

## **CLIENT ALERT: Massachusetts Supreme Judicial Court Recognizes Claim For Associational Discrimination Based On Handicap Under Chapter 151B**

On July 19, 2013, the Massachusetts Supreme Judicial Court (“SJC”) held for the first time that G.L. c. 151B (“Chapter 151B”) prohibits employers from discriminating against an employee based on the handicap of persons with whom the employee associates. According to the SJC, employers can be held liable under Chapter 151B for associational discrimination where an employee, although not handicapped himself or herself, is the victim of discriminatory animus directed toward a third person who is handicapped and with whom the employee associates.

In *Flagg v. AliMed, Inc.*, SJC-11182, the plaintiff was an 18-year employee whose wife underwent surgery for a brain tumor and thereafter was receiving rehabilitative care. As a result of his wife’s condition, the plaintiff became responsible for picking up his daughter from school – a task which required him to leave work during his shifts. When the plaintiff left to pick up his daughter, he failed to punch out on multiple occasions. The plaintiff alleged that his employment was terminated and that his employer explained it did so because his failure to punch out resulted in him being paid for hours that he did not actually work. The plaintiff claimed that the employer’s stated reasoning was false, and that instead he was terminated because his wife had a serious and expensive medical condition that rendered her disabled and for which the employer, through its health plan, was financially responsible.

A Superior Court judge initially dismissed the plaintiff’s complaint, holding that Chapter 151B did not provide a legal cause of action for associational discrimination based on handicap. However, the SJC reversed that decision and held for the first time that a plaintiff can bring such a cause of action under Chapter 151B. According to the SJC, “[w]hen an employer subjects an otherwise satisfactory employee to adverse employment decisions premised on hostility towards the handicapped condition of the employee’s spouse, it is treating the employee as if he were handicapped himself – that is, predicated on discriminatory animus, the employer treats the spouse’s handicap as a characteristic bearing on the employee’s fitness for his job.”

The SJC explained that its holding furthers the general purposes of Chapter 151B as a wide-ranging law, “‘seek[ing] ... removal of artificial, arbitrary, and unnecessary barriers to full participation in the workplace’ that are based on discrimination.” The court found support for its holding in the language of Chapter 151B, reasoning that the “provisions can only be understood as establishing an expansive, categorical prohibition against discrimination based on handicap in the workplace generally.” The SJC also determined that its conclusion was supported by the “consistent interpretation given to the statute by the Massachusetts Commission Against Discrimination and in the analogous provisions of federal antidiscrimination statutes.”

While Massachusetts law previously recognized associational discrimination as a basis for liability with respect to other protected categories such as race, religion and gender, this decision marks an

expansion of state law protections to associations with handicapped individuals – a protection which was only previously recognized under federal law. The Americans with Disabilities Act specifically includes associational discrimination as a type of prohibited disability discrimination in the employment context. See 42 U.S.C. § 12112(b)(4).

As a result of this decision, Massachusetts employers should be mindful that they face potential legal liability if their employment decisions are motivated by any discriminatory animus, regardless if it is directed at their employees or individuals with whom their employees associate. Employers are encouraged to contact their MBJ attorney with questions regarding how this decision impacts them and what steps they should take to protect themselves.

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