

[WELCOME TO MASSACHUSETTS!](#)

The Massachusetts anti-discrimination law, Chapter 151B, prohibits discrimination in employment on the basis of sex. Women can bring the following claims under Chapter 151B including but not limited to:

- (1) Unequal Pay
- (2) Disparate Impact
- (3) Disparate Treatment
- (4) Sexual Harassment
- (5) Pregnancy Discrimination
- (6) Failure to Hire
- (7) Wrongfully Denied Promotion
- (8) Wrongful Termination
- (9) Retaliation

Continue to learn more information about your rights!!!

[HAVE I BEEN DISCRIMINATED AGAINST? TAKE THE QUIZ!](#)

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# WHAT DOES THE MASSACHUSETTS LAW SAY?

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## WHAT DOES THE LAW SAY?

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**a. Where is the law regarding sex discrimination in employment in Massachusetts found?**

Sex discrimination is prohibited in Massachusetts by Massachusetts General Laws, Chapter 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>).<sup>1</sup>

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**b. To whom does Chapter 151B apply?**

Chapter 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>) covers “employers,” which is defined as any company or individual who employs six or more persons.<sup>2</sup> Under the statute, “employee” means anyone who performs work for pay, unless that person is employed by her parents, spouse or child, or works in a domestic capacity, as a housekeeper or a nanny, for example.<sup>3</sup>

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**c. Under Massachusetts law, what is illegal?**

Chapter 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>) makes it unlawful for any employer to discriminate on the basis of sex in hiring and firing, compensation, or the “terms, conditions or privileges of employment.”<sup>4</sup> The only situation where an employer *may* discriminate is if the employer can establish that it is based on a “bona fide occupational qualification.”<sup>5</sup> The statute also prohibits sexual harassment, as well as retaliation for reporting discrimination or filing a complaint.<sup>6</sup> Chapter 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>) also states that certain modes of employee classification are *not* prohibited, such as seniority systems.<sup>7</sup> §4.17.

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**d. What is an “employee” under this law?**

An employee is anyone who performs work for pay. However, certain classes of employees are not covered by the Massachusetts law, including individuals who are employed by their parent, spouse or child, and employees who work in domestic service (for instance, a housekeeper would not be covered).<sup>8</sup>

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**e. What is an “employer” this law?**

An employer is any company or individual that employs six or more individuals.<sup>9</sup>

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**f. Are women a “protected class”?**

Yes. All sex discrimination is prohibited by Chapter 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>), regardless of whether the victim is male or female, but women are considered a protected class.

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**g. Is there a federal law about sex discrimination?**

Yes. Federal law prohibits sex discrimination by statute – the statute is called Title VII. In Massachusetts, you may file a discrimination claim under both Chapter 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>) and Title VII. For more information on Title VII, [click here](#).<sup>10</sup>

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**h. How does the state law compare with federal in terms of coverage?**

Massachusetts law provides broader coverage than Title VII in several ways. First, Chapter 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>) covers more employers than Title VII, which covers only employers with 15 or more employees. Title VII also places limits on how much you can obtain in damages, but Chapter 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>) has no limits. Also, in Massachusetts, individuals can be sued under the “aiding and abetting” provision.<sup>11</sup> This section has been used to sue co-workers for sexual harassment<sup>12</sup> and supervisors who fail to investigate reports of discrimination.<sup>13</sup>

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**i. Is it ever okay for my employer to treat or impact women differently because of their sex?**

In some limited cases, yes. If your employer can show that there was a legitimate business reason, sometimes called a legitimate business *necessity*, to treat you differently because of your sex, then that conduct will not be considered discrimination.<sup>14</sup> However, these reasons are not common and “any old reason” won’t suffice – these reasons are difficult to establish.

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**j. In a nutshell, what must I prove to win my case?**

You must prove that you were treated differently because of your sex and not for any other reason. For instance, if you were fired, you have to prove that you were fired because you are a woman, and not because your work was unacceptable. In any discrimination case, you will have the ultimate responsibility of persuading the judge or jury that there was discrimination against you based on your sex.

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**k. What could my employer do to deny my allegations, and how do I respond to its denials?**

In Massachusetts, courts use a three-step analysis to evaluate discrimination cases. First, you must present initial evidence of discrimination – for this step, the court will assume that everything you allege is true, and if it is sufficient to show that discrimination took place, the case will continue. Next, your employer will be allowed to explain why its conduct was not discriminatory. Finally, you must rebut your employer’s explanation.

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**l. Does it matter when the discrimination occurred?**

Yes. In Massachusetts, you are required to file your complaint within 300 days of the discriminatory conduct.<sup>15</sup> This is called the statute of limitations. If you file your complaint after 300 days have elapsed, you will not be able to sue. A partial exception to this is where the discriminatory conduct is part of a pattern of conduct – if you can show this, all that you have to show is that at least *one* instance of discrimination occurred within the 300 days before you file your claim.<sup>16</sup>

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**m. What options do I have if I my employer has fewer than 6 employees?**

Unless your claim is for equal pay or sexual harassment, you have no legal options under Chapter 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>). (If your claim is sexual harassment, [click here](#).<sup>17</sup> If your claim is unequal pay, [click here](#).<sup>18</sup>) However, you may have options outside the legal realm. [Click here for more information about non-legal alternatives](#).<sup>19</sup> There may also be legal options available to you through common law tort claims, such as intentional infliction of emotional distress or wrongful termination.

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**n. Who enforces the law?**

Chapter 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>) is administered by the Massachusetts Commission Against Discrimination (MCAD) (<http://www.mass.gov/mcad/>). All discrimination claims under Chapter 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>) must be filed with MCAD (<http://www.mass.gov/mcad/>) before any court proceeding can occur. MCAD (<http://www.mass.gov/mcad/>) investigates every report and determines if there is “probable cause” to believe that discrimination has occurred – this means that it is more likely than not that you have been the victim of discrimination. For more information on MCAD (<http://www.mass.gov/mcad/>) procedures, [click here](#).<sup>20</sup>

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**o. If I prove my sex discrimination claim, what kind of remedies am I entitled to?**

Women who sue under Ch. 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>) can get a variety of different remedies, including: back pay (for lost wages or failure to hire), reinstatement (for failure to promote or wrongful discharge) and injunctive relief (e.g. a cease-and-desist order to the employer). In addition, courts also award compensatory damages for victims’ emotional distress and suffering, as well as, in some particularly egregious cases, punitive damages. Ch. 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>) also provides that plaintiffs who prevail will be awarded attorneys’ fees and costs.<sup>21</sup>

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**p. Does Massachusetts have local ordinances and can I use them?**

Some cities, such as Boston, do have local ordinances and you can sue under the local ordinances in the Superior Courts. However, you must always contact the MCAD (<http://www.mass.gov/mcad/>) first. Then, after filing your claim initially with the MCAD (<http://www.mass.gov/mcad/>) you can decide whether or not you want to drop that investigation and pursue a claim under the local ordinance. (Remember that once you drop your claim at the MCAD (<http://www.mass.gov/mcad/>), you are barred from bringing that claim again.) This is a personal choice and a representative at MCAD (<http://www.mass.gov/mcad/>) can help you make that decision. The local ordinances simply give you another avenue to seek relief from discrimination.

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## WHAT TYPES OF DISCRIMINATION ARE COVERED UNDER THE LAW?

**[UNEQUAL PAY: \*I don't think I'm being paid fairly compared to men doing the same job.\*](#)**

(Link to Equal Pay claims)

**[DISPARATE IMPACT: \*I think my employer's policies disadvantage women more than men.\*](#)**

(Link to Disparate Impact claims)

**[DISPARATE TREATMENT: \*I think my employer treats women differently than men.\*](#)** (Link to Disparate Treatment claims)

**[SEXUAL HARASSMENT: \*I think I am being sexually harassed at work.\*](#)** (Link to Sexual Harassment claims)

**[PREGNANCY DISCRIMINATION: \*I think my employer is discriminating against me because I am pregnant.\*](#)** (Link to Pregnancy Discrimination claims)

**[DISCRIMINATORY HIRING/PROMOTION POLICIES: \*I did not get hired and I think it's because I'm a woman.\*](#)** (Link to Discriminatory Hiring/Promotion Policy claims)

**[DISCRIMINATORY FIRING: \*I just got fired from my job, and I think it's because I'm a woman.\*](#)** (Link to Discriminatory Firing claims)

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**UNEQUAL PAY CLAIMS:** *I don't think I'm being paid fairly compared to men doing the same job.*

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**a. How do I prove that I am not receiving equal pay for equal work?**

In Massachusetts to prove you are not receiving equal pay, you must prove your work is of a “like or comparable character” to a male receiving higher pay.<sup>22</sup>

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**b. How do I know if I have a “like or comparable” position?**

There are two steps to show you have a “like or comparable” position. First, the “substantive content” or the actual duties of the job/position must have important common characteristics.<sup>23</sup> Second, you must show that the positions entail comparable “skill, effort, responsibility, and working positions.”<sup>24</sup> If you answer yes to both of these steps, you can prove you have a “like or comparable” position.

