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CLIENT ALERT: Massachusetts Supreme Judicial Court Finds that Employees Cannot be Terminated Merely for Filing a Rebuttal to a Personnel Record

On December 17, 2021, *Meehan v. Medical Information Technology, Inc.*, the Supreme Judicial Court of Massachusetts ("SJC") held that an employee's filing a rebuttal to information placed in their personnel file that could negatively affect them is an act protected by public policy. In doing so, it held that terminating an at-will employee simply for filing a rebuttal constitutes a wrongful discharge in violation of public policy.

Employers are generally free to terminate at-will employees for any reason, or no reason at all. Among others, Massachusetts recognizes an exception to this rule when employment is terminated contrary to a well-defined public policy. One of the judicially recognized categories of protected public policy is when an employee asserts a legally guaranteed right. In *Meehan,* the SJC held that because the ability to submit a rebuttal is a legally guaranteed right of employment (provided under the Massachusetts personnel record law, G.L. c. 149, § 52C), termination for exercise of this right violates public policy.

According to the facts alleged by the plaintiff in *Meehan,* the day he sent a rebuttal to his supervisor related to a performance improvement his employer had placed him on, his employer terminated his employment. Notably, the employee did not attach a copy of his rebuttal to his complaint or allege its contents and at the procedural posture the case was decided at, the court had to accept as true his allegation that he was fired merely for filing the rebuttal. Accordingly, while the SJC's decision holds that employers cannot terminate employees for the act of filing a rebuttal, it does not mean an employer cannot terminate the employment of any individual who has filed a rebuttal. The court explained, for example, that "if an employee had an attendance problem, was disciplined for it, and filed a rebuttal, the rebuttal would not in any way shield the employee from being disciplined or fired for lack of attendance. If the absenteeism continued, the employee could be terminated from employment, regardless of the rebuttal."

Nonetheless, the decision should serve as a cautionary tale for employers who receive rebuttals to documents placed in an employee's personnel file. Terminating an employee in these circumstances could lead to exposure if a court finds that the termination occurred because the rebuttal was filed, rather than, for example, for other legitimate performance concerns. Employers who have questions regarding employees' right to rebuttal or the legal implications of terminating an employee who has previously filed a rebuttal should consult with their MBJ attorney.

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