City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 3rd Floor, Chicago, IL 60654
312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)

IN THE MATTER OF:

Dena Lockwood
Complainant,
v.

Professional Neurological Services, Ltd.
Respondent.

Case No.: 06-E-89

Date Mailed: July 8, 2009

TO:

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FINAL ORDER ON LIABILITY AND RELIEF

YOU ARE HEREBY NOTIFIED that, on June 17, 2009, the Chicago Commission on Human Relations issued a ruling in favor of Complainant in the above-captioned matter. The findings of fact and specific terms of the ruling are enclosed. Based on the ruling, the Commission ORDERS Respondent to pay damages to Complainant in the total amount of $213,601.25 plus interest from June 2, 2006, on the compensatory damages of 113,601.25 and from June 17, 2009 on the punitive damages of $100,000, and to pay to the City of Chicago fines of $1,500.[1] The Commission also awards Complainant her attorney fees and associated costs.

Pursuant to Commission Regulations 100(15) and 250.150, parties seeking a review of this decision may file a petition for a common law *writ of certiorari* with the Chancery Division of the Circuit Court of Cook County according to applicable law; however, because attorney fee proceedings are now pending at the Commission, such a petition cannot be filed until after issuance of the Final Order concerning those fees.

Pursuant to Reg. 240.630, Complainant may now file with the Commission and serve on the other

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[1] **COMPLIANCE INFORMATION:** Parties must comply with a final order after administrative hearing no later than 28 days from the date of mailing of the later of a Board of Commissioners' final order on liability or any final order on attorney fees and costs, unless another date is specified. See Reg. 250.210. Enforcement procedures for failure to comply are stated in Reg. 250.220.

Payments of damages and interest are to be made directly to the Complainant. **Payments of fines** are to be made by check or money order payable to City of Chicago, delivered to the Commission at the above address, to the attention of the Deputy Commissioner for Adjudication and including a reference to this case name and number.

Interest on damages is calculated pursuant to Reg. 240.700, at the bank prime loan rate, as published by the Board of Governors of the Federal Reserve System in its publication entitled "Federal Reserve Statistical Release H.15 (519) Selected Interest Rates." The interest rate used shall be adjusted quarterly from the date of violation based on the rates in the Federal Reserve Statistical Release. Interest shall be calculated on a daily basis starting from the date of the violation and shall be compounded annually.

parties and the hearing officer a petition for attorney fees and/or costs, supported by argument and affidavit. The petition is must be served and filed on or before **August 5, 2009**. Any response to the petition must be filed with the Commission and served on Respondent and the hearing officer on or before **August 29, 2009**. Replies will be permitted only on leave of the hearing officer. A party may move for an extension of time to file and serve any of the above items pursuant to the provisions of Reg. 210.320.

CHICAGO COMMISSION ON HUMAN RELATIONS
Dana V. Starks, Chair and Commissioner

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IN THE MATTER OF:	
Dena Lockwood **Complainant,** **v.**	**Case No.:** 06-E-89
Professional Neurological Services, Ltd. **Respondent.**	**Date of Ruling:** June 17, 2009

FINAL RULING ON LIABILITY AND REMEDIES

I. INTRODUCTION

Complainant, Dena Lockwood, filed this Complaint at the Commission on Human Relations on November 29, 2006, alleging employment discrimination in violation of the Chicago Human Rights Ordinance by Respondent, Professional Neurological Services, Ltd. ("PNS"), based on her parental status. Complainant does not claim sex discrimination; some of the PNS employee-parents were male and most, if not all, of the non-parent salespeople were female. Her claim is that employees with children were discriminated against in the terms and conditions of their employment compared with employees without children, resulting in her discharge and denial of commissions due. PNS denies that the termination of Complainant's employment was based on her status as a parent.

There is no dispute that parental status discrimination in employment is prohibited by the Chicago Human Rights Ordinance ("CHRO"), §2-160-030, Chicago Municipal Code.[1] Both Complainant and Respondent agree on the importance of the CHRO as a matter of public policy, and Respondent's counsel has endorsed the concept of protecting parents from discrimination in the work place as an "admirable goal." (08/26/08 Tr. 55-56.) Complainant does not argue that the Ordinance entitles parents to better treatment than non-parents, and indeed it does not. Although there are some statutes, such as the federal Family Medical Leave Act ("FMLA"), that provide benefits to those with family obligations, this case presents a straightforward discrimination question: were similarly situated parent-employees at PNS treated worse than non-parent employees?

Complainant asserts that PNS's parental-status discrimination took a variety of forms, including differential salaries and commission structures; disrespectful treatment of parent-employees; and most significantly for this case, termination of employment under circumstances where a non-parent would not be fired and the concomitant refusal to pay earned commissions after termination.

[1] Although this is not the first claim of parental status discrimination in employment to be filed at this Commission, as the hearing officer suggested, it is the first one to have proceeded to the Board of Commissioners for a ruling. Parental status discrimination has been prohibited by the Chicago Human Rights Ordinance and Chicago Fair Housing Ordinance for approximately 19 years. Discrimination in employment based on parental status is also prohibited by the Cook County Human Rights Ordinance.

Complainant's termination claim stems from being fired when she postponed a June 2, 2006, meeting because her child was ill with a medical condition known as conjunctivitis or pinkeye. Although Respondent did not offer any reason for firing her at that time, in its pre-hearing brief and at the hearing, Respondent took the position that she was fired for "performance-based" reasons, including "excessive absences" and "failure . . .to articulate any reason for her failure to report" to the June 2, 2006, meeting. Respondent's Pre-Hearing Memorandum at 1. Respondent also argues that Complainant was not a good salesperson, which, it implies, had something to do with the termination of her employment.

The administrative hearing was conducted on July 17, 18 and 28, 2008, with closing arguments on August 26, 2008. Post-hearing briefing was completed on November 17, 2008.

II. FINDINGS OF FACT

A. The Parties

1. Complainant, Dena Lockwood, is the parent of two children who were six and twenty years old at the time of the 2008 hearing. (Tr. 28.)

2. In April 2004, Lockwood accepted a position as sales representative at PNS. (Tr. 33.) Her children were ages two and sixteen at the time.

3. Dr. Matthew Garoufalis and Dr. Malcolm Herzog, podiatrists who testified at the hearing, are owners and operators of Respondent PNS. (Tr. 328-329, 585.)[2] PNS's business includes performing tests of muscles and nerves, as well as sleep studies. (Tr. 50.)

4. PNS employs a number of sales representatives whose work includes contacting medical doctors to persuade them to use PNS's tests, which are typically reimbursed by Medicare, insurance, or both. The fees PNS receives for these services depend on the amount paid by the patient's insurance.[3] (Tr. 52.)

5. Over the relevant time period, PNS had many full-time and several part-time sales representatives. (Tr. 588-590; CX-1, CX-25, CX-27, CX-28, CX-30, CX-31, CX-32.)

6. Maryann Gordon, who testified at the Hearing, served as office manager and director of operations of PNS from approximately 2003 through the date of the hearing. (Tr. 504-506.)

7. PNS had various sales managers at various times, including Amanda Reid/Snider[4] and Gina Iliopoulos, both of whom testified. (Tr. 69, 143.)

8. Sometime in early 2006, Respondent hired Peter Salvestrini as an independent contractor; he participated in the management of PNS.[5] (Tr. 112-113, 223, 688.) He was not called to testify at the hearing.

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[2] Respondent objected to the hearing officer's recommended finding on this point on the grounds that there was no evidence they were sole owners. The finding has been revised to describe them as owners and operators without resolving whether they are the only owners of Professional Neurological Services.

[3] The Commission has eliminated from this finding any reference to Respondent's acceptance of Medicare, accepting as accurate Respondent's objection that there was no evidence Respondent took Medicare.

[4] Some of Respondent's employees changed their names during or after their employment. Both names will be used in these Findings to avoid confusion.

B. Hiring Complainant

9. Lockwood had a Bachelor of Science degree, which she obtained in 1999. (Tr. 27-29.)

10. In 2004, she was a single parent, and she had worked hard, doing primarily sales work,[6] to support her family. (Tr. 28-30.)

11. Until her second of three job interviews at PNS, PNS did not know that Lockwood had children. At her second interview, with Reid/Snider and Herzog, she volunteered this information. During the course of that interview, sales manager Reid/Snider asked Lockwood whether having children would "prevent her from working seventy hours a week." Lockwood assured Reid/Snider that it would not. (Tr. 35.)

12. Herzog made no protest when this question was asked; he simply listened and said nothing. (Tr. 35.)

13. Gordon was enthusiastic about hiring Lockwood, as was Dr. Garoufalis. (Tr. 333, 614.) Herzog, however, always "had reservations" about Lockwood and was reluctant to hire her. (Tr. 613.)

14. Despite Herzog's reservations, Lockwood was given an employment offer. Garoufalis testified that she was given the "standard average contract" (Tr. 397), but this was not really true. See, e.g., CX-26, CX-27, CX-28.

15. Originally, PNS offered Lockwood a salary of only $25,000 a year, significantly less than the salaries paid to non-parent sales representative Gretchen Fiala, who received approximately $59,000 per year (CX 28); Amy Achberger and Hilary Courtman, each of whom received approximately $45,000 (CX-26, CX-27); or Melissa Tramp/Wojcik, who received $40,000 (Tr. 72). Although Lockwood's original offer included a ten per cent commission, when she insisted on a higher salary, PNS lowered her commission to five per cent. (CX-1; Tr. 43, 45; see also August 26, 2008, Closing Argument at 68-69.)[7]

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[5] Respondent objected to the hearing officer's finding arguing that Salvestrini was not past of PNS management. That objection is overruled based on the cited portions of the transcript. Although an independent consultant, Salvestrini participated in management meetings and employees knew him as a manager of PNS. He consulted on hiring and firing and other management matters (Tr. 687-688.) Respondent's Reply, n.4, admits his role in these matters. See also Tr. 143-153, where witness Iliopoulos testifies that Salvestrini participated in management meetings.

[6] Respondents objection that Lockwood had no sales experience when hired except at her father's company is overruled as incorrect; she had sales experience not only at the machine and engineering company owned by her father but also a Box Packaging. See Tr. 271-272.

