

**STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
DCR DOCKET NO. EC06WB67339**

**Jalaia Hill,** )  
 )  
 **Complainant,** )  
 )  
 **v.** )  
 )  
 **America’s Best Contacts &** )  
 **Eyeglasses, Inc.,** )  
 )  
 **Respondent.** )

**Administrative Action  
FINDING OF PROBABLE CAUSE**

On March 8, 2019, Jalaia Hill (“Complainant”) filed a verified complaint with the New Jersey Division on Civil Rights (“DCR”) alleging that America’s Best Contacts & Eyeglasses, Inc. (“Respondent”) discriminated against her by subjecting her to differential treatment based on pregnancy and by failing to provide reasonable break times and a suitable private room for her to express breast milk, in violation of the New Jersey Law Against Discrimination (“LAD”), N.J.S.A. 10:5-1 to -49. Respondent denied the allegations of discrimination in their entirety. DCR’s investigation found as follows.

**SUMMARY OF INVESTIGATION**

Respondent is a discount provider of eye examinations, eyeglasses, and contact lenses, with 700 locations nationally and 15 branch locations in N.J. Respondent hired Complainant as a full time sales associate in May of 2018. Complainant took medical leave associated with her pregnancy and childbirth beginning November 19, 2018 and returned to work on March 4, 2019.

In the verified complaint, Complainant alleged that Respondent discriminated against her based on pregnancy by subjecting her to differential treatment because of her pregnancy and by denying her reasonable accommodations related to breastfeeding. Complainant alleged that, upon return from maternity leave, Respondent reduced her from a full-time to part-time schedule but did not reduce the hours of other similarly situated non-pregnant employees. Complainant also alleged that Respondent denied her reasonable accommodations to express breast milk, including providing breaks longer than (10) minutes and a private, appropriate location to express milk.

In its response to the complaint, Respondent denied that it discriminated against Complainant on the basis of pregnancy by reducing her hours and claimed that Complainant’s hours were reduced at her request after she told Respondent she could no longer work full-time because of her childcare needs. Respondent also denied Complainant’s allegation that she was not provided an appropriate location and appropriate breaks to express breast milk. Respondent alleged that it permitted Complainant to express milk throughout the day according to her own needs and provided her a private room in which to do so.

## Disparate Treatment

Complainant told DCR that Respondent hired her as a full-time sales associate in May of 2018. Respondent paid Complainant hourly and she received commission on sales. Because she worked more than 30 hours a week, she was considered full time and received healthcare benefits for herself and her children. It is undisputed that Complainant was on maternity leave from November 19, 2018 through March 2019.

According to Complainant, in late February of 2019, she called her manager, David James, to tell him that she was ready to return to work and to ask that he put her back on the schedule full time. She alleged James told her that, initially, he could only give her part-time hours because another employee had taken over her hours while she was out on maternity leave. She further alleged James told her that the employee planned to leave the company in one week and after that, he would be able to return her to her full-time hours. Complainant agreed to work part time for the first week until the employee left and then assume her pre-maternity leave, full-time schedule.

Complainant told DCR that James told her that in order for him to permit her to come back on a part-time basis, she would have to sign a “Change in Availability” form but that it would only be in effect for one week. Complainant said that she agreed to sign the form, believing James’ representations that it would be applicable for only a week. DCR reviewed the “Change of Availability” form, dated February 14, 2019, listing Complainant’s availability as Monday–Friday 8:30 a.m. – 4:30 p.m.<sup>1</sup> The form was signed by Complainant and James.

Complainant told DCR that, despite James’ representations, she was never restored to full-time status after she returned from maternity leave on March 4, 2019. Complainant alleged that she verbally requested that James restore her to full time several times and each time he told her to fill out a “Change in Availability” form. DCR reviewed the following “Change in Availability” forms, all of which were signed by both Complainant and James:

- Form dated February 14, 2019, listing Complainant’s availability as “Mon.-Fri. 8:30 am – 4:30 pm. Effective date 2/14/18 [*sic*] (As soon as back from maternity leave)”.
- Form dated February 26, 2019, listing Complainant’s availability as “Monday (open to close<sup>2</sup>) Tuesday (open to close) Wednesday 8:30 a.m. – 5:30 p.m. Thursday open – 7:00 p.m. Friday Open-7:00 p.m. Every other Saturday open to close.”<sup>3</sup>
- Form dated May 10, 2019 indicating , seeking “if possible off Wednesday or able to leave at 5:00 due to court order.”
- Form dated May 21, 2019 showing Complainant’s availability as Monday – Saturday 8:30 a.m. to 7:30 p.m.

