

Employment Law Summary

Massachusetts Fair Employment Laws – Overview



Because You're Different

Several [federal laws](#) provide workplace discrimination protections. In addition, Massachusetts state laws provide workplace discrimination protections for employees and applicants in the state. This Employment Law Summary provides a high-level overview of state fair employment laws in Massachusetts.

EQUAL PAY LAW

The [Massachusetts Pay Equity Act](#) prohibits **all employers** in the state from:

- Paying an employee less than the rates paid to employees of a different gender for comparable work;
- Requiring employees to refrain from discussing their own or other employees' wages;
- Seeking a prospective employee's wage or salary history or requiring a prospective employee's prior wage or salary history to meet certain criteria;
- Retaliating against an employee for opposing an unlawful act, making a complaint or participating in any proceeding relating to a claim that the employer violated the law.

EXCEPTIONS

Variations in wages between employees of different genders for comparable work are not prohibited if based on any of the following:

- A system that rewards seniority with the employer (as long as the time spent on leave due to a pregnancy-related condition and protected parental, family and medical leave does not reduce seniority);
- A merit system;
- A system that measures earnings by quantity or quality of production, sales or revenue;
- The geographic location in which a job is performed;
- Education, training or experience to the extent such factors are reasonably related to the particular job in question; or
- Travel, if the travel is a regular and necessary condition of the particular job.

An employer that is paying a wage differential in violation of this law may not reduce the wages of any employee solely to comply with this law.

DISCRIMINATION LAW

The **Massachusetts Fair Employment Practices Law (MFEPL)** prohibits employers with six or more employees (except certain exclusively social or fraternal nonprofit organizations) and **all employers of a domestic worker** in the state from discriminating against individuals based on certain characteristics known as protected traits. These include:

- Race (including traits historically associated with race, such as hair texture, hairstyle, hair length and protective hairstyles, including braids, locks, twists, Bantu knots, hair coverings and other formations);
- Color;

- Religious creed;
- National origin;
- Sex;
- Gender identity;
- Sexual orientation (except that which involves minor children as the sex object);
- Genetic information;
- Pregnancy or related condition (including lactation or the need to express breast milk);
- Ancestry;
- Status as a veteran;
- Handicap (disability); and
- Age (40 and older).

Although the MFEPL does not include language specifying that “race” includes traits historically associated with race as described above, the Massachusetts CROWN Act, enacted in 2022, expands the definition of discrimination based on race to prohibit discrimination based on natural and protective hairstyles.

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PROHIBITED ACTS

Under the MFEPL, the following actions are prohibited if based on a protected trait:

- Refusing to hire or employ an individual;
- Barring or discharging an individual from employment;
- Discriminating against an individual in compensation or in terms, conditions or privileges of employment; or
- Printing or circulating or causing to be printed or circulated any statement, advertisement or publication or using any form of application for employment or to make any inquiry or record in connection with employment, which expresses, directly or indirectly, any limitation, specification or discrimination.

Exceptions are available for certain bona fide occupational qualifications.

Employers are also prohibited from:

- Aiding, abetting, inciting, compelling or coercing the doing of any of the acts forbidden under the law or attempting to do so;
- Imposing upon an individual as a condition of obtaining or retaining employment any terms or conditions in which compliance would require such individual to violate or forego the practice of the individual’s creed or religion as required by that creed or religion;
- Making a preemployment inquiry of an applicant as to whether the applicant has a handicap or as to the nature or severity of the handicap (with certain exceptions);
- Denying reasonable accommodations for disability, pregnancy or related conditions or religious observances or practices, except where it would cause undue hardship;
- Denying an employment opportunity to an individual based on the employer’s need to make a reasonable accommodation for the individual’s known conditions related to pregnancy;
- Failing to reinstate an employee to their original employment status or an equivalent position with equivalent pay and benefits once they no longer require a reasonable accommodation for pregnancy or a related condition;
- Requiring an individual affected by pregnancy or related conditions to accept an accommodation that the employee chooses not to accept and is not necessary to enable them to perform the essential functions of the job;
- Requiring an employee affected by pregnancy or related conditions to take leave instead of another reasonable accommodation that may be provided without undue hardship on the employer’s program, enterprise or business; and
- Discharging or, in any other manner, discriminating or retaliating against an individual affected by pregnancy or related conditions because they request or use a reasonable accommodation.

SEXUAL HARASSMENT

The MFEPL's prohibition against discrimination based on sex includes sexual harassment. This is defined as sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to or rejection of the advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; or
- The advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment.

WRITTEN POLICY REQUIREMENT

The MFEPL requires employers to adopt a policy against sexual harassment that includes certain provisions. The [Massachusetts Commission Against Discrimination](#) (MCAD) provides a customizable [model policy](#) that employers may use to comply with the MFEPL's requirement. Employers must provide a written copy of the policy to each employee at the time of hire and annually thereafter.

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CRIMINAL HISTORY INQUIRIES

The MFEPL prohibits covered employers from asking for any criminal offender record information on an initial, written job application.

It also prohibits asking any employee or applicant about the following at any time and in any matter relating to the employment of any person:

- Any arrests that did not result in conviction;
- Any first convictions for certain offenses;
- Any misdemeanor convictions that occurred (or for which the period of any incarceration ended) three or more years prior to the date of the employment application or such request for information; or
- Any criminal record that has been sealed or expunged under state law.

However, an employer may include questions about an applicant's **criminal convictions** on an initial, written job application if the position being sought is one for which:

- A federal or state law or regulation creates mandatory or presumptive disqualification of an applicant based on a conviction; or
- The employer is subject to an obligation under a federal or state law or regulation not to employ people who have been convicted of crimes.

