

## MASSACHUSETTS — State Laws by Topic

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### ➤ AGE ◀

Employers with six or more employees may not refuse to hire or terminate based on an individual's age. For purposes of state law, age means 40 years old and over.

### ➤ AIDS ◀

*Discrimination:* Under the Massachusetts Fair Employment Practices Act, AIDS is a protected disability. Employers are expressly prohibited from discriminating against individuals with AIDS or those who have tested HIV-positive.

*Testing:* Employers are prohibited from requiring AIDS tests as a condition of employment. Informed consent must be obtained before an individual is tested for AIDS.

### ➤ ARRESTS/CONVICTIONS ◀

*Arrests:* The Massachusetts Fair Employment Practices Act prohibits an employer from collecting and using arrest records information when the arrest or detention failed to result in a conviction.

*Convictions:* Employers that employ six or more employees are prohibited from inquiring about prior convictions on an initial written job application, unless state or federal law mandates disqualification because of a conviction. Employers may inquire about an applicant's prior convictions at any later point in the hiring process and may take adverse action based on that information. However, employers may not inquire into an applicant's misdemeanor offenses that are older than five years.

Multi-state or multi-national employers may use standard job applications, provided the applications contain explicit instructions that employers are prohibited from obtaining criminal history information from Massachusetts employees and they contain a clear disclaimer in boldface type for Massachusetts employees. The following notice is an example of a model disclaimer.

### **MASSACHUSETTS APPLICANTS ONLY:**

**Under Massachusetts law, an employer is prohibited from making written, pre-employment inquiries of an applicant about his or her criminal history. MASSACHUSETTS APPLICANTS SHOULD NOT RESPOND TO ANY OF THE QUESTIONS SEEKING CRIMINAL RECORD INFORMATION.**

An application for employment used by any employer that seeks information concerning an applicant's prior arrests or convictions must include the following statement: "An applicant for employment with a record expunged pursuant to section 100F, section 100G, section 100H or section 100K of chapter 276 may answer 'no record' with respect to an inquiry herein relative to prior arrests, criminal court appearances or convictions. An applicant for employment with a record expunged pursuant to section 100F, section 100G, section 100H or section 100K of

chapter 276 may answer ‘no record’ to an inquiry herein relative to prior arrests, criminal court appearances, juvenile court appearances, adjudications or convictions.”

Effective February 2012, employers may request conviction information using the state’s Commonwealth Offender Record Information (CORI) system only after receiving the applicant’s signed consent form. The scope of CORI records available to most employers will be limited to:

- felony convictions for 10 years following disposition;
- misdemeanor convictions for five years following disposition; and
- pending criminal charges.

Employers will not be permitted to retain CORI records for more than seven years after the date of the final decision not to hire an applicant or after an employee’s last date of employment. Employers will be required to retain the signed consent form for one year from the date of the CORI request. Employers must maintain a dissemination log for one year following any disclosure of CORI records.

Also effective February 2012, employers that conduct more than five criminal background checks per year will be required to establish a written policy regarding the use of criminal background checks for job applicants. They will be required to provide applicants with a copy of the policy, plus any criminal background information obtained during the application process.

### ➤ BREAKS ◀

A 30-minute meal break must be provided to employees who work at least six hours. *Exceptions:* Due to the continuous nature of their operations, manufacturing employers in iron and glass works; paper mills; letterpress plants; or print, bleaching, or dyeing plants are excluded from the law.

### ➤ BREAST-FEEDING ◀

A woman may breast-feed her child in any public place or establishment or place that is open to and accepts or solicits the patronage of the general public and where the mother and her child may otherwise lawfully be present.

### ➤ CHILD LABOR ◀

Click on [www.mass.gov/lwd/labor-standards/dls/youth-employment/summary-of-massachusetts-laws-regulating.html](http://www.mass.gov/lwd/labor-standards/dls/youth-employment/summary-of-massachusetts-laws-regulating.html) for information about Massachusetts’s child labor laws.

### ➤ CHILD SUPPORT ◀

Employers served with a child support order must begin withholding with the first payment made after three days after the notice. Amounts withheld are remitted within three business days of payday. Notify the state agency before the next payday if the employee-obligor terminates. Regulations require that employers withholding child support for at least five employees must remit those funds via electronic funds transfer, and keep remitting electronically, even if the

number of employee-obligors falls below five. In addition, electronic remittances will be required of employers that have remitted with two back checks or haven't remitted on time.