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**c. What laws protect me from receiving unequal pay for equal work?**

To protect females against unequal pay Massachusetts has two laws: M.G.L. c. 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>) and the M.C.L. c. 105A also known as the Massachusetts Equal Pay Act (MEPA) (<http://www.mass.gov/legis/laws/mgl/149-105a.htm>). Chapter 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>) applies only to employers with over 6 employees while the MEPA (<http://www.mass.gov/legis/laws/mgl/149-105a.htm>) applies to all employers.<sup>25</sup> Under c.151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>), no employer can discriminate in compensation or terms, conditions, or privileges of employment based on sex.<sup>26</sup> Under the MEPA (<http://www.mass.gov/legis/laws/mgl/149-105a.htm>), no employer can discriminate in

any way in the payment of wages between the sexes for work of like or comparable character or work of like or comparable operations.<sup>27</sup>

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**d. Which law should I use?**

The first step is always to contact the Massachusetts Commission Against Discrimination (MCAD) (<http://www.mass.gov/mcad/>) within 300 days of learning that you are being paid unequally.<sup>28</sup> Even though there are two laws which protect you from unequal pay, the Massachusetts rule says you must use c. 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>) first and follow all the steps of filing with the **MCAD** (<http://www.mass.gov/mcad/>).<sup>29</sup> Then, after 90 days, but before 3 years, if you wish to withdraw your claim from the **MCAD** (<http://www.mass.gov/mcad/>), or, if the **MCAD** (<http://www.mass.gov/mcad/>) decides not to pursue your claim, you may proceed to sue your employer under the **MEPA** (<http://www.mass.gov/legis/laws/mgl/149-105a.htm>), and/or c. 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>).<sup>30</sup>

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**e. What do I do if my employer employs less than 6 people?**

Although c. 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>) only applies to employers with 6 or more employees, the **MEPA** (<http://www.mass.gov/legis/laws/mgl/149-105a.htm>) does not have any restriction on employee size.<sup>31</sup> Regardless of the number of employees, you should still always contact the **MCAD** (<http://www.mass.gov/mcad/>) as a first step.<sup>32</sup>

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**f. How do I know if I want to bring suit on my own?**

This is a personal decision for you to make. You always have to notify the **MCAD** (<http://www.mass.gov/mcad/>) first.<sup>33</sup> You can speak with a **MCAD** (<http://www.mass.gov/mcad/>) commissioner to weigh the benefits of both avenues. If you bring suit through **MCAD** (<http://www.mass.gov/mcad/>) you will have an administrative hearing.<sup>34</sup> If you choose to bring suit on your own, you will have a judicial hearing.<sup>35</sup>

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**g. What is the difference between an administrative hearing and a judicial hearing?**

If you bring suit through the **MCAD** (<http://www.mass.gov/mcad/>), you will have an administrative hearing where your case will not be decided by a judge but by a commissioner.<sup>36</sup> You will not need a lawyer, and the **MCAD** (<http://www.mass.gov/mcad/>) will decide the outcome of your case and your remedies.<sup>37</sup> If you choose to bring suit on your own, you can present your claim before a judge in a

judicial hearing. You will need a lawyer, and a judge or jury will decide the outcome of your case and your remedies.

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**h. Must I prove that my employer intentionally paid me less because I am a female?**

No. An employer violates the [MEPA](http://www.mass.gov/legis/laws/mgl/149-105a.htm) (<http://www.mass.gov/legis/laws/mgl/149-105a.htm>) if members of one sex receive lower pay than members of the other sex, for like or comparable work, regardless of whether the employer knew about it or meant to do it.<sup>38</sup>

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**i. What could my employer do to deny my allegations?**

Your employer can defend the difference in pay if that difference is based on a legitimate seniority system.<sup>39</sup>

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**DISPARATE IMPACT CLAIMS:** *My employer's policies disadvantage women more than men.*

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**a. What does disparate impact mean?**

Disparate impact cases involve situations where an employer's policy or practice, though not specifically based on sex, adversely affects one sex more than the other.<sup>40</sup> A good example of this is company leave policies. Imagine that an employer has a policy that allows paid short-term leave for employees who have surgery, but the employer doesn't allow paid maternity leave – this could be a case of disparate impact discrimination because the policy, while technically gender-neutral, has a harsher affect on women than men.<sup>41</sup>

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**b. What is a facially neutral policy?**

A facially neutral policy is one that does not explicitly, in its terms, differentiate between men and women. For instance, a policy that requires job applicants to be able to lift seventy pounds in order to be hired might have the effect of disqualifying most women, but because the policy itself does not mention gender, it is considered to be neutral.

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**c. What kinds of claims can be brought as a disparate impact claim?**

Any situation in which you feel that a company policy affects you negatively, or more negatively than men, could result in a disparate impact claim.

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**d. I think that a company policy adversely affects me because of my gender, how do I prove it?**

To prove disparate impact,<sup>42</sup> you must:

1. show the existence of a facially neutral policy or practice that
2. causes
3. a “statistically discernable disparate impact on a protected employee group.”<sup>43</sup>

Unlike in cases of disparate treatment, you do *not* have to prove that your employer intentionally discriminated against you based on your sex.<sup>44</sup> In addition, disparate impact cases are traditionally proven by statistical evidence, rather than circumstantial evidence.

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**e. What is the difference between disparate impact and disparate treatment?**

In a disparate treatment claim, you are treated differently because of your sex. In a disparate impact claim, your employer engages in practices that “appear neutral in their treatment” but affect one group more harshly than another.<sup>45</sup>

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**f. Are there times when an employment policy or practice may legally impact women different than men?**

If your employer can advance a legitimate business necessity that justifies the discriminatory practice or policy, then your employer may have a defense against a claim of disparate impact discrimination.<sup>46</sup>

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**DISPARATE TREATMENT CLAIMS:** *I think my employer treats women differently than men.*

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**a. What does “disparate treatment” mean?**

“Disparate treatment” refers to a policy or practice that explicitly treats women differently from men.

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**b. What kind of claims can be brought as a disparate treatment claim?**

Any case where you have been treated differently than a man, based on your sex and not due to a company policy is a case of disparate treatment. Policies also can be [facially discriminatory](#). For instance, a company can have different work-shift options for men and women.

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**c. What is the difference between disparate treatment and disparate impact?**

In a disparate treatment claim, you are treated differently because of your sex. In a disparate impact claim, your employer engages in practices that “appear neutral in their treatment” but affect one group more harshly than another.<sup>47</sup>

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**d. I think my company has treated me differently because of my gender, how do I prove it?**

You must prove four elements to show that you have experienced disparate treatment:

1. You are a member of a protected class,
2. You have been harmed by an “adverse employment decision,” and
3. There was discriminatory animus, and
4. The discriminatory animus was a motivating reason for the harm.<sup>48</sup>

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**e. What is discriminatory animus and how do I prove it?**

Discriminatory animus is discriminatory intent, motive or state of mind.<sup>49</sup>

Discriminatory animus may be proved by direct evidence or, in some cases, “may be inferred from mere facts of differences in treatment.”<sup>50</sup> In the case where your employer gives a non-discriminatory reason for the adverse employment decision, animus may be proven by showing your “employer offered a false reason for the adverse employment decision.”<sup>51</sup>

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**f. How do I prove discriminatory animus was the motive for the harm?**

To prove that discriminatory animus was the motive for the harm, you must show that the discrimination was the “determining factor” in the adverse employment decision.<sup>52</sup> In other words, you must show that the adverse employment action would not have occurred “but for” discrimination.<sup>53</sup>

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**g. Are there times when my employer can treat me differently because of my sex?**

In some limited cases, yes. If your employer can show that there was a legitimate business reason, sometimes called a legitimate business *necessity*, to treat you differently because of your sex, then that conduct will not be considered discrimination. However, these reasons are not common and “any old reason” won’t suffice – these reasons are difficult to establish.<sup>54</sup>

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**SEXUAL HARASSMENT:** *I think I am being sexually harassed at work.*

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**a. I think I am being sexually harassed at work, how do I prove it?**

