

WRONGFUL TERMINATION, DISCRIMINATION, AND HARASSMENT IN THE MUNICIPAL WORKPLACE

Presenter:

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2014

**69TH New England Management Institute
Maine Town, City and County Management Association
August 14, 2014**

I. What Actions Constitute a Wrongful Termination?

- Maine recognizes the common law employment-at-will doctrine. Most employees in Maine are employed for an indefinite term.
- In the absence of a clear, express agreement to the contrary, an employee hired for an indefinite term is an employee-at-will who may be terminated without advance notice for any reason or no reason at all, except that the employee may not be terminated for an illegal reason. An illegal reason for a termination is a reason prohibited by statute (i.e., disability discrimination).
- An employee and employer may expressly agree to limit the employer's right to terminate (i.e., such as a written advance notice limitation).
- An employer and employee may agree, either verbally or in writing, that the employee may only be terminated for "just cause."
- "Just cause" means only any good reason to terminate employment and does not have to be intentional misconduct, serious misconduct or gross misconduct.

- A common law action for wrongful discharge may not be brought by an employee on the basis of an alleged violation of some specific statute, such as the Maine Human Rights Act or the Maine Workers' Compensation Act.
- An employee covered by a collective bargaining agreement may not bring a common law wrongful discharge action in violation of the grievance and arbitration provisions of the agreement.
- An employer and an employee may agree that employment may be for a definite term. An employment contract for a term in excess of one year is normally required by the statute of frauds to be in writing.
- A municipality is covered by and subject to most of the employment laws applicable to private employers including the Maine Human Rights Act, the Family Medical Leave Law, the Whistleblower's Protection Act, the State Minimum Wage, Overtime and Child Labor Laws; and the Maine Workers' Compensation Act.

- Municipalities and public employers in Maine are subject to the municipal public employee's Labor Relations Law, 26 M.R.S. § 961, et. seq.
- Collective bargaining agreements commonly define the employment relationship between a municipality and a municipal employee. Collective bargaining agreements contain specific provisions and details on employee rights, benefits and obligations and in most circumstances, provide members with a multi-step grievance process.
- Municipalities who publish employee handbooks should include a statement of disclaimer which states that the language of the handbook is not intended to create nor it is to be construed to constitute a contract of employment. Moreover, the handbook should provide that for all members of a collective bargaining unit, the terms and conditions of the collective bargaining agreement supersede the general policy summaries of the handbook.
- The handbook should refer union members to their collective bargaining agreements for more details on employee rights, benefits and obligations.

- Most employment litigation involving municipalities and public employers arise out of allegations of violation of constitutional rights.
- The law in Maine is clear that a municipality must provide “procedural due process” in the termination of a municipal employee who has a property interest in continued employment. A municipality may not discipline or discharge a municipal employee in violation of that employee’s First Amendment Rights.
- In Maine, a property interest in continued employment, for due process purposes, may be established by contract, statute, or proof of an objectively reasonable expectation of continued employment.

Krennerich v. Inhabitants of Town of Bristol, 943 F.Supp. 1345, 1352
(D.ME. 1996)

- Due process requires that a public employee be given notice and a reasonable opportunity to be heard prior to termination. *Moen v. Town of Fairfield*, 1998 ME 135 at ¶ 9, citing *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985).

- In *Moen*, the court noted:
 - “ This pre-determination hearing, however, need not be formal or elaborate, as long as the employee has the opportunity to tell his or her side of the story and explain why termination should not occur.”
- The pre-determination hearing is intended to provide the employee only a “chance to clarify the most basic misunderstandings or to convince the employer that termination is unwarranted.” *Moen, supra*, citing *Powel v. Mikulecky*, 891 F.2d 1454, 1458 (10th Cir. 1989).
- In *Moen*, the law court concluded that, while the municipal employer was required to give to the employee a meaningful opportunity to be heard, it **was not** “required to provide that opportunity in the form of a full evidentiary hearing.”

The main point is that employee terminations must be taken very seriously. They must be well thought out, with solid grounds for termination based on performance, not unlawful discrimination.

The termination process must provide an opportunity for the employee to be heard.

Here's an example...