### ➤ COURT ATTENDANCE ◀

Employers are restricted from discharging or penalizing employees for taking leave as subpoenaed witnesses or as victims of a criminal action, if employees have notified the employer of the subpoena before the day of attendance in court.

See also violence.

### ➤ DISABILITIES ◀

Under the Massachusetts Fair Employment Practices Act, employers with six or more employees may not refuse to hire, terminate, bar from employment, or otherwise discriminate against an individual with respect to compensation or terms, conditions, or privileges of employment based on a physical or mental disability.

Employers may not print or circulate a discriminatory statement, advertisement, or publication in applications or when making a pre-employment inquiry or record.

### ➤ DRUG TESTING ◀

No statutory provisions.

The state has legalized the use of medical marijuana.

### ➤ FAMILIAL/MARITAL STATUS ◀

No provisions specified in the general employment context.

### ➤ FAMILY/MEDICAL LEAVE ◀

*Domestic violence leave:* Employers of 50 or more employees must allow employees who are the victims of domestic violence, or whose family members are victims of domestic violence, to take up to 15 days' leave in any 12-month period. Unless waived by employers, employees must exhaust all vacation, personal or sick leave. Employers have sole discretion to determine whether leave will be paid or unpaid.

Employees may use leave to obtain medical attention, counseling, victim services, legal assistance, secure housing, a protective order, appear in court, meet with a district attorney or other law enforcement officials, attend child custody proceedings or address other issues directly related to the domestic violence.

Except in cases of imminent danger, employees must provide advance notice of their leave, as required by their employers' leave policies. If there is a threat of imminent danger, employees must provide notice within three working days of taking leave. Notice may also be given by employees' family members, or a counselor, social worker, health care provider, member of the clergy, shelter worker, legal advocate or other professional. Employees who take unscheduled

leaves can't be disciplined if they present documentation within 30 days of their unauthorized absence or within 30 days from their last unauthorized absence. Employees may present one of the following documents:

- a protective order, order of equitable relief or other document issued by a court;
- a document under a court's or public agency's letterhead;
- a police report, or victim or witness statement provided to the police;
- documentation that the perpetrator has admitted to the abuse or has been convicted of abuse;
- medical documentation of treatment for abusive behavior;
- a sworn statement provided by a counselor, social worker, health care provider, member of the clergy, shelter worker, legal advocate or the professional who has helped the employee deal with the abuse;
- a sworn statement from the employee attesting that he/she has been the victim of abusive behavior or a family member has been the victim of abusive behavior.

Employers can't discipline or discharge an employee who takes domestic violence leave.

See pregnancy.

*Paid family and medical leave:* Beginning January 1, 2021, employees may take paid family and medical leave, which will be provided through a state fund. The leave will run concurrently with FMLA leave. Beginning October 1, 2019, employers must begin withholding 0.63% from employees' wages, up to the Social Security wage base. Employers deduct 40% of employees' contributions for medical leave and pay the remaining 60%; employers with fewer than 25 employees aren't liable for the employer's contribution. Employers deduct 100% of employees' contributions for family leave. Employers that employ more than 50% of their workforce as independent contractors for which filing Form 1099-MISC is necessary must include those individuals in their employee count.

Leave will be available according to this schedule:

- up to 12 weeks of family leave to bond with a newborn or newly adopted child or to care for a family member with a serious health condition;
- up to 26 weeks to care for a family member who is a member of the military with a qualifying exigency, as defined in the FMLA; and
- up to 20 weeks to care for themselves.

With a few exceptions, employees may not take leave intermittently or work reduced schedules, unless employers agree to those arrangements. The maximum combined leave is 26 weeks during employees' benefit years. Employers may provide more leave, if they choose and they may opt out of the state plan, if they provide an equivalent amount of leave under the same circumstances.

The maximum weekly benefit amount is \$850 and will be adjusted annually by October 1. Employees covered by employer-provided disability plans will receive the greater of disability

benefits or paid family leave benefits (i.e., disability policies will run concurrently with disability payments).

Employees must provide at least 30 days' notice of their anticipated date of leave, the anticipated length of the leave and the expected date of return. Notice must be provided as soon as practicable, if the delay is for reasons beyond employees' control.

Employees must be restored to the same jobs with the same benefits when they return to work. Taking paid leave doesn't affect employees' rights to accrue vacation time, sick leave, bonuses, promotions, seniority, length-of-service credit or other employment benefits, plans or programs. Employers must continue to contribute to employees' health benefits.

Notice posting and employee notification requirements apply.

