



Maine Human Rights Commission  
# 51 State House Station | Augusta ME 04333-0051

Physical location: 19 Union Street, Augusta ME 04330  
Phone (207) 624-6290 ■ Fax (207) 624-8729 ■ TTY: 1-888-557-6690  
[www.maine.gov/mhrc](http://www.maine.gov/mhrc)

Amy M. Sneirson  
Executive Director

John P. Gause  
Commission Counsel

**INVESTIGATOR'S REPORT**  
**E11-0393**

May 24, 2012

[REDACTED]

v.

[REDACTED]

**I. Complainant's Complaint:**

Complainant [REDACTED] alleged that Respondent violated the Whistleblowers' Protection Act and the Maine Human Rights Act by terminating her employment in retaliation for her protected activity.<sup>1</sup>

**II. Respondent's Answer:**

Respondent did not respond to the complaint.

**III. Jurisdictional Data:**

- 1) Date of alleged discrimination: March 15, 2011.
- 2) Date complaint filed with the Maine Human Rights Commission: June 9, 2011.
- 3) Respondent is subject to the Maine Human Rights Act and the Whistleblowers' Protection Act as well as state employment regulations.
- 4) Respondent is not represented by counsel. Complainant is represented by [REDACTED], Esq.
- 5) Investigative methods used: A review of the written materials provided by the parties. This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of reasonable grounds or no reasonable grounds..

**IV. Development of Facts:**

- 1) The parties and issues in this case are as follows:

---

<sup>1</sup>Complainant also believes that Respondent violated the Fair Labor Standards Act, a law that is not enforced by the Commission.

- a) Complainant [REDACTED] worked for Respondent as a Sales Associate and Lead Associate in its Biddeford store from August 24, 2009 until March 15, 2011.
- b) Respondent [REDACTED] (hereinafter, "[REDACTED]") is a New Hampshire corporation. [REDACTED] is a retailer/distributor/wholesaler of cellular telephones and wireless data products and services. [REDACTED] operated a store in Biddeford store at the time of these events.
- c) [REDACTED] alleged that [REDACTED]s violated the Whistleblowers' Protection Act and the Maine Human Rights Act by terminating her employment in retaliation for protected activity.
- d) [REDACTED] did not respond to the complaint. [REDACTED]s sold all of its assets, including the Biddeford store, on September 30, 2011; the sale agreement reserved to [REDACTED] liabilities for all claims such as the instant action.

2) Complainant provided the following:

- a) When she began working for [REDACTED], she was a Sales Associate working for an hourly wage. In October of 2010, she was promoted to Lead Sales Associate, a salaried position in which she earned \$900 bi-weekly and regularly worked 50-55 hours per week.
- b) She performed her job duties satisfactorily. In fact, she received an award for being the Top Performer of 2010.
- c) After her promotion, it seemed to her that she was given all the duties of a manager without the corresponding title or pay. Later she discovered that [REDACTED] had been fined by the Department of Labor for violating labor laws, so she looked into Maine's labor laws and learned that an employee could only be placed on salary pay if in an executive, administrative or professional position. She did not believe that her position qualified as any of these.
- d) She had ongoing issues with [REDACTED] not paying her commissions when they were due. She contacted her General Manager about her concerns regarding not being paid. She believed that [REDACTED]'s failure to pay her commissions when they were due violated state and federal wage laws.
- e) She emailed her General Manager on Friday, March 11, 2011 because, by that point, her commission should have been direct-deposited into her bank account and it had not. She received no response. She emailed him again on Monday and received no response.
- f) On Tuesday morning, March 15, 2011, she sent an email to her General Manager at 9:30 A.M. asking when she would receive her commission and mentioning that she could accrue late fees for payments due and that she believed that [REDACTED] would be responsible for those late fees. At 10:00 A.M. that same morning, she was terminated. She was given no reason for her termination and never received a response to her inquiry about her commission.
- g) She believes that she was terminated for questioning, in good faith, the amounts [REDACTED] owed and paid to her, which is protected activity under the Whistleblowers' Protection Act.