[7] The Commission overrules Respondent's objection that Complainant's contracts are not comparable to those of other sales representatives. Courtman, who had no children, was similarly situated to Complainant in many regards but her contract was significantly more favorable than Complainant's; compare CX-1 and CX-2 with CS-27. Courtman's prior sales experience involved selling cosmetics. (Tr. 366-367). The comparison is valid and indicates that employees without children received better contracts than employees like Complainant, who had children when hired. Damages were not recommended or awarded for the disparity between the contracts; rather, the comparison was made to assess whether it was further evidence of parental status discrimination. See FF. 22.

16. Before Lockwood signed the contract (CX-1), one of the PNS owners told Lockwood – falsely, as it turns out – that this $45,000 per year salary was the highest base salary of any sales person at the company.[8] (Tr. 46.) See Finding 15 above.

17. A key provision of her contract, in Lockwood's mind, was that when she reached a total of $300,000 in sales, her commission would increase to ten per cent. (CX-1, ¶ III(b).)

18. One of the PNS owners told Lockwood that it was her responsibility to keep track of her sales so that she would know when she hit the $300,000 target, because PNS would not keep track for her. (Tr. 47-48.)

19. Although PNS kept very poor commission records, it is clear that Lockwood either hit the $300,000 target or came very close by May 2005.[9] (Tr. 53, 54, 308.)

20. The contract provided Lockwood with five vacation days a year. (CX-1, ¶ III(i).) When she said that was not enough, the owners assured her, "Don't worry about it." (Tr. 37.)

21. The evidence made clear that PNS had a lax time-off policy, as will be discussed in more detail below. *E.g.*, Tr. 165-166, 197.

C. The Contracts of Other Sales Representatives

PNS sales representatives were given contracts with a variety of salaries and commission figures.

(a) Full-time sales representatives who did not have children at the time of their hire all received ten per cent commissions; their salaries varied, however. These included:

- Melissa Tramp/Wojcik, who worked at PNS since May 2004, at approximately $40,000 per year (no children until 2007 or 2008). (Tr. 67, 76-77, 89, 117.)

- Amy Achberger, who worked at PNS since sometime before May 2004, at approximately $45,000 per year. (CX-34 at 2, CX-26; Tr. 85, 361.)

- Gretchen Fiala, who worked at PNS since May 2004, at approximately $59,000 per year. (CX-28; Tr. 84-90.)

- Hilary Courtman, who worked at PNS since November 2005, at approximately $45,000 per year. (CX-27.)

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[8] Respondent's objection that Complainant's base salary was high enough for a new hire is overruled; this finding is correct. Complainant's initial contract compared unfavorably to that of Fiala, Iliopoulos, and Reid/Snider; see citations in FF 22. In addition, Courtman, a former cosmetics salesperson at Nordstrom, was given the same salary as Complainant with a 10 per cent commission rather than the 5% commission Complainant received.

[9] Complainant's objection that Complainant never met her performance goals is overruled. This finding is correct. The transcript portions cited by the hearing officer show that, according to Complainant's records, she had achieved approximately $324,000 in sales by May 2005; see also Tr. 53-54. Even Respondent's less-than-reliable records showed Complainant made substantial sales (see CX-34), with no proof Respondent's records were complete.

- Gina Iliopoulos, who worked at PNS since April 2006, at approximately $50,000 per year. (CX-30; Tr. 129.)

- Amanda Reid/Snider, who worked as a sales representative at PNS since approximately 2004, at approximately $65,000 per year. (CX-31, CX-34; Tr. 61-62.)

b. In addition to Lockwood, the full-time sales representatives who had children at the time of hire were Debbie McKinley, Julia Sheade, Mark Garoufalis (who was Dr. Garoufalis's brother), and Tom McNabola. (Tr. 61, 172, 338.)[10]

25.[11] Until they hit the $300,000 sales figure, all of the full-time parent-employees were paid only five percent commissions. CX-1 (Lockwood), CX-32 (Sheade), CX-25 (Mark Garoufalis).

26. A number of the sales representatives who had no children received extra pay for selling more than a certain number of tests per month while employees with children were required to achieve a minimum of sixty but were not paid extra. Compare CX-1, CX-25, and CX-32, Section VIII(a)(3) and CX-2, § III(b) with CX-26 and CX-30, § III(k), and CX-31, § III.

27. Some of the part-time sales representatives were paid ten per cent commissions but no salary. These included both parents and non-parents. See, e.g., CX-29 (Rachel Glidic); Tr. 62-63, 431-433 (Carmen Harper).

28a Some of the sales representatives–Melissa Tramp/Wojcik, Caryn Serio King, and Amanda Reid/Snider–did not have children when they began working at PNS but had children later. (Tr. 67, 103, 475.)

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[10] Respondent's objection that not all employees listed in FF22 were full-time sales representatives is overruled; the finding is correct. Tr. 142 further shows that Tramp/Wojcik, Achberger, Lockwood, and Iliopoulos were full time salespeople. Tr. 84-85 shows that Fiala was full time, and CX-27 shows that Courtman was full time. Also, Respondent's objection that not all non-parents received a 10 per cent commission is overruled; FF 22 is correct. The records in evidence show that *during the relevant time period*, PNS paid all full time non-parent salespeople 10 per cent commissions. See CS-27, CX-28, CS-30 and Tr. 76-77, 89). Kelly had no children. (Tr. 532) Respondents offered no evidence as to the dates of Kelly's employment or that of Jerry Sundine, and CS-34 does not show Cook or Sundine working at PNS at any time through March 2006. Respondent produced no contracts with Cook or Sundine. There was no persuasive evidence about the terms of their employment

[11] Due to clerical error, from this point the Findings of Fact in the hearing officer's recommended ruling were not always numbered serially, e.g. there were no Findings numbered 22 or 23 and two numbered 28. The Commission has retained the same order and numbering the recommended ruling with the designations 28a and 28b.

D. Lockwood Advises PNS That She Has Reached the $300,000 Target

28b About a year after Lockwood started working at PNS, her records established she had reached the $300,000 target. (Tr. 53, 308.) She scheduled a meeting with the PNS owners to discuss increasing her commission from five per cent to ten per cent, as her contract (CX-1) provided. (Tr. 48-49.)

29. At this meeting, in May 2005, Herzog told her, "No way," and refused to increase her commission. (Tr. 49.)

30. Rather than acknowledge that Lockwood was entitled to a ten per cent commission from that point onward, both PNS owners insisted she enter into a new contract, which would require she sell at least sixty tests per month to qualify for a ten per cent commission. (Tr. 49, 55, 58; CX-2.)[12]

31. Lockwood was disappointed and upset. (Tr. 56.) She signed the new contract (CX-2) anyway, however, because she felt she had no choice, since she needed to support her family. (Tr. 309-319.) In fact, she never received the ten per cent commission. (Tr. 59.)

E. Lockwood's Performance as a Sales Representative

32. Despite PNS's contentions about Lockwood's performance in its Pre-Hearing Memorandum and Position Statement, no documents were produced at the hearing to suggest any criticism of Lockwood's work. Likewise, there was no evidence of any sort to suggest that Lockwood had been told that she was not living up to PNS's expectations. (Tr. 182, 314.) In fact, her sales were higher than those of many of the other sales representatives. See CX-34.

33. PNS's sales manager Snider/Reid established that PNS never imposed sales quotas, nor did it have written performance reviews, even though Snider/Reid recommended them. (Tr. 645.) Snider/Reid could not recall any criticism of Lockwood from the PNS owners or anyone else. She believed Lockwood was as good as any other sales representative hired during that period. (Tr. 642.)

34. Iliopoulos likewise never heard any criticism of Lockwood's performance. This was true even though the performance of sales representatives was discussed frequently. (Tr. 144-145.)

35. Even when Lockwood was fired, none of the three representatives from PNS who sat down with her to give her the news cited any unacceptable behavior for the termination decision.[13] (Tr. 227-229.)

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[12] Several of the sales representatives' contracts allowed PNS to fire the employee during the probationary period if the sales representative fell short of the sixty-tests-per-month target. (CX-1, ¶ VIII(3), CX-25, ¶ VIII(3).) This requirement was never enforced, however. See CX-34 (reflecting many salespeople who sold fewer than sixty tests per month).

[13] Respondent's objection that Complainant was criticized for her performance is overruled; FF 33-36 are correct. Respondent offered no proof that any complaints were made against Complainant while she worked at PNS, nor any proof that Lockwood had been told during her employment that she was not meeting expectations. Although the evidence showed that Dr. Herzog was pushing Complainant and other employees to sell more tests, there was no proof of any criticism of her productivity, which was relatively good compared to many other salespeople at PNS (see CX-34) and n.14 below. Although Complainant and McKinley (another employee who had children) were sometimes

36. At the hearing, PNS made no effort to show that Lockwood failed to live up to any performance standard.[14]

F. Lockwood's Attendance/Time Off

37. PNS argues that Lockwood was dismissed because of "excessive time off." (See, e.g., Closing Brief for Respondent at 5, 9, 12.)

38. Such a justification for its termination decision would suggest that PNS had an attendance policy and kept track of absences, but the evidence proved that it did neither. PNS conceded in closing that its policy about absences was lax. (Tr. at 79, 109-110, 198; August 26, 2008 Tr. at 79-80) This was the case both before and after Maryann Gordon became office manager.[15] (Tr. 111, 562.)

39. Snider/Reid, a manager during much of Lockwood's employment, confirmed that she never tracked employees' attendance. (Tr. 645.) Gordon also conceded that attendance records were not complete. (Tr. 557.)

40. The rules for attendance changed constantly, insofar as there were any attendance rules in the first place. (Tr. 111.)

41. As one example, Iliopoulos confirmed that despite her contract, which said she was allowed only ten vacation days, she had a "personal arrangement" with the PNS owners to take more days off. (CX-30, ¶ III(i); Tr. 165-166.)

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reprimanded for "not getting enough orders" (Tr. 93-94), the evidence indicated these reprimands were delivered in a discriminatory fashion, namely to employees with children and not to employees with children who had comparably low (or worse) sales.