To prove sexual harassment, you must show the following: 1) that you are a member of a [protected class](#); 2) that you were subject to unwelcome sexual harassment; 3) that the harassment was based on sex; 4) that the harassment was sufficiently “severe” or “pervasive” as to alter the conditions of your employment; 5) that the conduct was objectively and subjectively offensive (in other words, the conduct must be offensive not only to you but also to a “reasonable” person in the same situation); and 6) that the employer can be held responsible (this doesn’t mean that the employer *caused* the harassment – there are other ways to hold the employer responsible).<sup>55</sup>

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**b. What does “Quid Pro Quo” sexual harassment look like?**

Quid pro quo harassment involves situations where a woman is, for example, fired or not promoted for failure to submit to her harasser’s “advances, requests or conduct[.]”<sup>56</sup>

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**c. What does “Hostile Work Environment” sexual harassment look like?**

Hostile work environment harassment applies in cases where a pattern of harassing

conduct or behavior exists to the extent that it “unreasonably interfer[es] with an individual’s work environment by creating an intimidating, hostile, humiliating or sexually offensive work environment.”<sup>57</sup>

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**d. How do I show that this conduct affected my ability to work?**

There have been cases where this has been shown by testimony from the victim’s psychologist or therapist. If you reported the conduct to your employer, that may also provide evidence of the effect of the harassment on your work. There are many different ways to show this effect, and it will vary from case to case, based on the individual victim and the harassment that occurred.<sup>58</sup>

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**e. How do I show that my employer knew what was going on?**

In Massachusetts, as opposed to under federal law, you don’t have to show that your employer actually knew what was going on. Employers in Massachusetts are strictly liable for sexual harassment perpetrated by supervisory employees, even if it neither knew nor should have known that there was harassment.<sup>59</sup> However, your case will probably be stronger if you can show that your employer either knew or should have known what was going on. This can be established if you or another employee reported the harassment.<sup>60</sup>

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**f. My employer has fewer than six employees – is there anything I can do?**

Yes – Massachusetts has another statute,<sup>61</sup> Ch. 214 § 1C (<http://www.mass.gov/legis/laws/mgl/214-1c.htm>), which prohibits sexual harassment for employees who are not covered by Ch. 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>). If you wish to file a claim under Ch. 214 § 1C (<http://www.mass.gov/legis/laws/mgl/214-1c.htm>), you do not have to first file with **MCAD** (<http://www.mass.gov/mcad/>). You have 300 days from the date of the harassment to file your claim in Superior Court. **Important:** if you are eligible to file a claim under Ch. 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>), you *cannot* file a claim under Ch. 214 § 1C (<http://www.mass.gov/legis/laws/mgl/214-1c.htm>) as well.<sup>62</sup>

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**g. Can I file a claim against my boss/supervisor under Massachusetts law?**

Yes. Chapter 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>) allows you to sue not only your employer, but also the harasser. Chapter 151B

(<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>) makes it illegal for any *individual* to “aid or abet” any prohibited discriminatory conduct.<sup>63</sup>

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**h. Can I bring a claim against my co-worker if he is not my boss or supervisor?**

Yes. The aiding and abetting provision applies to any and all individuals, regardless of whether that person was your supervisor or a co-worker.<sup>64</sup> You could even potentially sue non-employees.

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**i. I complained to my employer and they reprimanded the harasser. Can I still file a claim?**

It depends. If your harasser was a supervisor, it doesn't matter if your employer's handling of the situation was satisfactory or not – “remediation” is not a defense.<sup>65</sup> In addition, “supervisor” does not necessarily mean your direct boss – if your harasser was someone who exercised supervisory authority over you (whether direct in hierarchy or not), s/he can still be held to be a supervisor.<sup>66</sup> However, if your harasser was a coworker, the court will decide if your employer's handling of the situation was satisfactory – if it was, that will be a valid defense to your claim.<sup>67</sup>

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**j. I reported to my employer, but they didn't do anything – can I still file a claim?**

Yes. In addition, you may be able to sue individuals for their failure to investigate your complaint.<sup>68</sup> If the individual is someone who had a duty to address your complaints, for instance a supervisor, as opposed to a co-worker, then his or her failure to do so may constitute “aiding and abetting” under c. 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>).<sup>69</sup>

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**k. What if my harasser is also a woman?**

Unlike some other states, Massachusetts courts have awarded damages for same-sex sexual harassment, regardless of the sex or sexual orientation of the harasser.<sup>70</sup>

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**l. Is one incident of sexual harassment sufficient basis for a claim?**

In some cases, one incident can be enough to establish a case if the incident was particularly egregious.<sup>71</sup> For example, in a case called *Morehouse*, a photo of the plaintiff was posted in several places at a company golf tournament, and the photographs were covered with crude captions and sexually explicit drawings. Many of the plaintiff's co-workers saw the pictures, and she became depressed and unable to work as a result. The court held that although it was only one incident, it was clear that the incident had had a profound effect on the plaintiff's work environment, and the plaintiff prevailed.

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**m. What if the harassment has been going on for a long time? Can I still file a claim?**

If the harassment is a pattern of conduct, continuous and ongoing, all that's required when you file is that you can identify one incident within the six months before you file your **MCAD** (<http://www.mass.gov/mcad/>) complaint. As long as there's a pattern of behavior, the commission will consider all of the behavior as part of the same violation.<sup>72</sup> The only exception to this is where the harassment was so pervasive and extensive that you should have realized that the situation was hopeless and would never improve, and so you should have filed your claim then.<sup>73</sup>

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**n. Can I get damages for emotional distress?**

Yes. Emotional distress damages are allowable as "actual" damages under Ch. 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>).<sup>74</sup> In addition, victims may also sue for certain common law claims, including intentional infliction of emotional distress and assault and battery.<sup>75</sup> However, claims for *negligent infliction of emotional distress* are not allowed with a Ch. 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>) claim.<sup>76</sup>

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**o. What is the difference between sex discrimination and sexual harassment?**

Sexual harassment *is* a form of sex discrimination under Massachusetts law.

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**PREGNANCY DISCRIMINATION CLAIMS:** *I think my employer is discriminating against me because I am pregnant.*

- a. [What is pregnancy discrimination and does Massachusetts law cover it?](#)
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- c. [I just found out that I'm pregnant, should I tell my employer?](#)
- d. [Can my employer fire me because I may become pregnant?](#)
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- u. [If I prove my pregnancy discrimination claim, what kind of remedies am I entitled to? \(new window to Remedies\)](#)

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**a. What is pregnancy discrimination and does Massachusetts law cover it?**

Whenever a woman is discriminated against based on her pregnancy, pregnancy-related illnesses or disabilities, or likelihood of becoming pregnant, this is pregnancy discrimination. In Massachusetts, pregnancy discrimination is considered a form of sex discrimination and is illegal under Ch. 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>). In addition, Massachusetts law provides for maternity leave and prohibits employers penalizing a woman because she took maternity leave.<sup>77</sup> This statute also covers women who take leave to adopt a child.<sup>78</sup>

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**b. I think I am being impacted or treated differently because of my pregnancy. How do I prove it?**

To prove pregnancy discrimination, you must be able to show that you are a member of a protected class (women), that you performed at an acceptable level (or were capable of doing so), that you were treated differently because of your pregnancy (this might include being fired or being denied a promotion), and that your employer replaced you with a person similarly qualified.<sup>79</sup> In addition, under Massachusetts law, if you returned from maternity leave to a lesser position or lesser status (including seniority), you can sue for discrimination.

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**c. I just found out that I'm pregnant, should I tell my employer?**

You are not required to, nor can your employer fire you or discriminate against you in any way based on your pregnancy. As to whether or not you *should* tell your employer, that's a personal decision for you to make, but remember that you are protected against discrimination in either case.

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**d. Can my employer fire me because I may become pregnant?**

No – the ability to become pregnant is a characteristic specific to the female sex, and any illegitimate employment decision based on sex is illegal.<sup>80</sup>

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**e. Can I ask my employer to make accommodations for me on account of my pregnancy?**

If your employer has a short-term disability leave policy, it must apply to pregnancy-related disabilities, as well as other disabilities.<sup>81</sup> Note: this is *not* the same thing as maternity leave. Employers are not required to provide paid maternity leave in Massachusetts.