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<sup>1</sup> This schedule allows for a possible maximum of 40 hours per week.

<sup>2</sup> Respondent’s time sheets indicate that open to close is 8:30 a.m. to 7:30 p.m., which allows for a maximum of 11 possible hours.

<sup>3</sup> This schedule allows for a maximum of 51 possible hours without Saturday and 62 possible hours with Saturday.

Complainant told DCR that she discussed her need for more hours with James on multiple occasions and explained to him that if she did not receive full-time hours she would not be eligible for healthcare benefits or a Low Income Housing Tax voucher that she and her children relied on. Complainant alleged that James told her that she would be given a full-time schedule at some point in the future but would not tell her when. Complainant told DCR that because she never received her full-time hours, she lost healthcare for herself and her children and lost eligibility for her Low Income housing Tax voucher.

Complainant told DCR that the hours of other sales associates, who had not taken maternity leave and who did not require accommodations for breastfeeding, were not reduced from full to part time during the same period.

According to Respondent, James was transferred from the Burlington store to the Cinnaminson location in May of 2019. As part of the transfer, Allyson Mancuso, Respondent's District Manager, interviewed all of the employees at the Burlington store, including Complainant. Complainant alleged she told Mancuso that James had promised to restore her to her pre-maternity leave schedule but that he failed to do so. Complainant alleged Mancuso told her that Respondent did not have enough need at the Burlington store to offer Complainant full-time hours, but, if she wanted more hours, Mancuso could arrange it so that Complainant could pick up hours at Respondent's Cinnaminson or Audubon store locations. Complainant told Mancuso that she would not work for James again, so she would not work at the Cinnaminson store but that she was interested in the Audubon store. Complainant told DCR that Mancuso said that she would get back to her regarding hours at the Audubon location but that she never did.

According to Respondent, Miguel Manzano replaced James in June 2019. Complainant told DCR that she asked Manzano to be restored to full-time hours but he told her that the store did not have hours available for her at the time.

It is undisputed that Complainant resigned from Respondent on August 5, 2019. According to Complainant, though she did not mention it in her letter of resignation, she quit because she needed full-time hours to support her family and, despite her requests, Respondent would not restore her to a full-time schedule.

Complainant's last workday for Respondent was August 8, 2019. On August 12, 2019, Manzano filled out a "Voluntary Termination" form for Complainant, stating "gave one week notice and gave no reason. As far as I am aware, all was fine morale wise with me even assisting in her getting into the ophthalmic program." [*sic throughout*].

DCR interviewed three of the employees at Respondent's Burlington store. All three told DCR that Complainant was a full-time employee before she went on maternity leave but that her hours were reduced to part time when she returned. In addition, all three told DCR Complainant was upset that her hours had been cut, and that she reported to them that she requested that her full-time schedule be restored.

Respondent provided DCR Complainant's time sheets which showed that, prior to maternity leave, Complainant worked an average of 34 hours per week but on return from leave she worked an average 28 hours per week.<sup>4</sup>

During an interview with DCR, James denied Complainant's allegation that he told her he could not offer her full-time hours immediately when she returned from maternity leave or that he promised to increase her hours to full time once another sales associate left. James told DCR that when Complainant returned from maternity leave, she asked for part-time hours because she did not have the childcare coverage to come back full time. James said that because she was now moving from full to part time, she had to fill out a "change in availability form." James told DCR that Complainant told him she was trying to get back to full time because she needed her benefits but that she never explicitly asked for full-time hours or expressed an ability to work full time. James said he told Complainant that in order for him to increase her hours, she would have had to fill out another "change in availability" form, and that though he requested that she do so, Complainant never did. DCR presented James with two "change in availability" forms submitted by Complainant and signed and dated by James. James verified to DCR that it was his signature on both documents, but said he did not remember Complainant submitting these forms to him or signing them. James told DCR that regardless of whether she had requested more hours, Complainant was not eligible for full time because she had indicated on each form that she was not available on all nights and for the entire weekend and that, in order to be considered full time, an employee could not have any restrictions on their availability. James added that, even if she was eligible by virtue of an open schedule, the store did not have the hours for her given their staffing needs.

