

EMPLOYMENT DISCRIMINATION

Information & Resources for Workers

Contents

I've Lost My Job...What Do I Do Now?	3
I'm Being Harassed...What Do I Do Now?	4
Information about Employment Discrimination	5
What is Illegal Discrimination?	5
How Do I Start A Discrimination Case?	5
Will I Get A Hearing at the MCAD?	6
How Does the MCAD Determine If My Case Should Go To A Hearing?	6
What If the MCAD Dismisses My Case?	8
Will the MCAD Provide A Lawyer To Help Me?	9
What Will Happen If I Go To A Hearing and Win?	9
When Can I Go To Court?	10
Will An Employer Want To Settle My Case?	10
Sample Letter to Request Personnel File	11
Worker Reference Sheet	12

I've Lost My Job...What Do I Do Now?

1. If you were in a union, consult with the union about filing a grievance.
2. File a claim for unemployment benefits with the [Division of Unemployment Assistance](#) (617-626-6800). For information about other types of benefits (temporary cash assistance, food stamps, etc.), check with [MassResources.org](#).
3. If you think your employer owes you money, or if you have any other wage problems, check with the [Massachusetts Attorney General's](#) office (617-727-3465) about how to get your unpaid wages.
4. For health insurance, check with the [Commonwealth Connector](#) (877-MA-ENROLL) to see if you're eligible for free or low-cost benefits. If you're applying for or receiving unemployment benefits, you should also check with the [Medical Security Plan](#) (800-908-8801) to see if you're eligible for benefits.
5. Start looking for another job & keep records of your job search.
6. Gather together any documents you have from your former job.
7. If you think you lost your job because of your race/color, national origin, age (over 40), sex, disability, religion, or sexual orientation, or if you think you lost your job because you complained about discrimination or harassment, call the Fair Employment Project (617-390-2593) to see if you can get free legal assistance.
8. If you think you lost your job because of your immigration status, call the [Office of Special Counsel](#) (800-255-7688).
9. For other legal claims, call the Legal Advocacy & Resource Center (617-603-1700). To find a private attorney, call the Boston Bar Association Lawyer Referral Service (617-742-0625) or the Massachusetts Bar Association Lawyer Referral Service (866-MASS-LRS).

I'm Being Harassed...What Do I Do Now?

1. If possible, consult with an attorney. To see if you're eligible for free legal assistance, call the Fair Employment Project (617-390-2593) or the Legal Advocacy & Resource Center (617-603-1700). To find a private attorney, call the Boston Bar Association Lawyer Referral Service (617-742-0625) or the Massachusetts Bar Association Lawyer Referral Service (866-MASS-LRS). If you are a union member, you should also consult with your union.
2. If you think you're being harassed based on your race/color, national origin, age (over 40), sex, disability, religion, sexual orientation, or because you have complained about unfair treatment, you need to consider whether to file a complaint with the [Massachusetts Commission Against Discrimination](#) (MCAD) (617-994-6000). If you fail to file a complaint at the MCAD within 300 days of any harassment, you might lose the right to take further legal action.
3. You need to decide whether to report the harassment to a supervisor or human resources official. If you don't report the harassment, the company might not know what's going on and won't be able to take corrective action. Also, if the company doesn't know about the harassment, it might not be legally responsible.
4. Do not give your employer an excuse to take disciplinary action against you. Follow all workplace rules and policies, and act reasonably.
5. Keep a diary of significant events.
6. If the harassment is causing medical or emotional problems, seek medical attention.

Information About Employment Discrimination

What Is Illegal Discrimination?

Employers are supposed to follow a large number of rules created by the Massachusetts legislature, the U.S. Congress, government agencies (such as the U.S. Occupational Safety and Health Administration), and the courts. These rules allow employers to discipline or fire workers, as long as the reason for the action is not illegal. What this means is that employers do NOT necessarily have to treat workers fairly. For example, if your boss fires you because she wants to hire one of her family members to do your job, that is not illegal in most situations (special rules apply for union members, government employees, and employees with contracts).

What IS illegal is for employers to treat you differently and worse because of characteristics the law has “protected,” including your race, age (if you are over 40), sex, pregnancy, national origin, ancestry, religion, disability, or sexual orientation. Usually, it also is illegal for employers to treat you differently and worse because you have done something that the law gives you the right to do, like complaining about discrimination, filing a claim for workers’ compensation, or requesting a leave. Because the rules about firing can get complicated, you should talk to a lawyer if at all possible, as soon as possible.

How Do I Start A Discrimination Case?

If you think that you have been treated differently and worse because of a protected characteristic (race, age, sex, etc.), then the first step is to file a complaint at the Massachusetts Commission Against Discrimination, also known as the MCAD. You MUST take this step first to pursue a discrimination claim, even if you want to pursue your case in court. (As an alternative, you can file a complaint at the local office of the EEOC, but the EEOC does not have the same enforcement powers as the MCAD.)

