



MASSACHUSETTS QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW

PROVIDED BY BAKER DONELSON

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

At-Will Employment

Massachusetts is an at-will employment state, which means that, in general, an employer may terminate an employee at any time, and for any reason or no reason. *Kelleher v. Lowell Gen. Hosp.*, 98 Mass. App. Ct. 49, 52, 152 N.E.3d 126, 131 (2020). However, there are a number of exceptions to this general rule. For example, liability may be imposed upon an employer if the employer terminates an at-will employee for a reason that violates clearly established public policy, where an employee was discharged for asserting a legal right, following the law, or for refusing to disobey the law. *Flynn v. City of Boston.*, 59 Mass. App. Ct. 490, 493, 796 N.E.2d 881, 883 (2003).

Additionally, an employer may not terminate an employee for any unlawful reason, such as those rooted in discrimination or retaliation. There also exist labor protection considerations including protections for “concerted activity” or engagement in union activities. Mass.gov.

Employment Discrimination Laws

The Massachusetts Fair Employment Practices Law prohibits “covered employers” (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), from discriminating against employees based on, among other things, race (including traits historically associated with race, including, but not limited to, hair texture, hair type, hair length and protective hairstyles), color, religious creed, national origin, sex, gender identity, sexual orientation, genetic information, pregnancy, or a condition related to said pregnancy, including, but not limited to, lactation or the need to express breast milk for a nursing child, ancestry, or status as a veteran. M.G.L. c. 151B § 4; 2022 Mass. Acts Ch. 117.

Immigration Verification

All U.S. employers must properly complete Form I-9 for each individual they hire for employment in the United States, including citizens and noncitizens. USCIS.gov/i-9. 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.

Employment of Aliens

It is unlawful for any employer to unknowingly employ any alien in the commonwealth of Massachusetts 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 will not be deemed to have violated the law if they have made a bona fide inquiry into whether a person employed or referred to them is a citizen or an alien, and if an alien, whether they are lawfully admitted to the United States for permanent residence, admitted under a work permit, or authorized by the U.S. Attorney General to accept employment. M.G.L. c. 149 §19C.

Drug Testing

Massachusetts has not enacted any laws restricting drug testing by private employers. However, in *Webster v. Motorola*, the Massachusetts Supreme Court held that an employer’s random drug testing policy must be weighed on a case-by-case basis by analyzing whether the employer’s legitimate business interest in determining whether its employees are using drugs outweighs the employees’ right to privacy. *Webster v. Motorola, Inc.*, 418 Mass. 425 (Mass. 1994). In *Webster*, the court determined that testing was justified for some employees, whose performance of job duties while intoxicated by drugs would have involved a direct threat to the safety of others, damaged corporate property, and exposed the employer to corporate liability. *Id.*

Jury Duty Leave and Compensation

No person shall be discharged from or deprived of their employment because of their attendance or service as a grand or traverse juror in any court. An employer who violates this rule will be held in contempt of the court upon which the employee is or has been in attendance. M.G.L. c. 268 § 14A. Employers are required to pay employees their regular wages 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. M.G.L. c. 234A § 48.

Beginning on the fourth day of jury service, and each day after, the commonwealth of Massachusetts will pay jurors \$50 per day. M.G.L. c. 234A § 51. Beginning on the fourth day of grand jury service, and each day after, the commonwealth of Massachusetts will pay grand jurors at a rate determined for that particular grand juror. M.G.L. c. 234A § 54. The rate for a particular grand juror will be the greater of either: \$50 per day or an amount not to exceed the regular daily wages plus daily travel expenses in excess of those ordinarily incurred by the juror. The juror is entitled to receive this amount cumulatively from their employer and the commonwealth, however, the contribution by the commonwealth shall not exceed \$50 per day. M.G.L. c. 234A § 53.

Voting Leave

Under Massachusetts law, owners, employers, superintendents, and overseers of manufacturing, mechanical, or mercantile establishments are required to grant leave to employees to vote. Those employers must grant leave to their employees, only upon request by the employee, and must grant the leave only for the period of two hours after the opening of the polls in the voting precinct, ward, or town in which the employees are entitled to vote. M.G.L. c. 149 § 178. An employer that violates this law may be subject to a fine not to exceed \$500. M.G.L. c. 149 § 180.