DCR interviewed Mancuso who said that only full-time employees receive healthcare benefits and, to be full time, an employee must work 30 hours per week and be available to open and close the store and be available on weekends. Mancuso said that Respondent made exceptions for employees who were attending an ophthalmology program and intended to continue to work for Respondent upon graduation. Mancuso said employees in this category did not have to have full availability without restriction to remain full time and continue to receive health benefits.

DCR reviewed Respondent's Health Benefits Policy, which states in relevant part:

A full-time associate is one who is consistently scheduled to work an average of 30 or more hours per week and is eligible for applicable associate benefits. An associate in this category may be classified as exempt (salaried) or nonexempt (hourly). A part-time associate is one who is consistently scheduled to work an average of less than 30 hours per week and may not be eligible for most associate benefits. Management should evaluate the necessity of a change in status when a full-time associate is averaging scheduled hours of less than 30 hours per week over a twelve-week period and the reduction is scheduled hours is expected to continue. Management should evaluate the

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<sup>4</sup> DCR calculated the pre- and post-maternity leave weekly averages based on the time sheets Respondent provided and determined that Complainant worked a weekly average of 32 hours/week before going on maternity leave and an average of 28 hours/week upon returning from maternity leave.

necessity of a change in status when a part-time associate is averaging scheduled hours of 30 hours or more per week over a twelve week period and increase in scheduled hours is expected to continue.

Mancuso told DCR that Complainant had asked her for an increase in hours but that she did not explicitly ask for “full-time hours.” Mancuso said she told Complainant Respondent could not provide her more hours at the Burlington location because there “was no need.” Mancuso did not remember Complainant saying that she needed the hours in order to remain eligible for health benefits. Mancuso said she did not remember telling Complainant that she would work to get her more hours at the Audubon store, although she did say that getting employees more hours at different stores is something Respondent does in practice. Mancuso told DCR that neither Complainant nor James told her that James had promised Complainant that she would be restored to full-time status when she returned from maternity leave contingent on a sales associate leaving the company.

Manzano told DCR that when he replaced James as manager of the Burlington store he was told that Complainant was part time because of childcare needs and therefore he continued to schedule her part-time hours. Manzano told DCR that Complainant did ask him for more hours and he was able to give her a small increase, but not enough to make her full time. Manzano said that he told Complainant to submit a “change in availability” form, to receive more hours but that she never did. Manzano also told DCR that Complainant never told him why she resigned.

#### Reasonable Accommodation

Complainant told DCR that after her return from maternity leave she requested a suitable place to express milk. She told DCR that, because James initially failed to identify a location for her, she used a tiny utility closet. Complainant said that when she asked James for an accommodation, he directed her to use a utility room which did not have a lock, was filled with boxes of supplies, and was, according to Complainant, “unsanitary.” Though she was able to take unmonitored pump breaks, because there was no lock on the door, she had no guarantee of privacy and people walked in on her while she was pumping breast milk. She also alleged James frequently told her to “hurry up and finish” while she was pumping because there were customers.

Complainant alleged that she told James about her need for privacy and a working lock on the door and that he said he would put in a maintenance request for a lock to be installed. According to records produced by Respondent, the lock was not installed until May 29, 2019. Complainant reported that a lock was installed only after District Manager Allyson Mancuso became aware of the situation. Before then, in order to ensure privacy while she pumped, Complainant barricaded the door with boxes of supplies or leaned against the door to prevent others from entering.

DCR interviewed three of Respondent’s employees at the Burlington store regarding Complainant’s allegation that she was not provided a clean, private room to pump her breast milk. All three employees said that while James was General Manager, Complainant pumped in the supply room, a room that was described as being full of boxes and which did not have a lock on the door. Two of the employees told DCR that they had accidentally walked in on Complainant

while she was pumping breast milk because there was no lock. All three employees told DCR that they were aware that Complainant had asked James to install a lock and that he told her that he had made a request to maintenance. All three corroborated Complainant's statement that a lock was not installed until after District Manager Allyson Mancuso visited the store.