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**f. For what amount of time can I take leave because of pregnancy?**

Massachusetts law Ch. 105D (<http://www.mass.gov/legis/laws/mgl/149-105d.htm>)<sup>82</sup> provides for eight weeks of maternity leave to any female employee who:

- i. has completed the initial probationary period, if one exists<sup>83</sup>, or, if there is not probationary period,
- ii. has been employed full-time for three consecutive months at the same employer

Employees must give two weeks advance notice, including their anticipated date of departure and their intent to return. Maternity leave may also be taken by female employees who are absent for the purpose of adopting a child. If your employer has over

fifty employees, you may qualify for twelve weeks of leave under the Family Medical Leave Act.<sup>84</sup>

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**g. What happens to my job while I am on pregnancy leave?**

Under Ch. 105D (<http://www.mass.gov/legis/laws/mgl/149-105d.htm>), your employer is required to return you to the same or similar position when you return from maternity leave, with no changes in pay, status or seniority. However, if during your maternity leave, other employees who are in the same or similar position, with a similar status or seniority, have been laid off for legitimate business reasons, your employer is *not* required to restore you to your position.<sup>85</sup>

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**h. Can my employer deny me pregnancy leave?**

If you meet the criteria of Ch. 105D (<http://www.mass.gov/legis/laws/mgl/149-105d.htm>) of 1) having completed the initial probationary period or, if your company does not have an initial probationary period, you have been employed for 3 months, and 2) have given 2 weeks notice to your employer of your intended departure and return date, your employer is required to give you up to eight weeks of maternity leave.<sup>86</sup>

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**i. I've been missing a lot of work due to prenatal check-ups or pregnancy-related complications; can my employer fire me for this?**

Your employer is required to allow you to use sick time for pregnancy-related illnesses or disabilities.<sup>87</sup> If you have not been using sick time or don't have enough sick time, then your employer may be allowed to fire you for absenteeism. However, if this reason is merely an invented reason to cover for firing you because of your pregnancy, you may still have a claim of sex discrimination.

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**j. Is my employer required to pay me while I am on pregnancy leave?**

No. Ch. 105D (<http://www.mass.gov/legis/laws/mgl/149-105d.htm>) specifically states that maternity leave may be paid or unpaid, at the employer's discretion. However, if your employer would have provided a paid leave for a similar purpose (for example, surgery or short-term illness) for a male employee, then your employer is required to pay you during your maternity leave.<sup>88</sup> In addition, if you have accumulated sick time, your employer must allow you to apply those sick days to your leave, although you may only do so for the period during which you are physically disabled and unable to work.<sup>89</sup>

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**k. I'm pregnant but not showing yet and I have an upcoming interview, do I need to disclose the fact that I'm pregnant?**

You are not required to. If you are asked about pregnancy in an interview, that may be considered discrimination in itself, because an employer cannot refuse to hire you on the grounds that you are pregnant.<sup>90</sup>

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**l. Can an employer refuse to hire me because I may become pregnant?**

No – the ability to become pregnant is a characteristic specific to the female sex, and any illegitimate employment decision based on sex is illegal.<sup>91</sup>

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**m. Can my employer prevent me from working while I'm pregnant or require me to take a certain amount of leave?**

That depends. Your employer could require you to provide a note from your doctor that says that you can continue to do your job. However, your employer cannot require you to resign or to take a certain amount of leave based solely on your pregnancy (although your employer could require you to take *some* leave, if you are unable to work).<sup>92</sup> In a case called *Butner*, female state troopers had a legitimate claim for discrimination when they were automatically assigned to reduced-duty, which meant fewer benefits and no overtime, because of their pregnancy, despite doctors' approval of their continuing to work.<sup>93</sup>

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**n. Does my employer's health insurance have to cover the medical costs of my pregnancy?**

Your employer is not required to cover your medical costs, nor provide health insurance or other benefits while you are on maternity leave. However, if your employer provides those benefits for other employees on other types of leave, your employer must provide those benefits to you as well.<sup>94</sup> For instance, if a male co-worker takes a leave of absence to have surgery and your employer maintains his health insurance during his leave, your employer cannot refuse to do the same for you if you take maternity leave.

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**o. Can my employer move me to another position while I am pregnant so as not to offend clients or customers?**

No. Customer preference is not considered a legitimate business reason, so an employer may not justify otherwise discriminatory conduct on the basis of customer preference.<sup>95</sup>

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**p. Can my employer treat me differently because I am unmarried and pregnant?**

No. Your employer can't fire you for being pregnant unless there is some legitimate business reason for doing so.<sup>96</sup>

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**q. I was pregnant, but had a miscarriage or an abortion, and need time off to recover. Am I covered by the law?**

If your employer has a short-term disability leave program, it must cover your pregnancy-related disability.<sup>97</sup> However, if your employer doesn't have such a program, you should still be able to take sick leave, if you have accrued sick days. If you do not, your employer may be able to deny you leave. However, again, if your employer would allow or has allowed a similar leave for other employees, including male employees, (for example, to recover from an injury), denying you could constitute discrimination.

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**r. What could my employer do to deny my allegations, and how do I respond to its denials?**

In Massachusetts, there are three steps to proving a case of discrimination. First, you must provide evidence which, if everything you alleged was true, would prove that your employer discriminated against you. This is called your "[prima facie case.](#)" Next, your employer will be given an opportunity to produce a "plausible, legitimate and nondiscriminatory justification"<sup>98</sup> for its conduct. Finally, you must rebut your employer's argument and show either that the actual motivation was discriminatory or that the employer's proffered reason for its conduct was pretext (a false or invented reason advanced to cover for a real, discriminatory reason).<sup>99</sup> At all times, it is your responsibility to prove that discrimination was a "determinative factor" in the employer's decision to fire you, for instance.<sup>100</sup> However, "determinative factor" does not mean that discrimination was the *only* factor. You are not required to disprove all possible reasons that your employer *could* have had for firing you, only that the reason your employer produced is not the real reason. If, for instance, you succeed in persuading the court that your employer's proffered reason was pretext, you should prevail in your case.<sup>101</sup> In the end, the judge or jury will weigh all the evidence and decide if there is enough evidence to infer discriminatory intent on the part of your employer.

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**DISCRIMINATORY HIRING/PROMOTING POLICIES:** *I wasn't hired and I think it's because I'm a woman.*

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- h. [If I prove my hiring discrimination claim, what kind of remedies am I entitled to? \(New window to Remedies\)](#)

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**a. I think I wasn't hired/promoted because I'm a woman, how do I prove it?**

There are four elements the court uses to determine if you were not promoted/hired because you are a female:

1. You belong to a "protected group."
2. You were qualified for and you applied for the position.
3. A man with similar qualifications was promoted/hired.
4. You were denied the promotion/job.<sup>102</sup>

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**b. How do I prove I belong to a protected group?**

By being female, you automatically are a member of a protected group.<sup>103</sup>

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**c. How do I prove I was qualified for the position?**

The court will look at the qualifications and responsibilities of the position for which you applied and compare them with your duties and responsibilities at your current job.<sup>104</sup>

The court will also look at any past work evaluations and work recommendations and your education.<sup>105</sup>

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**d. How do I prove another person with similar qualifications but not a member of my protected class got the position?**

If the person who received the position is a man, he is not a member of your protected group. To determine if the person who received the position had similar qualifications,

the courts will look at the same information they look at to determine what your qualifications were.<sup>106</sup> The courts will compare qualifications such as your current or recent job responsibilities, duties, work abilities and prior training with those of the person who received the position.<sup>107</sup> If this person was under-qualified for the position, or less qualified than you, and not a female, this element is also satisfied.<sup>108</sup>

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**e. Must I prove that I didn't get the job because of my sex, and not my qualifications? If so how?**

In Massachusetts, there are three steps to proving a case of discrimination. First, you must provide evidence which, if everything you alleged was true, would prove that your employer discriminated against you. This is called your "[prima facie case.](#)" Next, your employer will be given an opportunity to produce a "plausible, legitimate and nondiscriminatory justification"<sup>109</sup> for its conduct. Finally, you must rebut your employer's argument and show either that the actual motivation was discriminatory or that the employer's proffered reason for its conduct was pretext (a false or invented reason advanced to cover for a real, discriminatory reason).<sup>110</sup> At all times, it is your responsibility to prove that discrimination was a "determinative factor" in the employer's decision not to hire or promote you.<sup>111</sup> However, "determinative factor" does not mean that discrimination was the *only* factor. You are not required to disprove all possible reasons that your employer *could* have had for not hiring or promoting you, only that the reason your employer produced is not the real reason. If, for instance, you succeed in persuading the court that your employer's proffered reason was pretext, you should prevail in your case.<sup>112</sup> In the end, the judge or jury will weigh all the evidence and decide if there is enough evidence to infer discriminatory intent on the part of your employer.

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**WRONGFUL TERMINATION:** *I think I was fired because I'm a woman.*

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- j. [If I prove my wrongful termination claim, what kind of remedies am I entitled to? \(New window to Remedies\)](#)

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**a. I think I was fired because I'm a woman, how do I prove it?**

There are four elements you must prove to show you were terminated because of your sex.