[14] Respondent's various objections to the effect that Complainant did not live up to the company's contractual performance standards are overruled; this finding is correct. Respondent offered no proof that Complainant failed to live up to any standards that were actually enforced by PNS. The testimony established that the idea of quotas had been discussed but they were never imposed. (Testimony of Reid/Snider, Tr. 645). Complainant's second contract (CX-2), did not impose any performance standards. Although her first contract (CX-1) allowed PNS in its discretion to fire her if she failed to maintain a rate of sixty tests per month by the end of six months (CX-1, ¶VIII), PNS did not exercise its discretion to fire her at that point (November 2005), and her new contract (CX-2) contained no such requirement. Notably, employees who did not have children had no such requirement in the first place; see, e.g., the Courtman contract (CS-27). The objection that Julia Sheade had the same goals as Complainant must be overruled; this argument does not help Respondent because, like Complainant, Sheade had children. Furthermore, CX-34 shows that very few PNS salespeople achieved such sales records; it was only the exceptional salesperson who exceeded sixty tests per month and none did so consistently. See also n.8 above. The objection that Mark Garoufalis had better sales figures than Complainant is overruled as incorrect; as CS-34 shows, he had drastically lower sales than Complainant much of the time and rarely exceeded her sales figures. When he did exceed her sales, it was only by a small amount, and beginning in October 2004, Complainant consistently exceeded his sales figures, often by a substantial amount. The objection that salespeople with poor sales figures worked only part time or left is also overruled; Complainant's sales figures are relevant to the point that no criticism of her sales performance relative to that of others was ever given before she was fired. Respondent has pointed to no evidence of such criticism during the first six months of her employment, when she could have been fired for not selling sixty tests per month. Finally, the objection that other sales representatives left PNS is not only irrelevant, but there is no verification of the time frame for most of these departures.

[15] Respondent's objection that it did have an attendance policy is overruled; FF 38 is correct. In addition to the testimony cited in FF 38, Respondent's office manager, Mary Ann Gordon, did not review attendance records for accuracy and admitted there were errors. (Tr. 558-560). Tramp/Wojcik testified that the time-off rules changes all the time. (Tr. 111) Gordon confirmed that record keeping for vacation and sick days was lax. (Tr. 558-562) Respondent's counsel admitted in closing argument that Respondent was not aware of any criticisms of Complainant's attendance (08/26/08 Tr. at 79-90).

42. Absences for personal emergencies were never grounds for termination of the employment of non-parents. As one example, Tramp/Wojcik once cancelled a meeting to stay home on account of plumbing problems, and she was not disciplined in any way. (Tr. 112-113.) To the contrary, Respondent's consultant, Peter Salvestrini, told Tramp/Wojcik, "I understand. Take care of your basement." (Tr. 114.)

43. Sales manager Iliopoulos confirmed that no one had ever complained about Lockwood's attendance. (Tr. 144-145.) Insofar as PNS claimed to have kept attendance records (RX-3, RX-4), they were full of errors and completely unreliable, as even Gordon admitted.[16] (Tr. 557-558, 563.)

44. Lockwood testified persuasively that she was never criticized for taking too much time off (Tr. 197, 221), and she never saw any attendance records like RX-3 while working at PNS. (Tr. 219-220.)

45. RX-3 is so inaccurate that the hearing officer found it false. PNS had no reasonable basis to offer it as a record of actual absences.

46. Although Herzog testified that he had seen an attendance report prepared by Gordon regarding Lockwood's time off (Tr. 699-700), there was no such report until after Lockwood was fired. (Tr. 563.)

47. Although Gordon advised Lockwood shortly before June 2006 that she had used up her vacation days and would be docked for any additional days of absence, even if the hearing officer had credited this evidence (and she did not), this would not suggest that Lockwood greatly exceeded her allotted time off. She had taken a vacation one week before she was fired, and no one at PNS had raised an issue about her time off through that time. (Tr. 197-198, 221-222.)

48. Dr. Garoufalis testified that PNS was very flexible and tolerant with child care issues (Tr. 331-332), which would suggest that even if Lockwood had used up all her leave, taking a day off for her child's medical needs would not be grounds for termination. As will be discussed below, however, Dr. Garoufalis was not involved in the termination decision. (Tr. 351.)

49. Despite the evidence establishing PNS's unreliable attendance-tracking procedure, an August 2006 letter from Respondent's attorney states that one of the reasons Lockwood was fired is that she "greatly exceeded her vacation day allotment." (CX-20; Tr. 699.) The hearing officer finds this false and the Commission accepts this finding.

50. In contrast to PNS's Reply Brief and Pre-Hearing Memorandum, at closing argument, PNS argues that "nobody cared" about the number of days an employee took off as long as they

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[16] Respondent's objection that its Exhibits 3 and 4 are reliable is overruled. See also Tr. 210.212, 218-222 (Testimony of Lockwood) and Tr 558-563 (Testimony of Gordon). Respondent's own agent, Gordon, admitted problems with the company's vacation and sick leave records. There is no support for Respondent's objection that Gordon did not make this admission. She admitted that the company's attendance system counted holidays as absences or vacation, which is a serious inaccuracy. (Tr. 558-562). She admitted she did not review RX-3 for accuracy. (Tr. 561-562. She further admitted that Complainant's time records for 2006 were not prepared until January 2007, after Complainant had been fired (Tr. 563), so that Complainant would have had no opportunity to review or correct them. Further, there is no evidence to support Respondent's objection that Complainant took more time off than others; Respondent offered no citation for this argument.

made sales. (August 26, 2008, Closing Argument at 79-80.) This is characteristic of Respondent's ever-changing position on why Lockwood was fired. The evidence strongly established that the absenteeism explanation for firing Complainant is not true but pretextual.

G. PNS's Anti-Parent Animus

51. The next factual question is: was the real reason for the termination parental status discrimination? Many of the facts outlined above show that PNS treated parent-employees worse than non-parent employees with respect to the terms of their contracts. For example, no full-time non-parent employee received such a low commission as five per cent, and no parent employee was given ten per cent (except where the offered salary was extremely low; see Finding No. 15). There are other facts suggesting anti-parent discrimination as well.

52. Dr. Herzog was aggressive and mean to employees with children. (Tr. 286.)

53. When Reid/Snider, who was a highly successful sales person (see Tr. 574, CX-34), became pregnant, PNS began to treat her badly: Once Reid/Snider announced her pregnancy, she was demoted, treated with less respect, and her opinions ceased to be taken seriously. (Tr. 103-105, 280-281.) In addition, important duties that she enjoyed were taken from her and she was excluded from meetings and other activities, including trainings and ride-alongs. (Tr. 627-629.) It is not true, as PNS contends, that Reid/Snider, on her own initiative, asked to go back into sales and give up her sales manager position (*see* Tr. 398); she was disappointed and unhappy with her superiors' sudden change in attitude toward her. (Tr. 627-629, 635-638.)

54. Contrary to PNS's contention that it paid Reid/Snider for much of her maternity leave (Tr. 344), PNS had no maternity leave policy, and Reid/Snider was not paid any salary for the time she took off to have her baby. (Tr. 639-40.)

55. Other evidence of anti-parent animus includes the following:

a. Gina Iliopoulos heard Dr. Herzog say, "I want young, single people who live in the city, those who would no have other responsibilities to worry about." (Tr. 155.) Iliopoulos also observed that only single employees were granted job interviews. (Tr. 156.)

b. Melissa Tramp/Wojcik heard Herzog say that the company should hire only "young, single women." (Tr. 121-123, 155-156.)

c. Melissa Tramp/Wojcik did not have children when she was hired. When she got married, Herzog asked how quickly she planned to have children. (Tr. 659.)

d. When Salvestrini arrived, he limited his search for new salespeople to young women (Tr. 159), which tends to correlate with not having children.

H. The Termination of Lockwood's Employment

1. Who made the termination decision?

56. None of the four witnesses who PNS contends participated in the termination decision testified about the reasons for Lockwood's firing.

57. Peter Salvestrini, who allegedly made the recommendation to terminate Lockwood's employment (Tr. 348-350), never testified at all. See Respondent's Reply at 10.

58. Dr. Garoufalis and Maryann Gordon both testified, but neither gave any explanation for why Lockwood was fired. In fact, Dr. Garoufalis knew virtually nothing about the decision to fire Lockwood. Although Herzog testified that Garoufalis participated in the termination decision (Tr. 702), Garoufalis's own direct testimony made clear he did not:

> Q: Were you involved in that [decision] at all?
>
> A: I was not.
>
> (Tr. 351.)

59. The only PNS agent who testified at any length about Lockwood's firing, Herzog, gave no reasons for the decision whatsoever. (Tr. 758-761.)

60. As Lockwood's testimony established, when she was fired, she asked the reason, and PNS refused to give her one. (Tr. 227-229.)

2. When was the decision to fire Lockwood made?

61. There was contradictory evidence as to when the decision to fire Lockwood was made. (e.g., compare Tr. 701-702 with CX-65.)

62. PNS argues that no decision was made until June 5, 2006, but Lockwood testified persuasively that she was told on Friday, June 2, 2006, that if she did not quit, she would be fired. (Tr. 224-225.)

63. Consistent with Lockwood's testimony and contrary to the position of PNS, the resignation letter PNS asked Lockwood to sign was dated June 2, 2006. (CX-65.)

64. On Friday, June 2, Lockwood was scheduled to meet individually with Salvestrini to get to know him better. (Tr. 223-224.)

65. Salvestrini had worked at PNS for only a short time, and he had made this request of all the sales representatives at one of the regular Friday meetings. (Tr. 223-224.)

66. Lockwood had proposed to have her meeting with Salvestrini on June 2. (Tr. 223.)

67. On the morning of June 2, however, Lockwood's daughter came down with pinkeye. (Tr. 223-224.)

68. Lockwood called Salvestrini, told him her child was ill, and asked to postpone their meeting. Salvestrini said that would be no problem and suggested they meet on Monday, June 5. (Tr. 224.)

69. Then, for reasons that never came to light, a half-hour after that phone call, Salvestrini called Lockwood back, this time with Herzog on the speaker phone. They told Lockwood she had these choices: be fired with cause or without cause, or resign. (Tr. 224-225.)

