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Massachusetts High Court Adds Teeth to Personnel Records Law With At-Will Employment Exception

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On December 17, 2021, the Massachusetts Supreme Judicial Court (SJC) held that a termination of employment based only upon an employee's rebuttal to a negative performance review in the employee's personnel file violates the public policy exception to at-will employment. In so holding, the SJC reversed confusing lower court decisions and added teeth to the notoriously strict Massachusetts Personnel Records Law.

The Massachusetts Personnel Records Law

The Massachusetts Personnel Records Law (G.L. c. 149, § 52C) is one of the most expansive in the US, imposing affirmative obligations on employers and equipping employees with certain rights. Specifically, the statute:

- Gives employees the right to inspect their personnel file.
- Requires employers to notify employees of any negative information placed in their file if such information may be used to negatively affect the terms of the employee's employment.
- Gives employees the right to rebut any negative information in their personnel file.

The state attorney general may impose fines between $500 and $2,500 for violation of the statute.

At-will employment

In Massachusetts, at-will employment can generally be terminated for any reason or no reason at all. Courts in the commonwealth have long recognized narrow exceptions to at-will employment when employment is terminated in violation of public policy, including, for example, when an employee asserts a legally guaranteed right.

Meehan v. Medical Information Technology

In *Terence Meehan v. Medical Information Technology, Inc.*, SJC-13117 (Dec. 17, 2021), Terence Meehan submitted a lengthy rebuttal to a performance improvement plan (PIP) with his personnel file. Meditech terminated Meehan's employment shortly thereafter. The SJC accepted Meehan's contention that he was fired because of the rebuttal.

Meehan alleged that he was exercising his statutory right under the Personnel Records Law by filing his rebuttal to the PIP. Accepting this as true, the question before the SJC was: Does retaliating against an employee for filing a rebuttal under the Personnel Records Law qualify as a public policy exception to at-will employment?

The SJC answered in the affirmative. Although the lower courts concluded that the right to rebuttal is an internal matter and not "important," the SJC held that the enactment of the Personnel Records Law established the importance of the right to rebuttal. The SJC explained that a common-law wrongful discharge action is also proper where an employer retaliates against an employee for exercising the statutory right of rebuttal because the Massachusetts Legislature only provided limited relief for violations of the Personnel Records Law.

The SJC's decision overturns confusing lower court decisions that baffled legal observers – why would the Massachusetts Legislature have a statute regarding the right of rebuttal for personnel files if there was no penalty for employers who violated it? This decision rights the ship, allowing employers to terminate employees

(even those who filed rebuttals) for any reason or no reason, as long as they do not terminate an employee for filing the rebuttal itself. The SJC made clear that the right of rebuttal does not shield employees from disciplinary action or termination due to legitimate reasons, such as poor attendance or performance.

To ensure compliance with this ruling, Massachusetts employers should be aware of an employee's statutory right to rebuttal, and reach out to a member of the Cooley employment team with any questions.

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