1. You belong to a "protected group."
2. You performed your job at an acceptable level.
3. You were terminated.
4. Your employer sought a replacement with similar qualifications.<sup>113</sup>

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**b. How do I prove I belong to a protected group?**

By being female, you automatically are a member of a protected group.<sup>114</sup>

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**c. How do I prove I performed at an acceptable level?**

The court will look at the job requirements, your job evaluations, educational level needed for the job, and any continued training you have received.<sup>115</sup>

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**d. What if I resigned or quit my job?**

If you resigned or quit your job because of intolerable working conditions or because you were experiencing discrimination, you might have a claim for constructive discharge.<sup>116</sup>

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**e. What is constructive discharge and how do I prove it?**

Constructive discharge occurs when your employer deliberately makes your work environment "so intolerable" that you are forced into an "involuntary resignation."<sup>117</sup> To

prove a constructive discharge occurred, you must show your working conditions were so intolerable that any “reasonable” person in your situation would have resigned.<sup>118</sup>

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**f. How do I prove my employer sought a replacement with similar qualifications?**

The court will compare your qualifications and the qualifications of the person who received your position to the qualifications requested by your employer.<sup>119</sup> The court will also compare your job responsibilities, duties, work abilities and prior training with those of your replacement.<sup>120</sup>

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**g. How do I prove I was terminated because I am a female?**

In Massachusetts, there are three steps to proving a case of discrimination. First, you must provide evidence which, if everything you alleged was true, would prove that your employer discriminated against you. This is called your “[prima facie case.](#)” Next, your employer will be given an opportunity to produce a “plausible, legitimate and nondiscriminatory justification”<sup>121</sup> for its conduct. Finally, you must rebut your employer’s argument and show either that the actual motivation was discriminatory or that the employer’s proffered reason for its conduct was pretext (a false or invented reason advanced to cover for a real, discriminatory reason).<sup>122</sup> At all times, it is your responsibility to prove that discrimination was a “determinative factor” in the employer’s decision to fire you.<sup>123</sup> However, “determinative factor” does not mean that discrimination was the *only* factor. You are not required to disprove all possible reasons that your employer *could* have had for firing you, only that the reason your employer produced is not the real reason. If, for instance, you succeed in persuading the court that your employer’s proffered reason was pretext, you should prevail in your case.<sup>124</sup> In the end, the judge or jury will weigh all the evidence and decide if there is enough evidence to infer discriminatory intent on the part of your employer.

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**RETALIATION/REPRISAL:** *I think my employer fired me because I filed a sex discrimination claim.*

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**a. What is retaliation or reprisal, and how do I prove it?**

It is retaliation when you filed a complaint or reported suspected discrimination to your employer and, as a result, you are fired, demoted or otherwise negatively affected. To prove retaliation, you must show that you engaged in “protected conduct” (in this case, reporting or filing a complaint of suspected discrimination), that you were “adversely affected” (which could mean that you were fired, demoted or disciplined, for instance) and that your “protected conduct” **caused** the adverse action.<sup>125</sup>

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**b. For what reasons can I be fired?**

You can be fired for any reason that is not discriminatory – for example, if your employer considers your work to be inadequate or lacking, that is a legitimate reason for firing you. Some other examples for legitimate reasons include: unexcused or excessive absences, frequent tardiness and violating a company policy.

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**c. How do I show that my legally protected conduct led to my discharge?**

There are several ways that this can be shown. One of the most common and effective is if your termination (or other adverse action) took place within a short time after your protected activity – this is called “temporal proximity.” Causation may also be shown by other evidence, including evidence of your employer’s attitude towards you, treatment of you, and any statements your employer may have made to you about your complaint or report.<sup>126</sup>

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**d. What is an “adverse action”?**

Adverse action can take many forms. It can be as basic as being fired or it could be unwarranted disciplinary action. Anything that negatively affects you or your working environment may be considered adverse action.

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**e. Must I show that my employer knew about my “protected conduct”?**

Yes. If your employer didn’t know about your protected conduct, then any action taken against you, while it may still be discriminatory, may not be retaliation.<sup>127</sup>

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**f. What could my employer do to deny my allegations, and how do I respond to its denials?**

In Massachusetts, there are three steps to proving a case of discrimination. First, you must provide evidence which, if everything you alleged was true, would prove that your employer discriminated against you. This is called your “[prima facie case.](#)” Next, your employer will be given an opportunity to produce a “plausible, legitimate and nondiscriminatory justification”<sup>128</sup> for its conduct. Finally, you must rebut your employer’s argument and show either that the actual motivation was discriminatory or that the employer’s proffered reason for its conduct was pretext (a false or invented reason advanced to cover for a real, discriminatory reason).<sup>129</sup> At all times, it is your responsibility to prove that discrimination was a “determinative factor” in the employer’s decision fire you, for instance.<sup>130</sup> However, “determinative factor” does not mean that discrimination was the *only* factor. You are not required to disprove all possible reasons that your employer *could* have had for firing you, only that the reason your employer produced is not the real reason. If, for instance, you succeed in persuading the court that your employer’s proffered reason was pretext, you should prevail in your case.<sup>131</sup> In the end, the judge or jury will weigh all the evidence and decide if there is enough evidence to infer discriminatory intent on the part of your employer.

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## **HOW DO I FILE A CLAIM?**

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### **a. How do I file a state claim with the Massachusetts Commission Against discrimination (MCAD)?**

Contact the Massachusetts Commission Against Discrimination (MCAD) (<http://www.mass.gov/mcad/>) within 300 days of the alleged discrimination.<sup>132</sup> [MCAD](#) (<http://www.mass.gov/mcad/>) has offices in Boston and Springfield.<sup>133</sup>

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### **b. How do I contact the MCAD?**

Call the [MCAD](#) at either their Boston or Springfield office:

Boston:       One Ashburton Place  
                  6<sup>th</sup> Floor, Room 601  
                  617-994-6000

Springfield:  436 Dwight Street  
                  2<sup>nd</sup> Floor, Room 220  
                  413-739-2145<sup>134</sup>

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**c. Against whom can I file a claim?**

In Massachusetts, you can sue both your employer and individuals who may have sexually harassed you or discriminated against you, including supervisors and coworkers. You can also sue your employer or supervisor, in some cases, for failing to adequately investigate or remedy complaints of harassment or discrimination.<sup>135</sup>

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**d. If I choose to file a claim, what is expected of me?**

You are expected to initially contact the [MCAD \(http://www.mass.gov/mcad/\)](http://www.mass.gov/mcad/).<sup>136</sup> An investigator will talk you through the entire process.<sup>137</sup> After your initial conversation, an investigator will likely contact you and/or set up an “Investigative Conference” where you will sit down with the investigator and identify the issues in dispute, discuss evidence, and discuss possible settlements and trial outcomes.<sup>138</sup>

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**e. How long will the process take?**

The [MCAD \(http://www.mass.gov/mcad/\)](http://www.mass.gov/mcad/) tries to complete the investigation of your complaint within 18 months of filing.<sup>139</sup> After the investigation phase is complete, the time line varies depending on whether or not your employer decides to settle or proceed to a hearing at the commission.<sup>140</sup>

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**f. Do I need an attorney?**

You do not need an attorney to pursue your claim through the [MCAD \(http://www.mass.gov/mcad/\)](http://www.mass.gov/mcad/). However, if you want an attorney, you can hire one and the [MCAD \(http://www.mass.gov/mcad/\)](http://www.mass.gov/mcad/) will work with your attorney.<sup>141</sup>

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**g. What if I can't afford an attorney?**

You do not need an attorney, and it does not cost any money to file with the [MCAD \(http://www.mass.gov/mcad/\)](http://www.mass.gov/mcad/).<sup>142</sup>

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**h. What will my attorney need from me?**

If you choose to hire an attorney, your attorney will need the same information from you as the [MCAD \(http://www.mass.gov/mcad/\)](http://www.mass.gov/mcad/): the issues in dispute, any evidence, and what type of settlement or outcome you are seeking.<sup>143</sup>

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**i. Do I have to contact the MCAD?**

You must always file a claim with the [MCAD](http://www.mass.gov/mcad/) first.<sup>144</sup> Then, if you decide you would rather pursue a claim on your own, through the judicial system, you must notify the [MCAD](http://www.mass.gov/mcad/) after 90 days of your original filing (or earlier if the commission agrees in writing), but no later than 3 years after your original filing.<sup>145</sup> This is the general rule. However, as the [MCAD](http://www.mass.gov/mcad/) proceeds with your claim, the window of time to choose a judicial hearing changes.<sup>146</sup> You should always be aware of what the [MCAD](http://www.mass.gov/mcad/) is doing, so you will have every opportunity to choose how to proceed.

