



# MASSACHUSETTS QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW

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*Disclaimer: These materials do not constitute legal advice and should not be substituted for the advice of legal counsel.*

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## At-Will Employment

Massachusetts is at-will employment state with a number of exceptions. Generally, an employer may terminate an employee for any reason or no reason as long as it is not related to a prohibited reason such as discrimination or retaliation. [Mass.gov](#).

Massachusetts employment discrimination laws apply to employers with six or more employees, and any employer of a domestic worker (i.e., a household worker such as a nanny or caregiver) regardless of the employer's size. Employers are prohibited from discriminating against employees based on race, color, religious creed, national origin, ancestry, sex, gender identity, age, criminal record (inquiries only), handicap (disability), mental illness, retaliation, sexual harassment, sexual orientation, active military personnel and genetics.

## Right to Work Laws

Massachusetts is not a right to work state.

## Immigration Verification

Massachusetts places no additional employment verification procedures on employers beyond Federal I-9 compliance. There is no requirement to use E-Verify under Massachusetts state laws.

## Drug Testing

Massachusetts has not enacted any laws restricting drug testing. However, there is case law on the issue.

The Massachusetts Supreme Court issued a ruling on random drug testing in private employment. In *Webster v. Motorola*, the Court held that an employer's random drug testing policy must be weighed on a case-by-case basis. A court will weigh the employee's job responsibilities and the employer's interests. In *Motorola*, the Court found that a random drug test policy was valid when applied to an account executive driving up to 25,000 miles per year for the employer. However, the random drug testing policy was not valid as applied to a technical editor whose job did not involve national security or pose an immediate risk to health and safety. The Court reasoned that the editor's right to privacy outweighed the employer's interest in drug testing. [Webster v. Motorola, Inc., 418 Mass. 425 \(Mass. 1994\)](#).

## Jury Duty Leave

Each regularly employed trial or grand juror shall be paid regular wages by his employer for the first three days, or part thereof, of juror service. Regular employment includes part-time, temporary and casual employment as long as the employment hours of a juror reasonably may be determined by a schedule or by custom and practice established during the three-month period preceding the term of service of such juror. [Mass. Gen. Laws. 234A §48](#).

## Voting Leave

An employee must apply for voting leave. [Mass. Stat. 149 § 178](#). This applies to employees of manufacturing, mechanical or mercantile establishments. [Mass. Stat. 149 §180](#). An employer violating this provision may be subject to a fine up to \$500. [Id.](#)

## Parental Leave

An employee is entitled to eight weeks of parental leave for the purpose of giving birth or for the placement of a child under the age of 18 for adoption with the employee who is adopting or intending to adopt the child. However, any two employees of the same employer are only entitled to eight weeks of parental leave in aggregate for the same child.

The employee should give at least two weeks' notice to the employer of the anticipated date of departure or as soon as practical if the departure is beyond the individual's control.

The employer is not required to restore an employee on parental leave to the previous or a similar position if other employees of equal length of service credit and status in the same or similar positions have been laid off due to economic condition or other changes in operating conditions affecting employment during the employee's parental leave.

An employer must post and keep posted in a conspicuous place upon its premises a notice describing this section and the employer's policies related to this section. [Mass. Gen. Laws. 149 § 105D](#).

### **Sick Leave**

An employer must provide a minimum of one hour of earned sick time for every 30 hours worked by an employee. This becomes effective upon hiring an employee. However, employees are not entitled to use accrued earned sick time until the 90th calendar day following commencement of their employment. [Mass. Gen. Laws. 149 § 148C\(d\)\(1\)](#).

### **Smoking Laws**

It is the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace.

Smoking shall be prohibited in workplaces, workspaces, common work areas, classrooms, conference and meeting rooms, offices, elevators, employee lounges, etc.

Every area in which smoking is prohibited by law shall have "no smoking" signs conspicuously posted so that the signs are clearly visible to all employees, customers or visitors while in the workplace. [Mass. Gen. Laws. 270 § 22](#).

### **Break Time to Express Milk**

It is unlawful discrimination for an employer to deny a reasonable accommodation for an employee's pregnancy or any condition related to the employee's pregnancy including, but not limited to, lactation or the need to express breast milk. [Mass. Gen. Laws. 151B § 4](#).

### **Minimum Wage, Overtime and Wage Recordkeeping**

The minimum wage in Massachusetts is \$13.50 effective January 1, 2021. [Mass. Stat. 151 § 1](#). However, [Mass. Stat. 151 § 7](#) and [Mass. Stat. 151 § 9](#) allow for review of the job title and tip status to determine if lower wage is reasonable.

### **Final Payments**

If an employee is leaving employment, the employee must be paid in full for wages earned on the following regular pay day; in the absence of a regular pay day, the employee must be paid on the following Saturday.

If an employee is discharged, the employee must be paid in full on the day of their discharge. This excludes Boston, where the employee must be paid as soon as the laws requiring pay rolls, bills and accounts to be certified are complied with. [Mass. Gen. Laws. 149 § 148](#).

### **Unemployment Insurance**

Massachusetts requires employers to pay taxes to the Department of Unemployment Assistance, which provides funds to temporarily offset wages lost by an employee for becoming unemployed through no fault of their own.

## Workers' Compensation

Workers injured on the job are entitled to workers' compensation benefits from the employer, generally. Massachusetts has a Workers' Compensation Advisory Council, which monitors and reports on the system in place in Massachusetts.