*Paid sick leave:* Employers with at least 11 employees, including full-time, part-time, or temporary employees, must allow employees to accrue up to 40 hours of paid sick time. Employers with fewer than 11 employees must provide up to 40 hours of unpaid sick leave. Employers must provide one hour of paid or unpaid sick time for every 30 hours worked. Exempt employees are presumed to work 40 hours a week. Employees begin to accrue their time on their first day of work and may not use their time until the 90th calendar day of work. Employees may carry over up to 40 hours of unused accrued time into the next year. Employers aren't required to cash out unused accrued time for terminating employees.

Employers may provide for more time off than required by the law. Employers that already provide employees with paid sick leave, paid vacation, or other paid leave that's equivalent to leave required under the law aren't required to provide additional paid sick leave.

Employees may use their earned sick time in the smaller of hourly increments or the smallest increment the payroll system uses to account for absences or the use of other time. By mutual agreement, employees who are absent from work, and who work an equivalent number of additional hours or shifts during the same pay period or the next pay period, aren't required to use their accrued time. Employees must make a good faith effort to provide notice of their leave, if the need for leave is foreseeable. Employers may require reasonable medical certification of the need for leave when employees are out for more than 24 consecutive scheduled work hours.

Employers can't interfere with, restrain, or deny employees their rights to take earned sick time, including using their use of earned sick time against them in performance reviews. In addition, employers can't retaliate against employees who blow the whistle on illegal practices. Employers must post a notice of these provisions; a model notice will be available.

*Parental leave:* Employers that have at least six employees must extend up to eight weeks of unpaid leave to both parents of newborn or newly adopted children. Employees who have completed probationary periods of not longer than three months qualify for leave. Employees who aren't required to satisfy a probationary period qualify for leave after three months of employment. Spouses who work for the same employer are only entitled to a combined eight weeks of leave.

Employees must provide at least two weeks' notice of their need for leave and their intent to return once leave is exhausted. If employees can't provide two weeks' notice, they must provide notice as soon as practicable. Employees retain their right to vacation time, sick leave, bonuses,

promotions, seniority, length-of-service credits, benefits, or other plans or programs for which they were eligible prior to leave.

Employers must restore returning employees to their previous position or a similar position with the same status, pay, length of service credit, and seniority. Employers that allow employees to take longer leaves aren't required to extend job restorations, but employees must be informed of this risk.

### ➤ GENETIC TESTING ◀

Employers may not discriminate against an individual because of the individual's genetic information or refusal to submit to a genetic test or make available the results of a genetic test.

### ➤ HEALTH CARE CONTINUATION COVERAGE ◀

Continuation coverage requirements apply to employers with two to 19 employees. Eligible employees have the right to continue coverage for up to 36 months.

Click on [www.malegislature.gov/Laws/GeneralLaws/PartI/TitleXXII/Chapter176j/Section9](http://www.malegislature.gov/Laws/GeneralLaws/PartI/TitleXXII/Chapter176j/Section9) to access the state law.

### ➤ JURY DUTY ◀

Employers must pay jurors regular wages for the first three days of jury service unless compensation would cause extreme financial hardship for the employer. If an employer is excused from compensating a worker, the state will pay reasonable compensation to the juror up to \$50 per day for the first three days. Employers may not require employees to work each morning before reporting to jury duty. Employers may not impose compulsory work assignments on employees or otherwise intentionally interfere with employees' availability, effectiveness, or attentiveness while on jury duty.

Public employees are entitled to their usual compensation less compensation for jury service.

### ➤ LIFESTYLE DISCRIMINATION ◀

No provision.

### ➤ MASS LAYOFF NOTIFICATION ◀

Employers must promptly notify the state Department of Labor and Workforce Development of any relocation, closing, or partial closing of a facility. Employers with 12 or more employees must report relocations within the state; employers with 50 or more employees that have been in business in the state for at least a year must report closings or partial closings.

Once the Department of Labor and Workforce Development certifies that the closing has occurred or will occur, it will give notice of its certification to the employer, employees, and any union representing affected employees.



A plant closing is defined as any reduction or cessation of business that will cause the termination of at least 90% of a facility's employees in the six months preceding the actual or anticipated date of the closing. A partial closing is any permanent cessation of a part of a business that will affect a significant number of employees in a manner that will be similar to that of a plant closing.

