

First Circuit Ruling Expands Liability for Discrimination by Non-Employers and Employers with Offsite Workers in Maine

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A recent opinion from the U.S. Court of Appeals for the First Circuit has potentially expanded the reach of the Maine Human Rights Act (MHRA), with important implications for Maine companies. In [Roy v. Correct Care Solutions et al.](#), the federal appellate court addressed sexual harassment and retaliation claims brought by a nurse, Tara Roy, who was an employee of Correct Care Solutions (CCS) placed by contract to work at a Maine Department of Corrections (MDOC) prison in Warren, Maine.

Following her complaints about prison guards making sex-based remarks toward her, and leaving her alone with patients in violation of MDOC rules, the harassment allegedly escalated culminating in MDOC revoking Roy's security clearance, which in turn caused CCS to terminate her employment. Although MDOC did not employ Roy, she brought a claim against the prison under Section 4633 of the Maine Human Rights Act, alleging that MDOC interfered with her MHRA-protected right to work free from sex discrimination, and that its revocation of her security clearance was unlawful retaliation for her MHRA-protected complaints about sexual harassment and unsafe work conditions.

The U.S. District Court for the District of Maine granted summary judgment based on the Maine Law Court's 2012 decision in *Fuhrmann v. Staples Office Superstore East, Inc.*, which held that the MHRA protects against discrimination by employers only, and never against "non-employer entities" like MDOC. The First Circuit came to a different conclusion based on a different section of the MHRA. Section 4572, which was at issue in *Fuhrmann*, is the traditional source of MHRA liability that prohibits discriminatory conduct by an employer occurring within the scope of a traditional employment relationship. However, the First Circuit reasoned that the *Fuhrmann* analysis, limiting MHRA liability to employers (and declining to extend liability to individual supervisors), does not apply to Section 4633, which targets actions by "any person" that hinders employees' MHRA-protected rights via retaliation, interference, coercion, or intimidation. The court held that non-employers may be liable for discriminatory actions under this section of the Act.

The *Roy* court also addressed another issue created by "the unique nature of Roy's workplace," where workers employed by multiple entities share a worksite - namely, whether employer CCS could be liable for a hostile work environment created by the non-employee prison staff. Again, the First Circuit reversed the district court's grant of summary judgment for CCS, ruling that even though CCS did not employ the corrections officers or manage the prison, and thus had no direct level of control over the conditions that allegedly created the hostile work environment, CCS was aware of Roy's concerns and was "not helpless" to influence the officers or the operation of the prison's medical facility.

The court held that a jury assessing the reasonableness of CCS's response to the hostile work environment might decide that CCS was obligated to suggest disciplinary measures for offending officers to MDOC, or to transfer Roy to another facility staffed by CCS. As for Roy's retaliation claim, the court made clear that a third party's retaliatory or discriminatory animus can form the basis for liability when the employer knew that the animus motivated the third party's actions or demands and ratified them through its own employment decision, even if there is no evidence of discriminatory animus held by the employer itself.



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Takeaway: Because of the First Circuit's expansion of potential liability under MHRA Section 4633 to non-employers, plaintiffs may no longer need to establish joint employment relationships in order to seek redress from non-employers in discrimination cases involving multiple entities. It will be interesting to see how the Law Court reacts to the *Roy* opinion, including whether it revisits its *Fuhrmann* decision on the question of individual supervisor liability under the Maine Human Rights Act.

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