



**STATE OF NEW JERSEY**

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of D.P., Department of  
Law and Public Safety

CSC Docket No. 2023-2412

Discrimination Appeal

**ISSUED: May 22, 2024 (SLD)**

D.P., an Executive Secretary with the Department of Law and Public Safety, Division of Consumer Affairs, appeals the determination of the Director, Division of Equal Employment Opportunity/Affirmative Action (EEO/AA), Civil Service Commission (Commission),<sup>1</sup> which was unable to substantiate that she was subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant, a female, filed a complaint alleging that she was discriminated against due to her pregnancy. Specifically, she asserted that an EEO Investigator with the Department of Law and Public Safety (Respondent) had refused to vacate the lactation room when she had requested to use it for that purpose; that the Respondent acknowledged that it was the lactation room, but that the Respondent was from the Office of the Attorney General (OAG) and the room had been reserved for the Respondent; that the Respondent had stated that she would call “HR” and find somewhere else for the appellant; and that the Respondent stated that she “told you [that she] would find somewhere else for you to go” when the Respondent was exiting the room.

<sup>1</sup> As there was a conflict, the Division of EEO/AA had investigated the complaint and rendered a determination.

In response, the Division of EEO/AA conducted an investigation which included an analysis of relevant documentation and interviews. The Division EEO/AA found that its investigation corroborated that the Respondent stated to the appellant that the room had been reserved for the Respondent. Moreover, the investigation did reveal that the Respondent was granted permission to use the lactation room from 10:30 a.m. to 12:30 p.m. However, the investigation did not corroborate that the Respondent stated that she was from the OAG, that she had refused to vacate the room, that she had stated that she was going to call HR to find someplace for the appellant or that she told the appellant that she was going to find somewhere else for the appellant to go. The Division of EEO/AA stated that although it could not substantiate a violation of the State Policy, procedural safeguards were put in place at the Division of Consumer Affairs to ensure that a similar incident did not occur again.

On appeal, the appellant reiterates her complaints that the Respondent's actions were discriminatory, and that her threatening and intimidating conduct was in violation of the State Policy.<sup>2</sup> In this regard, she asserts that as the Respondent was escorted out of the lactation room, it is clear that the Respondent did refuse to vacate the room. Moreover, she maintains that she had contacted several people via email on that date, including her immediate supervisor and had telephoned a coworker, requesting to use another space. The appellant maintains that as a result, she was offered several options, however, none had sufficient privacy.

Additionally, the appellant argues that as she did not know the Respondent, it is obvious that the Respondent had to state that she was from the OAG, for her to be able to identify that the Respondent was from the OAG. The appellant maintains that misusing an official position or information to secure unwarranted privileges or advantages for themselves is a clear violation of the New Jersey Uniform Ethics Code. The appellant contends that the Respondent, in telling the appellant where she was from, and her refusal to vacate the lactation room is a clear violation of the State Policy. In this regard, the appellant notes that M.S., Senior Executive Service, confirmed to her that the Respondent was from the OAG, and that M.S. had permitted the lactation room to be used and apologized for the confusion. In support, the appellant submits a December 22, 2022 email from M.S., which states in pertinent part:

As I previously explained, the decision to permit the lactation room to be used for the meeting was mine, and I made that decision with the

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<sup>2</sup> The appellant also claims that the Respondent's conduct violated the New Jersey Uniform Ethics Code (as later noted), the Fair Labor Standards Act, and the New Jersey Law Against Discrimination. However, as the Commission does not have jurisdiction over complaints concerning any violations of the preceding statutes, any alleged violations of them will not be discussed in this matter. Rather, as the Commission only has the jurisdiction to determine whether there was a violation of the State Policy, only the claims under the State Policy will be addressed.

understanding that the room would be used for a short time, and with notice to HR so that HR staff would advise anyone who needed the space about an alternate lactation location. I was under the impression that the lactation room is locked when not in use and that an employee seeking to use it must obtain the key from HR, so I believed providing timely notice to anyone who needed to use the space would not be an issue.

The appellant argues that the appointing authority is required to provide a space for nursing mothers and must be free from intrusion by coworkers or the public, and therefore, the Respondent's use of the room, and refusal to vacate, was a clear violation of federal and State law.