70. Lockwood asked why she was being fired, and Salvestrini said "it just wasn't working out." (Tr. 225.)

71. Lockwood reminded Salvestrini that he had agreed to reschedule the June 2 meeting because her child had pinkeye. (Tr. 225.)

72. This second phone call of June 2 ended with Salvestrini instructing Lockwood to be in the office at 9:00 a.m., Monday. (Tr. 226.)

73. Lockwood testified credibly that this sudden threat of termination threw her into a state of shock. (Tr. 226.)

3. June 5, 2006

74. On Monday morning, June 5, 2006, Lockwood arrived at PNS a few minutes after 9:00. She was kept waiting for twenty minutes, however, and then PNS representatives Herzog, Salvestrini, and Gordon met with her. (Tr. 227.)

75. Even though they had just kept Lockwood waiting for twenty minutes, Herzog began the meeting saying, "I have only five minutes." (Tr. 228.)

76. Lockwood told Herzog she didn't want to talk in front of Salvestrini and Gordon, but Herzog told her she had no choice. (Tr. 227.)

77. Again, Lockwood was told she could resign or be fired. She asked the reason, and Salvestrini said PNS did not have to give a reason. (Tr. 228.)

78. Lockwood expressed concern that she was being fired because she asked to reschedule the meeting due to her daughter's pinkeye. (Tr. 572-573.)

79. Still, no reason was given for the termination of her employment at this meeting.

80. Other employees, including sales manager Iliopoulos, never heard any reasons why Lockwood was fired, either. (Tr. 115-116, 162.)

I. What Were the Reasons for the Termination Decision?

81. PNS's Pre-Hearing Memorandum, at 1, states that the reasons for the termination of Lockwood's employment were "excessive absences" and especially "her failure to report to the offices of the company on June 2, 2006." PNS's Position Statement, ¶ 1, to which Dr. Garoufalis certified after his inquiry into the facts, also confirms that Lockwood's absence on Friday, June 2, was "the immediate catalyst for the termination decision." The letter from PNS's attorney to Lockwood's, dated August 2006 (CX-20), further confirms that Lockwood's Friday, June 2, absence was a key reason for the termination. Like the Position Statement, CX-20, states that she was absent "without articulating any reason or cause" for her absence; yet, there is overwhelming evidence that Lockwood advised the company both on June 2 and on June 5, 2006, that she was absent for one reason only: her child was ill and she needed to make childcare arrangements. PNS's assertion that Lockwood gave no reason for her June 2 absence is flatly false. See, e.g., Tr. 223-227, 573.

82. Although Respondent's letter (CX-20), says that she was terminated "for cause," her contract defines cause as "conviction, by a court of competent jurisdiction, of a felony, theft of company property, or a crime of moral turpitude, or gross negligence in the performance of [her] duties." (CX-2, ¶ VIII(a)(iii).) No such cause was ever suggested, far less proved. PNS's allegation that Lockwood was fired for cause is untrue.

83. Under her contract, if Lockwood was not fired "for cause," she was entitled to thirty days' written notice. (CX-2, ¶ VIII(a)(i).) She did not receive it.

84. The timing of the termination decision, immediately after Lockwood asked for time off to make child care arrangements because her child was ill, is strong circumstantial evidence that she was fired because of her parental duties. The fact that there were no other legitimate reasons for the termination decision, coupled with the fact that PNS employees without children were allowed to take time off, liberally, for personal reasons such as plumbing problems, establishes that Lockwood's termination was due not merely to requesting a day off, but to taking off for the purpose of attending to her child's illness.

85. The Commission does not adopt the hearing officer's proposed finding that the only employees who were fired by PNS were parents (McKinley, Lockwood, and Mark Garoufalis); Respondent's objection to this finding has some validity. It appears that McKinley was given an ultimatum and then left rather than being fired. The other non-parent employees who were fired, however, were not working as salespeople at the time of discharge. Full time salesperson Iliopoulos was a manager when she was fired and was replaced by Salvestrini (Tr. 151, 164); Iliopoulos and Duggan were fired at a later date.

86. Further undermining PNS's argument that Lockwood was not fired because of child care obligations is PNS's testimony that Peter Salvestrini was hired to evaluate the staff and make recommendations. See Respondent's Closing Brief at 5.

87. In fact, Drs. Garoufalis and Herzog testified that Salvestrini was planning to meet with Lockwood to discuss how she might increase her sales figures. No such meeting occurred before she was fired, and it would be peculiar to fire her before making this effort; her sales were higher than those of many of the other salespeople.[17] *See* CX-34. (Tr. 350-351, 700.)

88. The hearing officer finds that Lockwood was fired because she took a day off to attend to a child with an illness while comparable sales representatives who took time off for reasons unrelated to their children were not terminated. The Commission accepts this finding.

J. Lockwood's Replacements

89. Lockwood was replaced by other employees who were already working at PNS. (Tr. 160-161.)

90. Most of Lockwood's territory was given to Bernice Garcia, who had no children, while other parts were given to two other employees who had no children at the time. (Tr. 160-161.)

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[17] Respondent's objection that Complainant's sales were not higher than others with comparable territories is overruled; FF 87 is correct. Courtman was hired in November 2005, while Complainant was working as a salesperson. (Tr. 350-351). The records of PNS do not show any sales for Courtman through March 2006, however. See CS-34. There was credible proof that Courtman's and Complainant's territories were comparable. For example, Iliopoulos testified that while she was a manager, PHS tried to align the territories fairly. (Tr. 144)

K. Lockwood's Unpaid Commissions

91. It is undisputed that PNS failed to pay Lockwood the commissions for sales that came in after she was fired. In part because of PNS's poor record keeping and in part because of PNS's failure to provide adequate discovery in this case, Lockwood has asked the Commission to order, as part of the relief, an accounting by PNS of her post-firing commissions. See Complainant Dena Lockwood's Supplement to Closing Brief.

92. Lockwood argues that PNS's refusal to pay these post-firing commissions was both an act of parental-status discrimination and an act of retaliation for protesting same.

93. Non-parents who left PNS's employ were paid their full commissions for receipts that came in after they left, even for those that arrived many months after their last day of work. (Tr. 118.) In fact, some sales representatives received payment up to a year later. (Tr. 162, 243.)

94. PNS argues that the only reason it did not pay Complainant post-firing commissions is that it had a policy, which PNS says had been in effect for several months before Lockwood's termination, that failure to make a claim within four weeks waived any rights to the commissions.

95. PNS's argument is false, as its own July 27, 2006, email (CX-21) establishes. This email proves that until July 2006 (two months after Lockwood was fired), the company had a policy allowing six months to request unpaid commissions. At the end of July 2006, that policy was changed to four weeks.

96. Although CX-20, an August 14, 2006, letter from PNS's attorney to Lockwood's attorney, states that a "new policy" had been put into effect "several months ago," CX-21 proves this false: the policy had been put into effect less than two weeks before PNS's lawyer's letter; the statement in the PNS attorney's letter is false.

97. The Hearing Officer found that PNS's new policy was created after the fact and sent to Lockwood's attorney in an attempt to deceive her and make her think she had waived her rights. The Commission accepts this finding.

98. The Hearing Officer found that PNS wrongfully denied Complainant's post-firing commissions, lied to her about the rules for getting them, and treated her differently than non-parents with regard to the post-firing receipts.

99. PNS's falsehoods regarding its commission-payment policy also came shortly after Lockwood complained about being fired because her child had pinkeye, *see* Tr. 572-573. The hearing officer found that these facts suggest retaliation; however, see the Commission's discussion of this issue below.

L. Credibility

100. Several witnesses who testified at the hearing were found not credible by the hearing officer. The hearing officer found that the least credible was Dr. Herzog. She found that his testimony was not credible on any significant point, and his body language suggested to the hearing officer he would say whatever was necessary to win the case, even under oath.

101. The hearing officer found that Dr. Garoufalis was sometimes credible, but there were serious flaws and inconsistencies in his testimony:

a. The Position Statement to which he attested was found highly inconsistent with the facts of the termination decision. He admitted that he barely participated in that decision and his testimony revealed that he failed to perform any real investigation of the facts.

b. Garoufalis's testimony that Reid/Snider requested a change from management back to sales when she became pregnant (Tr. 343) was found not credible. Likewise, his testimony about maternity benefits was found greatly exaggerated. (Tr. 344.) While documentation of salaries paid during employees' maternity leaves was clearly under PNS's control, no evidence of any maternity benefits paid to anyone was offered at the hearing. (Tr. 103-105, 280-281, 627-629, 635-638.)

102. Maryann Gordon's testimony likewise was found by the hearing officer to contain serious flaws and exaggerations:

a. It was simply not true, as she testified, that all sales representatives from May 2004 onward received only five per cent commissions regardless of their parental status. Gretchen Fiala's contract (CX-28), entered into in May 2004, only two days before Lockwood was hired, proves that.

b. The attendance records that Gordon allegedly maintained were not as advertised. As discussed at ¶¶ 38-50 above, they were not only not prepared and shown to employees at the time, but they were riddled with inaccuracies.

c. The hearing officer gave Gordon credit, however, for honestly confirming that Lockwood made clear her belief that she was being fired because of an absence due to her daughter's illness. (Tr. 572.)

103. Gina Iliopoulos came across to the hearing officer as completely credible, even though she has a pending matter with the EEOC against PNS.

104. The Hearing Officer concluded that all the other witnesses, including Lockwood, were attempting to be accurate and truthful in their testimony at all times and that they did not attempt to shade their testimony even when doing so might have been in their self-interest.

M. Lockwood's Injury

105. No one would doubt that being fired is hard on anyone, see, e.g., Respondent's Closing Brief at 14; but the news of the termination of Lockwood's employment was particularly ill-timed for her. It occurred the day of her son's high school graduation. (Tr. 254-255.) Being fired out of the blue on such an important day caused an enormous emotional impact that forced Lockwood to consult various therapists, including a psychiatrist.[18] (Tr. 261.) Xanax was prescribed. (Tr. 257.)

