

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
DCR DOCKET NO. EM05SB-63733  
EEOC CHARGE NO. 17E-2013-00307

Heena Patel and Director of the )  
Division on Civil Rights, )  
 )  
Complainants, )  
 )  
v. )  
 )  
Suncity Distribution, )  
 )  
Respondent. )

Administrative Action

**FINDING OF PROBABLE CAUSE**

On March 25, 2013, Heena Patel (“Complainant”) filed a verified complaint with the New Jersey Division on Civil Rights (“DCR”) alleging that her former employer, Suncity Distribution (“Respondent”), discriminated against her based on gender in violation of N.J.S.A. 10:5-12 (a) of the New Jersey Law Against Discrimination (“LAD”), N.J.S.A. 10:5-1 to -42. Respondent denied the allegations of discrimination in their entirety. It asserted that Complainant<sup>1</sup> was fired for legitimate non-discriminatory business reasons. After reviewing the DCR’s ensuing investigation, the DCR Director now finds, for purposes of this disposition only, as follows.

On January 16, 2012, Complainant, an East Hanover resident, was hired by Respondent as a purchasing manager with a salary of \$40,000/year. She was responsible for negotiating contracts and purchase prices with suppliers. She described the job as essentially sedentary—her principal tools were a telephone and computer. Her immediate supervisor was Manish Talati (Vice-President of Operations). The position did not require her to perform any physical labor.

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<sup>1</sup> The DCR Director hereby intervenes as a complainant pursuant to N.J.S.A. 13:4-2.2(e). However, for purposes of this finding, “Complainant” will refer only to Ms. Patel.

Respondent, which is located in Edison, describes itself as a “New Jersey domestic profit corporation that engages in the wholesaling and distribution of Information Technology products.” See Letter from Nayan Panchal, Esq., to DCR, Apr. 25, 2014, p. 1. Respondent states that its overseas parent company is Niti Distribution Ltd. Ibid.

On February 6, 2013, Complainant told Talati that she was pregnant. She alleged that Talati replied that they would “try to work something out” and he allowed her to work from home two days a week. Complainant stated that she had no further conversations about her pregnancy with anybody at work. She told DCR that she was approximately three months pregnant at the time.

On February 18, 2013, Talati sent her the following email:

Dear Heena,

We reviewed the business in whole for Suncity for the year of 2012 and the financial data revealed, has shown the company is in losses. With this we are forced to file a loss with state of NJ.

Also it has forced the company to restructure all the expenses to help the operation run successfully. All expenses and accounts are under review and may affect all payables of company including employee's salary.

Due to your maternity and the kind of work we are involved, the management has recommended you to take rest immediately with effect from 28<sup>th</sup> Feb 2013 and in the future if this vacancy is available we will call for you to rejoin. The management would like to wish you all the best in your future endeavors.

Regards,  
Manish

[sic throughout]

At the time, Complainant was one of two female purchasing managers. The other employee was not pregnant. Complainant called Talati, Ponnin Selvan (Vice President Sales & Marketing, Niti Distributors Ltd.), and the company's human resource department, seeking an explanation. She told DCR that she was unable with speak to anyone and that no one replied to her messages asking to be called back.

Respondent told DCR that its decision to discharge Complainant stemmed from a number of performance issues including Complainant's "failure to take ownership of her role within [Respondent] when [she] failed to obtain her own network of suppliers," "trying to avoid completing her assigned work," and unexplained absences. See Panchal letter, supra. Respondent produced a number of emails sent to Complainant from July 7, 2012, to February 1, 2013, including nine emails that criticized her for performance issues. For instance, on July 7, 2012, Selvan wrote:

Heena,

I am surprised with this kind of mail of yours, let me give you information on what is my expectation from you and what you should have done.

1. Not depend of Manish's suppliers and create a pool of your own suppliers
2. This is business and sometime payments can be delayed, if payment was to be done for 30 or 45 days, we should have taken precautionary measures to ensure that payments are not delayed.
3. And you are not a middle person, you are part of my organization and I need you to take ownership and drive towards getting results for the organization.
4. Manish, will no longer involved in giving prices, if I need prices from USA you and Jina will be responsible for giving the same, I don't know anybody else, when Manish comes there and is responsible for sales there I will ask him the same.
5. I need positive output from you and need help to get prices immediately from various sources of the market rather than depend on Manish's resources.