REASONABLE ACCOMMODATION REQUIREMENTS

Except where it would cause undue hardship to the employer's program, enterprise or business, the MFEPL requires employers to provide reasonable accommodations for:

- Disabilities of a "qualified handicapped person";
- Pregnancy and related conditions, which include lactation; and
- Religious practices and observances.

DISABILITY

Under the MFEPL, the term "qualified handicapped person" means a person with a handicap who is capable of performing the essential functions of a particular job or who would be capable of performing the essential functions of a particular job with reasonable accommodation to their handicap.

The term "handicap" means:

- A physical or mental impairment which substantially limits one or more major life activities of a person;
- A record of having such impairment; or
- Being regarded as having such impairment.

The law does not protect the current illegal use of a controlled substance.

The term "major life activities" means functions including, but not limited to, caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. Reasonable accommodations for disability may include but are not limited to:

- Making changes in the physical work area;
- Making changes in job requirements;
- Allowing an employee to perform a job in a different way; and
- Making changes in work schedules to allow employees to take periodic rests or keep medical appointments.

Undue Hardship

In determining whether an accommodation or disability would impose an undue hardship on the conduct of the employer's business, factors to be considered include:

- The overall size of the employer's business with respect to the number of employees, number and type of facilities, and size of budget or available assets;
- The type of the employer's operation, including the composition and structure of the employer's workforce; and
- The nature and cost of the accommodation needed.

PREGNANCY AND RELATED CONDITIONS

Under the Massachusetts Pregnant Workers Fairness Act, if an employee or applicant is capable of performing the essential functions of a job but requests an accommodation for pregnancy or a related condition, the MFEPL requires the employer to either:

- Provide the requested accommodation; or
- Engage in an interactive process with the individual to determine an effective, reasonable accommodation.

Examples of reasonable accommodations for pregnancy and related conditions include:

- More frequent or longer breaks (paid or unpaid);
- Time off to attend to a pregnancy complication or recover from childbirth (with or without pay);
- Acquisition or modification of equipment or seating;
- Temporary transfers to less strenuous or hazardous positions;
- Job restructuring;
- Light duty;
- Private non-bathroom spaces for expressing breast milk;
- Assistance with manual labor; and
- Modified work schedules.

Other types of accommodations may be reasonable as well. However, the MFEPL does not require employers to:

- Discharge or transfer any employees who have more seniority than an individual who needs an accommodation; or
- Promote any employee who is not capable, with or without a reasonable accommodation, of performing the essential functions of the job.

Undue Hardship

An employer may deny reasonable accommodation to an individual affected by pregnancy and related conditions only if it can demonstrate that the accommodation would impose an undue hardship on its program, enterprise or business. "Undue hardship" is defined as an action requiring significant difficulty or expense. In making a determination of undue hardship, the following factors are considered:

- The nature and cost of the needed accommodation;
- The overall financial resources of the employer;
- The overall size of the employer's business, in terms of the number of its employees and the number, type and location of its facilities; and
- The effect on expenses and resources or any other impact of the accommodation on the employer's program, enterprise or business.

RELIGIOUS PRACTICES AND OBSERVANCES

Employers must reasonably accommodate an employee or prospective employee's religious observance or practice unless it would cause undue hardship in the conduct of the employer's business. Employees have the burden of proof of the required practice of their creed or religion.

An employee intending to be absent from work when required by their creed or religion must notify their employer at least 10 days in advance of each absence. Employers are not required to compensate an employee for this absence.

Undue Hardship

For purposes of providing time off as religious accommodation, undue hardship includes the inability of an employer to provide services that are required by and in compliance with all federal and state laws and regulations or where:

- The health or safety of the public would be unduly compromised by the employee's absence;
- The employee's presence is indispensable to the orderly transaction of business and their work cannot be performed by another employee of substantially similar qualifications during the period of absence; or
- The employee's presence is needed to alleviate an emergency situation.

NOTICE POSTING REQUIREMENT

The MFEPL requires employers subject to the law to post a [notice](#) prepared or approved by the MCAD in conspicuous places on their premises. An employer that fails to comply with this mandate may face fines of between \$10 and \$100 for a first violation and between \$100 and \$1,000 for any subsequent violation occurring more than 60 days from a prior conviction for a first violation.

ENFORCEMENT

Individuals who believe their rights under the MFEPL have been violated must file a complaint with the MCAD within **300 days** after the date of an alleged violation.

After a complaint is filed, the MCAD will conduct an investigation to determine whether probable cause exists for crediting the allegations in the complaint. If the MCAD determines that probable cause does exist, it may:

- Engage the employer in conference, conciliation or persuasion to eliminate the unlawful practice;
- Conduct a hearing;
- File a lawsuit in court against the employer; or
- Grant permission to the individual who filed the complaint to sue the employer in court.

In addition, an individual who files a complaint with the MCAD becomes authorized to file a lawsuit against the employer once 90 days have passed since the complaint was filed or sooner if a commissioner assents in writing. To be valid, a lawsuit must be filed within **three years** after the date of the alleged violation.

If the MCAD or a court determines that an employer has violated the MFEPL, the employer may be ordered to:

- Hire, reinstate or promote any individual who was affected by the violation;
- Pay back wages to any affected individual;
- Pay any costs or attorney's fees associated with the action; and
- Pay civil fines of up to between \$50,000 and \$300,000, depending on employer size.

MORE INFORMATION

Please contact Heffernan Insurance Brokers for more information on fair employment laws in Massachusetts.

Provided By Heffernan Insurance Brokers

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