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## New Ruling Broadens Scope Of Massachusetts Anti-Discrimination Statute

July 22, 2013



The Massachusetts Supreme Judicial Court (SJC), the highest court in Massachusetts, ruled on Friday that the Commonwealth's antidiscrimination statute, which bars employment discrimination on the basis of handicap, prohibits employers from discriminating against an employee based on the handicap of a person *associated* with the employee. *Flagg v. Alimed, Inc.*

This lesser-known concept, referred to as "associational discrimination," has long been recognized by the Massachusetts Commission Against Discrimination (MCAD), and is explicitly recognized in the federal Americans with Disabilities Act (ADA), but had yet to be recognized by state courts. The law applies to both public employers and private employers with six or more employees.

### The Case That Brought Us Here

The law prohibits employers from discriminating against a qualified handicapped person "because of his handicap." In the *Alimed* case Marc Flagg alleged that his former employer, Alimed, Inc., fired him out of discriminatory animus towards his wife, who underwent surgery to remove a brain tumor and was receiving subsequent rehabilitative care.

Through his employment with Alimed, Flagg received family medical insurance that covered his wife. Flagg claimed that Alimed "desire[d] to be free from its obligation to pay for the wife's costly medical treatment." Alimed took the position that Flagg's claim should be thrown out of court because the handicapped person involved was not the former employee, but his wife. The lower court agreed and dismissed Flagg's case. Flagg appealed and the SJC ruled on Friday that it will allow Flagg to pursue his associational-discrimination claim against Alimed.

In analyzing Flagg's claim, the Court reviewed the legislative intent behind the state law and explained that adversely impacting an employee "premised on hostility towards the handicapped condition of the employee's spouse" is "treating the employee as if he were handicapped himself" – and this was the exact kind of behavior that the law seeks to protect against.

The Court also relied upon the statutory definition of "handicap," which includes protection of individuals who are "regarded as" having an impairment, explaining that an employee who is the direct victim of animus based on a spouse's impairment "suffers precisely the same type of discrimination as an employee whom the employer directly but incorrectly 'regards as' being handicapped."

In support of its decision, the Court noted that the MCAD has long interpreted the law as protecting against employment discrimination based on association. The Court also reviewed the analogous federal antidiscrimination statutes, Title VII and the Rehabilitation Act, which have been interpreted to cover associational-discrimination claims even without explicit statutory language providing for such claims.

### What The Ruling Means For You

This interpretation of the Massachusetts anti-discrimination statute appears to be limited; while it prohibits discrimination, it does not require employers to *accommodate* an employee without a disability due to that person's association with someone who is disabled (i.e., allow an employee time off or a reduced schedule to care for a relative). The decision's concurring opinion specifically warned against this case being interpreted that broadly and expanding even beyond that provided by the ADA (which already explicitly provides for associational discrimination but does not require reasonable accommodations to be made in those circumstances).

But always remember the importance of consistency: even though there is no requirement under the ADA or the state's antidiscrimination law to accommodate an employee without a disability due to that person's relationship with a disabled person, that employee must not be treated differently than other employees because of that association. For example, your leave policy should treat an employee taking time off to take a child to camp the same as an employee taking time off to care for a sick parent.

For employers governed by the ADA (15 or more employees), this case is a good reminder of the issues that can arise from these kinds of factual scenarios, which are less common than the traditional “reasonable accommodation” questions that employers deal with everyday. For employers subject to the Massachusetts antidiscrimination state law, this decision broadens the claims available.

Our advice? Make sure that you don’t take actions against an employee because of that individual’s relationship with someone who is known to be disabled. Educate your managers about the availability of these claims to heighten their awareness. Before making any decisions that might give rise to an associational-discrimination claim consult with your Fisher & Phillips attorney.

For more information contact any of the attorneys in our Boston office at (617) 722-0044.

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