Domestic Violence and Abuse Leave

Under Massachusetts law, an employer of 50 or more employees must permit an employee to take up to 15 days of leave from work within a 12-month period if they or a family member are the victim of abuse and are using that time to address issues directly related to that abuse. The employer may require the employee to provide documentation of their being a victim of abuse. Documents which the employer must accept as evidence include:

1. A protective order, order of equitable relief, or other documentation issued by a court;
2. A document under the letterhead of the court, provider, or public agency which the employee attended for the purpose of acquiring assistance as it relates to the abusive behavior against the employee or the employee's family member;
3. A police report or statement of a victim or witness provided to police, including a police report documenting the abusive behavior complained of by the employee or the employee's family member;
4. Documentation that the abuser has admitted to facts sufficient to support a finding of guilt of abusive behavior;
5. Medical documentation of treatment resulting from the abuse;
6. A sworn statement, signed under penalty of perjury, provided by a counselor, social worker, health care worker, member of the clergy, shelter worker, legal advocate, or other professional who has assisted the employee; or
7. A sworn statement, signed under penalty of perjury, from the employee attesting that they have been the victim of abuse.

All such documentation must be kept confidential by the employer. An employee seeking leave under this act is required to first exhaust all annual or vacation leave, personal leave, and sick leave available, but the employer may waive this requirement. The employer has the sole discretion to determine if any leave taken under this provision is paid or unpaid. M.G.L. 149 § 52E. An employer that violates this law may be subject to a fine not to exceed \$500. M.G.L. c. 149 § 180.

Paid Leave

Most Massachusetts employees are eligible for up to 26 weeks of combined family and medical leave per benefit year. These 26 weeks may include: (1) up to 20 weeks of paid medical leave to manage a personal serious health condition; (2) up to 12 weeks of paid family leave to care for a family member, to bond with a child, or to manage an emergency arising from the fact that a family member is on active duty; or (3) up to 26 weeks of paid family leave to care for a family member who is a member of the armed forces. M.G.L. c. 175M § 2.

Employees may take more than one kind of leave in a benefit year, but the maximum amount of paid leave you can take in a benefit year is 26 weeks. M.G.L. c. 175M § 2.

Parental Leave Act

The Massachusetts Parental Leave Act requires employers with six or more employees to provide no fewer than eight weeks of unpaid leave to eligible employees for the birth or for the placement of a child under the age of 18, or under the age of 23 if the child is mentally or physically disabled. An eligible employee is any employee who has completed a probationary period with the company not to exceed three months or has worked for the same employer full-time for at least three months if no probationary period is implemented. M.G.L. c. 149 § 105D. This law is gender neutral: leave must be afforded to employees who request it, regardless of gender. Mass.gov.

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 Family and Medical Leave Act, to:

1. Participate in school activities directly related to the educational advancement of their child, such as parent-teacher conferences, or interviewing for a new school;
2. Accompany the child of the employee to routine medical or dental appointments, such as check-ups or vaccinations; and
3. Accompany an elderly relative – an individual of at least 60 years of age – to routine medical or dental appointments or other professional services related to the elder's care, such as interviewing at nursing or group homes.

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 practicable. M.G.L. c. 149 § 52D.

Paid Family and Medical Leave Act

Massachusetts' Paid Family and Medical Leave Act (PFML) and the federal Family and Medical Leave Act (FMLA) are separate laws that cover similar situations, however, employers who are exempt from FMLA may be subject to PFML. All Massachusetts businesses may be subject to the PFML law, even those not subject to the FMLA.

Under the PFML eligible employees may take up to 12 weeks after the birth, adoption, or foster care placement of a child. M.G.L. c 175M § 2. An employee's weekly benefit amount is a percentage of the employee's earnings and is capped at a maximum of \$1,149.90 per week. Mass.gov.

To be eligible to receive paid leave under PFML, an employee must have earned at least \$6,300 in the previous 12 months. Mass.gov. PFML eligibility is not dependent on how long an individual has worked for a current employer. If both parents work for the same employer, both parents are entitled to up to 12 weeks of PFML. This time is granted for the parent to bond with the child and may be taken within one year of the child's birth or placement.

Sick Leave

Earned sick time shall be provided by an employer for an employee to: (1) care for the employee's child, spouse, parent, or parent of a spouse who is suffering from a physical or mental illness, injury, or medical condition that requires home care, professional medical diagnosis or care, or preventative medical care; (2) care for the employee's own physical or mental illness, injury, or medical condition that requires home care, professional medical diagnosis or care, or preventative medical care; (3) attend the employee's routine medical appointment or a routine medical appointment for the employee's child, spouse, parent, or parent of a spouse; or (4) address the psychological, physical, or legal effects of domestic violence, and (5) address the employee's own physical and mental health needs, and those of their spouse, if the employee or the employee's spouse experiences pregnancy loss or a failed assisted reproduction, adoption, or surrogacy.

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 the date an employee is hired.

However, employees are not entitled to use accrued earned sick time until the 90th calendar day after the commencement of their employment. M.G.L. c. 149 § 148C.

An employer with 11 or more employees must provide paid leave. Smaller employers must provide unpaid leave. If the employee's primary place of work is Massachusetts, the employee is eligible for sick leave.

