

One Minute Memo[®]



Massachusetts Supreme Judicial Court Recognizes Associational Disability Discrimination Under Massachusetts Law

The Massachusetts Supreme Judicial Court altered the state's disability law landscape last week with a narrowly tailored decision allowing some -- but not all -- claims of associational disability discrimination to proceed under the state's anti-discrimination law, M.G.L. ch. 151B, § 4(16) ("Chapter 151B").

In *Flagg v. AliMed*, the plaintiff brought suit against his former employer, alleging that the Company fabricated reasons for terminating him because it did not want to pay for health plan costs related to his wife's disability. The Massachusetts Superior Court granted the Company's motion to dismiss, finding that the relevant section of Chapter 151B only covers individuals with disabilities and provides no protections for employees who are associated with disabled individuals. The plaintiff appealed, arguing that Chapter 151B, which does not expressly cover instances of associational discrimination, should still encompass this form of discrimination because it causes a direct and specific injury to the employee and represents "a formidable barrier to the full participation of an individual in the workplace," which Chapter 151B is intended to prevent.

The SJC agreed with the plaintiff's argument and issued a narrow ruling in his favor. Looking to the general purpose of Chapter 151B and the Massachusetts Commission Against Discrimination's ("MCAD") more expansive reading of the statute, as well as the federal Rehabilitation Act of 1973, the Court found that Chapter 151B encompasses certain associational discrimination claims despite the absence of express statutory language on discrimination based on association. However, the Court was careful to limit its holding to the facts of this particular case, holding that associational disability discrimination can be actionable in cases where the employer seeks to avoid health insurance costs related to the care of an employee's disabled family member. The decision does not reach other types of associational discrimination, and one Justice's concurring opinion highlights the narrowness of the holding, noting that "[t]he court does not decide in this case whether associational discrimination . . . will be interpreted to extend beyond the type of case at issue here." The concurring Justice further clarifies that the Court's opinion does not suggest that an employer is required to provide reasonable accommodation to an employee who is not himself disabled to allow the employee to attend to matters relating to the disabled individual with whom the employee is associated, and that the failure to so accommodate does not amount to disability discrimination under Chapter 151B.

Flagg v. AliMed expands the scope of disability discrimination law in Massachusetts, bringing it in line with the Americans with Disabilities Act, which expressly prohibits associational disability discrimination. However, a careful reading of the *Flagg* decision reveals that its holding only applies to a narrow set of situations. Further, this decision does not hold that Chapter 151B requires employers to accommodate employees based on their association with a disabled person. Nevertheless, employers who offer subsidized health insurance to employees should exercise caution in the aftermath of *Flagg* in the event that they learn that a covered family member suffers from a disability. Further, employers generally should stay tuned to case law developments on the courts' potential adoption of the MCAD's expansive view of Chapter 151B with respect to other forms of associational discrimination.

By: *Beth Gobeille Foley*

Beth Gobeille Foley is located in Seyfarth Shaw's Boston office. If you would like further information, please contact your Seyfarth Shaw LLP attorney or Beth Gobeille Foley at bfoley@seyfarth.com.