During an interview with DCR, James said he did not offer Complainant a suitable, private room to pump her breast milk because he thought she would find a place to do so. James admitted that the room Complainant used to express milk did not have a lock and told DCR he did not know that he was required to provide her a lock on the door. James said he knew the room was available and he assumed that's where she would go, but he did not instruct her to use it. James told DCR that Complainant never complained to him about the conditions in the room or that it did not have a lock. James said that there was a small amount of stock in the room but he would not describe it as "unsanitary." He said that he knew that Complainant needed to pump and that he permitted her pump breaks when she needed them. He told DCR he never heard Complainant or anyone else complain that they had walked in on Complainant while she was pumping. James denied he ever told Complainant to "hurry up" while she was pumping. James said that when Complainant asked him to install a lock on the door he put the request in for maintenance to install it, but that it was not installed until after he was transferred to a different store.

During an interview with DCR, Respondent's District Manager, Mancuso said she first learned that Complainant had complained about not having a private room with a locking mechanism in which to express breast milk when she met with employees at the Burlington store. Mancuso told DCR that Complainant reported to her that there was no lock on the door and that she had complained to James about the lack of privacy but that nothing was done to remedy the situation. Mancuso said she understood this did not comply with the law so she had a lock installed.

Respondent provided DCR an invoice of the lock installation which indicates that it was ordered on May 22, 2019 and installed on May 29, 2019. Complainant told DCR that the lock was not immediately installed when she brought the issue to Mancuso, but was installed some time later while when Manzano took over the General Manager position.

## **ANALYSIS**

At the conclusion of an investigation, 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(a). "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." N.J.A.C. 13:4-10.2(b). If DCR determines that probable cause exists, then the complaint will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b). However, if DCR finds there is no probable cause, then that determination is deemed to be a final agency order subject to review by the Appellate Division of the Superior Court of New Jersey. N.J.A.C. 13:4-10.2(e); R. 2:2-3(a)(2).

A finding of probable cause is not an adjudication on the merits. Instead, it is merely an initial “culling-out process” in which the Director makes a threshold 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.*, 498 U.S. 1073. Thus, the “quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits.” *Ibid.*

### Differential Treatment

The LAD makes it unlawful to fire, refuse to hire, or otherwise discriminate in the “terms, conditions or privileges of employment” based on pregnancy. N.J.S.A. 10:5-12(a)

Here, the investigation found sufficient evidence to support a reasonable suspicion that Respondent discriminated against Complainant when it failed to restore her to full-time status when she returned from maternity leave. According to information provided by Respondent, employees who work an average of 30 hours or more per week are considered full time and are entitled to health benefits. There is no dispute here that, prior to her maternity leave, Complainant worked more on average more than 30 hours per week, and was considered full time and eligible for health benefits but after she returned from maternity leave, she worked less than 30 hours per week on average and was not entitled to health benefits.

During the course of DCR’s investigation Respondent shifted its rationale for Complainant’s lack of hours after her return from maternity leave. First, Respondent told DCR that Complainant specifically requested a part-time schedule when she returned from maternity leave stating that she was having difficulty arranging childcare.<sup>5</sup> Respondent told DCR that if Complainant wanted full-time hours, she was required to submit a “change in availability form.” Documentary evidence submitted by Respondent, however, shows that Complainant submitted several “change in availability forms” all of which show that she was available to work more than 30 hours per week. Specifically, the February 14, 2019 form shows that Complainant was available Monday – Friday, 8:30 a.m. to 4:30 p.m.; the February 26, 2019 form shows that she was available from opening to closing on Mondays, Tuesdays, and every other Saturday, and from 8:30 a.m. to 5:00 p.m. on Wednesday, opening until 7:00 p.m. on Thursday and Friday; the May 10, 2019 form shows that Complainant had “open” availability with a note asking for either all day off on Wednesday or permission to leave at 5:30”; the May 21, 2019 form shows that Complainant was available Monday – Saturday, 8:30 a.m. to 4:30 p.m. All of the forms are signed and dated by both Complainant and James. The timing of the two February forms provides some support for Complainant’s statements that James had her fill out a form when she returned from maternity leave and another when she said James was to return her to full-time hours. In addition, witnesses

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<sup>5</sup> Whether Complainant had asked for part-time hours when she returned from work or whether James told Complainant that restoring her to full time was contingent on another employee leaving the company is disputed by the parties. It is noted that Complainant could have been given a full-time schedule in accord with her “change in availability” forms, where she would have consistently been scheduled for an average of over 30 hours per week; i.e., she thus considered full time and eligible for health benefits.

interviewed by DCR corroborated Complainant's assertion that she asked James for more hours when she returned from leave.

