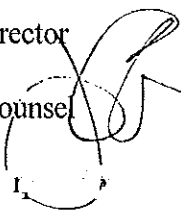


MAINE HUMAN RIGHTS COMMISSION

Memo

Date: May 8, 2007
To: Patricia E. Ryan, Executive Director
From: John P. Gause, Commission Counsel
Re: E06- , v.



Respondent, _____, has requested administrative dismissal of the above-referenced complaint based on lack of jurisdiction. I recommend that the Commission deny the request for dismissal.

Complainant alleges that he was injured at work, Respondent made him work beyond his restrictions in order to avoid a workers' compensation "reportable injury," and that he was then terminated because of his work-related disability. Respondent asserts that the Commission lacks jurisdiction because Complainant is a Vermont resident who worked for Respondent exclusively in Vermont. Complainant concedes that he lived and worked in Vermont. Respondent cites 5 M.R.S.A. § 4566, which states, in part, that the Commission is empowered to investigate "all conditions and practices *within the State* which allegedly detract from the enjoyment, by *each inhabitant of the State*, of full human rights and personal dignity." *Id.* (emphasis added). Respondent also claims that the Commission lacks jurisdiction because the claim is governed by the anti-retaliation provision in the Maine Workers' Compensation Act, 39-A M.R.S.A. § 353. *See* 5 M.R.S.A. § 4572(1)(A)(1).

First, with respect to the Workers' Compensation issue, § 353 provides, in relevant part, that "[a]n employee may not be discriminated against by any employer in any way for testifying or asserting any claim under [the Workers' Compensation Act]." 39-A M.R.S.A. § 353. Complainant asserts that he is not claiming discrimination for asserting a workers' compensation claim. Because the complaint can be fairly construed to assert a claim that Complainant was terminated because of a disability, which happened to be work-related, and not for asserting a workers' compensation claim, the complaint should not be dismissed. Of course, this issue should be monitored by the Investigator as the investigation proceeds.

With respect to the fact that Complainant lived and worked outside the State, Complainant asserts that _____ is based in Maine and that the personnel policies and practices that resulted in his termination were established in Maine. Respondent has not disputed this. A Maine statute will only be given extraterritorial effect if it so provides. *See Arizona Commercial Min. Co. v. Iron Cap Copper Co.*, 110 A. 429, 433 (Me. 1920) ("a remedy provided by statute will not be given extraterritorial effect unless such effect is within the contemplation of the act"). Here, the Maine Human Rights Act

states that it is unlawful employment discrimination for “any employer . . . to discharge an employee” because of disability. 5 M.R.S.A. § 4572(1)(A). The Act defines “employer” to include “any person in this State employing any number of employees, whatever the place of employment of the employees, and any person outside this State employing any number of employees whose usual place of employment is in this State. . . .” 5 M.R.S.A. § 4553(4). “Employee” is defined in relevant part simply as “an individual employed by an employer.” 5 M.R.S.A. § 4553(3).

Accordingly, by its plain terms, the Act covers the instant complaint because Respondent is located in Maine. The definition of “employer” specifically contemplates coverage of discrimination by employers located in Maine against employees located outside of the State.

Other state anti-discrimination laws with less clear language concerning extraterritorial application have been interpreted to cover discrimination against non-residents working out of state by resident employers. *See Burnside v. Simpson Paper Co.*, 864 P.2d 937, 940 (Wash. 1994) (Washington Law Against Discrimination applied to non-resident who worked in California); *State ex rel. Natalina Food Co. v. Ohio Civil Rights Com'n*, 562 N.E.2d 1383, 1385 (Ohio 1990) (Ohio Civil Rights Commission had jurisdiction to investigate unlawful discrimination against nonresident who worked in West Virginia for Ohio employer).

In *Burnside*, plaintiff worked at the end of his tenure in California for a corporation that was headquartered in California but was incorporated in Washington and was wholly owned by a Washington corporation that was headquartered in Washington. Defendant argued that there was no subject matter jurisdiction under the Washington Law Against Discrimination (“WLAD”). For support, defendant pointed to the purposes section of the WLAD, which refers to discrimination against “inhabitants.” *See Burnside*, 864 P.2d at 940. The Washington Supreme Court rejected this argument, finding that the reference to “inhabitants” was not jurisdictional and that limiting the Act to Washington inhabitants would undermine the antidiscrimination purposes of the Act. *Id.* The Court liberally construed the WLAD to apply to plaintiff, noting that the law provides that “‘any’ person injured by any act in violation of the chapter shall have a civil cause of action.” *Id.*

In *Natalina Food Co.*, Natalina Food Company sought an injunction to prevent the Ohio Civil Rights Commission from conducting an administrative hearing under the Ohio Fair Employment Practices Law (“OFEPL”) on a complaint brought by a West Virginia resident who worked for Natalina (presumably an Ohio-based corporation) primarily in West Virginia. The Ohio Supreme Court rejected the request for an injunction, finding that the Ohio Civil Rights Commission had the “basic statutory jurisdiction” to proceed. *Natalina Food Co.*, 562 N.E.2d at 1385. The court relied on the provisions in the OFEPL that allowed “any person” to file a charge with the OCRC and that defined “employer” as one that “employ[s] four or more persons within the state.” *Id.*

It should be noted that the United States District Court for the District of Maine recently reached the opposite conclusion on this issue. *See Judkins v. Saint Joseph's College of Maine*, 2007 WL 1196559, *5 (D.Me. 2007). The court relied on the language in § 4566 cited by Respondent to conclude that the Commission is limited to investigating discrimination occurring within the State of Maine affecting Maine residents. Decisions of the federal court are not binding on the Commission,

however, and § 4566 is not a jurisdictional statement of the Commission's investigative authority under the Act. *Cf. Burnside*, 864 P.2d at 940("use of the term 'inhabitants' as a general reference not intended to impose a residency requirement as a jurisdictional prerequisite to bringing suit"). The scope of the reference in § 4566 ("full human rights and personal dignity") is considerably broader than unlawful discrimination under the Act. Other provisions in the Act charge the Commission with the statutory responsibility of investigating all complaints filed by persons who believe that they have been subjected to unlawful discrimination under the Act. 5 M.R.S.A. § 4611, 4612(1)(B).

Accordingly, I believe that the Commission has jurisdiction to investigate the instant complaint.