You have to file a complaint within 300 days (about 10 months) of the employer’s illegal action. For example, if you are told on February 1, 2004 that you are being fired and that your last day of work will be February 14, 2004, you must file a complaint at the MCAD within 300 days of February 1, 2004, because that is when you learned about the illegal action. It can be tricky to figure out when the 300 days start, so if you cannot get legal assistance the safest thing to do is to file a complaint as soon as possible.

To file a complaint, go to the MCAD’s office on the 6th floor of One Ashburton Place in Boston. One Ashburton Place is right next to the Massachusetts State House. The closest T stops are Park (Red Line, Green Line), Downtown Crossing (Orange Line), and State (Blue Line). The telephone number is 617-994-6000. When going to file your complaint, you should bring the name and address of your employer and any documents that will help you explain your case.

At the MCAD, you will meet with an intake person, who will listen to your story, ask questions, and prepare a complaint for you to sign.

Will I Get A Hearing At The MCAD?

There are two parts to a case at the MCAD. The first part is called the investigation stage, when the MCAD will figure out if your case should go to a hearing. If the MCAD decides your case should go to a hearing, it will issue a “probable cause” finding, and your case will then go to the second stage, called the hearing stage. Although the numbers change over time, usually only about 1 or 2 out of every 10 cases gets a “probable cause” finding and goes to the hearing stage.

If the MCAD decides your case should not go to a hearing, which is what happens in most cases, it will issue a “lack of probable cause” finding and dismiss your case.

How Does The MCAD Determine If My Case Should Go To A Hearing?

After you file a complaint, there are usually three steps before the MCAD will decide if your case should proceed to a hearing.

1. Position Statement

After you go to the MCAD to file a complaint, the MCAD will send a copy of the complaint to your employer. (In the MCAD’s words, you are called the “complainant” and the employer is called the “respondent.”) The MCAD will tell the employer to provide a response to the complaint within 21 days. The employer’s response is called a “position statement.” Employers often will ask for more time to provide a position statement, and the MCAD usually will give the employer an extra 21 days, sometimes more and sometimes less. When the employer sends its position statement to the MCAD, it also should send a copy to you.

A position statement usually looks like a letter and often has attachments. Most of the time, the position statement is prepared by a human resources person, by a company lawyer, or by a lawyer hired by the company to respond to the complaint. In the position statement, the employer will argue that it did not discriminate against you. Position statements often will try to make it look like you were a bad employee, a complainer, or someone who cannot be trusted.

The employer is required to sign the position statement under oath. If the position statement is not signed under oath, you should ask the MCAD to make the employer sign the statement under oath.

2. Rebuttal

Once you receive the position statement, the MCAD will give you 21 days to respond. Your response is usually referred to as the “rebuttal.” The rebuttal is the most important part of your case during the investigation stage, so you should make it as strong and detailed as possible.

The first thing you should do is request a copy of your personnel record from your employer. Under Massachusetts law, you have the right to obtain a copy of your

personnel record from your employer within 5 business days of your request. You should make your request in writing, so you have a record of it. The law that gives you the right to get your file (the law can be referred to as the “Personnel Record Statute, Mass. Gen. Laws ch. 149, § 52C”), requires the employer to provide specific kinds of information, including any documents about why you were fired, demoted, etc.

Once you receive your personnel record, you should compare what the employer said about you in the position statement to what is in your personnel record. For example, if the position statement said that you were repeatedly warned about being late to work, are there warnings in your personnel record? If not, you can say in your rebuttal that the employer’s statement that you were warned is not supported by your personnel record. As another example, if the employer said in the position statement that you were fired for being rude to your boss, but if a form in your personnel record says that you were fired for being late to work, you can say in your rebuttal that the employer is changing its story.

What you are trying to do in the rebuttal is convince the MCAD that the real reason you were fired (or demoted, harassed, etc.) was because of a protected characteristic, such as race, gender, or disability. Here are the kinds of things to mention in the rebuttal:

- Did you ever hear any negative comments (or did anyone tell you they heard any negative comments) about people like you? For example, if you think you were fired because of your age, did anyone ever say something like, “we need to get rid of the old geezers.”
- Are the reasons given by the employer in the position statement true? For example, if the employer said you were fired for being late to work, were you late to work? Do you have anything you can show to the MCAD to prove that you were not late to work? Do you know of anyone who could sign a statement for you saying that you were not late to work?
- Were other employees treated the same as you? For example, if you are black and the employer says you were fired for being late to work, were white employees also fired for being late to work?
- Did the employer follow its own policies? For example, if there is an employee handbook that says employees will receive 2 warnings before being fired, were you given 2 warnings before being fired?
- Did the employer favor certain categories of people for promotions or hiring? For example, if you were a female cashier in a supermarket, were most of the cashiers women and all of the managers men?