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**j. Can't I sue my employer directly without going through the MCAD?**

You must always file a claim with the [MCAD](http://www.mass.gov/mcad/) first, then you will have an opportunity to decide to withdraw and file a claim on your own.<sup>147</sup> This is a personal question and you must weigh the benefits of each. However, if you decide to bring your own claim, the [MCAD](http://www.mass.gov/mcad/) will dismiss your complaint.<sup>148</sup> You will then be unable to bring that claim about that specific discrimination again to the [MCAD](http://www.mass.gov/mcad/).<sup>149</sup>

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**k. Who will investigate my complaint?**

If you choose to follow through with the [MCAD](http://www.mass.gov/mcad/), they will investigate your complaint.<sup>150</sup>

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**l. What happens after I submit my claim?**

After the response from your employer is received, the [MCAD](http://www.mass.gov/mcad/) investigator will investigate and decide if there is "[probable cause](#)" (*probable cause means that it is more likely than not*) that you have been the victim of employment discrimination.<sup>151</sup>

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**m. What happens if the investigators determine that no "probable cause" exists on which to base a claim?**

If the [MCAD](http://www.mass.gov/mcad/) does not find "[probable cause](#)" that you have been unlawfully discriminated against, it will dismiss your charge and give you notice of the dismissal within 10 days.<sup>152</sup> If your charge has been dismissed for lack of [probable cause](#), you can request an [appeal](#) of the decision within 10 days.<sup>153</sup>

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**n. What happens if I appeal the MCAD's decision that there is not probable cause?**

If you appeal, the [MCAD](http://www.mass.gov/mcad/) (<http://www.mass.gov/mcad/>) will hold an informal hearing where you can explain why you feel there is probable cause.<sup>154</sup> The Commission may either determine that there is [probable cause](#), make a ruling that further investigation is needed, or determine that there is no probable cause.<sup>155</sup> If [probable cause](#) is found, the [MCAD](http://www.mass.gov/mcad/) (<http://www.mass.gov/mcad/>) will continue with your claim.<sup>156</sup> If the Commission still feels you do not have [probable cause](#), your claim will be closed and will not proceed any further at the [MCAD](http://www.mass.gov/mcad/) (<http://www.mass.gov/mcad/>).<sup>157</sup> However, you are allowed to pursue your claim in court if you believe such action is warranted.<sup>158</sup> In this situation, you will need to retain your own lawyer.

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**o. What happens if the investigator determines that “probable” cause exists on which to base a claim?**

If the [MCAD](http://www.mass.gov/mcad/) (<http://www.mass.gov/mcad/>) finds "[probable cause](#)," you have two options.<sup>159</sup> At this point, the window of time to choose a judicial hearing shortens. You still may choose a judicial hearing, however, you only have 20 days to make this decision and notify the [MCAD](http://www.mass.gov/mcad/) (<http://www.mass.gov/mcad/>).<sup>160</sup> Your other option is to continue with the [MCAD](http://www.mass.gov/mcad/) (<http://www.mass.gov/mcad/>) and either work through a voluntary mediation process or move on to an administrative hearing<sup>161</sup>

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**p. What is the difference between mediation and a hearing?**

Mediation is voluntary, confidential, and assisted by a mediator who acts as a neutral third party.<sup>162</sup> The goal of mediation is to settle your dispute through negotiation.<sup>163</sup> Both you and your employer must agree to mediation.<sup>164</sup> A hearing is a form of litigation and a decision maker will determine whether a law has been violated.<sup>165</sup>

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**q. What happens if I don't want mediation or no resolution can be reached through mediation?**

If you do not choose mediation, or through mediation no resolution can be met, you will have an administrative/public hearing.<sup>166</sup> “A public hearing is formal proceeding where you will testify under oath before one of three [MCAD](http://www.mass.gov/mcad/) (<http://www.mass.gov/mcad/>) Commissioners.”<sup>167</sup> The Commissioner will serve as judge.<sup>168</sup> You are welcome to hire an attorney.<sup>169</sup> However, if you do not, a [MCAD](http://www.mass.gov/mcad/) (<http://www.mass.gov/mcad/>) lawyer will prosecute the case on your behalf.<sup>170</sup>

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**r. Can I sue my employer?**

Yes. When you file a claim with [MCAD](http://www.mass.gov/mcad/) (<http://www.mass.gov/mcad/>), you'll most likely file the claim against your employer (or, in some cases, an employer who failed to hire you). In addition, you can sue individuals for "aiding and abetting" discrimination.<sup>171</sup>

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**s. Can I file a federal claim of employment discrimination as well? If so, how?**

Yes, you can file a federal claim as well. When you contact the [MCAD](http://www.mass.gov/mcad/) (<http://www.mass.gov/mcad/>), you can tell them you want your charges filed with the [EEOC](#) as well.

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**t. What are the advantages and disadvantages of filing a federal claim over a state claim?**

In Massachusetts, actually, you're often better off filing a state claim (although you can certainly file both, if your employer is covered). The Massachusetts statute is broader, providing more protection for victims, and it covers more employers as well. In addition, while federal claims are subject to a set of caps on how much you can win, there are no limits in Massachusetts. Finally, Massachusetts law also allows you to sue individual co-workers or supervisors in addition to your employer.

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## **WHAT AM I ENTITLED TO IF I WIN?**

- a. [What am I entitled to if I prove my claim?](#)
- b. [What is equitable relief?](#)
- c. [What is injunctive relief?](#)
- d. [Am I entitled to monetary damages if I win?](#)
- e. [What is the difference between compensatory and punitive damages?](#)
- f. [Am I entitled to back pay?](#)
- g. [Am I entitled to “pecuniary losses?”](#)
- h. [Am I entitled to my old job back?](#)
- i. [Am I entitled to attorney’s fees?](#)
- j. [If I am not satisfied with the result, can I appeal?](#)

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### **a. What am I entitled to if I prove my claim?**

While specific remedies vary from case to case based on the individual facts of each situation, Chapter 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>) provides for certain types of remedies, including: back pay (e.g. for lost wages or failure to hire), reinstatement (e.g. for failure to promote or wrongful discharge) and injunctive relief (e.g. a cease-and-desist order to the employer). In addition, courts also award compensatory damages for victims’ emotional distress and suffering, as well as, in some particularly egregious cases, punitive damages. Ch. 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>) also provides that plaintiffs who prevail will be awarded attorneys’ fees and costs.<sup>172</sup>

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### **b. What is equitable relief?**

Equitable relief is any remedy that the court chooses to grant based on what it deems fair and within its powers to enforce.

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### **c. What is injunctive relief?**

Injunctive relief is a type of remedy that doesn’t include monetary damages. It often means requiring the employer to do something, or sometimes to *stop* doing something. For instance, a court order requiring your employer to train its employees about sexual harassment would be a form of injunctive relief.

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### **d. Am I entitled to monetary damages if I win?**

For the most part, yes. Damages in discrimination cases take two forms: compensatory damages and injunctive relief. Compensatory damages are awarded to “make the victim whole” – they are designed to return you to the situation you would have been in if no

discrimination had occurred. Frequently, compensatory damages include [back pay](#), [front pay](#) or “actual damages,” which compensates the victim for emotional distress, medical problems or other monetary damages she may have suffered as a result of discrimination.

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**e. What is the difference between compensatory and punitive damages?**

Punitive damages are designed not to benefit the plaintiff, but to punish the employer. While Chapter 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>) provides for both, punitive damages are not appropriate in every case. Instead, they are reserved for particularly extreme or egregious discrimination.<sup>173</sup>

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**f. Am I entitled to back pay?**

Yes, for the most part. However, victims are also subject to what is called the “duty to mitigate.”<sup>174</sup> What this means is that if you were fired, you are required to make a good-faith effort to find a new job, and your damages for back pay will be reduced by the amount that you make in your new job. For instance, if you were wrongfully fired from a job that paid you \$20,000 a year and you found a new job, but it only paid \$15,000 a year, you would be entitled to back pay for the difference. Failure to make a good-faith effort to mitigate damages may reduce your award.

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**g. Am I entitled to “pecuniary losses?”**

You are entitled to compensation for any monetary losses that result from your discrimination. For example, if you became depressed as a result of sexual harassment, you would be entitled to compensation for your psychologist bills.<sup>175</sup> The same is true if you suffered medical problems or other financial losses.

