

## Wrongful Termination

State and federal law prohibit employers from firing employees for certain reasons including discrimination based on membership of a specific group. Losing a job can be devastating, cause financial stress, and left an individual feeling wronged. However, Massachusetts is an 'at will' employment state meaning an employer has the right to terminate workers for a wide variety of reasons or no reason at all. The reasons can range from showing up to work late/underperforming, being let go due to the company facing financial distress, or the employer not liking the shoes you wear. The problem arises when the termination is due to an illegal reason, like violating an employment law or public policy. The Massachusetts Fair Employment Practice Act states that any government or private sector business or entity that employs more than 6 people have to abide by the anti-discrimination laws in MA. Wrongful terminations occurs when there is discriminatory reasons, whistleblower/retaliation, or violation of public policy.

A) **Age Discrimination Act** → prohibits age discrimination and applies to companies with at least 15 employees (have to be at least 40 years old)

B) **Title VII of the Civil Rights Act of 1964** → prohibits discrimination based on race, color, national origin, and applies to companies with 15 employees (includes sexual harassment)

Unlawful has been defined as → based on discrimination for being part of a protected class or in retaliation for a protected activity.

### Cannot discriminate against on employee based on:

1. Race
2. Color
3. Religious creed
4. National origin
5. Age
6. Ancestry
7. Sex
8. Pregnancy
9. Family Responsibility

### Discrimination can be manifested in many different ways in the workplace and can include:

- a. Being fired
- b. Being passed over for a promotion as someone less qualified gets promoted
- c. Being disciplined more harshly than others who have committed the same offense
- d. Paid less than others doing the same job

### **How to prove?**

In order to prove discrimination it takes more than just a gut feeling to bring a case to court and successfully get damages or retain employment benefits. Discrimination can be very hard to prove because employers can contend there were other reasons behind the termination. However, the burden is on the employer to prove the real reason (that it wasn't because the employee belonged to a protected class). It could also help prove your case if there was a pattern of discrimination.

### **Remedies:**

- Money damages (lost wages if you were fired)
- Pension money (may be owed)
- Pain and suffering (if you were harassed)

### **Employees are protected if they:**

1. Exercise a lawful employee right
2. Whistleblowing by reporting illegal acts of an employer
3. Refusing to engage in illegal acts
4. Violation of an employment contract
5. Discrimination

### **Employees have rights they should be able to exercise without the fear of being terminated by their employer:**

- a. To request/take family and medical leave
- b. Right to take rest or meal breaks as provided by labor laws
- c. Right to have proper wages and overtime payments
- d. Right to file a workers compensation claim after a work related injury

If you opposed an illegal act or were a whistleblower and you were wrong your employer CAN NOT terminate you as long as you had a reasonable belief that the conduct was unlawful and took whistleblowing actions that were appropriate given the circumstances.

### **Following characteristics are considered protected statuses and cant play any role in the reason for your termination**

- Physical disabilities
- Age
- Pregnancy status
- Gender identify
- Sexual orientation
- Gender
- National origin



- Race and color

**Employees are also protected from retaliation. An employee can't be fired for engaging in protected activities:**

- a. Requesting religious accommodations
- b. Speaking out against sexual harassment
- c. Expressing concerns about age bias
- d. Protects employees who oppose unlawful conduct against others even if the employer was not the target of discriminatory treatment

**Remedies:**

- Reinstatement of job
- Emotional distress damages
- Forward pay
- Back pay
- Damages