The MCAD will be looking for this type of information in your rebuttal. The more details you can provide, the stronger your rebuttal will be.

If you need additional time to finish your rebuttal, you should call the MCAD as soon as possible to request more time.

3. Investigative Conference

After the MCAD receives your rebuttal, it may schedule what is called an “investigative conference.” The conference is held at the MCAD and usually lasts about 10-15 minutes. THIS IS NOT A “HEARING” – IT DOES NOT MEAN THE MCAD HAS ISSUED A PROBABLE CAUSE FINDING IN YOUR CASE. The purpose of the conference is to give the investigator a general sense of what your case is about. It also gives the investigator a chance to ask for more information, although the investigator typically will ask a limited number of questions.

As the complainant, you will be given the chance to speak first. You typically have about 5-10 minutes to explain what happened in your case and why you believe you were treated differently and worse. The employer will then give its side of the case. If the employer is represented by a lawyer, the lawyer will make this presentation (although someone, and sometimes several people, from the employer will be with the lawyer).

You might be asked if you want to respond to what the employer said. This is not a chance to repeat what you said before but to respond, briefly, to anything the employer said that you think is wrong or misleading.

4. Probable Cause Finding

After you have submitted your rebuttal, and after the investigative conference (if there is one), the MCAD will eventually issue a decision, either dismissing your case (a finding of “lack of probable cause”) or moving your case to the hearing stage (a finding of “probable cause”). This decision can take months, and sometimes more than one year.

What If The MCAD Dismisses My Case?

If the MCAD dismisses your case, you have 10 days to tell the MCAD, in writing, that you want to appeal. If possible, you should personally deliver your request for an appeal to the MCAD to guarantee that it is received within 10 days.

The MCAD will schedule an appeal hearing, which is similar to an investigative conference. At the appeal hearing, you will have an opportunity to explain why the MCAD’s dismissal was wrong. If you prefer, you also can submit a written version of your appeal. If you have discovered new information about your case, you should provide it to the MCAD as part of your appeal. The MCAD denies most appeals, but if you think an error was made you should appeal.

When deciding whether your case should go to a hearing, the MCAD is not supposed to decide which side is telling the truth. That is what happens at a hearing. Instead, the MCAD is supposed to believe what you say in your complaint and rebuttal and determine if you have enough evidence to go to a hearing. If your case is dismissed, you should read the MCAD’s decision carefully. If it looks like the MCAD believed what the employer said, and did not believe what you said, you should argue in your appeal that the MCAD acted improperly.

Will The MCAD Provide A Lawyer To Help Me?

During the first stage (the investigation stage), the MCAD will not provide any legal assistance to you. You will have to handle your case on your own or will have to find your own lawyer. If you cannot afford a lawyer, you might find a lawyer who will represent you on what is called a “contingency” arrangement. What this means is that you will not have to pay anything to the lawyer unless you settle or win your case. If you settle or win your case, you will have to pay part of the money you receive to the lawyer. The most common arrangement is a 1/3 contingency, meaning that you will have to pay the lawyer 1/3 of the money you receive. For example, if you settle your case against your employer for \$9,000 (in other words, the employer agrees to pay \$9,000 rather than fight your case), the lawyer would receive \$3,000 and you would receive \$6,000 (these amounts would be adjusted depending on the exact agreement you had).

If the MCAD decides that your case should proceed to the hearing stage, then the MCAD will appoint an MCAD attorney to handle your complaint at no cost to you. If you prefer, you can hire your own lawyer, but you will have to make arrangements with the attorney about how he or she will be paid.

What Will Happen If I Go To A Hearing And Win?

If your case moves to the hearing stage, you will have a very long wait (usually several years) before you have a hearing. If you win at the hearing, you will be entitled to “damages,” which is compensation for what you lost as a result of the employer’s illegal discrimination. The damages you can recover include lost pay and emotional distress.

Lost pay is the amount of money you lost based on the employer’s discrimination. For example, if you remained unemployed for one year after being fired and then found another job paying the same amount you used to earn, your lost pay would be one year of your old pay. Under the law, you are required to look for another job, so if you did not look for another job after being fired, you might be prevented from getting lost pay from the employer.

Emotional distress damages are designed to pay you for any mental or emotional distress you suffered as a result of the discrimination. At the MCAD, emotional distress damages most often fall in the range of \$5,000 to \$30,000, although it could be \$0 and it could be greater than \$30,000, depending on what evidence you have to demonstrate your distress.