Next, during his interview with DCR, James told DCR that Complainant did ask for more hours, saying that she needed to be eligible for health benefits. James suggested to DCR, however, that although Complainant asked for more hours in order to be eligible for health benefits, she did not ask explicitly for "full-time" hours. Since, according to Respondent's policy, eligibility for health benefits is dependent on full-time status, James' rationale is a distinction without a difference. Moreover, as Complainant averaged 28 hours per week after her maternity leave, only two more hours per week would have made her eligible for benefits as a full-time employee.

Respondent also asserted that, even though Complainant's "change in availability" forms evidenced availability for more than 30 hours per week, she did not have "full availability" and that only employees with full availability were eligible to be full time and enjoy health benefits. However, the requirement that in order to be considered "full time" an employee must have no restrictions on their availability to work was not initially stated by Respondent and is not reflected in Respondent's written policies.<sup>6</sup>

In addition, the investigation revealed that, in practice, Respondent grants exceptions to the requirement that in order to be entitled to health benefits, an employee must work an average of 30 hours per week. Specifically, Mancuso told DCR that supervisors can and do grant exceptions to ophthalmology students on staff who intend to work at Respondent after graduation. Respondent told DCR that employees on staff during the relevant time were, in fact, granted this exception, and were entitled to health benefits even though they worked less than 30 hours per week on average. Respondent offered no explanation why it could not grant an exception for Complainant, particularly given that she was classified as full time prior to maternity leave, that she requested to be returned to full-time hours after her leave, and her time records showed that she worked an average of 28 hours per week after she returned from maternity leave, only 2 hours short of eligibility for health benefits.

Last, the investigation showed that, during the relevant time, Complainant was the only employee to have her status reduced from full time to part time.

In sum, the investigation found sufficient evidence to support a reasonable suspicion that Respondent discriminated against Complainant by refusing to restore her to full-time status after she returned from maternity leave. At this threshold stage, there is sufficient basis to warrant "proceed[ing] 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). Therefore, the Director finds probable cause to support Complainant's allegation of pregnancy discrimination.

#### Milk Expression

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<sup>6</sup> It is also noted that Complainant did not have "full availability" prior to her maternity leave, since she had days listed where she was not available until 12:30 pm, but nonetheless had a full-time schedule.

The LAD requires an employer to make available to mothers who are breastfeeding reasonable accommodations, including but not limited to “reasonable break time each day . . . and a suitable room or other location with privacy, other than a toilet stall, in close proximity to the work area for the employee to express breast milk for the child, unless the employer can demonstrate that providing the accommodation would be an undue hardship on the business operations of the employer.” N.J.S.A. 10:5-12(s).

Here, the investigation found sufficient evidence to support a reasonable suspicion that Respondent failed to provide Complainant with a suitable room with privacy to express breast milk in violation of the LAD. Complainant returned from maternity leave on March 4, 2019. From the date of her return to work until three months later, in late May 2019, Complainant pumped breast milk in a small utility room, which Complainant described as “unsanitary” and which, because it lacked a lock, offered Complainant no privacy from other employees who unknowingly walked in while she was pumping breast milk. It is undisputed that Complainant requested that a lock be installed but that, despite James’ representations that he had ordered a lock, none was installed until Respondent’s District Manager came to the store and order a lock several months later.

Respondent’s General Manager, David James, admitted to DCR that he did not offer Complainant a private room, that the room Complainant used did not have a lock on the door and that he did not know that Respondent was required to provide women who were expressing milk a private room; he only knew that breastfeeding mothers were supposed to get some time to express milk. Respondent District Manager Allyson Mancuso also admitted Respondent’s noncompliance with the law when she told DCR that when she arrived at the Burlington location and learned of Complainant’s requests, she understood the branch to be in noncompliance with the law because there was no lock on the door Complainant used to express milk and ordered a lock installed.

At this threshold stage in the process, there is sufficient basis to warrant “proceed[ing] to the next step on the road to an adjudication on the merits.” *Frank, supra*, 228 N.J. Super. at 56. Therefore, the Director finds probable cause to support Complainant’s allegation that she was discriminated against based on pregnancy in that she was subjected to differential treatment and was denied reasonable accommodations related to breastfeeding, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A.



Rachel Wainer Apter, Director  
New Jersey Division on Civil Rights

Date: 12/15/2020