Finally, the appellant maintains that the Respondent engaged in threatening, intimidating and hostile conduct toward her, when the Respondent stated she had told her that she "would find somewhere else for [the appellant] to go." The appellant indicates that she was on the phone with her immediate supervisor, J.F., a Government Representative 2, at that time and that the appellant had repeated the comment to J.F. The appellant submits that as she belongs to a protected category, the statement was then a clear violation of the State Policy.

For a remedy, the appellant requests that the Respondent's employment be terminated. In this regard, the appellant claims that the Respondent "blatantly lied about the incident." She reiterates that the Respondent's response and general attitude caused her to "experience anxiety, stress, depression, humiliation, and shame" and negatively impacted herself and her infant. The appellant also requests that the appeal fee be reimbursed, as she was a victim of the Respondent's discriminatory, threatening and intimidating conduct, which resulted in violations, and it is "outrageous and inappropriate" that she incurred the fee. In support, she submits several emails.

It is noted that the Division of EEO/AA did not submit additional information in response to the appeal.

## CONCLUSION

Initially, *N.J.A.C.* 4A:7-3.1(a)3 provides that it is a violation of the State Policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories: race, creed, color, national origin, nationality, ancestry, age, sex/gender, pregnancy, marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability. *N.J.A.C.* 4A:7-3.1(a)3 further provides that the State Policy pertains to all

employment practices such as recruitment, selection, hiring, training, promotion, advancement appointment, transfer, assignment, layoff, return from layoff, termination, demotion, discipline, compensation, fringe benefits, working conditions, and career development. Moreover, *N.J.A.C. 4A:7-3.2(m)*<sup>4</sup> states that the appellant shall have the burden of proof in all discrimination appeals brought before the Commission.

The Commission has conducted a review of the record in this matter and finds that an adequate investigation was conducted, and that the investigation failed to establish that the appellant was subjected to a violation of the State Policy. The Division of EEO/AA indicated that it analyzed relevant documents and interviewed individuals in investigating the appellant's complaint and concluded that there was no violation of the State Policy. The appellant argues that it is obvious that the Respondent lied to the Division of EEO/AA as it is clear that the Respondent refused to vacate the lactation room, as she was ultimately escorted out of the room. The appellant also claims that she had no way of knowing that the Respondent was from the OAG, unless the Respondent had told her. However, the appellant has failed to provide any proof or documentation in support. Regardless, even assuming that the Respondent had indicated that she was from the OAG, identifying her employer to the appellant does not violate the State Policy. In this regard, the appellant does not indicate that the Respondent threatened her with any actions. Rather, the appellant asserts that the Respondent identified herself and stated that she would contact HR and find another location for the appellant, as the room had been reserved for the Respondent. The record establishes that M.S. had arranged that the lactation room be available for use by the Respondent. However, that due to several assumptions that were made by M.S., alternate arrangements were not made for the appellant, as M.S. believed that the room was locked, and therefore, if it was to be used, the appellant would need to contact someone for the key, allowing an opportunity to make other arrangements.

In addition, there is no indication in the record that the appellant was treated differently due to her inclusion in a protected category, in violation of the State Policy nor is there any indication that the Respondent made the comments due to the appellant's inclusion in a protected category. Rather, the record clearly indicates that the appellant and the Respondent were both told that they had the sole authority to utilize the room for different purposes. Furthermore, it was noted that changes had been made at the Division of Consumer Affairs to ensure such a situation would not happen again.

Accordingly, an impartial investigation of the appellant's complaint was conducted, and no basis exists to find a violation of the State Policy. Therefore, the appellant has not met her burden of proof in this matter.

Finally, with regard to the appellant's request to be reimbursed for the appeal fee, *N.J.A.C.* 4A:2-1.8(f) provides that the fee is for processing purposes only and shall not be refunded for any reason except when submitted in error for an exempt appeal. Thus, as appeals of this nature are subject to an appeal filing fee and the appellant has not presented that she is exempt from the fee, the appeal fee is not reimbursable.

**ORDER**

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 22<sup>ND</sup> DAY OF MAY, 2024

*Dolores Gorczyca*

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Dolores Gorczyca  
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