### ➤ MEDICAL DONATION LEAVE ◀

Public employees are entitled to up to 30 days of leave per calendar year to serve as an organ donor, without loss or reduction of pay and without loss of leave to which the employee is otherwise entitled. If the necessity for leave is foreseeable, the employee shall provide the employer with not less than seven days' notice before the leave is to begin. If the necessity for leave is not foreseeable, the employee shall provide such notice as is practicable. An employer may require that a request for leave be supported by medical certification.

### ➤ MILITARY LEAVE ◀

It is unlawful for an employer to deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment to a member of the U.S. Armed Forces, including the National Guard, on the basis of that membership, application, or obligation.

Any member of an organized unit of the ready reserve of the Armed Forces who, in order to receive military training, leaves a position other than a temporary one for a period of no more than 17 days in any one calendar year is eligible for military leave privileges. The leave may be with or without pay, within the discretion of the employer. Absences for military training do not affect an employee's right to receive normal vacation, sick leave, bonuses, advancement, and other advantages of employment.

*Reinstatement:* If military training does not exceed 17 days in any one calendar year, and the position is not temporary, an employee must be restored to his/her position or a similar one with the same status, pay, and seniority, provided the employee: 1) gave notice to the employer of the date of departure and date of return; 2) submitted evidence of satisfactory completion of training; and 3) is qualified to perform the duties.

*Veterans Day:* Employers with at least 50 employees must allow veterans to take Veterans Day off with pay. Employees must provide reasonable notice of their leave.

### ➤ MINIMUM WAGE ◀

*Minimum hourly wage/overtime rate:* \$12/\$16; \$12.75/\$19.13, eff. 1-1-20; \$13.50/\$20.25, eff. 1-1-21; \$14.25/\$21.38, eff. 1-1-22; \$15/\$22.50, eff. 1-1-23.

*Basis for overtime:* Over 40 hours/week.

*Opportunity wage for under 20-year-olds:* None.

**Note:** The state bases its minimum wage on the federal minimum wage. The state minimum may exceed federal minimum wage by a stated amount or percentage, or be adjusted to reflect cost of living increases.

### ➤ NATIONAL ORIGIN ◀

Under the Massachusetts Fair Employment Practices Act, employers with six or more employees may not refuse to hire or terminate based on an individual's national origin or ancestry.

### ➤ NEW-HIRE REPORTING ◀

*Data to be reported:* Employee's name, address, SSN, date of hire; employer's name, address, federal EIN; report independent contractors if Form 1099-MISC is filed. *Reporting deadline/form:* Within 14 days of hire or reinstatement after 30 or more calendar days; on W-4s or through the state's website.

### ➤ OVERTIME ◀

*Basis for overtime:* Over 40 hours in a workweek.

*Nurses:* Except for emergencies, hospital nurses can't be required to work mandatory overtime. Nurses who work longer than 16 consecutive hours must be given an eight-hour break. Before hospitals require nurses to work mandatory overtime, they must make a good faith effort to have overtime covered on a voluntary basis. Hospitals must report all instances of mandatory overtime and the circumstances requiring its use to the Department of Public Health.

### ➤ PAY STATEMENTS ◀

*Information required:* Employee/employer name; date, pay period; hours worked, hourly rate; deductions; additions to pay.

### ➤ PERSONNEL FILES ◀

Access to personnel records must be provided by both public and private employers upon written request. "Personnel records" are records kept by an employer that identify an employee, to the extent that the records are used relative to that employee's qualifications for employment, promotion, transfer, additional compensation, or disciplinary action.

A personnel record may not include information of a personal nature about a person other than the employee if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy.

An amendment to the Massachusetts Personnel Records Statute requires employers to notify an employee within 10 days of placing in the employee's personnel file any information that is used, has been used, or may be used to negatively affect the employee's qualification for employment, promotion, transfer, additional compensation, or the possibility that the employee will be subject to disciplinary action. Also, upon written request by the employee, the employer must provide the employee with the opportunity to review his/her personnel file within five business days of the request. An employer is required to allow an employee to review his/her personnel record only two times each calendar year. However, a records review that results from the notification requirement relating to negative records does not count as one of the two permitted annual reviews.



### ➤ POLYGRAPH TESTING ◀

It is unlawful for any employer, with respect to any of its current or future employees, to subject such a person to, or request such person to take, a lie detector test, or to discharge, refuse to hire, demote, or otherwise discriminate against such a person for the assertion of rights arising under this law.

The fact that a lie detector test was to be, or was, administered outside the state for employment within the state is not a valid defense.

*Notification:* All applications for employment within the state are to contain the following notice that must be in clearly legible print.

