The First Circuit Significantly Expands the Scope and Reach of the Maine Human Rights Act

By Devin W. Deane, Esq. In a recent decision, *Roy v. Correct Care Solutions, LLC*, 914 F.3d 52 (1st Cir. 2019), the United States Court of Appeals for the First Circuit significantly expanded the scope and reach of employer and non-employer liability under the Maine Human Rights Act ("MHRA"). Addressing "unresolved questions of Maine Law," the First Circuit held:

- Non-employers may be liable for employment-related discrimination under § 4633 of the MHRA;
- Employers may be liable for a hostile work environment created by non-employees as long as the employer knew of the harassment and failed to take reasonable steps to address it; and
- Employers may be liable for retaliation where its adverse action was caused by a third party's action or demand, which the employer knew was motivated by a retaliatory or discriminatory animus.

The case arises out of the Maine State Prison in Warren, Maine. The plaintiff, Tara Roy, worked at the Maine State Prison as a nurse, employed by defendant Correct Care Solutions, LLC—a government contractor that contracted with the Maine Department of Corrections ("MDOC") to provide health care services at the prison. As alleged by the plaintiff, while working at the prison, several MDOC corrections officers made derogatory comments about the plaintiff and women in general; referred to her using sexual epithets; and spread rumors that she had slept with multiple corrections officers. After she complained about the conduct to her employer, Correct Care Solutions, corrections officers began ignoring her requests for assistance and frequently left her alone with inmates in violation of prison protocols. The plaintiff reported the protocol violations to her employer, which she claimed were retaliatory and put her at risk of harm. Correct Care Solutions notified the MDOC of the complaints. After investigating at least one of the incidents, the MDOC concluded that the plaintiff had exaggerated the circumstances of the alleged protocol violations. The MDOC revoked the plaintiff's security clearance, which was a requirement of plaintiff's position at Correct Care Solutions. Citing the revocation of her security clearance, Correct Care Solutions terminated the plaintiff's employment. The plaintiff sued the MDOC and Correct Care Solutions alleging, among other things, that she was subjected to a hostile work environment created by the MDOC correction officers; that her employer, Correct Care Solutions, knew of the officers' harassment and failed to take reasonable steps to address it; and that her termination and the revocation of her security clearance were in retaliation for her complaints about the hostile work environment created by the MDOC corrections officers. The United States District Court for the District of Maine entered summary judgment in the defendants' favor. With respect to the claims against the MDOC, the District Court held that non-employers, like the MDOC in this instance, cannot be liable under the MHRA. With respect to the claims against Correct Care Solutions, the District Court held that the plaintiff did not generate a dispute of fact regarding the existence of a hostile work environment and that the plaintiff's complaints regarding the corrections

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officers' conduct were not protected activity—and therefore could not be the basis of a retaliation claim—because Correct Care Solutions was without the ability and authority to correct the officers' behavior. On appeal, the First Circuit reversed summary judgment for each defendant finding error with each of the bases of the District Court's opinion. *Non-employer liability under the MHRA* Relying on the Law Court's decision in *Fuhrmann v. Staples Office Superstore East, Inc.*, 2012 ME 135, 58 A.3d 1083, the District Court concluded that the MHRA allows employment discrimination actions against employers only, and never against non-employer entities like the MDOC. The First Circuit disagreed, holding, based on the text and history of § 4633 of the MHRA, the MHRA allows retaliation claims against any "person," including non-employers. The First Circuit distinguished *Fuhrmann*, where the issue before the Law Court was individual supervisor liability for a claim under § 4572, the MHRA provision that prohibits unlawful employment discrimination an "employer." In contrast, § 4633 prohibits discrimination by any "person," which, according to the First Circuit, targets actions by third parties, like the MDOC—not the employer, its employees, or agents. The First Circuit declined to extend *Fuhrmann*'s holding to bar suits against non-employer third parties under § 4633. *Employer liability for a hostile work environment created by non-employees* The District Court did not address the issue of whether Correct Care Solutions could be liable for the alleged hostile work environment created by the non-employee, third-party corrections officers. The District Court entered summary judgment for Correct Care Solutions on the basis that the plaintiff did not establish a genuine dispute of fact as to whether the corrections officers' conduct constituted a hostile work environment. The First Circuit disagreed, concluding that the plaintiff had produced enough evidence to generate a dispute of fact as to the existence of a hostile work environment. The First Circuit then addressed Correct Care Solutions' potential liability for the alleged hostile work environment created by the non-employee, third-party corrections officers. Citing a number of federal cases interpreting similar claims under Title VII, the First Circuit held that "an employer can be liable under the MHRA for a hostile work environment created by non-employees as long as the employer knew of the harassment and failed to take reasonable steps to address it." *Employer liability for adverse action caused by a third party's discriminatory animus* In entering summary judgment for Correct Care Solutions on the plaintiff's retaliation claim, the District Court ruled that the plaintiff's complaints were not protected activity because, in its view, Correct Care Solutions lacked the ability and authority to correct the complained-of violations by the corrections officers. Because it concluded that the plaintiff's complaints were not protected activity, the District Court did not address the plaintiff's argument that Correct Care Solutions terminated her because of her complaints. The First Circuit reversed, concluding that the plaintiff's complaints were protected activity under the MHRA and that factual disputes existed as to whether the plaintiff was terminated in retaliation for her complaints. Rejecting Correct Care Solutions' argument that its reason for firing the plaintiff— the MDOC's revocation of her security clearance—was neutral, the First Circuit held that "a jury could conclude that MDOC's retaliatory animus caused the revocation of the security clearance and, in turn, caused [the plaintiff's] termination." The First Circuit held that an employer may be liable for retaliation under the MHRA where a third party's retaliatory or discriminatory actions or demands caused the employer's adverse action and "the employer knew that [retaliatory or discriminatory] animus motivated the third party's actions or demands and simply accepted those actions or demands." *The First Circuit's opinion is non-binding but likely persuasive authority to Maine courts* Because it was interpreting and applying a state statute, and not reviewing the statute with respect to its constitutionality, the First Circuit's opinion is not binding on Maine state courts' interpretation and application of the MHRA. However, the First Circuit's opinion is likely to be persuasive authority unless and until the Law Court addresses the issues specifically.

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