

# CLIENT ALERT: Massachusetts Supreme Judicial Court Limits Discrimination Claims to Those Raised in MCAD Investigation

On December 10, 2010, the Massachusetts Supreme Judicial Court (SJC) clarified its position on the admissibility at trial of claims raised during Massachusetts Commission Against Discrimination (MCAD) investigations. This decision provides a reminder that employers and their counsel should review the scope of an MCAD filing when determining which claims are properly brought before a trial court.

In *Pelletier v. Town of Somerset*, No. SJC-10654, the plaintiff sued her former employer, claiming unlawful discrimination on the basis of gender and sexual orientation in violation of Chapter 151B of the Massachusetts General Laws. Before bringing suit in the Superior Court, the plaintiff filed a charge of discrimination with the MCAD – a prerequisite to filing discrimination claims in court. Plaintiff's MCAD charge contained allegations concerning conduct by a specific supervisor that allegedly occurred during the year 2000. The MCAD found "no probable cause" that the employer engaged in the unlawful conduct the plaintiff alleged at the MCAD. The plaintiff then exercised her right to bring suit in Superior Court.

The plaintiff introduced evidence of numerous allegations at her trial in Superior Court that she did not raise in her charge with the MCAD. The bulk of these claims involved allegedly inappropriate conduct dating back to 1980. The trial judge permitted these claims and, based on the evidence admitted, a jury awarded the plaintiff over \$1.5 million in compensatory and punitive damages, which the judge later reduced to \$600,000. Both parties appealed and the case reached the SJC.

The SJC ordered a new trial, explaining that the inclusion of evidence of the claims not raised at the MCAD violated the "scope of investigation" standard. Under this standard, a plaintiff cannot bring forward claims of discrimination at trial that she failed to raise in her charge with the MCAD. The standard is somewhat broad, in that it permits plaintiffs to include any information that the investigation "could reasonably be expected to uncover." As the SJC explained in its opinion, "a claim that is not explicitly stated in the administrative complaint may be asserted in the subsequent Superior Court action so long as it is based on the acts of discrimination that the MCAD investigation could reasonably be expected to uncover." In this situation, however, the plaintiff's allegations raised in Superior Court predated those listed in her MCAD complaint and were not related to its content. In rejecting the trial court's decision to admit evidence of these claims, the SJC explained "the town ... was not on notice that plaintiff considered pre-[2000] disputes to be live issues. To allow a plaintiff to withhold notice of the scope of a complaint until after the [probable cause] finding issues is unfair to her employer and inconsistent with the statutory framework as well."

Employers should carefully scrutinize any claims brought in Superior Court after disposition at the MCAD. As this ruling indicates, a court is only permitted to entertain claims within the scope of the investigation of the initial complaint. Plaintiffs cannot include unrelated content for the first time in Superior Court.

Morgan, Brown & Joy, LLP advises employers, including municipal clients, on labor and employment law issues. Contact an MBJ attorney today for additional advice and information.

*Peter J. Mee is an attorney with Morgan, Brown & Joy, LLP. Peter may be reached at (617) 523-6666 or at [pmee@morganbrown.com](mailto:pmee@morganbrown.com). Morgan, Brown & Joy, LLP focuses exclusively on representing employers in employment and labor matters.*

This alert was published on December 23, 2010.

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