

Massachusetts Creates Exception to At-Will Employment for Employees Exercising the “Right of Rebuttal”

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On December 17, 2021, the highest state court in Massachusetts held that an employer may not terminate an employee solely for exercising his right to file a rebuttal to be included in his personnel file. The Supreme Judicial Court found this new common law remedy is necessary to fully protect this legal right and to “complement the remedial scheme.” See [Meehan v. Med. Info. Tech., Inc.](#), No. SJC-13117, 2021 WL 5990887 (Mass. Dec. 17, 2021).

The Court also stated that an employee may not be terminated solely for what is written in his rebuttal, assuming it is directed at explaining the employee’s position regarding a disagreement over his employment record, no matter how “intemperate and contentious” it may be (unless it includes physical threats or other “egregious” responses).

This holding is based on the Massachusetts “right of rebuttal” in [Mass. Gen. Laws Ann. ch. 149, § 52](#). According to this statute, an employer must notify an employee whenever the employer modifies or adds information to an employee’s personnel file that may negatively affect his employment circumstances. The employee then has a right to inspect his personnel file and to submit a written statement explaining his position on the modifications. This “rebuttal” must then be included in the personnel file whenever it is transferred to a third party (as long as the original modification remains). The statute is enforced by the Attorney General, and employers are subject to small fines for noncompliance. This holding adds a new common law remedy, through the public policy exception to at-will employment, for any employee terminated solely for exercising rights under this statute.

In general, Massachusetts courts recognize a limited public policy exception to at-will employment: an employee may not be terminated contrary to a well-defined public policy. This exception has always been narrowly construed, and traditionally has been recognized to protect employees for things such as filing workers compensation claims, serving on juries, cooperating with a criminal investigation, or otherwise refusing to break the law. See [Meehan v. Med. Info. Tech., Inc.](#) at *2.

In [Meehan](#), the Court found that the statutory right of rebuttal requires further common law protection as a public policy exception to at-will employment. The statutory remedy is not comprehensive and does not include a private enforcement mechanism. It was not designed to protect an employee from termination or retaliation. The Court notes that not providing a remedy for an employee retaliated against or terminated for exercising the right of rebuttal would be “sticking a finger in the eye of the Legislature,” and would allow any employer to effectively negate the “important policies served by the right of rebuttal.” See [Meehan v. Med. Info. Tech., Inc.](#) at *5.

The Court reasoned that recognizing this new exception does not effectively end at-will employment and create a just cause requirement for terminating Massachusetts employees. A rebuttal under G. L. c. 149, § 52 simply memorializes an employee’s position; it does not provide any other right or job protection. An employee who filed a rebuttal can be terminated for any other legal reason, as long as it is not for filing a rebuttal itself or for its contents.

In addition, unlike the lower courts, the Supreme Judicial Court did not consider whether the right of rebuttal is important or whether it solely relates to internal matters; instead, the Court held that by making it a statutory right, the Legislature had already determined the right to be a matter of public significance. The Court believes accuracy in a personnel file is very important for current and future employment, as it ensures employees will be fairly evaluated by new employers (though we should note that employers rarely, if ever, provide a copy of an employee’s personnel file to future employers, so this rationale rings hollow). The Court held that the right also helps evaluate an employer’s legal compliance with things like workplace safety, wage and hour laws, and discrimination.

Following this holding, Massachusetts employers terminating an employee who has filed a rebuttal must take care to ensure they have sufficient reason to terminate the employee without regard to the rebuttal or its contents.

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