**V. Analysis:**

- 1) The Maine Human Rights Act provides that the Commission or its delegated investigator "shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 M.R.S.A. § 4612(1)(B). The Commission interprets the "reasonable grounds" standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
- 2) The Maine Whistleblowers' Protection Act ("WPA") prohibits an employer from discharging an employee because the employee, acting in good faith, reports orally or in writing to the employer what the employee has reasonable cause to believe is a violation of law or rule adopted under the laws of this State, a political subdivision of this State or the United States. 26 M.R.S.A. § 833 (1)(A).
- 3) The Maine Human Rights Act ("MHRA") prohibits an employer from discharging an employee because of previous actions that are protected under the WPA. See 5 M.R.S.A. § 4572(1)(A).
- 4) Here, Complainant [REDACTED] alleged that Respondent [REDACTED], violated the WPA and the MHRA by terminating her employment in retaliation for her protected activity. [REDACTED] did not respond to the complaint.
- 5) In order to establish a prima-facie case of retaliation in violation of the WPA, Complainant must show that she engaged in activity protected by the WPA, she was the subject of adverse employment action, and there was a causal link between the protected activity and the adverse employment action. See *DiCentes v. Michaud*, 1998 ME 227, ¶ 16, 719 A.2d 509, 514; *Bard v. Bath Iron Works*, 590 A.2d 152, 154 (Me. 1991). One method of proving the causal link is if the adverse job action happens in "close proximity" to the protected conduct. See *DiCentes*, 1998 ME 227, ¶ 16, 719 A.2d at 514-515.
- 6) The prima-facie case creates a rebuttable presumption that Respondent retaliated against Complainant for engaging in WPA protected activity. See *Wyrwal v. Saco Sch. Bd.*, 70 F.3d 165, 172 (1st Cir. 1995). Respondent must then "produce some probative evidence to demonstrate a nondiscriminatory reason for the adverse employment action." *DiCentes*, 1998 ME 227, ¶ 16, 719 A.2d at 515. If Respondent makes that showing, Complainant must carry her overall burden of proving that "there was, in fact, a causal connection between the protected activity and the adverse employment action." *Id.*
- 7) In order to prevail, Complainant must show that Respondent would not have taken the adverse employment action but for Complainant's protected activity, although protected activity need not be the only reason for the decision. See *Maine Human Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1268 (Me. 1979).
- 8) Here, Complainant has established a prima-facie case by showing that she engaged in protected activity by repeatedly questioning her General Manager about Respondent's pay practices, and complaining that she was not receiving payment for her commissions in full when due. Complainant had a good faith belief that [REDACTED]'s failure to pay her commissions when they were due violated state and federal wage laws.

- 9) Complainant was terminated on Tuesday, March 15, 2011 at 10:00 A.M. shortly after her latest complaint about not receiving payment for her commission. The timing of events, and the fact that no reason for termination was given by Respondent, provides the causal link between Complainant's protected activity and the termination.
- 10) Respondent did not respond to the complaint and thus, failed to produce any probative evidence to demonstrate a nondiscriminatory reason for terminating Complainant's employment.
- 11) The Commission should conclude that there are reasonable grounds to believe that Respondent discharged Complainant from her job in retaliation for her protected activities because she established a prima-facie case of retaliation and Respondent did not deny that retaliation occurred.

**VI. Recommendation:**

For the reasons stated above, it is recommended that the Maine Human Rights Commission issue the following finding:

1. There are **Reasonable Grounds** to believe that Respondent [REDACTED] terminated Complainant [REDACTED]'s employment because of retaliation in violation of the Whistleblowers' Protection Act and the Maine Human Rights Act; and
2. Conciliation should be attempted in accordance with 5 M.R.S.A. § 4612(3).

  
\_\_\_\_\_  
Amy M. Sheirson, Executive Director

  
\_\_\_\_\_  
Barbara Lelli, Chief Investigator