II. Employee Termination Process (Sample)

- An employee facing termination will be provided with a written preliminary termination notice (*Loudermill* letter) informing the employee of:
 1. Termination is being considered;
 2. Date, time and place of the meeting; and
 3. Brief statement of the reasons termination is being considered.
- An employee facing termination will be afforded a preliminary termination meeting with his/her supervisor at which the employee will be provided:
 1. Explanation why termination is being considered;
 2. An explanation supporting the reasons given; and
 3. An opportunity for the employee to present his/her response to the basis for termination.

- Within seven (7) days of the conclusion of the meeting, the supervisor will provide the employee with a termination notice informing the employee:
 1. Whether he/she has been terminated;
 2. His/her right to request a post-termination hearing before the Town Manager or Board of Selectmen by giving written notice of such request to the supervisor within seven (7) days; and
 3. Failure to make a timely request for a post-termination hearing will result in such hearing being waived.

- If a request for a post-termination hearing is made, the Town Manager/Board of Selectmen will provide the employee with a post-termination hearing notice informing the employee:
 1. Date, time and place of post-termination hearing;
 2. His/her right to be represented by counsel or other representative and to present and cross-examine witnesses and to offer supporting documents; and
 3. His/her right to have the hearing conducted in Executive Session.

- At the post-termination hearing, the employee will be afforded the opportunity to address the basis for termination by hearing and examining the evidence presented against the employee, cross-examining witnesses and presenting evidence on his/her behalf. The Town Manager/Select Board will make rulings as evidentiary issues arise.
- When the hearing is adjourned, the Town Manager/Board of Selectmen will consider the evidence presented at the hearing in Deliberative Session.
- The Town Manager/Board of Selectmen will render a written decision within fourteen (14) days after the adjournment of the hearing, unless otherwise agreed upon by the parties.
- The decision of the Town Manager/Select Board will be final.

III. Standard of Review Pursuant to M.R.Civ.P 80B.

- The Terminated employee must file a Complaint with thirty (30) days after notice of the Town Manager/Board of Selectmen's Decision (unless the court enlarges the time in accordance with M.R.Civ.P. 6(B).
- As an intermediate appellate court, the Superior Court reviews municipal administrative decisions "directly for abuse of discretion, legal error, or findings unsupported by substantial evidence in the record." *Rowe v. City of So. Portland*, 1999 ME 81, ¶ 5, 730 A.3d 673, 675.
- "Substantial evidence exists when a reasonable mind would rely on that evidence as sufficient support for a conclusion." *Forbes v. Town of Southwest Harbor*, 2001 ME 9, ¶ 6, 763 A.2d 1183, 1186.

- The burden of persuasion is on the party challenging a municipal decision to show that the evidence compels a different result. The court must not substitute its judgment for that of the municipal decision maker on factual issues.
- Administrative hearings are not subject to the “highly technical rules of evidence.” *Frye v. Inhabitants of the Town of Cumberland*, 464 A.2d 195, 200 (ME 1983). The court must consider the entire record to determine if the Hearing Officer, “based upon all of the testimony and exhibits before him/her ... could fairly and reasonably find the facts as he/she did.” *Frye*, 464 A.2d at 200.

IV. Due Process Concerns.

- In order to provide an individual with a full and fair hearing, the Town Officer must not prejudge the case.
- The Town Officer should suspend his/her own judgment until the hearing is completed, that it may be the result of the hearing, and not of a pre-conceived opinion.
- Prior involvement in some aspects of a case will not necessarily bar an official from acting as a decision maker. (A degree of familiarity and informal contact with a case by a Hearing Officer is a common phenomenon in many administrative agencies). Therefore, if a Review Officer is familiar with or has even formulated opinions about the facts of a case prior to review, that is not in and of itself sufficient to disqualify him/her.

V. Actions that a Municipality should take to Avoid Employment Law/ Wrongful Termination Lawsuits.

A. Documentation:

- Clear written policies must be drafted for termination and said policies must be followed to the letter. They should be available and readily accessible to employees in the Employee Handbook. The municipality should have a detailed description of the review procedures that may lead to termination as well as policies regarding severance (if applicable), future employment references and the return of property.

B. Procedure:

- It is important for a municipality to follow proper termination procedures, whether they be in the context of an at-will employee without a collective bargaining agreement or a union employee pursuant to a collective bargaining agreement. The procedures should be not only followed but documented with precision.