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**h. Am I entitled to my old job back?**

Yes, if you want it.<sup>176</sup> You may also be entitled to “front pay,” as an alternative to reinstatement.<sup>177</sup> Front pay is intended to compensate you for lost future earnings and is subject to a duty to mitigate.<sup>178</sup> What this means is that if you were fired, you are required to make a good-faith effort to find a new job, and your damages for back pay will be reduced by the amount that you make in your new job. For instance, if you were wrongfully fired from a job that paid you \$40,000 a year and you found a new job, but it only paid \$25,000 a year, you would be entitled to back pay for the difference. Failure to make a good-faith effort to mitigate damages may reduce your award.

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**i. Am I entitled to attorneys' fees?**

Yes. Chapter 151B (<http://www.mass.gov/legis/laws/mgl/gl-151b-toc.htm>) specifically provides that if you prevail in your discrimination claim, you are entitled to attorneys' fees.<sup>179</sup>

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**j. If I am not satisfied with the result, can I appeal?**

If you are not satisfied w/ the result you can request a judicial review with in 30 days of the order of the commission. (the commission's decision after their administrative hearing) The judicial review will be held by the superior court in your county.<sup>180</sup> If you are still not satisfied with the result after judicial review, you can appeal through the normal judicial channels.

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<sup>1</sup> Mass. Gen. Laws ch. 151B (2005). <http://www.mass.gov/legis/laws/mgl/151b-5.htm>

<sup>2</sup> Mass. Gen. Laws ch. 151B § 1.5.

<sup>3</sup> Id. at § 1.6.

<sup>4</sup> Id. at § 4.1.

<sup>5</sup> Id.

<sup>6</sup> Id. at § 4.16A; § 4.4.

<sup>7</sup> Id. at § 4.17.

<sup>8</sup> Id. at § 1.6.

<sup>9</sup> Id. at § 1.5.

<sup>10</sup> Link to Federal Title VII section.

<sup>11</sup> Mass. Gen. Laws ch. 151B § 4.5.

<sup>12</sup> See *Morehouse v. Berkshire Gas Co.*, 989 F. Supp. 54 (D. Mass. 1997).

<sup>13</sup> See *Chapin v. University of Massachusetts at Lowell*, 977 F. Supp. 72 (D. Mass. 1997).

<sup>14</sup> *Blare v. Husky Injection Molding Sys. Boston, Inc.*, 419 Mass. 437, 444-5 (1995).

<sup>15</sup> 804 Code Mass. Regs. 1.10(2) (July 30, 2004).

<sup>16</sup> See *Cuddy v. Stop & Shop*, 434 Mass. 521, 750 N.E.2d 928, 938 (2001).

<sup>17</sup> Link to previous sexual harassment question about fewer than six employees.

<sup>18</sup> Link to equal pay section.

<sup>19</sup> Link to Ideas for Change.

<sup>20</sup> Link to How to File a Claim section

<sup>21</sup> Mass. Gen. Laws ch. 151B § 9.

<sup>22</sup> *Jancey v. School Committee of Everett*, 421 Mass. 482, 489-90 (1995).

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Mass. Gen. Laws ch. 151B; Mass. Gen. Laws ch.149 § 105A; <http://www.mass.gov/legis/laws/mgl/151b-5.htm>

<sup>26</sup> Mass. Gen. Laws ch. 151B (2005); <http://www.mass.gov/legis/laws/mgl/151b-5.htm>

<sup>27</sup> Mass. Gen. Laws ch.. 149 § 105A (2005).

<sup>28</sup> 804 Code Mass. Regs. 1.10(2) (July 30, 2004).

<sup>29</sup> *Jancey*, 421 Mass. 482, 497-98.

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<sup>30</sup> *Id.*

<sup>31</sup> Mass. Gen. Laws ch. 149 § 105A (2005).

<sup>32</sup> *Jancey*, 421 Mass. 482, 497-98.

<sup>33</sup> MCAD, *Frequently Asked Questions*, <http://www.mass.gov/mcad/faq2.html#filing> (accessed March 6, 2005).

<sup>34</sup> Mass. Gen. Laws ch. 151B § 9.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Jancey*, 421 Mass. 482, 494.

<sup>39</sup> M.C.L. c. 105A.

<sup>40</sup> *School Committee of Braintree v. MCAD*, 377 Mass. 424, 429 (1979).

<sup>41</sup> *Id.*

<sup>42</sup> Although in Massachusetts there have been very few disparate impact cases and none of sex discrimination, the Supreme Judicial Court has noted, in several decisions, that disparate impact is an available theory to prove illegal sex discrimination. See e.g. *Lynn Teachers Union v. MCAD*, 406 Mass. 515 (1990) and *School Comm. Of Braintree v. MCAD*, 377 Mass. 424 (1979). In addition, where the SJC has examined the disparate impact theory of discrimination (thus far, in disability discrimination), it has adhered to the analysis used in federal courts, suggesting that it would do so in sex discrimination cases as well. See *Cox v. New England Tel. & Tel. Co.*, 414 Mass. 375, 390 (1993). For similar discussion, see *Mullin v. Raytheon Co.*, F.3d 696, 704-706 (1999).

<sup>43</sup> *Mullin v. Raytheon Co.*, F. Supp. 2d. 165, 173 (1998).

<sup>44</sup> *School Committee of Braintree*, 377 Mass. at 429.

<sup>45</sup> *Id.*

<sup>46</sup> *Mullin*, 164 F.3d at 700.

<sup>47</sup> *School Committee of Braintree*, 377 Mass. at 429

<sup>48</sup> *Lipchitz v. Raytheon Co.*, 434 Mass. 493, 502 (2001); *School Committee of Braintree v MCAD*, 377 Mass. 424, 427 (1979)

<sup>49</sup> *Lipchitz*, 434 Mass. at 504.

<sup>50</sup> *School Committee of Braintree*, 377 Mass. at 429.

<sup>51</sup> *Lipchitz*, 434 Mass. at 502.

<sup>52</sup> *Lipchitz*, 434 Mass. at 504.

<sup>53</sup> *Id.* at 505.

<sup>54</sup> Mass. Gen. Laws ch. 151B § 4 (2005).

<sup>55</sup> *Brissette v. Franklin County Sheriff's Office*, 235 F. Supp. 2d. 63 (D. Mass. 2003).

<sup>56</sup> Mass. Gen. Laws. ch. 151B § 1 (year).

<sup>57</sup> *Id.*

<sup>58</sup> See generally *Brissette; Morehouse v. Berkshire Gas Co.*, 989 F. Supp. 54 (D. Mass. 1997).

<sup>59</sup> *College-Town, Division of Interco v. MCAD*, 400 Mass. 156, 172, 508 N.E.2d 587, 596 (1987).

<sup>60</sup> See generally *Brissette v. Franklin County Sheriff's Office*, 235 F. Supp. 2d. 63 (D. Mass. 2003).

<sup>61</sup> Mass.Gen. Law. ch. 214 § 1C. <http://www.mass.gov/legis/laws/mgl/214-1c.htm>

<sup>62</sup> *Guzman v. Lowinger*, 422 Mass. 570, 572, 664 N.E.2d 820 (1996).

<sup>63</sup> Ch. 151B § 4.5; *Morehouse*, 989 F. Supp. at 63.

<sup>64</sup> *Id.*

<sup>65</sup> *Messina v. Araserve, Inc.*, 906 F. Supp. 34, 37 (D. Mass. 1995).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 38

<sup>68</sup> See *Chapin v. University of Massachusetts at Lowell*, 977 F. Supp. 72 (D. Mass. 1997).

<sup>69</sup> *Id.* See also *Morehouse*, 989 F. Supp at 62.

<sup>70</sup> See *Melnychenko v. 84 Lumber Co.*, 424 Mass. 285, 676 N.E.2d 45 (1997).

<sup>71</sup> See *Morehouse*, 989 F. Supp. at 54.

<sup>72</sup> See *Cuddy v. Stop & Shop, Inc.*, 434 Mass. 521, 750 N.E.2d 928, 938 (2001).

<sup>73</sup> *Id.* at 941-942.

<sup>74</sup> Ch. 151B § 9.

<sup>75</sup> See *Chapin; Guzman*.

<sup>76</sup> See *Morehouse*.

<sup>77</sup> Mass. Gen. Laws ch. 149 § 105D. <http://www.mass.gov/legis/laws/mgl/149-105d.htm>

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<sup>78</sup> Mass. Gen. Laws ch. 149 § 105D.

<sup>79</sup> *McDonnell v. Certified Engineering & Testing Co.*, 899 F. Supp. 739, 747 (D. Mass. 1995).

<sup>80</sup> *Massachusetts Electric Co. v. MCAD*, 375 Mass. 160, 375 N.E.2d 1192 (1978).

<sup>81</sup> *Id.*

<sup>82</sup> M.G.L. 149 § 105D.

