

Massachusetts Supreme Judicial Court Holds That Chapter 151B Prohibits Associational Discrimination

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On July 19, 2013, the Massachusetts Supreme Judicial Court (SJC) held in *Flagg v. AliMed, Inc.* that a non-disabled employee can sue his employer for disability discrimination under Chapter 151B, the state anti-discrimination law, if he can demonstrate that he was treated adversely because of his association with a disabled family member. By recognizing so-called associational discrimination, the Court has broadened the scope of disability discrimination to include employees who care for an immediate family member with a disability.

In *Flagg*, employee Marc Flagg's wife had been receiving medical care in connection with a brain tumor. As a result, on certain days, Flagg had to leave work for a half hour to pick up his daughter. He did not punch out for this time, and Flagg alleged that management knew that he was not punching out. Nonetheless, his employer, AliMed, terminated him purportedly for not punching out. Flagg sued AliMed for disability discrimination, alleging that he was terminated because his wife had a serious, expensive medical condition that rendered her totally disabled and for which AliMed was financially responsible through its health plan. The trial court dismissed the Chapter 151B claim on the ground that the statute does not cover associational discrimination. Flagg appealed the dismissal, and the SJC took the case directly.

On appeal, the SJC reversed the dismissal and held that Chapter 151B prohibits associational discrimination. Although the statute specifically refers only to an employee's disability, the SJC explained that the statute also protects individuals who are "regarded as" having an impairment but who themselves are not actually disabled. It reasoned that when an employer takes an adverse action against its employee because of his spouse's impairment, that employee suffers the same discrimination as an employee whom the employer "regards as" being disabled. In a footnote, the Court explained that its analysis was limited to claims of associational discrimination in the context of immediate family members only.

In a concurring opinion, Justice Gants suggested the Court's holding was a narrow one -- that a claim of associational discrimination is limited to where the employer does not want to incur under its health plan the anticipated medical expenses arising from the spouse's disability. However, the full Court's decision reads more broadly than that, and we expect plaintiffs' lawyers and the Massachusetts Commission Against Discrimination to interpret it as such.

Left open after *Flagg* is whether an employee with a disabled spouse is entitled to a reasonable accommodation. The SJC specifically noted that the issue was not presented in the case and therefore did not address it.

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