106. Lockwood testified poignantly, in the view of the hearing officer, that her treatment by Respondent was akin to the loss she felt when her parents died. (Tr 255.) She suffered the anxiety of losing her job and worrying about how she would support her family and pay the mortgage on her new home. (Tr. 259.) She seeks $200,000 for the emotional distress she suffered.

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[18] Respondent's objection that Complainant did not consult a psychiatrist in connection with her discharge is overruled. She saw Dr. Karim, an internist, immediately after she was fired and obtained a prescription for Xanax from him (Tr. 257). She later saw a psychiatrist, Dr. Cusick, whom she had also consulted after her parents had died; see Tr. 258, 260-261, 269.

107. Lockwood earned $33,601.25 in commissions in the year before she was fired. See CX-52 through CX-55, CX-57 through CX-59 and CX-61 through CX-64.

108. As for the financial injury, in addition to the unpaid commissions for receipts that came in after she was fired, she lost one full year of salary and commissions, due in part to the fact that she had to switch industries because PNS had imposed a non-compete covenant on her.[19] See CX-2, Section IX; Tr. 260.

III. CONCLUSIONS OF LAW

As set forth in §2-120-510, Chicago Municipal Code, and Commission Regulation 240.620(c), the Board of Commissioners of the Commission on Human Relations may adopt, reject, or modify the recommendations of a hearing officer in whole or in part, but shall adopt the findings of fact recommended by a hearing officer if they are not contrary to the evidence presented at the hearing.

Complainant must prove her case by a preponderance of the evidence. Reg. 240.610(a)(iii). With regard to any affirmative defenses, such as the allegation that Complainant failed to mitigate her damages, Respondent bears the burden of proof. *Griffiths v. DePaul Univ.*, CCHR No. 95-E-224 (Apr. 19, 2000).

Complainant has elected to use the *McDonnell-Douglas* method of proof, set forth in *McDonnell-Douglas Corp. v. Green*, 411 U.S. 792 (1973), whereby she must first establish (1) that she is a member of the protected class (here, a parent) (2) That she was performing her job to her employer's legitimate expectations, (3) that she suffered an adverse employment action, and (4) that similarly situated employees did not suffer the same adverse employment action. See e.g. *Wehbe v. Contacts & Specs*, CCHR No. 93-E-232 (Nov. 20, 1996). Respondent concedes the first and third elements of the *McDonnell-Douglas* test, that Lockwood is a member of a protected class and that she suffered an adverse employment action, but disputes the other elements. See Respondent's Closing Brief at 14. If Lockwood meets her burden on these elements, the burden shifts to PNS to articulate that it had a legitimate reason for firing her. *Wehbe, supra.* If PNS meets that burden, Lockwood assumes the burden of showing PNS's reason or reasons to be pretextual. *Id.*

A. Discrimination

As the Findings of Fact establish, the evidence presented at the hearing proves that Complainant was performing her job to her employer's legitimate expectations. In fact, she was never criticized for any shortcoming or misconduct up to the moment of her firing. There was considerable evidence that other employees, including non-parent employees, who had poorer sales figures or who missed time from work were not disciplined nor was their employment terminated. PNS failed to present any credible evidence that Complainant was not meeting its reasonable expectations at the time she was fired.

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[19] Respondent's objection that Complainant did not lose a year's salary and commission is overruled. Complainant was ordered to provide Respondent with her W-2 and 1099 tax forms, together with evidence of any other earned income following her discharge by PNS, and Respondent never suggested that the order was not obeyed. See the July 3, 2008, Rulings on Motion to Compel. Yet Respondent offered no proof of any earned income by Complainant for the year following her discharge. Complainant took a commission-only job sometime after being fired by PNS. (Tr. 270) There was no evidence of any earnings from that work through June 2008 (one year after she was fired), despite the fact that Respondent had access to her income records through the order of July 3, 2008.

With regard to PNS's treatment of similarly situated employees, there was ample proof that employees with children were treated far worse than those without children in many regards. PNS employees who became parents only after they had been hired provided a rather unique set of comparators. They provided, in effect, their own control group. Like a person who changes religion or gender but remains the same person, PNS's treatment of these employees demonstrates what changed when nothing but parental status changed. While there is not a wealth of evidence on this subject, there is sufficient evidence to conclude that Reid/Snider was treated far worse after becoming a parent than she was treated before. (Caryn Serio King apparently asked that her duties be lessened when her child was born, so the fact that her work diminished does not suggest discrimination. (Tr. 477.))

But the most persuasive evidence here was the differential treatment of parents and non-parents in a variety of objective categories: salaries, commissions, minimum test requirements, termination of employment, and the payment of commissions after the employee left PNS. As discussed in the Findings of Fact, non-parents were generally given higher base salaries and significantly (and consistently) higher commissions than employees with children. Employees who were parents had to reach the sixty-tests-per-month minimum to qualify for higher commissions or bonuses; by contrast, non-parent employees were paid something extra for selling more than forty-three or sixty tests per month. Parent employees were treated rudely by Dr. Herzog. When Reid/Snyder became pregnant, she was denied important duties in which she had thrived.

Lockwood was fired for a single absence; no employee without children ever suffered such a fate. In addition, Lockwood was replaced by employees who had no children. Lockwood has met her burden to establish a *prima facie* case under the *McDonnell-Douglas* test. We next consider whether PNS has presented a legitimate reason for Lockwood's firing.

While PNS asserted a variety of reasons for firing Lockwood, it failed to present credible evidence in support of any of them. In fact, PNS provided no compelling evidence to account for its differing treatment of parent-employees and non-parent employees. As discussed above, Lockwood established that each of the reasons proffered by PNS to explain her firing – "excessive absenteeism," failure to provide a reason for her June 2, 2006, absence, or "things just weren't working out" – were all false, fraudulent, and pretextual.

With regard to PNS's chief reason for the termination decision, the June 2, 2006, absence, PNS's proffer of that reason *supports* a finding of parental status discrimination. By admitting that this particular absence was a critical reason for firing Lockwood, PNS has virtually admitted to discrimination because the uncontroverted evidence proved that absence for reasons unrelated to children was never a reason for discipline, far less firing. The pretextual nature of PNS's asserted reasons for firing Lockwood allows the finder of fact to draw an inference of discrimination. See *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 511 (1993). This permissible presumption, coupled with the evidence of anti-parent animus discussed above (Findings 51 through 55), compels the Commission to agree with the hearing officer's conclusion that PNS fired Lockwood because she asked for time to attend to her parental duties on June 2, and not for any legitimate reason. PNS thus violated the Human Rights Ordinance.

B. Post-Termination Commissions

The hearing officer also concluded that PNS unlawfully retaliated against Lockwood for her complaint about parental status discrimination. Gordon's testimony established that Lockwood complained during the June 5 meeting that she was being fired because she asked to reschedule a meeting due to her daughter's illness. (Tr. 572–73.) After the June 5 meeting, PNS elected not to

pay Complainant her commissions for sales that came in after the termination of her employment, even though it had been its practice and policy to pay commissions on fees that came in up to a year later.

The hearing officer concluded that this failure to pay commissions constituted retaliation for having complained internally about the parental status discrimination. However, a separate cause of action for retaliation of this nature does not exist under the Chicago Human Rights Ordinance (although it is available under other discrimination laws not enforced by this Commission). The retaliation prohibited by the CHRO is more limited in nature: "No person shall retaliate against any individual because that individual in good faith has made a charge, testified, assisted or participated in an investigation, proceeding or hearing under this chapter." §2-160-100, Chicago Municipal Code. This provision has always been construed as covering only people who participated in the Commission's administrative process, not those who opposed discrimination elsewhere including on the job. *Workman v. First National Bank of Chicago*, CCHR No. 95-E-106 (Jan. 4, 1996), *Harris v. Buddy Products*, CCHR No. 96-E-117 (Apr. 4, 1998), *Stokfisz v. Spring Air Mattress et al.*, CCHR No. 97-E-105 (Feb. 11, 1999), *Thomas v. Cook County State's Attorney's Office*, CCHR 94-PA-18 (Mar. 3, 1994), *Brandt v. Chicago Area Interpreter Referral Svc.*, CCHR No. 01-E-57 (May 21, 2001). Thus the Commission cannot find retaliation on these facts.

That does not mean, however, that the failure to pay post-termination commissions consistent with established policy and practice cannot be considered either as another adverse action of against Complainant and thus part of the discriminatory conduct, or as an element of damages. In that context, the Commission must consider Respondent's objections to the effect that the Complaint is insufficient to cover this claim.

The Commission agrees with the hearing officer's findings as to the events which culminated in Complainant's discharge and the later failure to pay certain commissions. Although not detailed, the Complaint is sufficient to allege discrimination in terms and conditions of employment throughout Complainant's employment relationship with Respondent, leading ultimately to her discharge after missing one appointment. Moreover, the hearing officer's recommended remedies flow entirely from the discharge and its aftermath, not from the prior acts of differential treatment which occurred up to the discharge. The hearing officer found that three actions by Respondent formed the basis for her recommended fines:

First, Complainant was told by Salvestrini by telephone (with Herzog present by speakerphone) on Friday, June 2, 2006, that if she did not quit she would be fired and that she must be in the office at 9:00 a.m. on Monday, June 5, 2006. (FF 62-72)

Second, at the meeting with Herzog, Gordon, and Salvestrini on Monday, June 5, 2006, Complainant was definitively told that she must resign or be fired, and further that Respondent did not have to give a reason. (FF 74-79)

Third, the hearing officer found that Complainant was falsely and deceptively told on August 14, 2006, in a letter from Respondent's attorney to Complainant's attorney, that a "new policy" had been put into effect "several months ago" requiring that a claim for post-termination commissions be made within four weeks of termination or any rights to the commissions would be waived. However, non-parents had received such commissions as much as a year later and the policy was not actually changed until late July of 2006, after Complainant's discharge. (FF 91-99).