## Child Labor

A person shall not employ a child or permit a child to work in, about or in connection with any establishment or occupation before 6:00 a.m. or after 10:00 p.m.; however, provided that a child that is 16 years of age or older may be employed until, but not after, 11:30 p.m. on any night other than a night preceding a regularly school day.

Additionally, provided that a child is 16 years or older, a child may be employed in a restaurant or racetrack until, but not after, 12:00 a.m. in the evening on any given night other than a night preceding a regularly scheduled school night; and if the establishment stops serving clients or customers at 10:00 p.m., the establishment may not employ the child past 10:15 p.m.

A person shall not employ a child or permit a child to work in, about or in connection with any establishment or occupation after 8:00 p.m. unless the child is under the direct and immediate supervision of an adult acting in a supervisory capacity, who is situated in the workplace and is reasonably accessible to the child. [Mass. Gen. Law. 149 § 66.](#)

## Gun Laws

Employers in Massachusetts may restrict employees from possessing firearms on workplace premises even in employee vehicles regardless of whether the employee has a license for concealed carry.

## Employment of Aliens

It shall be unlawful for any employer unknowingly to employ any alien in the commonwealth, who is a student or visitor, or who has not been admitted to the United States for permanent residence, except those who are admitted under a work permit, or unless the employment of such alien is authorized by the U.S. Attorney General. An employer shall not be deemed to have violated this section if it has made a bona fide inquiry whether a person hereafter employed or referred by him is a citizen or an alien, and if an alien, whether he is lawfully admitted to the United States for permanent residence, admitted under a work permit or authorized by the U.S. Attorney General. [Mass. Gen. Laws. 149 §19C.](#)

## Work on Holiday

Whoever requires an employee to work in a mill or factory on any legal holiday, except to perform such work as is both absolutely necessary and can lawfully be performed on Sunday, shall be punished by a fine of not more than \$1500. [Mass. Gen. Laws. 149 § 45.](#)

## Family and Medical Leave

An employee is entitled to a total of 24 hours of leave during any 12-month period, in addition to leave available under the federal act for the following reasons:

1. Participate in school activities directly related to the educational advancement of the son or daughter, such as parent-teacher conferences;
2. Accompany the son or daughter of the employee to routine medical or dental appointments; and
3. Accompany an elderly relative – an individual of at least 60 years of age – to routine medical or dental appoints or other professional services related to the elder's care.

If the necessity for leave is foreseeable, the employee shall provide the employer with not less than seven days' notice. If the necessity for leave is not foreseeable, the employee shall provide such notice as is practical. [Mass. Gen. Laws. 149 § 52D.](#)

## Meal Breaks

No person shall be required to work for more than six hours during a calendar day without an interval of at least 30 minutes for a meal. An employer who violates this section shall be punished by a fine of not less than \$300 nor more than \$600. [Mass. Gen. Laws. 149 § 100](#).

## Vacation Wages

"Wages" include vacation due under an oral or written agreement. Employers may not contract with employees to forfeit earned wages, including paid vacation. [Mass. Stat. 149 § 148](#).

Employees who leave or are fired, with or without cause, are entitled to accrued vacation pay. [Mass. Stat. 149 § 148](#); See also [Electronic Data Systems Corp. v. Attorney General, 907 N.E. 2d 635, 637 \(Mass. 2009\)](#).

## Additional Laws and Regulations

### Polygraph Testing

It is unlawful for any employer or his agent, with respect to any employee, or any person applying for employment, including any person applying for employment as a police officer, to subject such person to, or request such person to take a lie detector test within or without the commonwealth, or to discharge, not hire, demote or otherwise discriminate against such person for the rights in this section. This section does not apply to lie detector tests administered by law enforcement agencies as permitted in criminal investigations. [Mass. Gen. Laws. 149 § 19B](#).

### Genetic Information

A genetic test is classified as a test of human DNA, RNA, mitochondrial DNA, chromosomes or proteins for the purpose of identifying genes, inherited or acquired genetic abnormalities, or the presence or absence of inherited or acquired characteristics in genetic material.

Genetic records shall not be public records. An organization with genetic records cannot divulge without having informed written consent, except upon proper judicial order or to a person whose official duties (in the opinion of the commissioner), is entitled to receipt of the information.

No facility, physician or health care provider shall: (1) test any person for genetic information without first obtaining prior written consent; (2) disclose the results of a genetic test to any person other than the subject thereof without first obtaining the informed written consent, except where the results will be used only as confidential information for use in epidemiological or clinical research; or (3) identify the person being tested to any other person without first obtaining informed written consent or upon proper judicial order. [Mass. Gen. Laws. 111 § 70G](#).

### Medical Marijuana

Massachusetts allows for possession and use of medical marijuana. The statute does not require any health insurance provider, or any government agency or authority, to reimburse any person for the expenses of the medical use of marijuana or require any health care professional to authorize the use of medical marijuana for a patient. [Mass. Gen. Laws. 94I § 6](#).

A patient receiving a written or electronic certification for medical use marijuana is required to register with the commission. [Mass. Gen. Laws. 94I § 5](#).

A health care professional cannot be penalized, in any manner, or denied any right or privilege for advising a qualifying medical marijuana patient, or providing a patient with written or electronic certification upon a full assessment and determining that requirements to meet certification were met. [Mass. Gen. Laws. 94I § 2](#).