C. Accommodation:

- A municipal employer should make every effort to assist an employee who needs an employment accommodation. This may take the form of giving an employee time off from work, modifying a job assignment, modifying a work schedule, providing the employee with the right to go to an EAP (Employee Assistance Program), etc. (This will become critically obvious in the context of claims filed under the Americans with Disabilities Act, the Maine Human Rights Act, the Family Medical Leave Act, the Age Discrimination and Employment Act, or the Whistleblower's Protection Act).

D. Training:

- All municipalities, regardless of size, should require Town Managers, Boards of Selectmen, supervisors, and anyone who has supervisory responsibilities be trained in proper employment procedures and principles. That is not to say that these individuals must necessarily attend classes or seminars. There are numerous internet and on-line resources available as well as manuals, videotapes, etc. that provide this training.

E. Wage and Hour Claims:

- It is important to know that pursuant to 26 M.R.S. § 626, an employee leaving employment must be paid in full within a reasonable time after demand at the office of the employer where the payrolls are kept and the wages are paid. A reasonable time is defined in the statute as the earlier of either the next day on which the employees would regularly be paid or a day not more than two weeks after the day in which the demand is made.
- An employer found in violation of this statute is liable for the amount of unpaid wages and, in addition, the judgment rendered in favor of the employee or employees must include a reasonable rate of interest, an additional amount equal to twice the amount of those wages as liquidated damages and costs of suit, including a reasonable attorney's fee.

F. Maine's Family Medical Leave Law:

- The Maine Family Medical Leave Law was amended in 2007 to expand coverage to domestic partners and to provide for intermittent leaves. However, a domestic partner leave under the Maine statute does not qualify for or count as a Family Medical Leave under the Federal FMLA.

G. Review and Update Employee Handbooks:

- Employee handbooks should be reviewed and revised, as necessary, and in order to comply with changes in the law including case law and statutory changes.

VI. Municipal Officer's Employment Statute.

- “Except where specifically provided by law, charter or ordinance, the municipal officers shall appoint all municipal officials and employees required by general law, charter or ordinance and may remove those officials and employees for cause, after notice and hearing.” 30-A M.R.S. § 2601.
- “Municipal Officers” is defined, in the case of a city, to include the mayor and aldermen or councilors of a city. 30-A M.R.S. § 2001(10)(B).
- “Municipal Official” means any elected or appointed member of a municipal government. 30-A M.R.S. § 2001(11).

- 30-A. M.R.S. § 2636 gives a Town Manager exclusive authority to remove all persons whom he is authorized to appoint, but only for cause, and after notice and hearing.
- This statute has been found by the courts to limit the Town Manager's ability to terminate an employee without cause, unless authority is granted via ordinance, charter, policy, etc. See *Barrera v. Town of Brownville*, 139 F.Supp. 2d 136 (D. ME. 2001).

VII. Specific Federal and State Statutory Discrimination Claims.

Maine Human Rights Act.

- The Maine Human Rights Act is a comprehensive anti-discrimination law which prohibits all forms of discrimination in employment and otherwise on the basis of race, color, sex, physical or mental disability, religion, age, ancestry or national origin or other protected activities.
- Effective September 12, 2009, the filing deadlines under the Maine Human Rights Act were extended. Employees now have 300 days from the date of the alleged unlawful act of discrimination to file a charge with the Maine Human Rights Commission. The Amendment requires the Commission to complete an investigation within two years after a Charge of Discrimination is filed. Finally, as amended, the Maine Human Rights Act allows would-be plaintiffs to have either two years from the act of discrimination or 90 days from the date the Commission takes action on the Charge (by issuing its findings, dismissing the case or issuing a right-to-sue letter) to file suit in court.

- Plaintiffs who first file a Charge of Discrimination with the Commission now have just over three years in total after the alleged discriminatory act to file suit in court. (300 days to file with the Commission plus two year investigation by the Commission plus 90 days after Commission issues findings). Finally, in 2007, the legislature passed an Amendment to the Maine Human Rights Act disability.”

Advice.

- Municipalities must ensure that supervisors and human resource personnel understand this new definition in order to (1) respond properly to employee request for accommodation based on a disability; and (2) prevent discrimination in the workplace based on an actual or perceived disability. Employers must ensure established claims.

Whistleblower's Protection Act.