“IT IS UNLAWFUL IN MASSACHUSETTS TO REQUIRE OR ADMINISTER A LIE DETECTOR TEST AS A CONDITION OF EMPLOYMENT OR CONTINUED EMPLOYMENT. AN EMPLOYER WHO VIOLATES THIS LAW SHALL BE SUBJECT TO CRIMINAL PENALTIES AND CIVIL LIABILITY.”

### ➤ POSTING REQUIREMENTS ◀

Unemployment Insurance (English & Spanish) — All employers

Workers' Compensation — All employers

Minimum Wage — All employers

Fair Employment Law — All employers

Parental Leave — Recommended

Small Necessities Leave Act — Recommended

Child Labor Law — Recommended for all employers who employ youth under 18

Sexual Harassment — Recommended

Right to Know — All employers

No Smoking — All employers

Maternity Leave Fact Sheet — Recommended

Fair Housing — All employers

Parental Leave — Employers of six or more employees

## ➤ PREGNANCY ◀

*Coverage:* Employers that employ six or more persons, excluding not-for-profit and religious organizations. The law does not affect any bargaining agreement or company policy that provides for greater or additional benefits than those required under this section.

*General rule:* Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment.

Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan — formal or informal — must be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

*Employee eligibility:* A female employee who has completed the initial probationary period set by the terms of her employment or, if there is no such probationary period, has been employed by the same employer for at least three consecutive months as a full-time employee, who is absent from such employment for a period not exceeding eight weeks for the purpose of giving birth or adopting a child, and who gives at least two weeks' notice to her employer of her anticipated date of departure and intention to return, must be restored to her previous or a similar position with the same status, pay, length of service credit, and seniority, wherever applicable, as of the date of her leave.

**Note:** Although the Massachusetts Maternity Leave Act contains language specifying that only female employees are eligible for such leave, the Massachusetts Commission Against Discrimination has taken the position that male employees are also eligible for this type of leave.

*Length of leave:* Eligible female employees are entitled to up to eight weeks of maternity leave per child.

*Paid leave:* Maternity leave may be with or without pay, at the discretion of the employer.

*Benefits:* Maternity leave may not affect employees' rights to receive vacation time, sick leave, bonuses, advancement, seniority, length of service credit, benefits, plans, or programs for which they were eligible at the date of their leaves, and any other advantages or rights of their employment. However, maternity leave isn't included in the computation of such benefits, rights, and advantages. Employers don't have to provide for the cost of any benefits, plans, or programs during the period of maternity leave unless they provide such benefits for all other employees on leaves of absence.

*Reinstatement:* Employers are not required to restore employees on maternity leave to their previous or similar positions if other employees of equal length of service credit and status in the same or similar positions have been laid off due to economic conditions or other changes in operating conditions affecting employment during the period of leave. However, employees on maternity leave retain any preferential consideration for another position to which they may be entitled as of the date of their leaves.

*Reasonable accommodations and nondiscrimination:* Employers must provide reasonable accommodations to pregnant employees or job applicants, unless employers can show that

making accommodations would be an undue hardship. Reasonable accommodations include more frequent or longer paid or unpaid breaks; acquiring or modifying equipment or seating; a temporary transfer to a less strenuous or hazardous job; job restructuring; light duty; private nonbathroom space for expressing breast milk; assistance with manual labor; or a modified work schedule.

Employers must provide written notice to employees of their right to be free from discrimination in relation to pregnancy, or a condition related to pregnancy, and the right to reasonable accommodations for conditions related to pregnancy.

Employers may not take any adverse action against an employee who requests or uses a reasonable accommodation in terms, conditions, or privileges of employment including failing to hire or reinstate the employee to her original job or to an equivalent job with equivalent pay and accumulated seniority, retirement, fringe benefits, and other service credits when the need for a reasonable accommodation ceases; require a pregnant employee to accept an accommodation that she chooses not to accept, if that accommodation is unnecessary to enable her to perform the essential functions of her job; or require an employee to take a leave if another reasonable accommodation may be provided.

### ➤ RACE ◀

Under the Massachusetts Fair Employment Practices Act, employers with six or more employees may not refuse to hire, or terminate, based on an individual's race or color.

### ➤ REFERENCES ◀

No provision specified in the general employment context.

All newly hired teachers, school employees, bus drivers and subcontractors, and early education, care, and out-of-school time providers must undergo state and national fingerprint-supported background checks prior to the start of the 2013-2014 school year. All current employees must undergo national background checks over the next three years, prior to the start of the 2016-2017 school year.

