

Case in Point: Employment

Massachusetts Human Rights Bill

The Massachusetts Human Rights Bill (House Bill 706) is an innovative piece of legislation currently under consideration by the Massachusetts legislature. The aim of House Bill 706 is to initiate a process to integrate international human rights standards and protections into state law. House Bill 706 would authorize state legislators to investigate human rights abuses in Massachusetts through a series of public hearings. The bill would also authorize a technical review of state law.

CEDAW: A Bill of Human Rights for Women

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is a comprehensive bill of human rights for women that endorses the adoption of proactive measures to ensure gender equality and prevent discrimination. CEDAW requires that governments respect, protect and fulfill the full range of women's human rights and freedoms. House Bill 706 would measure Massachusetts state law and regulations against the standards of non-discrimination developed by the committee overseeing compliance with international treaty law. This "case in point" offers a preview of what the legal reviews requested by House Bill 706 might discover about one area of urgent concern to Massachusetts women: Employment.

Applicable Articles of CEDAW

The prototype review commissioned for the area of Employment identified gaps between current state law and the following human rights standards guaranteed by CEDAW:

- Article 11(1) – the right to equal employment opportunities, the right to free choice of profession and employment, and the right to equality of treatment in the evaluation of the quality of work.
- Article 11(2) – the right to protection from discrimination and/or discharge on the basis of marital status, pregnancy, or maternity leave; the right to paid maternity leave without the loss of employment or seniority; and the right to supporting social services that enable a parent to combine family obligations with work responsibilities.

Measuring State Laws Against the Standards of CEDAW	Yes	No
Does this report describe the gaps between the Massachusetts laws pertaining to pregnancy and maternity leave and the international human rights standards of CEDAW?	X	
Does employer discrimination on the basis of pregnancy and maternity leave still exist in Massachusetts?	X	
Does the provision of unpaid maternity leave meet the international human rights standards asserted by CEDAW?		X
Does underfunding and understaffing negatively impact the ability of the Massachusetts Commission Against Discrimination ("MCAD") to enforce state law?	X	
Does the intricate complaint filing procedure of the MCAD deter some women from filing employment discrimination claims?	X	

Employment Findings

Social and economic rights are not guaranteed by the United States Constitution. To ensure that women do not have to choose between the right to employment and the right to have a family, the right to paid maternity leave must be deemed essential to humankind.

- The ability of a woman to have free choice of profession and employment is directly related to her ability to balance family obligations with work responsibilities:
 - The social stigma associated with paternity leave leads men to choose work over family, which in turn pressures women to sacrifice work responsibilities for familial obligations.
- To obtain gender equality in the right to employment, women must have the right to paid maternity leave without the loss of employment or seniority:
 - Many Massachusetts companies only offer unpaid maternity leave, an empty benefit given that many women lack the resources for self-financed leave.
 - A significant percentage of women returning to work from maternity leave report facing employer discrimination, including redefined work responsibilities.
- The insufficient enforcement of state law leads to the inability of the Commonwealth to protect a woman's right to receive maternity leave:
 - The complicated procedure required to file a claim with the MCAD reduces the desire of many women to pursue employment discrimination claims.
 - The MCAD is very selective, meaning many complaints are never pursued. This practice may mask the true level of employer discrimination in Massachusetts.

Case in Point

Charity Reyore, a married mother of two children, worked as a laboratory technician in a small biotechnology company in Boston. After learning that she was pregnant and due to give birth in June, Charity shared the good news with her co-workers and her supervisor. While Charity's colleagues were excited for her and began planning her baby shower, Charity's supervisor responded badly, asking, "What are you...some kind of breeding cow?" Charity wanted to file a complaint about the inappropriate remark, but she felt vulnerable given that she was not backed by the protection and support of a labor union. Charity just ignored the "breeding cow" remark, and pressed on at work, putting the financial needs of her family first.

In the months before Charity gave birth to the baby, her family suffered a series of setbacks. First, Charity's husband lost his job, which left her with no choice but to work overtime to make up for the lost income. Next, due to the added stress and the physical demands of her work, Charity's health declined and, during her final trimester, Charity experienced complications that called for bed rest. On top of all of these problems, Charity worried incessantly about how her family would survive during her unpaid maternity leave.

Just one month into her three month maternity leave, Charity returned to work. Her family needed the money. Although she expected to return to the position that she held before taking maternity leave, Charity found that she had been replaced with a recent college graduate, and that she had been demoted to the position of laboratory assistant. With little to lose given that her salary had been cut in half, Charity filed a claim with MCAD. More than a year has passed, and Charity has yet to hear anything about her case.

The international human rights asserted by CEDAW provide that women should be protected from workplace discrimination on the bases of pregnancy and maternity leave. A mother should not have to forgo maternity leave out of fear that her position will be changed or even filled in her absence.