<sup>83</sup> MCAD has promulgated a regulation defining “initial probationary period” that states that this period cannot exceed six months. 804 Code Mass.Reg. § 8.01(2) (1978). *Solomon v. School Committee of Boston*, 395 Mass. 12, 16, 478 N.E.2d 137, 139. (1985)

<sup>84</sup> 29 U.S.C. § 2612(a)(1).

<sup>85</sup> Mass. Gen. Law. ch 149 § 105D.

<sup>86</sup> *Id.*

<sup>87</sup> *School Committee of Braintree*, 377 Mass. at 432, 386 N.E.2d at 1256.

<sup>88</sup> *Massachusetts Electric Co. v. MCAD*, 375 Mass. 160, 375 N.E.2d 1192 (1978).

<sup>89</sup> *School Committee of Braintree*, 377 Mass. at 432, 386 N.E.2d at 1256

<sup>90</sup> *Massachusetts Electric Co. v. MCAD*, 375 Mass. 160, 375 N.E.2d 1192 (1978).

<sup>91</sup> *Id.* at 167.

<sup>92</sup> *Lynn Teachers Union, Local 1037, AFT, AFL-CIO v. MCAD*, 406 Mass. 515, 549 N.E.2d 97 (1990).

<sup>93</sup> *Butner v. Department of State Police*, 60 Mass. App. Ct. 461, 803 N.E.2d 722 (2004).

<sup>94</sup> *Massachusetts Electric Co. v. MCAD*, 375 Mass. 160, 375 N.E.2d 1192 (1978).

<sup>95</sup> This came from class – where did we get that?

<sup>96</sup> *Massachusetts Electric Co. v. MCAD*, 375 Mass. 160, 375 N.E.2d 1192 (1978).

<sup>97</sup> *Id.*

<sup>98</sup> *See Brissette*, 235 F. Supp. 2d. at 93).

<sup>99</sup> *Blare v. Husky Injection Molding Sys. Boston, Inc.*, 419 Mass. 437, 444-5 (1995).

<sup>100</sup> *Lipchitz v. Raytheon Co.*, 434 Mass. 493, 504 (2001).

<sup>101</sup> *Blare v. Husky Injection Molding Sys. Boston, Inc.*, 419 Mass. 437, 444-5 (1995).

<sup>102</sup> *Radvilas v. Stop & Shop*, 18 Mass.App. Ct. 431, 440 (1984).

<sup>103</sup> *Id.* at 440.

<sup>104</sup> *Id.* at 442.

<sup>105</sup> *Id.*

<sup>106</sup> *Sbrogna v. ChipCom Corp.*, 1997 Mass. Super. LEXIS 271, 13-14; *Radvilas*, 18 Mass.App. Ct. 431, 438.

<sup>107</sup> *Sbrogna v. ChipCom Corp.*, 1997 Mass. Super. LEXIS 271, 13-14.

<sup>108</sup> *Radvila*, 18 Mass.App. Ct. at 442.

<sup>109</sup> *See Brissette*, 235 F. Supp. 2d. at 93.

<sup>110</sup> *Blare v. Husky Injection Molding Sys. Boston, Inc.*, 419 Mass. 437, 444-5 (1995).

<sup>111</sup> *Lipchitz v. Raytheon Co.*, 434 Mass. 493, 504 (2001).

<sup>112</sup> *Blare v. Husky Injection Molding Sys. Boston, Inc.*, 419 Mass. 437, 444-5 (1995).

<sup>113</sup> *White v. University of Massachusetts*, 410 Mass. 553, 557 (1991).

<sup>114</sup> *Radvilas*, 18 Mass.App. Ct. at 440.

<sup>115</sup> *Radvilas*, 18 Mass.App. Ct. at 442.

<sup>116</sup> Mass. Gen. Laws ch. 151B § 4 (2005).

<sup>117</sup> *Young v. Southwestern Savings and Loan Assn.*, 509 F.2d 140, 144 (5th Cir. 1975).

<sup>118</sup> *Pena v. Brattleboro Retreat*, 702 F.2d 322, 325 (2d Cir. 1983).

<sup>119</sup> *Radvilas*, 18 Mass.App. Ct. at 442

<sup>120</sup> *Sbrogna v. ChipCom Corp.*, 1997 Mass. Super. LEXIS 271, 13-14.

<sup>121</sup> *See Brissette*, 235 F. Supp. 2d. at 93.

<sup>122</sup> *Blare v. Husky Injection Molding Sys. Boston, Inc.*, 419 Mass. 437, 444-5 (1995).

<sup>123</sup> *Lipchitz*, 434 Mass. at 504.

<sup>124</sup> *Blare*, 419 Mass. at 444-5.

<sup>125</sup> *See Brissette*, 235 F. Supp. 2d. at 92.

<sup>126</sup> *Id.* at 93.

<sup>127</sup> *Id.* at 93.

<sup>128</sup> *See Brissette*, 235 F. Supp. 2d. at 93.

<sup>129</sup> *Blare*, 419 Mass. at 444-5.

<sup>130</sup> *Lipchitz*, 434 Mass. at 504.

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<sup>131</sup> *Blare*, 419 Mass. at 444-5.  
<sup>132</sup> 804 Code Mass. Regs. 1.10(2).  
<sup>133</sup> MCAD, *Frequently Asked Questions*, <http://www.mass.gov/mcad/faq.html> (accessed March 6, 2005).  
<sup>134</sup> MCAD, *Directions and Hours*, <http://www.mass.gov/mcad/hours.html> (accessed March 6, 2005).  
<sup>135</sup> Mass. Gen. Laws ch. 151B § 4.5; *Morehouse*; *Chapin*.  
<sup>136</sup> MCAD, *Frequently Asked Questions*, <http://www.mass.gov/mcad/faq2.html#filing> (accessed March 6, 2005).  
<sup>137</sup> *Id.*  
<sup>138</sup> *Id.*  
<sup>139</sup> *Id.*  
<sup>140</sup> *Id.*  
<sup>141</sup> *Id.*  
<sup>142</sup> *Id.*  
<sup>143</sup> *Id.*  
<sup>144</sup> Mass. Gen. Laws ch. 151B § 9 (2005).  
<sup>145</sup> *Id.*  
<sup>146</sup> *Jancey*, 421 Mass. at 498.  
<sup>147</sup> *Id.*  
<sup>148</sup> Mass. Gen. Laws ch. 151B § 9 (2005).  
<sup>149</sup> *Id.*  
<sup>150</sup> MCAD, *Frequently Asked Questions*, <http://www.mass.gov/mcad/faq2.html#filing> (accessed March 6, 2005).  
<sup>151</sup> *Id.*  
<sup>152</sup> MCAD, *How does the MCAD Process Work?* <http://www.mass.gov/mcad/filing.pdf> (accessed March 6, 2005).  
<sup>153</sup> *Id.*  
<sup>154</sup> *Id.*  
<sup>155</sup> *Id.*  
<sup>156</sup> *Id.*  
<sup>157</sup> *Id.*  
<sup>158</sup> *Jancey*, 421 Mass. at 498.  
<sup>159</sup> Mass. Gen. Laws ch. 151B § 5 (2005).  
<sup>160</sup> *Id.*  
<sup>161</sup> MCAD, *MCAD Fact Sheet Mediation*, <http://www.mass.gov/mcad/mediation.html> (accessed March 22, 2005).  
<sup>162</sup> *Id.*  
<sup>163</sup> *Id.*  
<sup>164</sup> *Id.*  
<sup>165</sup> *Id.*  
<sup>166</sup> MCAD, *How does the MCAD Process Work?* <http://www.mass.gov/mcad/filing.pdf> (accessed March 6, 2005).  
<sup>167</sup> *Id.*  
<sup>168</sup> *Id.*  
<sup>169</sup> *Id.*  
<sup>170</sup> *Id.*  
<sup>171</sup> Mass. Gen. Laws ch. 151B § 4.5.  
<sup>172</sup> Mass. Gen. Laws ch. 151B § 9.  
<sup>173</sup> See e.g. *Brissette*, etc.  
<sup>174</sup> *Beaupre v. Cliff Smith & Associates*, 50 Mass. App. Ct. 480, 496, fn. 25 (2000).  
<sup>175</sup> See e.g. *Brissette*.  
<sup>176</sup> Mass. Gen. Laws ch. 151B § 9.  
<sup>177</sup> *Conway v. Electro Switch Corp.*, 402 Mass. 385 (1988).  
<sup>178</sup> *Conway*, 402 Mass. 385 at 389.  
<sup>179</sup> Mass. Gen. Laws ch. 151B § 9.  
<sup>180</sup> Mass. Gen. Laws ch. 151B § 6.