In addition, all individuals who hold a Department of Early Education and Care (EEC) program license, EEC teacher qualification, current and prospective employees working in an EEC-licensed or approved program, family child care providers, their household members (age 15 or older), persons regularly on the premises of a family child care home, and those individuals in an EEC-licensed or approved program who have the potential for unsupervised contact with children must undergo a national criminal history record check.

School districts, private schools, and special education school programs that employ licensed educators must share with the Department of Elementary and Secondary Education any information, including the results of state and national criminal history record checks, which might be relevant to the department's investigation of misconduct by a license holder or applicant.

### ➤ RELIGION ◀

Under the Massachusetts Fair Employment Practices Act, employers with six or more employees may not refuse to hire, or terminate, based on an individual's religious creed.

### ➤ REPORTING PAY ◀

Employees must be paid for at least three hours of work, if they're scheduled to work at least three hours and they aren't provided with the expected hours of work. **Note:** This provision doesn't apply to organizations granted status as charitable organizations by the IRS.

### ➤ SAFETY ◀

Click on [www.mass.gov/lwd/labor-standards/](http://www.mass.gov/lwd/labor-standards/) to access Massachusetts' Division of Occupational Safety.

### ➤ SCHOOL VISITATION LEAVE ◀

Employers with 50 or more employees may grant employees up to 24 hours of family obligation leave during any 12-month period to participate in school activities that are directly related to the educational advancement of a child, such as parent-teacher conferences or interviewing for a new school. This is in addition to leave available under the federal Family and Medical Leave Act. Employees must have worked for at least 12 months and put in at least 1,250 hours of service.

Employees must provide at least seven days' notice before the date the leave is to begin. If the leave is not foreseeable, employees must provide as much notice as practical. Employers may request certification verifying the need for family obligation leave.

### ➤ SEX DISCRIMINATION ◀

Under the Massachusetts Fair Employment Practices Act, employers with six or more employees may not refuse to hire, or terminate, based on an individual's sex.

Transgendered individuals have been added as a protected class for anti-discrimination purposes. Employers, therefore, cannot discriminate against transgendered employees or job applicants.

*Pay discrimination:* Beginning January 1, 2018, employers may not discrimination on the basis of pay against employees of different genders who perform comparable work. "Comparable work" includes work that requires substantially similar skill, effort, and responsibility and is performed under similar working conditions. Job titles or job descriptions alone don't determine comparability. Variations in wages and benefits are permissible if they're based on the following criteria:

- a bona fide system that rewards seniority with the employer; except that time spent on leave due to a pregnancy-related condition and protected parental, family, and medical leave, doesn't reduce seniority;

- a bona fide merit system;
- a bona fide system that measures employees' pay by quantity or quality of production or sales;
- the geographic location in which a job is performed;
- education, training or experience, if these factors are reasonably related to a particular job and consistent with business necessity; or
- travel, if the travel is a regular and necessary condition of the particular job.

Employers can't reduce employees' pay to comply with the law.

### ➤ **SEXUAL HARASSMENT** ◀

Employers with six or more employees must promote a work environment free from sexual harassment. Employers must provide all employees with an annual written policy on sexual harassment. At a minimum, the policy must include the following.

- A statement that sexual harassment in the workplace is unlawful.
- A statement that it is unlawful to retaliate against an employee for filing a sexual harassment complaint.
- A description, including examples, of sexual harassment.
- A statement of the range of consequences for employees found to have committed sexual harassment.
- A description of the process for filing internal complaints about sexual harassment and the work addresses and telephone numbers of the person(s) to whom complaints should be made.
- The identity of the appropriate state and federal employment discrimination enforcement agencies, and instructions as to how to contact the agencies.

### ➤ **SEXUAL ORIENTATION DISCRIMINATION** ◀

Under the Massachusetts Fair Employment Practices Act, employers with six or more employees may not refuse to hire or terminate based on an individual's sexual orientation, except when the sexual orientation involves minor children as a sex object.

**Note:** The Massachusetts Commission Against Discrimination has held that gender identity is encompassed in the terms "sex" and "disability."

Under Executive Orders 526 and 427, state agencies and private employers that contract with the state cannot discriminate on the basis of gender identity or expression.

### ➤ **SMOKING** ◀

Under the state's Smoke-Free Workplace Law, employers must provide a smoke-free environment for all employees working in an enclosed workplace, including private offices, taxis, restaurants, and bars, at which one or more employees perform a service for compensation for the employer.