- Maine's Whistleblower's Protection Act, 26 M.R.S. § 831, et. seq. prohibits employers from terminating or otherwise retaliating against their employees for making good faith complaints about things that the employee believes to be unlawful and conditions that they reasonably believe put at risk the health and safety of individuals. The Act also protects employees who refuse to carry out directives from their employers that they believe to be unlawful or that they reasonably believe create a risk of serious injury or death to themselves or others. The Act also prohibits from retaliating against employees for participating in a public investigation, hearing or trial. Finally, the Act protects workers in the health care field from reporting what they reasonably believe to be deviations from the applicable standard of care.
- The Whistleblower's Protection Act may be enforced by the Maine Human Rights Commission or by the employee in Superior Court.

- On May 24, 2010, a Cumberland County jury awarded Michael Afthim \$1,015,000.00 in damages in connection with his lawsuit against his former employer, Alternative Labor Resources (“ALR”) for violating Mr. Afthim’s rights under the Maine Whistleblower’s Protection Act. The jury concluded that he was entitled to \$115,000 for lost wages, \$200,000 for compensatory damages, and \$700,000 for punitive damages.
- Maine Law (Title 26 M.R.S. § 839) requires every employer to place a poster published by the Maine Department of Labor in the workplace where workers can easily see it.

Maine Workers' Compensation Act.

- An employer may not discharge or discriminate against an employee because that employee has asserted a claim for workers' compensation benefits, testified in a workers' compensation matter, or otherwise exercised a right under the Workers' Compensation Act. See 39-A M.R.S. § 353.
- If an employee is out of work for an extended period of time because of a work related injury, the employer may terminate the employee as well as his/her health insurance and other fringe benefits so long as the termination is in accordance with the terms of a written policy that applies equally to all extended absences.
- In *Jandreau v. Shaw's Supermarkets, Inc.*, 2003 ME 134, the Maine Supreme Judicial Court upheld an employer's termination of an employee's employment under the employer's facially neutral six month absence policy. The Court stated: "There is no *per se* discrimination when an employer makes a *bona fide* employment decision according to the employee's post-injury ability to work, even though the employee's inability to work may result from a work related injury." The employer's six month absence termination policy was neutral and did not discriminate against workers' compensation claimants.

Civil Rights Act

Under Title VII of the Civil Rights Act, employers cannot discriminate against their employees based on race, skin color, religion, age, sex (gender), disability or national origin. Federal and state statutes have been set up to prevent illegal job discrimination. If an employee is terminated for a reason specifically based on a discrimination protected by the law, then it is likely that the employer does not have good cause for termination.

Here is an example:



Americans with Disabilities Act (ADA), 42 U.S.C. § 12101m, et. seq.

- To establish a claim under the ADA, a plaintiff must prove by a preponderance of the evidence (1) that she was disabled within the meaning of the ADA; (2) that he/she was able to perform, with or without reasonable accommodation, the essential functions of her job; and (3) that the adverse employment decision was based in whole or in part on her disability.

Soto-Ocasio v. Federal Express Corp., 150 F.3d 14, 18 (1st Cir. 1998).

- The ADA does not prohibit an employer from discharging an individual with a physical or mental disability when the employer can show that the employee or applicant, “because of the physical or mental disability, is unable to perform the duties or to perform the duties in a manner that would not endanger the health or safety of the individuals or others...”

- The defense requires an individualized assessment of the relationship between an employer or job applicant's physical or mental disability and the specific legitimate requirements of the job. See *Higgins v. Maine C.R. Co.*, 471 A.2d 288, 290 (ME 1984).
- The ADA Amendments Act of 2008 (effective 01/01/09) expanded the ADA's definition of "disability." "It is now construed in favor of broad coverage of individuals... to the maximum terms permitted by the ADA."
- Given this expanded definition of "disability" as well as the changes to the Act with respect to the "regarded as" prong of the disability definition it is important for municipalities to work with individuals who meet the expanded definitions in an effort to accommodate their restrictions. The so-called "individualized assessment" of the relationship between the employee or job applicant's physical or mental disability and the specific legitimate requirements of the job is of critical and paramount importance.

Age Discrimination.

