

MAINE HUMAN RIGHTS COMMISSION

Memo

Date: April 17, 2008
To: Patricia E. Ryan, Executive Director
From: John Gause, Commission Counsel
Re: [REDACTED]

807-0726

You asked whether Complainant should be permitted to amend her charge to include an allegation of disability discrimination. Complainant filed a timely charge alleging that she was denied sick bank days because of her pregnancy. She wishes to amend her charge to include a claim of disability discrimination, although more than [REDACTED] has expired since the date of alleged discrimination. She asserts that the narrative in the charge sets forth an adequate basis to conclude that disability discrimination is alleged, even though she only checked the box for "sex" discrimination, not the box for "disability" discrimination. The issue is whether the disability charge (which is untimely) relates back to the filing date of the sex charge (which is timely).

Our Procedural Rule states, in relevant part, that "amendments alleging additional acts which constitute unlawful practices related to or growing out of the subject matter of the original complaint will relate back to the date the complaint was first received." MHRC Procedural Rule § 2.02(F). In *Caldwell v. Federal Express Corp.*, 908 F. Supp. 29, 35 (D.Me. 1995), the United States District Court for the District of Maine held that an age discrimination claim brought in court had been properly administratively exhausted with the EEOC despite the fact that the EEOC charge did not allege age discrimination (it alleged sex discrimination). The court held that the age claim had been properly administratively exhausted because it alleged the identical set of facts (surrounding a failure to hire) as the sex discrimination claim that had been raised with the EEOC. Accordingly, the Court held that the age claim was "reasonably related to" the sex claim and "grew out of" the same set of circumstances. *See id.*

Here, because both the sex and disability claims relate to the same alleged denial of benefits, I think that the disability claim is timely.