Complainant did not file her Complaint at the Commission until November 29, 2006.[20] Thus the actions of June 2, June 5, and August 14 all took place before the Complaint was filed, so the Commission cannot find that on August 14, 2006, Complainant had filed a discrimination complaint at this Commission and Respondent was aware of it, and thus cannot find retaliation as defined in the CHRO. However, the Commission can find on this evidence that Respondent was aware that the payment of post-termination commissions was being sought by Complainant and was a matter in active dispute between the parties between the time of her termination and the filing of the Complaint. This is further confirmed by Respondent's position statement filed during the investigation process on January 26, 2007. That document acknowledges "a series of threatening letters from the attorneys representing Ms. Lockwood, making claims for compensation, i.e. wages and commissions, allegedly due her, and promising to institute a lawsuit if the Respondent failed to settle with her." (Position Statement of Respondent, ¶2)

It is uncontested that Complainant did not amend her Complaint at any time between the filing of the initial Complaint and the conclusion of the administrative hearing. Complainant filed her initial Complaint on November 29, 2006, alleging among other things that she was discharged by Respondent on June 2, 2006. She mentions that, in her view, Respondent's "discriminatory behavior" began when she interviewed for the position and was asked if her children would prevent her from working 70 hours a week." She describes in the complaint other examples of Respondent's "mistreatment of employees with children" including demotion of employees who announced their pregnancy and took maternity leave. However, Complainant did not specifically mention in her initial Complaint the failure of Respondent to pay her the post-termination commissions she had earned.

Although the hearing officer concluded that under the Commission's liberal pleading standards the Complainant was sufficient to encompass the unpaid commissions after discharge, Commission precedents on this issue are less clear. For example, in *Vasilatos v. Chicago Bureau of Parking and Dept. of Law*, CCHR No. 95-PA-60/61 (May 31, 1996), the Commission refused to reopen a case which had been dismissed to investigate events not covered by the complaints and which occurred after they were filed. In *Wong v. City of Chicago Dept. of Fire*, CCHR No. 99-E-83 (Dec. 5, 2002), *aff'd* Cir. Ct. Cook Co. No. 03 CH 00793 (Dec. 11, 2003), the Commission explained that despite the its liberal pleading standards, its adjudicatory role is not to conduct a wide-ranging audit of all potentially discriminatory practices; rather, claims investigated must be drawn from timely events and incidents alleged in the complaint. In *Floyd v. City of Chicago Dept. of Health*, CCHR No. 00-E-120 (Nov. 4, 2004), the Commission held that new allegations in a complainant's response to a motion to dismiss which were not included in the complaint or amended complaint could not be considered part of the complainant's claim. While following the principle that a complaint need not set out every fact or all the evidence, at the same time the Commission has held that the purpose of a complaint is to set forth the scope of the case so that no party is prejudiced, and so it must "substantially apprise" the respondent of the violation. *Adams v. Chicago Fire Dept.*, CCHR No. 92-E-72 (Oct. 14, 1993), *Ingram v. Rosenberg & Liebentritt et al.*, CCHR No. 93-E-141 (Mar. 29, 1995), *Algarin v. Sanchez Management et al.*, CCHR No. 95-H-36 (June 29, 1995), *Sheppard v. Pabon*, CCHR No. 94-H-173 (Oct. 12, 1995), and numerous other decisions.

In *Carroll v. Moravec*, CCHR No. 00-E-12 (May 24, 2001), the Commission held that it could not find a complainant's allegations about harassment to substantially apprise the respondent that she was also claiming that her discharge, which occurred after she filed her complaint, was

[20] The Complaint was filed on the 180th day after the events of June 2, 2006, and so is timely regardless of whether the discharge is calculated from June 2 or June 5.

discriminatory; the complaint should have been amended to address that subsequent, distinct event. See also *Gill v. Chicago Board of Educatio*n, CCHR No. 00-PA-54 (Aug. 9, 2001) and *Sigman v. R.R. Donnelly & Sons Co.*, CCHR No. 98-E-54 (Aug. 9, 2001). Although it is true that the Commission has found complaints adequate to state a particular claim even when the box for that type of claim has not been checked on the Commission's complaint form, those decisions have been based on a determination that the text of the complaint made it clear that type of claim was being made and sufficiently set forth the dates and descriptions of the incidents alleged to violate the ordinance. See, e.g., *De los Rios v. Draper & Kramer, Inc., et al.,* CCHR No. 05-H-32 (Aug. 23, 2006). In *Workman, supra*, cited by the hearing officer, the Commission found that the allegations of the complaint demonstrated that the complainant considered retaliation to be a reason for her discharge and mistreatment and that the respondents understood the complaint as such, even though the "retaliation" box had not been checked on the complaint form.

In the instant complaint, there are general allegations that Respondent began discriminating against Complainant based on her marital status at the time she was hired and "mistreated" other employees who were parents, but the narrative of alleged adverse actions and events specific to Complainant concluded with her discharge, and unpaid commissions after discharge were not mentioned. The Commission finds that the initial Complaint is *not* sufficient to "substantially apprise" Respondent of a claim with regard to its post-termination failure to pay commissions due.

The failure to pay these commissions was a discrete act which occurred after the employment relationship between Complainant and Respondent ended; if whether they would be paid had been ambiguous earlier, the letter of August 14, 2006, made it clear that Respondent was refusing to pay Complainant any post-termination commissions. The Commission cannot regard this action in the same category as less favorable treatment which occurred during the employment relationship; even though it may be part of a larger pattern of parental status discrimination against Complainant and other employees, that does not mean that it need not be timely pleaded by an amended complaint in order to "substantially apprise" Respondent of the scope of the case.

After Respondent submitted objections to the hearing officer's recommended ruling, Complainant through her counsel moved for leave to amend the Complaint. This motion was focused on establishing that the initial Complaint is sufficient to claim differential treatment in terms and conditions of employment throughout Complainant's employment, arguing that Complainant had alleged the discrimination began when she was hired and the purpose of amending the Complaint post-hearing was simply to make that clear. The proposed Amended Complaint indeed stated in part, "The terms and conditions of my employment were not as favorable as my counterparts with no children, including a lower commission percentage." The proposed Amended Complaint concludes with the following paragraph:

> PNS has not paid me commissions that were owed to me. I have learned that others who have not filed charges with the City of Chicago, Commission on Human Relations, have been paid the Commissions they were due.[21] I believe this is another incident of discrimination due to the fact that I am a parent and exercised my legal rights against PNS. To further retaliate against me, I learned that PNS implemented a new policy after my termination indicating that commissions which are in dispute must be submitted within four weeks of the claim and then represented to my counsel that the policy had been in effect during my employment.

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[21] Again, this formulation misunderstands the Commission's limited coverage of retaliation under the CHRO. Respondent had refused to pay post-termination commissions to Complainant several weeks before she filed her Complaint. Even if Complainant had "threatened" to file a discrimination complaint at this Commission or elsewhere, which is suggested by the evidence of pre-filing communications between counsel, that is insufficient.

Respondent opposed Complainant's motion, arguing among other things that the new claims of differential treatment and retaliation were untimely, not encompassed by the initial Complaint, not tried by implicit consent, and not in conformity with the criteria in Reg. 210.150(c)(i)-(iv). Complainant moved for leave to reply.

The hearing officer issued an order on April 21, 2009 (after issuance of her Recommended Opinion on January 16, 2009), allowing the reply but denying leave to file the proposed Amended Complaint. The hearing officer determined that the portion of the motion regarding amendment to allege discrimination in the claim of terms and conditions of Complainant's employment was unnecessary under the Commission's liberal pleading standards, noting that a great deal of evidence on terms and conditions was taken at the hearing regarding Respondent's animus toward employees with children and the differential treatment of parent and non-parent employees regarding a variety of terms and conditions including pay, demotions, time off, performance requirements, and more. The hearing officer further noted that the damages which were proved all flowed from the discharge itself, so there was simply no need for Complainant to amend her Complaint to "more perfectly track the evidence," as the motion had requested. In addition, the hearing officer denied Complainant's request to add Drs. Garoufalis and Herzog as individual respondents, on the basis that they were never on notice before or during the hearing that they had to defend against the Complaint individually, and the criteria of Reg. 210.160(b)(2) for adding respondents after an administrative hearing were not satisfied.

Complainant argues that Respondent was aware that her discrimination claim included failure to pay post-termination commissions because it became an issue in the pre-hearing discovery process. Complainant filed a Motion to Compel against Respondent on June 18, 2008, attaching a copy of her "First Request for Production of Documents."[22] Request 6(c) is for "All documents reflecting or relating to Respondent's policies, practices, guidelines, rules, requirements and procedures in effect during Complainant's employment on the following subject matters....(c) Payments of commissions, including without limitation post-termination." In Respondent's response to the document request,[23] also attached to the Motion to Compel, Respondent objected to the entire Request 6 on the grounds that "the information sought is not relevant to the charge in this matter nor is the request calculated to lead to relevant information" (then without waiving the objection answered "None"). In responding to the Motion to Compel, regarding Request 6 Respondent merely repeated that it had objected and stated that it did not have documents responsive to the request. Respondent's main arguments on the Motion to Compel were the privacy expectations of its employees and the "narrow" limits of her "unusual" and "unique" claim. However, the latter argument was to the effect that Complainant was claiming parental status discrimination and not pregnancy discrimination or sex discrimination. There was no mention of the sufficiency of the Complaint to cover the denial of post-termination commissions.

Following the hearing officer's ruling on Complainant's and Respondent's Motions to Compel, Complainant filed her Pre-Hearing Memorandum. It clearly stated the position that "PNS discriminatory treatment toward Ms. Lockwood permeated her entire employment relationship...all the way through to her termination." It also stated, "After Ms. Lockwood reported this discrimination, PNS refused to pay her wages due, claiming that she had to wait....Respondent has

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[22] The Certificate of Service shows that the document request was initially served only on Respondent and not on the Commission or hearing officer as required by Reg. 240.407. However, Respondent made the same service error regarding its document request.

[23] This response is undated and with no Certificate of Service. No copy of a Certificate of Service was filed with the Commission as required by Reg. 240.407.

refused to pay her the wages she is due even though it has paid similarly situated employees and former employees who were not parents and who did not file charge of discrimination. PNS also fabricated a policy requiring that wage claims be submitted to PNS within four weeks of the accrual of such claims even though the policy was created after Ms. Lockwood was terminated." As damages, she claimed loss of wages in excess of $35,000 but does not specifically mention lost post-termination commissions.