- The Age Discrimination in Employment Act (“ADEA”) prohibits involuntary retirement for persons over 40. The Federal Age Discrimination law has a minimum age limit (40 years of age) but Maine law has no similar limit.
- Two of the most common age discrimination problems relating to discharges are (1) the layoff or early retirement of an older employee as part of a department restructuring; and (2) the disciplinary discharge of an older employee.
- In *Smith v. City of Jackson*, the U.S. Supreme Court held for the first time that an ADEA claim may be filed not only when an employer intentionally discriminates against an older worker, but also when an employer makes a business decision or adopts a policy or practice that, though neutral on its face, has a disproportionately adverse impact on older workers.

What can a municipality do to avoid an age discrimination claim?

- First, for any personnel action, whether it involves one individual or many, the municipality should be able to identify and articulate a business based rationale.
- Second, for a large scale personnel action, the municipality should test in advance the impact on workers over 40 compared with those under 40.
- Third, be aware of patterns showing possible discrimination and give the employee more slack if a discriminatory pattern seems to be developing.
- Fourth, if the employee must be discharged, considering offering a separation agreement to the employee and obtaining the employee's release of a potential age discrimination claim in accordance with the requirements of the Older Workers' Benefit Protection Act ("OWBPA").

Workplace Harassment

Workplace Harassment is a Form of Discrimination

- Unlawful harassment is a form of discrimination that violates Title VII of the Civil Rights Act and other federal authority.

- The main point, from the HR perspective, is to provide for **trainings** on harassment, especially for supervisors.
- Make sure **supervisors model appropriate behaviors and create a safe environment** for all employees.
- Have **personnel policies** in place that address harassment and how to act to protect the employee (victim) once it happens, and to appropriately address the issue with the perpetrator to prevent further harassment.

Let's see an example.



Unlawful Harassment is:

- Unwelcome verbal or physical conduct based on race, color, religion, sex (whether or not of a sexual nature and including same-gender harassment and gender identity harassment), national origin, age (40 and over), disability (mental or physical), sexual orientation, or retaliation (sometimes collectively referred to as “legally protected characteristics”) constitutes harassment when:
 - ✓ The conduct is sufficiently severe or pervasive to create a hostile work environment; or
 - ✓ A supervisor’s harassing conduct results in a tangible change in an employee’s employment status or benefits (for example, demotion, termination, failure to promote, etc.).

Hostile work environment harassment occurs when:

Unwelcome comments or conduct based on sex, race or other legally protected characteristics unreasonably interferes with an employee's work performance or creates an intimidating, hostile or offensive work environment. Anyone in the workplace might commit this type of harassment – a management official, co-worker, or non-employee, such as a contractor, vendor or guest.

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9:00 am - 12:00 Noon



*Important caveat:

The victim can be anyone affected by the conduct, not just the individual at whom the offensive conduct is directed.

Examples of actions that may create a hostile environment of the sexual nature include:

- Leering, i.e., staring in a sexually suggestive manner
- Making offensive remarks about looks, clothing, body parts
- Touching in a way that may make an employee feel uncomfortable, such as patting, pinching or intentional brushing against another's body
- Telling sexual or lewd jokes, hanging sexual posters, making sexual gestures, etc.
- Sending, forwarding or soliciting sexually suggestive letters, notes, emails, or images.

Other actions which may result in hostile environment harassment, but are non-sexual in nature, include:

- Use of racially derogatory words, phrases, epithets
- Demonstrations of a racial or ethnic nature such as a use of gestures, pictures or drawings which would offend a particular racial or ethnic group
- Comments about an individual's skin color or other racial/ethnic characteristics
- Making disparaging remarks about an individual's gender that are not sexual in nature

Non sexual harassment examples continued...

- Negative comments about an employee's religious beliefs (or lack of religious beliefs)
- Expressing negative stereotypes regarding an employee's birthplace or ancestry
- Negative comments regarding an employee's age when referring to employees 40 and over
- Derogatory or intimidating references to an employee's mental or physical impairment

Harassment that results in a tangible employment action occurs when a management official's harassing conduct results in some significant change in an employee's employment status (e.g., hiring, firing, promotion, failure to promote, demotion, formal discipline, such as suspension, undesirable reassignment, or a significant change in benefits, a compensation decision, or a work assignment).

* Only individuals with supervisory or managerial responsibility can commit this type of harassment.

