

June 4, 2004

MCAD Reorganizes and Abandons Pre-Determination Discovery

The Massachusetts Commission Against Discrimination today issued a new standing order announcing a significant reorganization. Until today, the MCAD had been organized into two separate units with different procedures: the Pro Se Unit (for unrepresented parties) and the Attorney Assisted Unit (or "AAU," for cases in which both parties are represented by counsel). The reorganization eliminates the separate units, in favor of a single Enforcement Division comprised of Investigators and Enforcement Advisors.

Most importantly for employers, the reorganization also abandons the AAU's "pre-determination discovery" process. Under the old system, parties in the AAU were required to engage in limited discovery (including depositions, document production and written interrogatories) prior to the MCAD's issuance of a causal determination, and were required to submit a detailed memorandum of fact and law to aid in the MCAD's probable cause assessment. This process often resulted in substantial costs for employers. Now, all cases will follow the same procedure, similar to the EEOC's approach:

- Complaint filed by complainant;
- Respondent submits a position statement;
- Complainant may file a response to the position statement;
- MCAD may conduct a pre-investigative conference (if necessary);
- MCAD may request additional information from the parties; and
- Probable cause determination issues

Unfortunately for employers, all cases currently pending at the Commission in which a discovery order has been issued already will proceed under the former pre-determination discovery procedure. If no discovery order has been issued, the case will be governed by the new streamlined procedure.

If you have questions about how this reorganization will affect a pending case, please feel free to contact your Seyfarth Shaw attorney.