Every area where smoking is prohibited by law must have "no smoking" signs conspicuously posted so that the signs are clearly visible to all employees, customers, or visitors while in the workplace.

### ➤ **SOCIAL SECURITY NUMBER PRIVACY** ◀

Final data security regulations issued by the Massachusetts Office of Consumer Affairs and Business Regulation require that every person who owns or licenses personal information (a first name or first initial and last name in combination with a Social Security number, for example) about a resident of the Commonwealth must develop, implement, maintain, and monitor a comprehensive information security program applicable to any records containing such personal information. Owns or licenses is defined as receiving, maintaining, processing, or otherwise accessing personal information in connection with the provision of goods and services or in connection with employment.

The program must: 1) be in writing; 2) be reasonably consistent with industry standards; and 3) contain administrative, technical, and physical safeguards. At a minimum, covered persons or entities must:

1. Designate one or more employees to maintain the program.
2. Identify and assess reasonably foreseeable internal and external risks to the security, confidentiality, and/or integrity of any electronic, paper, or other records containing personal information. Then, evaluate and improve, where necessary, the effectiveness of the current safeguards for limiting such risks, including but not limited to: ongoing employee (including temporary and contract employee) training; employee compliance with policies and procedures; and means for detecting and preventing security system failures.
3. Develop security policies concerning whether and how employees should be allowed to keep, access, and transport records containing personal information outside of business premises.
4. Impose disciplinary measures for violations.
5. Prevent terminated employees from accessing records containing personal information.
6. Take reasonable steps to verify that third-party service providers with access to personal information have the capacity to protect such personal information. Prior to permitting third-party service providers access to personal information, the covered entity or person permitting such access must obtain written certification that such service provider has a compliant information security program.



7. Identify paper, electronic, and other records; computing systems; and storage media to determine which records contain personal information, except where the program provides for the handling of *all* records as if they contained personal information.
8. Impose reasonable restrictions on physical access to records containing personal information, including a written procedure that sets forth the manner in which physical access to such records is restricted.
9. Regularly monitor to ensure that the program is operating in a manner reasonably calculated to prevent unauthorized access to or unauthorized use of personal information, and upgrade information safeguards as necessary to limit risks.
10. Review the scope of the security measures at least annually or whenever there is a material change in business practices that may reasonably implicate the security or integrity of records containing personal information.
11. Document steps taken to respond to a security breach and any changes in safeguards resulting from a review of the breach incident.

If covered entities or persons electronically store or transmit personal information, they must include in their written, comprehensive information security program, to the extent technically feasible, the establishment and maintenance of a security system covering its computers, including any wireless system, that, at a minimum, has the following elements:

1. Secure user authentication protocols.
2. Secure access control measures that: a) restrict access to records and files containing personal information to those who need such information to perform their job duties, and b) assign unique identifications plus passwords, which are not vendor supplied default passwords, to each person with computer access, that are reasonably designed to maintain the integrity of the security of the access controls.
3. Encryption of all transmitted records and files containing personal information that will travel across public networks, and encryption of all data to be transmitted wirelessly.
4. Reasonable monitoring of systems for unauthorized use of or access to personal information.
5. Encryption of all personal information stored on laptops or other portable devices.
6. For files containing personal information on a system that is connected to the Internet, there must be reasonably up-to-date firewall protection and operating system security patches.
7. Reasonably up-to-date versions of system security agent software that must include malware protection and reasonably up-to-date patches and virus definitions, or a version of such software that can still be supported with up-to-date patches and virus definitions, and is set to receive the most current security updates on a regular basis.
8. Education and training of employees on the proper use of the computer security system and the importance of personal information security.

Employers that maintain or store data that includes personal information (e.g., Social Security numbers) must notify “as soon and as practicable and without unreasonable delay” anyone whose

information might have been compromised if the employer knew or had reason to know of a security breach or had reason to know that an unauthorized person acquired or used the data for an unauthorized purpose.

Employers must also destroy paper documents that contain personal information that are being disposed of by redacting, burning, pulverizing, or shredding the documents so that the personal data cannot be read or reconstructed. Electronic media and other non-paper media that contain personal information that are being disposed of must be destroyed or erased so that the personal data cannot be read or reconstructed.

### ➤ UNEMPLOYMENT INSURANCE ◀

Click on <https://www.mass.gov/orgs/departments-of-unemployment-assistance> to access the Massachusetts Department of Labor and Workforce Development, Division of Unemployment Assistance home page.

