MINTZ

Associational Discrimination Claims under Massachusetts Law Require More than Just Association

November 22, 2013 | Blog |

VIEWPOINT TOPICS

- Employment

RELATED PRACTICES

RELATED INDUSTRIES

Written by **Gauri Punjabi**

"Associational discrimination" refers to a claim that a plaintiff, though not a member of a protected class, was still subjected to some type of adverse action because of his or her association with a member of a protected class. This past summer, the Massachusetts Supreme Judicial Court, in ***Flagg v. AliMed, Inc.***, held that an individual may assert an associational discrimination claim under **Massachusetts General Laws, Chapter 151B, § 4(16)** – a provision of the Massachusetts anti-discrimination statute. Many Massachusetts employers feared an influx of associational discrimination claims by a new "class" of plaintiffs as a result of Flagg. But such fears appear to have been misplaced.

Less than a month after *Flagg*, in *Lashgari v. Zoll Med.*, a Massachusetts state appeals court threw out the case because the employee failed to show any connection between his conversation with his supervisor about his autistic son and the employer's decision to demote the employee and place him on a performance improvement plan. The court held that the employee could not simply rely upon a short time span between that conversation and demotion alone to support his claim; instead, he needed to show that the employer took these actions because of his association with his autistic son.

Then, last week, the federal district court in Massachusetts further narrowed an employee's ability to bring these claims. In ***Perez v. Greater New Bedford Vocational Tech. Sch. Dist.,*** the plaintiff, a special education coordinator, claimed that the school fired her because she advocated on behalf of the interests of the school's handicapped students. In rejecting the plaintiff's associational discrimination claim, the court relied upon *Flagg* in explaining that associational discrimination claims require evidence that the school regarded the employee as handicapped *by proxy because of her association* with the handicapped students, which was not present here. The court further cautioned that allowing plaintiff's claim would extend the reach of the anti-discrimination statutes beyond the intent of the legislature.

While employers will surely cite to *Lashgari* and *Perez* to limit employee associational discrimination claims, employers must still take steps to limit their exposure to these types of claims. Indeed, employers must make sure that they do not take an adverse action against an employee because of that employee's association with a member of a protected class or otherwise regard an employee as a member of a protected class by proxy.

Authors