The elements of a claim of harassment:

- The complaining party must be a member of a statutorily protected class (race, gender, national origin, religion, disability, etc);
- S/he was subjected to unwelcome verbal or physical conduct related to his or her membership in that protected class;
- The unwelcome conduct complained of was based on his or her membership in that protected class;
- The unwelcome conduct affected a term or condition of employment and/or had the purpose or effect of unreasonably interfering with his or her work performance and/or creating an intimidating, hostile or offensive work environment.

The elements of a claim of harassment – continued...

Harassment can occur in a variety of circumstances, including, but not limited to, the following:

- The harasser can be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee.
- The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct.
- Unlawful harassment may occur without economic injury to, or discharge of, the victim.

What is Not Harassment?

The anti-discrimination statutes are not a general civility code. Thus, federal law does not prohibit simple teasing, offhand comments, or isolated incidents that are not extremely serious. Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of illegality.

Harassment = conduct that is so objectively offensive that it alters the conditions of the individual's employment and creates a work environment that would be intimidating, hostile, or offensive to reasonable people.

The conditions of employment are altered only if the harassment culminates in a tangible employment action or is sufficiently severe or pervasive to create a hostile work environment.

PREVENTION IS KEY

Prevention is the best tool to eliminate harassment in the workplace. Employers are encouraged to take appropriate steps to prevent and correct unlawful harassment. They should clearly communicate to employees that unwelcome harassing conduct will not be tolerated.

They can do this by establishing an effective complaint or grievance process, providing anti-harassment training to their managers and employees, and taking immediate and appropriate action when an employee complains.

- Employers should strive to create an environment in which employees feel free to raise concerns and are confident that those concerns will be addressed.
- Employees should be encouraged to inform the harasser directly that the conduct is unwelcome and must stop. Employees should also report harassment to management at an early stage to prevent its escalation.

Employer Liability for Harassment

- The employer is automatically liable for harassment by a supervisor that results in a negative employment action such as termination, failure to promote or hire, and loss of wages.
- If the supervisor's harassment results in a hostile work environment, the employer can avoid liability only if it can prove that: 1) it reasonably tried to prevent and promptly correct the harassing behavior; and 2) the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer.

The employer will be liable for harassment by non-supervisory employees or non-employees over whom it has control (e.g., independent contractors or customers on the premises), if it knew, or should have known about the harassment and failed to take prompt and appropriate corrective action.

When investigating allegations of harassment, the Maine Human Rights Commission and the courts look at the entire record: including the nature of the conduct, and the context in which the alleged incidents occurred. A determination of whether harassment is severe or pervasive enough to be illegal is made on a case-by-case basis.

CONCLUSION

- Sexual harassment claims have been and still are a frequently filed type of employment discrimination claim with the EEOC and the Maine Human Rights Commission.
- Most sexual harassment claims involve allegations that the victim complained about the harassment to a manager or supervisor but the employer took no effective corrective action.
- Maine law requires that all employers must annually provide their employees with notice of the employer's sexual harassment policy.
- The employer's policy must contain, among other things, the definition of harassment (with examples), the employer's internal complaint mechanism, the Maine Human Rights Commission's complaint process and an anti-retaliation statement.

- Maine law also requires that all employers with over 15 employees must conduct a training program on harassment within the employee's first year of employment.
- In *Watt v. Unifirst Corp.*, the Maine Supreme Judicial Court adopted a standard that holds an employer responsible for acts of sexual harassment in the workplace by a co-worker "where the employer, or its agents or supervisory employees knows or should have known of the conduct." The employer may rebut apparent liability for such acts by showing that it took immediate and appropriate corrective action upon learning of the wrongful conduct.
- This case highlights the importance for employers to have appropriate sexual harassment policies in place and to abide those policies in every instance when management becomes aware that conduct and violation of that policy is occurring in the workplace.

- In order to avoid sexual harassment claims, a municipality should: (1) provide to employees the sexual harassment training required by Maine law. See 26 M.R.S. §§ 806, 807; (2) train and encourage all supervisors and managers to promptly investigate or otherwise follow-up on all sexual harassment complaints and possible sexual harassment situations (even if no formal or official sexual harassment complaint has been made); and (3) promptly take whatever effective corrective action, if any, may be warranted in each situation.
- An employer's sound sexual harassment policy, training to supervisors, prompt remedial action and investigation – including firing within one month when the conduct did not cease – can serve to negate liability. See *Allison Forrest v. Brinker Int. Nat'l Payroll* (“Chili’s”).