### ➤ VACATION PAY UPON TERMINATION ◀

Discharged (fired or laid off) employees must be paid all wages due and owing on the day of termination. The term “wages” includes all vacation time earned under the employer’s written or oral policy. The state Attorney General has interpreted the preceding sentence to require that accrued vacation pay be included with final pay.

### ➤ VIOLENCE ◀

Massachusetts has a zero-tolerance policy for workplace violence in state employment.

In an effort to help all businesses combat violence in the workplace, the Massachusetts Executive Office of Public Safety provides guidelines for all employers. These guidelines encourage every employer to: 1) conduct regular threat assessments; 2) evaluate internal and external risks; and 3) engage in strategic planning.

*Domestic violence:* An executive order requires all public employers to establish a formal policy of zero tolerance for sexual assault, domestic violence, and stalking in the workplace. Such policies must be in writing and must include:

- a definition, description, and examples of sexual assault, domestic violence, and stalking;
- a statement that any use of work time or workplace facilities to commit or threaten to commit acts of sexual assault, domestic violence, or stalking is cause for discipline up to and including dismissal;
- a statement that all acts of sexual assault, domestic violence, or stalking, regardless of whether they occur in or near the workplace, may be cause for discipline up to and including dismissal, and may be considered as part of the employee’s work history; and
- information indicating where victims and abusers can go for assistance, including but not limited to victim assistance hotlines and programs, sexual assault or domestic violence programs and shelters, and state certified batterer intervention programs.

Public employers shall implement the Domestic Violence and Sexual Assault in the Workplace Prevention Training curriculum and delivery program developed by the state. This training shall be made available: 1) upon the hiring of new personnel, and 2) agency-wide every two years.

Public employees are entitled to up to 15 days of leave per year for purposes of victim counseling, obtaining medical treatment, attending legal proceedings, or carrying out other necessary activities, where such activities result from domestic violence or stalking and the employee is not the abuser, or where such activities result from sexual assault inflicted upon the employee or upon the employee's children where the employee is not the abuser. Such absences shall be paid, and shall be in addition to any other vacation time, personal time, or other paid leave time to which the employee is entitled.

In addition, public employers are authorized and encouraged to grant up to six months of unpaid leave to an employee who is a victim, or whose children are victims where the employee is not the abuser, where the employee requests such leave as a result of sexual assault, domestic violence, or stalking. Employers shall offer the same or a similar position to such an employee upon the employee's return from leave.

#### ➤ VOTING ◀

Employees in manufacturing, mechanical, and mercantile establishments are not permitted to work during the two-hour period after polls open if employees apply for leave to vote during that period.

*Notification:* Employees have to apply for leave to get time off to vote.

#### ➤ WAGE DEDUCTIONS ◀

Deductions for bank deposits, repayment of bank loans, hospital or medical services, charitable contributions, insurance or annuity premiums, stock purchases or government bonds, if authorized in writing by the employee, are permitted. Contributions to pension and welfare funds made by deductions from employee wages must be reported to employees upon request.

#### ➤ WAGE GARNISHMENT ◀

The amount exempt from a creditor garnishment per week is the greater of 85% of the employee's gross wages or 50 times the greater of the federal or state minimum wage. The state has no provisions prohibiting discharge, but federal law prohibits discharging an employee for any single indebtedness.

#### ➤ WAGE PAYMENT ON TERMINATION ◀

*Employee who quits:* Next payday.

*Employee who's fired:* At once.

➤ **WAGE PAYMENTS** ◀

*Payday requirements:* Weekly or biweekly.

*Direct deposit:* Employers may require employees to be paid electronically if the employee chooses bank.

*Pay secrecy:* Beginning January 1, 2018, employers may not prohibit employees from inquiring about, discussing, or disclosing information about their pay and benefits. In addition, employers are prohibited from screening job applicants on the basis of their wages and benefits, including requesting or requiring that applicants disclose this information as a condition of being interviewed; from seeking salary history from an applicant's current or former employers, but applicants may authorize their prospective employer, in writing, to confirm their prior wages; and from firing or retaliating against employees that seek to exercise these rights.

➤ **WHISTLEBLOWING** ◀

The Massachusetts statute on whistleblower protection repeats the federal law.

➤ **WORK AUTHORIZATION** ◀

No general provision.

➤ **WORKERS' COMPENSATION** ◀

Click on the following link [www.mass.gov/lwd/workers-compensation/](http://www.mass.gov/lwd/workers-compensation/) to access the Massachusetts Worker's Compensation home page.