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 the signs are clearly visible to all employees, customers, or visitors while in the workplace. M.G.L. c. 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 for a nursing child if the employee requests such an accommodation. However, an employer may deny such an accommodation if the employer can demonstrate that the accommodation would impose an undue hardship on the employer's program, enterprise, or business. A "Reasonable accommodation" may include, but shall not be limited to: (1) more frequent or longer paid or unpaid breaks; (2) time off to attend to a pregnancy complication or recover from childbirth with or without pay; (3) acquisition or modification of equipment or seating; (4) temporary transfer to a less strenuous or hazardous position; (5) job restructuring; (6) light duty; (7) private non-bathroom space for expressing breast milk; (8) assistance with manual labor; or (9) a modified work schedule, provided, however, that an employer shall not be required to discharge or transfer an employee with more seniority or promote an employee who is not able to perform the essential functions of the job with or without reasonable accommodation. M.G.L. c. 151B § 4.

Minimum Wage, Tipped Employees, and Overtime Pay

The minimum wage in Massachusetts is \$15.00 effective January 1, 2023. M.G.L. c. 151. The minimum wage for tipped employees is \$6.75 per hour as of January 1, 2023, provided that their tips bring them up to at least \$15 per hour. If the total hourly rate for the employee including tips does not equal \$15 at the end of the shift, the employer must make up the difference. Mass.gov. For overtime pay, employers must compensate employees at a rate of not less than one and one-half times the regular rate at which the employer pays the employee for any work in excess of 40 hours in one week. Some employees are exempt from overtime pay. M.G.L. c.151 § 1A.

Payment Schedule Every employer in Massachusetts must pay its nonexempt employees weekly or biweekly. Exempt employees may be paid biweekly or semi-monthly. M.G.L. c. 149 § 148.

Final Payments

An employee who is terminated involuntarily must be paid in full on the day of their discharge. However, if the employee is absent from the job site when terminated, the employee "shall be paid thereafter on demand." An employee who voluntarily resigns their employment can be paid on the next regular pay date after their departure. M.G.L. c. 149 § 148.

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. Employees who resign or who are terminated, are entitled to accrued vacation pay. M.G.L. c.149 § 148; *See also Electronic Data Systems Corp. v. Att'y Gen.*, 907 N.E. 2d 635, 637 (Mass. 2009).

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. M.G.L. c. 151A.

Workers' Compensation

Workers injured on the job are generally entitled to workers' compensation benefits from the employer. Employers are required to maintain workers' compensation insurance. M.G.L. c.152 § 25A. Employers must furnish notice within seven calendar days to the Division of Administration, the employee, and the insurer about any injury alleged to have arisen out of and in the course of employment that incapacitates an employee from earning full wages for a period of five or more calendar days. M.G.L. c.152 § 6.

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, a child who 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 scheduled school day. A "child" is defined as a person under 18 years of age.

Also, a child who is 16 years or older may be employed in a restaurant or racetrack until, but not after 12:00 a.m. (midnight) on any given night, other than a night preceding a regularly scheduled school night. 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. M.G.L. c. 149 § 66. However, this section shall not apply to a child employed at a kiosk, cart, or stand located within the common areas of an enclosed shopping mall that employs security personnel, a private security company, or a public police detail every night from 8:00 p.m. until the mall is closed to the public.

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. M.G.L c. 140 §§ 121-131Q.

Prohibition of Work on Holidays for Mills or Factories

Whoever requires an employee to work in any 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 \$1,500. M.G.L. c. 149 § 45.

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. Any employer who violates this section shall be punished by a fine of not less than \$300 nor more than \$600. M.G.L c. 149 § 100. The break period may be unpaid if employees are free from all duties and free to leave the workplace during the break. MA Dept. of Labor and Workforce Dev., Opinion Letter 08-05-03.

Additional Laws and Regulations

Polygraph Testing

It is unlawful for any employer or their 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 in or beyond the commonwealth, or to discharge, not hire, demote, or otherwise discriminate against such person. This law does not apply to lie detector tests administered by law enforcement agencies as permitted in criminal investigations. M.G.L. c. 149 § 19B.

Genetic 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. M.G.L. c. 111 § 70G.

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 such records without having informed written consent, except upon proper judicial order or to a person whose official duties (in the opinion of the commissioner) make them entitled to receipt of the information.

Medical Marijuana

Massachusetts permits a qualifying patient with a debilitating medical condition to obtain a written or electronic certification from a healthcare professional with whom the patient has a bona fide health care professional-patient relationship to purchase medical use marijuana from a medical marijuana treatment center. A qualifying patient or personal caregiver shall not be subject to arrest, prosecution, or civil penalty for medical use of marijuana. M.G.L. c. 94I § 2.