There is, then, some indication that Respondent was aware of Complainant's claim for unpaid post-termination commissions before the filing of the initial Complaint at this Commission as well as during the pre-hearing discovery and disclosure process (even through there is also some indication that Complainant was pursuing the matter of unpaid commissions under other laws and not just the CHRO).

It is clear that testimony was taken at the hearing concerning the unpaid commissions sufficient to support Findings of Fact by the hearing officer. It was undisputed that no post-termination commissions had been paid to Complaint (FF 91) and Respondent had represented that its four-week claim policy had been in effect for several months prior to Complainant's termination (FF 94). Testimony and exhibits were received at hearing about the policy, when it was instituted, and how these commissions were handled for other employees, all sufficient to support further Findings of Fact about it (FF 91-99). In particular, the evidence established that employees had customarily been allowed at least six months after termination to claim commissions that would come in after the termination date.

The Commission could not identify any point at which Respondent had objected to admission of this evidence at the hearing (or to discovery) *on the ground that it was not within the issues raised by the pleadings.* This objection was made only in the Objections filed after issuance of the hearing officer's Recommended Opinion (and even then the objection was not based on the Ordinances and Regulations governing this Commission but rather on generalized "due process" grounds as applied to the terms and conditions and retaliation claims). Respondent has offered no citation to the record to show that it objected to admission of evidence concerning post-termination commissions on the ground that it was not within the issues raised by the pleadings.

Commission Regulation 210.150(c)(2) provides as follows concerning issues not raised by the pleadings:

> At the administrative hearing, when issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated as if they had been raised in the pleadings. Amendment of pleadings to conform to the evidence and raise such issues may be granted on the motion of any party at any time, even after a final order, but failure to amend does not affect the result of the hearing as to such issues. If a party objects to admission of evidence on the ground that it is not within the issues raised by the pleadings, the hearing officer may allow amendment of the pleadings and shall do so if the criteria for amendment after a determination of substantial evidence are met. An oral motion to amend may be allowed at the hearing. The hearing officer may grant a continuance to enable an objecting party to support the objection and/or meet the evidence.

This is a generous provision for amendment to conform to evidence at a hearing. As the first sentence indicates, "At the administrative hearing, when issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated as if they had been raised in the pleadings." Although the next sentence indicates that amendment to conform to the evidence may be granted on motion even *after* a final order, the sentence concludes stating that "failure to

amend does not affect the result of the hearing as to such issues," referring to issues that "are tried by express or implied consent."

Further, the only time that the criteria for amendment after a determination of substantial evidence come into play is indicated by the next sentence, "If a party objects to admission of evidence on the ground that it is not within the issues raised by the pleadings...." Here, the Commission cannot discern that Respondent made any objection on this basis *at the hearing* (or in any pre-hearing motion *in limine*). The Commission concludes that the issue of unpaid post-termination commissions was tried by implied consent of Respondent, in that no objection directed to the sufficiency of the pleadings to cover this issue was raised at the hearing.

The granting of a motion to amend a complaint after a finding of substantial evidence is generally covered by Reg. 210.150(c), and in particular the criteria set forth subsection 210.150(c)(1):

(i) The claim or allegation to be added did not arise before the filing of the original complaint and any previous amended complaints or, if it did, the complainant did not know and could not have known of it before the Commission's substantial evidence finding.
(ii) The claim or allegation to be added is substantially related to those in the original complaint and any previous amended complaints.
(iii) Addressing the new claim or allegation will not raise new, material factual or legal issues not considered by the Commission in its investigation.
(iv) Any objecting party has failed to demonstrate that including the claim or allegation would prejudice the party in maintaining its action or defense on the merits.

The first and third criteria in particular are not met in connection with post-hearing commissions. The conduct at issue—refusal to pay any post-termination commissions—occurred before, not after, the filing of the Complaint. Also, it does not appear that the failure to pay these commissions as another act of differential treatment was considered in the Commission's investigation of the case. Nevertheless, the Commission finds the failure to meet all four of these criteria immaterial in a situation such as this one where the requirements of Reg. 210.150(c)(2) are met.

Although the Commission reached a different result regarding unpleaded post-termination conduct in a previous ruling, *Feinstein v. Premiere Connections et al.*, CCHR No. 02-E-215 (Jan. 17, 2007), the Commission believes that it has reached a correct result under the circumstances of this case, a result which gives meaning to the provisions of Reg. 210.150(c)(2).

IV. REMEDIES

A. Emotional Distress Damages

Lockwood was fired on a particularly ill-timed date, the day of her son's high school graduation. The evidence established that this caused her distress, depression, confusion, and anxiety. The hearing officer noted that Lockwood was crying through much of her testimony on this subject, and it was clear that the pain caused by the discrimination was still fresh. To deal with her anxiety and depression, she sought treatment from the same therapist she had consulted when her parents passed away, a situation which had caused her similar emotional pain.

The hearing officer found that Complainant suffer great depression and anxiety from the loss of her job and the worries about how she could support her family, and also was robbed of the joy she should have had in celebrating her son's graduation. Observing that Complainant was thrown into the depths of despair, the hearing officer found that no less than $100,000 could possibly compensate her for that loss, and therefore recommended an award in at least that amount.

The Commission agrees with the hearing officer that Complainant has established entitlement to substantial emotional distress damages but finds that $35,000 is a sufficient award in light of Commission precedents. The Commission has recently awarded that amount to a complainant who demonstrated similar levels of emotional distress under circumstances in which the employment discrimination was similarly pervasive and egregious given the use of continual derogatory language directed to him regarding his perceived sexual orientation. *Alexander v. 1212 Restaurant Group et al.*, CCHR No. 00-E-110 (Oct. 16, 2008). Together, these are the highest awards of emotional distress damages entered by this Commission in an employment discrimination case.[24] Previously, in *Salwierak v. MRI of Chicago et al.*, CCHR No. 99-E-107 (July 16, 2003), the Commission had awarded $30,000 for emotional distress where the complainant had been subjected to severe and pervasive sexual harassment on the job. See also *Bellamy v. Neopolitan Lighthouse*, CCHR No. 03-E-190 (Apr. 18, 2007), where $25,000 in emotional distress damages was awarded to a complainant subjected to differential terms and conditions of employment due to her sexual orientation.

The Commission does not accept Respondent's objection that Complainant's emotional distress was "made up from whole cloth." Respondent correctly states the factors considered in awarding emotional distress damages including the duration and severity of the discriminatory conduct, the vulnerability of the complainant, the duration and severity of the distress, whether there were physical manifestations, and whether the complainant received medical or psychological treatment. The same legal authority does not require expert testimony to prove emotional distress. See, e.g., *Steward v. Campbell's Cleaning Svcs. & Campbell*, CCHR No. 96-E-170 (Jun 18, 1997), where a complainant was awarded $15,000 in emotional distress damages based on his own testimony including that he received psychiatric treatment due to the discrimination. See also *Mullins v. AP Enterprises*, LLC et al., CCHR No. 03-E-164 (Jan. 19, 2005), in which a complainant was awarded $20,000 in emotional distress damages based solely on her testimony, which included that she was devastated by her job loss and was re-hospitalized for depression shortly after being fired.

As the hearing officer noted, Complainant established that she suffered enormous emotional impact due to the sudden demand that she quit or be fired on the day of her son's high school graduation (and on a day when she needed to seek medical treatment for another child due to pinkeye). (FF 105) Complainant testified that her distress over the termination was akin to the loss she felt when her parents died; she consulted therapists including a psychiatrist and received a prescription for Xanax. (FF. 105-106) She worried about how to support her family and pay the mortgage on her new home (FF 106) and indeed she suffered the loss of a full year's worth of salary and commissions. (FF 108). This evidence amply supports an award of $35,000 for emotional distress arising from the termination of her employment.

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[24] There are higher awards in other categories. The Commission awarded $40,000 in emotional distress damages in a housing discrimination case of sexual harassment of a tenant. *Sellers v. Outland*, CCHR No. 02-H-73 (Oct 15, 2003), award aff'd Cir. Ct. Cook Co. No. 04 L 06429 (Sep. 14, 2004), reversed in part on other grounds, Ill. App. No. 1-04-3599 (1st Dist. Sep. 15, 2008), leave to appeal denied 231 Ill. 2d 635 (Jan 18, 2009). The Commission awarded $50,000 for emotional distress in a case of race discrimination in housing, *Sheppard v. Jacobs*, CCHR No. 94-H-162 (July 16, 1997), and in a case of disability discrimination in a public accommodation, *Winter v. Chicago Park District*, CCHR No. 97-PA-55 (Oct. 18, 2000).

Respondent objected that the recommended amount was too high and pointed to other Commission awards which were lower. Although the Commission has reduced the emotional distress damages award to a level closer to previous Commission awards on similar evidence, that does not mean that damage awards should be smaller simply because a case is brought at the Chicago Commission on Human Relations rather than in the state or federal courts. Each of these tribunals follows the relief standard of striving to make a prevailing complainant or plaintiff whole for the full measure of damages proved to have resulted from the discrimination. See §2-120-510, Chicago Municipal Code. The amount awarded may vary by the evidence in each case. Nevertheless, in the state and federal courts, numerous verdicts have been rendered and sustained on appeal which award emotional distress damages equal to or exceeding the $100,000 amount recommended by the hearing officer. See, e.g., *Stafford v. Puro*, 63 F.3d 1437 (7th Cir. 1995), affirming a $100,000 award for emotional distress 14 years ago while remitting the $500,000 punitive damages award to $250,000); see also *Ridley v. Costco Wholesale Corp.*, 217 Fed. Appx. 130 (3d Cir. 2007), affirming a $200,000 award for emotional distress damages, and *Ross v. Douglas County*, 234 F.3d 391 (8th Cir. 2000), affirming a $100,000 award for emotional distress. The Commission does not by reducing this award suggest that an award of $100,000 or more for emotional distress is never appropriate for this tribunal.

