

EMPLOYMENT DISCRIMINATION



There are many forms of discrimination. At the Massachusetts Commission Against Discrimination (MCAD), discrimination is the unfair treatment of a person or group based on the certain characteristics of who they are—referred to as their membership in a protected class:

PROTECTED CLASSES

- Race (including natural & protective hairstyles)
- Color
- Disability
- Age (40+)
- Religious Creed
- Sex
- Pregnancy / Nursing or Other Pregnancy Condition
- Sexual Orientation
- Parental Leave
- Gender Identity / Gender Expression
- Marital Status
- National Origin
- Ancestry
- Active Military
- Veteran Status
- Retaliation
- Genetic Information
- Criminal Record

COMMON FORMS OF EMPLOYMENT DISCRIMINATION

Disparate Treatment

Unequal treatment based on membership in a protected class.

Example: lower salary, denial of leave or benefits, non-selection/promotion, inequitable discipline or appraisal based on membership in a protected class.

Retaliation

An adverse action by the employer as a result of the employee engaging in a protected activity.

Example: an employee complains about discrimination in their department (protected activity), and in response, the employer fires them (adverse action).

Disparate Impact

A rule or policy that appears neutral but impacts groups differently.

Example: a grooming policy that limits hair textures, protective styles, or height.

Harassment

Words, conduct, or actions that denigrate, show hostility to, or exhibit aversion towards a person or group based on their membership in a protected class. Conduct is unwelcome, severe, and pervasive.

Examples:

- **Protected Class Harassment:** inappropriate touching of a non-sexual nature, stereotyping, knowingly misgendering.
- **Sexual Harassment:** sexual advances, requests for sexual favors, sexual jokes, displaying sexually suggestive pictures or objects.

Failure to Accommodate

Failure to Accommodate Employees or Job Applicants for their disability, religion, pregnancy or pregnancy-related conditions.

The Interactive Process is essential: dialogue exploring a potential reasonable accommodation which would allow an employee to perform the essential functions of their position.

RESPONSIBILITIES

Employees

- Monitor your own behavior
- Report potential policy violations or accommodation needs to the employer when feasible
- Participate in the interactive process if making a request for reasonable accommodation

Supervisors

- Monitor behavior and counsel anyone who behaves inappropriately
- Report potential policy violations immediately
- Recognize a possible need for an accommodation and report accommodation needs
- Know when to get assistance with an interactive process
- Implement agreed-upon accommodation(s)
- Prevent retaliation
- Must report even if:
 - The person reporting is reluctant
 - The complaint is made verbally
 - The complaint appears trivial or false
 - Remedial action is immediately taken
 - The person reporting was not specifically offended or targeted by the conduct
 - Complaint not made but conduct is pervasive

Web Resources

Massachusetts Commission Against Discrimination (MCAD): mass.gov/MCAD

Massachusetts Attorney General (AGO): AGO.state.ma.us

U.S. Equal Employment Opportunity Commission (EEOC): EEOC.gov