In addition to lost pay and emotional distress, the employer also might be required to pay your attorney’s fees, interest, and a penalty of \$10,000 (or more or less, depending on several things). Generally, your attorney would be entitled to the attorney’s fees, you would be entitled to the interest, and the state would keep the penalty.

When Can I Go To Court?

Under Massachusetts law, if you want to pursue your discrimination case in court, you have to file your court complaint within three years of the discrimination. If your case is still going on at the MCAD, you should notify the MCAD that you have decided to

proceed in court. If the MCAD has dismissed your case, you are still allowed to file a claim in court, but you must do so within three years of the discrimination.

If you are pursuing a claim under federal law (such as Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, or the Americans with Disabilities Act), the time limits are different. You first need to obtain a “right-to-sue” letter from the EEOC. You will then have 90 days to file a claim in court.

Will An Employer Want To Settle My Case?

Employees often think that an employer will want to do whatever it can to keep a discrimination case out of the newspaper. This might be true in some cases, but most employers, particularly larger employers, are used to dealing with occasional stories like this, so they are usually unwilling to pay a settlement just to avoid a newspaper story.

Employees also routinely think that employers will not want to incur legal fees to have to deal with a complaint. Employers are never happy to incur legal fees, but they are often more concerned about what would happen if they settle a complaint. They worry that if they settle one complaint, other employees will start filing complaints just to get a settlement. What this means is the employers often will stubbornly refuse to settle a case, even if it means they will incur a large amount of legal fees.

At the early stages of a case, some employers will refuse to discuss settlement at all. More often, employers might be willing to settle a case but only for a small amount of money, maybe \$1,000 to \$3,000. Occasionally, where the employer is more concerned about the case (you cannot expect the employer to tell you this, of course), it might be willing to pay greater amounts, but this varies greatly on a case-by-case basis.

Sample Letter To Request A Copy Of Your Personnel File

[YOUR ADDRESS]

[DATE]

[COMPANY NAME & ADDRESS]

Dear [COMPANY]:

I am hereby requesting a copy of my “personnel record,” which you are required to provide within five business days pursuant to Mass. Gen. Laws ch. 149, § 52C. Please note that the law defines a “personnel record” as “a record kept by an employer that identifies an employee, to the extent that the record is used or has been used, or may affect or be used relative to that employee's qualifications for employment, promotion, transfer, additional compensation or disciplinary action.”

Thank you.

Sincerely,

[YOUR NAME]

Worker Reference Sheet

Health Insurance

- MA Connector, 877-MA-ENROLL, <http://www.mahealthconnector.org>
- If collecting unemployment: Medical Security Program, 800-908-8801

Cash & Food Assistance (Food Stamps, EAEDC, TAFDC)

- Refer to local office of Department of Transitional Assistance, 800-249-2007, www.mass.gov
- Project Bread Hotline: 800-645-8333

Wage Complaints

- Volunteer Lawyers Project: 617-423-0648
- Office of the Attorney General
Fair Labor Division
One Ashburton Place
Boston, MA 02108
www.mass.gov
- Fair Labor Hotline: 617-727-3465

Discrimination Complaints

- Fair Employment Project, 617-390-2593, www.fairemploymentproject.org
- Massachusetts Commission Against Discrimination
One Ashburton Place, 6th Floor
Boston, MA 02108
617-994-6000; 617-994-6024 (fax)
www.mass.gov
- U.S. Equal Employment Opportunity Commission
1 Congress Street, Room 1001
Boston, MA 02114
617-565-3200
www.eeoc.gov
- U.S. Department of Justice
Office of Special Counsel (immigration-status discrimination): 800-255-7688
<http://www.usdoj.gov/crt/osc/>

Worker Reference Sheet

Unemployment Benefits Claims

Massachusetts Division of Unemployment Assistance
19 Staniford Street
Boston, MA 02114
Claims: 617-626-6800
Hearings: 617-626-5200
Hearings Fax (General): 617-727-5874
Hearings Fax (Request Hearing): 617-727-9329

Unemployment Hearings

Greater Boston

- Legal Advocacy & Resource Center 617-603-1700
- Volunteer Lawyers Project 617-423-0648
- Greater Boston Legal Services 617-371-1234
- Harvard Legal Aid Bureau 617-495-4408

Outside Greater Boston

See www.masslegalhelp.org (use Find Legal Aid tool)

Union Issues

National Labor Relations Board
10 Causeway St # 601
Boston, MA 02222
(617) 565-6700
www.nlr.gov

Family & Medical Leave Act

U.S. Department of Labor
ESA Wage & Hour Division
John F. Kennedy Federal Building
Room 525
Boston, MA 02203
(617) 624-6700
www.dol.gov

Attorney Referral Services

- Massachusetts Bar Association 617-654-0400
- Boston Bar Association 617-742-0625