B. Lost Earnings

The hearing officer observed that Lockwood did amazingly well to find a comparable job in one year. (Tr. 252, 253.) However, she lost a full year of salary and commissions due to the need to rebuild her career after the termination. (FF 108) The hearing officer found that her out-of-pocket loss due to the discriminatory termination of her employment was $78,601.25, including both the $45,000 base salary and $33,601.25 in commissions based on the commissions she actually received in the prior year. The Commission accepts and adopts the hearing officer's recommendation that Lockwood be awarded this measure of damages for lost earnings. Respondent's objections to this award are overruled. Respondent prevailed on motions to compel the submission of Complainant's W-2 and 1099 forms and evidence of self-employment earnings. Respondent never suggested at the time of the hearing that Complainant had failed to provide the documents required by that order of the hearing officer. Although Complainant obtained another job after leaving PNS, it was a commissions-only job, and there was no proof of any net earnings from that work within the year after her discharge by PNS. (Tr. 270) Furthermore, Complainant had been prevented from working in Respondent's industry for a full year under her non-compete agreement. (FF 108)

C. Unpaid Commissions

PNS never supplied records sufficient for Lockwood to calculate the amount of commission receipts that came in after she was fired,[25] and apparently Lockwood was unable to testify herself with certainty to the amount of those commissions, as she did not do so. Lockwood has asked the Commission to order PNS to provide a complete accounting of all sales resulting from her contacts where the payment was received by PNS after the termination, and that it then be ordered to pay those commissions in full. The hearing officer recommended that the Commission enter such an order, noting that Section 2-120-510(l), Chicago Municipal Code, allows the Commission to "order such relief as is appropriate" and to order the Respondent to "take such action as may be necessary to make the individual complainant whole." Such an order would thus be in the nature of injunctive relief.

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[25] Respondent's objection that it had provided sufficient records is overruled. Complainant's counsel stated only

On June 13, 2008, Complainant moved to compel PNS to produce several categories of documents that had been withheld from discovery. By Order dated July 3, 2008, the hearing officer overruled PNS's objections, most of which were deemed baseless[26] and ordered PNS to produce the documents in question, including those requested in ¶ 3(d): "Records relating to sales and related data for the period June 1, 2004 through June 10, 2006." This request encompassed records for the sales Lockwood made before she was fired and for which she was never paid commissions. In light of PNS's failure to produce these documents in discovery, even after an order directing that production, the hearing officer recommended that Lockwood's request for an accounting be granted and that Lockwood then be awarded 5% of all such sales as compensation for the lost commissions, plus interest from the dates when PNS received each payment that resulted from her sales efforts.

The Commission has considered this recommendation but has decided that it will not accept it and will not enter such an order. First, Respondent has insisted that it does not have any documentation of such commissions, and there is no evidence to confirm that any reliable documentation of Complainant's post-termination receipts exists at this time, so the potential benefits of prolonging this litigation to pursue such an accounting are uncertain at best. Further, by awarding Complainant the value of a full year's commissions at the level she had achieved during her previous year of employment, the Commission believes that it has incorporated any commissions which would have come to Complainant in the course of the ensuing year had she remained employed with Respondent. Finally, Respondent's lack of cooperation with the discovery process including the hearing officer's order has been taken into account in the award of punitive damages to Complainant, described below.

D. Punitive Damages

The Commission on Human Relations awards punitive damages to punish discriminatory conduct and deter such conduct in the future. *Nash/Demby v. Sallas Realty & Sallas*, CCHR No. 92-H-128 (Apr. 19, 2000). Significant punitive damages awards have been ordered by the Commission when the respondent's conduct was willful and wanton, or was in reckless disregard or callous indifference to the complainant's rights. *Salwierak v. MRI of Chicago, Inc.*, CCHR No. 99-E-107 (July 16, 2003). Punitive damages are appropriate to punish. *McCall v. Cook County Sheriff's Office*, CCHR No. 92-E-122 (Dec. 21, 1994). Any efforts by a respondent to cover up its misconduct may be considered in deciding whether to award such damages, *Huff v. American Mgmt. & Rental Service*, CCHR No. 97-H-187 (Jan. 20, 1999), and punitive damages should be granted where there is proof of egregious conduct such as callous indifference to protected rights or perjured testimony at the administrative hearing (*Id.*)

Lockwood seeks punitive damages in the amount of three times her lost salary to take into account both the willful nature of PNS's discrimination and the risk to other parent-employees at PNS. The hearing officer has recommended that punitive damages of $100,000 are required in this case to punish and deter PNS's willful, callous, and egregious violations of Complainant's right to be treated equally with non-parent employees. In addition to engaging in blatant discrimination

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that she had received Complainant's personnel file. (Tr. 249-250) In Complainant Dena Lockwood's Supplement to Closing Brief, Complainant made clear that she still needed an accounting for the post-termination commissions as had been directed in the discovery order.

[26] PNS argued, without support, that it should not have to produce employment and pay records unless Lockwood showed "particularized need." It also presented a highly-strained argument about the information that was relevant to this case.

against employees with children, PNS created false records including false attendance sheets, and it tried to deceive Lockwood into believing that there were long-standing policies regarding commissions where there were not. False evidence and arguments were presented by PNS both to Complainant to deter her from pursuing her rights, and to the hearing officer.

In addition, Respondent attempted to withhold legitimate discovery materials and indeed never produced information which it should have retained in the course of its business and after the filing of this Complaint in light of Reg. 210.270(a), putting Complainant to the burden of making a motion to compel which still failed to result in production of the information. Moreover, PNS's unlawful preference for employees "without other responsibilities," i.e., non-parents, violates the spirit and letter of the Chicago Human Rights Ordinance, and Respondent is charged with knowledge of the Ordinance as a business operating and employing people in the City of Chicago. The Commission agrees with the hearing officer's recommendation in light of this conduct and awards $100,000 in punitive damages.

The Commission is not persuaded by Respondent's protestations that it meant no harm to Complainant and did not have specific precedents to guide its conduct regarding what might constitute parental status discrimination. The Chicago Human Rights Ordinance and Chicago Fair Housing Ordinance have been enforced by the City of Chicago, through the Commission on Human Relations, since 1990. Throughout that period these ordinances have prohibited parental status discrimination in employment as well as in housing, public accommodations, credit transactions, and bonding. Respondent as an employer and business operator in the City of Chicago is charged with knowledge of these ordinances. Moreover, employment discrimination based on parental status is prohibited by the Cook County Human Rights Ordinance. There is no reason Respondent should have understood its differential treatment toward Complainant and other parent-employees to have been acceptable.

E. Interest

Pre- and post-judgment interest on damages is allowed by §2-120-510(l), Chicago Municipal Code, and Reg. 240.700, and the hearing officer has recommended that interest be awarded as the ordinance permits. Indeed the Commission routinely awards such interest, which shall be calculated from the date of the first incident of discrimination except for interest on punitive damages, which shall be calculated from the date of entry of this final order. Accordingly, interest on the damages for Complainant's lost earnings and emotional distress in this case shall be calculated from June 2, 2006, and interest on the punitive damages from June 17, 2009. See *Fox v. Hinojosa*, CCHR No. 99-H-116 (June 16, 2004) and *Edwards v. Larkin*, CCHR No. 01-H-35 (Feb. 16, 2005).

F. Fines

Under §2-160-120, Chicago Municipal Code, PNS must be assessed a fine of not less than $100 and not more than $500 for each offense; moreover, "Every day that a violation shall continue shall constitute a separate and distinct offense." *Id.* The discrimination against Lockwood occurred on at least the following dates as documented in the Findings of Fact: June 2, 2006, the date she was told that she must resign or be fired after she sought to change an appointment due to her child's illness; June 5, 2006, the date she met with Respondent's managers who finalized their demand and terminated her employment; and August 14, 2006, the date of Respondent's letter falsely representing that it had a policy in place at the time of Complainant's termination setting a four-week deadline for payment of post-termination commissions. Accordingly, a fine of $500 is imposed for each of these three offenses, for a total of $1,500 in fines.

G. Attorney Fees

Section 2-120-510(l), Chicago Municipal Code, allows the Commission to order a respondent to pay a prevailing complainant's reasonable attorney fees and costs. Indeed, the Commission has routinely found that prevailing complainants are entitled to an award of their reasonable attorney fees and costs. See, e.g., *Nash/Demby, supra.* The Commission adopts the hearing officer's recommendation that Respondent pay Complainant's reasonable attorney fees and costs.

Pursuant to Commission Regulation 240.630, Complainant may serve on the hearing officer and Respondent, and file with the Commission, a petition for attorney's fees and/or costs, supported by arguments and affidavits no later than 28 days from the mailing of this Final Ruling on Liability and Relief. The supporting documentation shall include the following:

1. A statement showing the number of hours for which compensation is sought in segments of no more than one-quarter hour, itemized according to the date performed, the work performed, and the individual who performed the work;

2. A statement of the hourly rate customarily charged by each individual for whom compensation is sought;

3. Documentation of costs for which reimbursement is sought.

V. SUMMARY AND CONCLUSION

The Board of Commissioners finds Respondent Professional Neurological Services, Ltd., liable for employment discrimination based on parental status in violation of Chapter 2-160 of the Chicago Human Rights Ordinance and orders the following relief:

1. Payment to Complainant of damages for lost earnings in the amount of $78,601.25.

2. Payment to Complainant of emotional distress damages in the amount of $35,000.

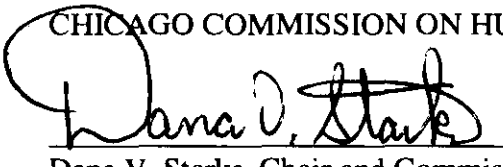
3. Payment to Complainant of punitive damages in the amount of $100,000.

4. Payment to Complainant of plus pre- and post-judgment interest on the damages for lost earnings and emotional distress dating from June 2, 2006, plus payment of post-judgment interest on the punitive damages dating from June 17, 2009.

5. Payment to the City of Chicago of a fine of $500 for each of three incidents of discrimination for a total of $1,500.

6. Payment of Complainant's reasonable attorney fees and costs as determined by further order of the Commission pursuant to the procedures outlined above.

CHICAGO COMMISSION ON HUMAN RELATIONS



By: Dana V. Starks, Chair and Commissioner
Entered: June 17, 2009