[sic throughout]

On January 30, 2013, Selvan wrote:

Heena,

Why does it take so much time to response and close the issue and it seems you are not accessible to on skype and your telephone also? We need to have and work on response TAT to the countries...

I would urge you to be much more quicker and responsive?

[sic throughout, ellipse in original]

On February 1, 2013, Selvan wrote to Complainant and Talati, and copied four others:

Without internal PO approvals, no payments is done, anybody found doing so is under scrutiny for improper work conduct (don't forget now online review mechanisms have started through HRIS portal and it will affect your ratings)

Heena, don't give payment instructions without internal PO approval; I have told this to you now over a 100 times...

Manish, since you are in US, explain what is the internal PO system and what are the reasons we take them.

[sic throughout, ellipse in original]

The LAD prohibits gender discrimination in employment, labor organizations, credit and contracting, places of public accommodations, and housing/real estate transactions. N.J.S.A. 10:5-12. Because only women can become pregnant, courts have interpreted gender discrimination to include discrimination based on pregnancy. Wolpert v. Abbott Laboratories, 817 F. Supp. 2d 424 (3<sup>rd</sup> Cir. 2011), see e.g., Castellano v. Linden Bd. of Ed., 79 N.J. 407 (1979)(holding that disallowing sick leave for disability caused by pregnancy discriminates against women, since sick leave is available for disabilities due to illness or injury), mod. on other grounds, 79 N.J. 407, 412-13 (1979).<sup>2</sup>

The New Jersey Supreme Court has declared that employment discrimination "is not just a matter between employer and employee . . . [t]he public interest infuses the inquiry," Raspa v. Office of Sheriff, Gloucester County, 191 N.J. 323, 335 (2006) (quoting Fuchilla v. Layman, 109 N.J. 319, 335 (1988)), and the LAD is the "Legislature's attempt to protect society from the vestiges of discrimination." Id. at 335 (quoting L.W. v. Toms River Reg'l Schools, 189 N.J. 381, 399 (1988)).

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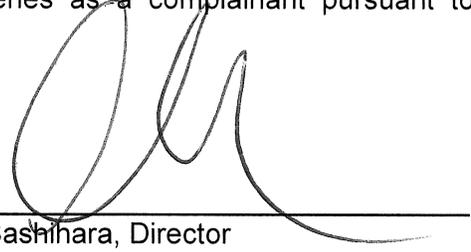
<sup>2</sup> In January 2014, the Governor signed a bill amending the LAD to expressly add the word "pregnancy" to sections 10:5-12a, 12b, 12c, 12f, 12g, 12h, 12i, 12k, 12l, 12m, and 12o, to make pregnancy a separate protected class in employment, housing, credit/contracting and public accommodations.

When verified complaints are filed with the DCR, the DCR Director is required to determine whether “probable cause exists to credit the allegations of the verified complaint.” N.J.A.C. 13:4-10.2. “Probable cause,” for purposes of this analysis, means a “reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated.” Ibid. A finding of probable cause is not an adjudication on the merits, but merely an initial “culling-out process” whereby the Director makes a preliminary determination of “whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits.” Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev’d on other grounds, 120 N.J. 73 (1990), cert. den., 111 S.Ct. 799; Sprague v. Glassboro State College, 161 N.J. Super. 218, 226 (App. Div. 1978).

In this case, the email from Respondent’s Vice-President of Operations indicates that Complainant’s “maternity” was a factor in Respondent’s decision to terminate Complainant. (“Due to your maternity and the kind of work we are involved . . . [M]anagement would like to wish you all the best in your future endeavors.”). Respondent produced emails showing that it had criticisms of Complainant’s job performance. Even if Respondent was having legitimate concerns about complainant's job performance, it appears that her pregnancy was nonetheless a motivating factor in the decision to terminate her employment. Perhaps Respondent felt that once Complainant became three and a half months pregnant, she was unable to effectively communicate on the computer and/or telephone with suppliers. If that is the case, there is no indication that Respondent relied on any medical evaluation to reach that conclusion. In view of the above, the investigation found sufficient evidence to support a reasonable suspicion that gender was a factor in Respondent’s decision to terminate Complainant based on pregnancy.

WHEREFORE, it is on this 19<sup>th</sup> day of May, 2014, determined and found that PROBABLE CAUSE exists to credit the allegation of gender discrimination and it is further

ORDERED that the DCR Director hereby intervenes as a complainant pursuant to N.J.S.A. 13:4-2.2(e).



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Craig Sashihara, Director  
NJ DIVISION ON CIVIL RIGHTS