



Massachusetts Commission Against Discrimination

Know Your Rights: A Brief Guide to Massachusetts' Anti-Harassment Law in the Workplace

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Overview: All Massachusetts employees are entitled to work in an environment free from unlawful harassment. Unlawful harassment can be sexual harassment or harassment based on an employee's membership in a legally protected group, or "protected class." Such harassment deprives employees of their rights and basic well-being in the workplace.

Who qualifies as an employee: Under Massachusetts law, an employee includes full-time and part-time workers, temporary workers, contract workers, minor workers, and domestic workers. Independent contractors, interns, volunteers, and those employed by immediate family members are not typically considered employees. However, there are specific definitions associated with each employee category, so just labeling someone as a non-employee (e.g., independent contractor, intern) does not necessarily mean they are not protected by M.G.L. c. 151B.

The two types of unlawful harassment, protected class harassment and sexual harassment, can each take the form of either quid pro quo harassment or hostile work environment harassment.

Sexual Harassment

The Law: It is unlawful "[f]or an employer, personally or through its agents, to sexually harass any employee." M.G.L. c. 151B, § 4(16A).

Definition: Sexual harassment is harassment involving unwelcome, or unwanted, conduct of a sexual nature, including but not limited to sexual advances, requests for sexual favors, inappropriate touching, sexual jokes or gestures, or displaying sexually suggestive pictures or objects. Sexual harassment is defined as a type of sex harassment. However, the person being harassed or doing the harassing can be of any sex, gender, or sexual orientation. Also, conduct does not have to be motivated by sexual desire or attraction to qualify as sexual harassment.

Types of Sexual Harassment:

- Quid pro quo sexual harassment occurs whenever an employee is asked to submit to or tolerate sexual conduct in exchange for keeping their job, getting workplace benefits or opportunities, or avoiding negative consequences. Such a condition can be clearly stated or hinted at.

- Hostile work environment sexual harassment occurs whenever sexual conduct creates an “intimidating, hostile, humiliating, or sexually offensive work environment” that makes it harder for an employee to do their job or fully participate in the workplace.

Protected Class Harassment

The Law: It is unlawful “[f]or an employer, by himself or his agent... to discriminate against [any] individual in compensation or in terms, conditions or privileges of employment [because of their protected class] unless based upon a bona fide occupational qualification.” M.G.L. c. 151B, § 4(1).

Definition: Protected class harassment is harassment involving unwelcome, or unwanted, conduct directed at an employee because they belong to, or are believed to belong to, a protected class or because they are associated with a member of a protected class. Such harassment can include inappropriate touching of a non-sexual nature, stereotyping, knowingly misgendering, or displaying offensive pictures or objects. Sometimes, an employee is harassed because they belong to, or are believed to belong to, more than one protected class. In that case, they may have a claim of intersectional protected class harassment.

The following are protected classes within the employment context:

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| • race | • gender identity | • ancestry |
| • color | • sexual orientation | • veteran status |
| • religion | • genetic information | • military service |
| • national origin | • pregnancy or a | • age (40+) |
| • sex | pregnancy-related | • disability status |
| | condition | |

Types of Protected Class Harassment:

- Quid pro quo protected class harassment occurs whenever an employee is asked to tolerate discriminatory conduct to keep their job, get workplace benefits or opportunities, or avoid negative consequences. Usually, it involves requiring an employee to change or hide things about themselves related to their protected class. Such a condition can be clearly stated or hinted at.
- Hostile work environment protected class harassment occurs whenever discriminatory conduct based on an employee’s membership in or association with a member of a protected class creates an intimidating, hostile, humiliating, or offensive work environment that makes it harder for an employee to do their job or fully participate in the workplace.

Harassment Outside of the Workplace: An employee may have a claim of unlawful harassment even if the harassing conduct did not happen at work or during work hours. This includes harassment that occurs via social media or other online platforms. What matters is that the conduct is sufficiently connected to the employee's job or their relationship with their employer.

Preventing Harassment at Work: Employers are required by law to adopt and to provide their employees with a sexual harassment policy. The Massachusetts Commission Against Discrimination (MCAD) provides a [Model Sexual Harassment Policy](#) for employers to use and a [Sexual Harassment Poster](#) that it encourages employers to post. Although not required, employers are strongly encouraged to adopt a policy against protected class harassment as well. The MCAD recommends employers implement a general anti-harassment policy aimed at eliminating all protected class harassment in the workplace.

Addressing Harassment at Work: An employer who knows or should know about harassment against an employee has a duty to investigate and take reasonable and appropriate action to remedy the situation. Reporting harassment to supervisory personnel, human resources, an owner, or any individual responsible for handling such complaints, whether formally or informally, verbally or in writing, is sufficient to put an employer on notice. An employer must investigate all harassment between coworkers regardless of the hierarchical or departmental relationship between them. This duty remains even if the harassment is reported for the first time during an exit interview or if either party no longer works for the employer. Where an employer fails to investigate a complaint of coworker harassment in a prompt and effective manner, or to take reasonable steps to stop the harassment, the employer faces liability.

If harassment is confirmed, the employer must act promptly to stop it and prevent future incidents. Remedial actions could include ending ongoing harassment, disciplining the harasser, and conducting company-wide anti-harassment training. Failing to address known harassment promptly may itself be considered retaliatory and subject to legal action.

Retaliation: It is against the law to retaliate or threaten to retaliate against an employee for doing something protected under M.G.L. c. 151B, including filing a complaint of harassment or cooperating in the investigation of such a complaint. Conduct that would discourage a reasonable person—even a person who no longer works where the discrimination occurred—from making or supporting a charge of discrimination is unlawful retaliation. Employees can file a separate complaint of workplace retaliation and that claim may be successful even if the underlying claim of discrimination fails.

Filing a Complaint: The MCAD enforces M.G.L. c. 151B by investigating, prosecuting, and adjudicating complaints of unlawful employment discrimination, including harassment. Complaints must be filed with the MCAD within 300 days of the most recent alleged act of discrimination, with very limited exceptions. If harassment is proven, remedies under M.G.L. c. 151B may include compensation for emotional distress or lost wages. The MCAD can also impose civil penalties, order training for employers and individuals, or impose other affirmative relief.