



Can An Employee Be Fired For Rebutting A Negative Review? Maybe.

A new decision from the Massachusetts Appeals Court has called into question the breadth and scope of an employee's right to rebut negative information put into her personnel file by an employer.

Under G.L. c. 149, §52C, if an employee disagrees with the employer regarding negative information being added to her employee file, the employee has a statutory right to have her side of the story included in the file by way of a rebuttal. In doing so, the employee is able to protect herself by ensuring that the information contained in her file includes both sides of the dispute. On January 20, 2021, however, the Massachusetts Appeals Court held in *Meehan v. Medical Info. Tech., Inc.* that an employee may be fired for filing a rebuttal under the statute. In an unusual posture, while oral argument was heard by a three-judge panel, five judges wrote the opinion. The court reasoned that the statutory right to file a rebuttal does not rise to the level of a public interest that is necessary to create a new public policy exception to the general rule of at-will employment.

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In that case, a sales specialist at a privately-held, Massachusetts-based software and service company was put on a performance improvement plan after a change in job responsibilities and commission structure. In response, the

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Firm News

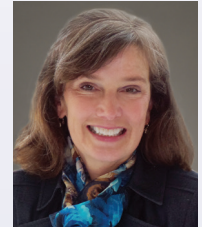


Mark Smith

Congratulations to our partner Mark Smith as he celebrates 20 years with the firm!

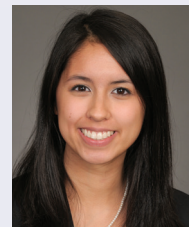


John Fitzpatrick



Donna Frankel

In 2020, we welcomed two new attorneys to the team! Please visit laredosmith.com to learn more about John Fitzpatrick and Donna Frankel.



Jessica Conklin

Jessica Conklin was appointed to the Boston Bar Association's White Collar Crime Conference steering committee where she will help develop the 2021 virtual conference.

Jessica Conklin will moderate and Payal Salsburg will present an on-demand panel program, "Related Aspects of Prepping Trials in the Remote World" for the Boston Bar Association.



Payal Salsburg

Payal Salsburg co-presented a webinar for the Boston Bar Association entitled, "Ethical Dilemmas and Considerations in Representing Impaired Clients" where she covered ethical duties representing a mentally impaired client.

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employee filed a rebuttal in accordance with section 52C, in which he provided his side of the story. That same day, company management reviewed the employee's rebuttal and fired him. The employee sued for wrongful termination in the Superior Court, which action was dismissed because there was no established public policy exception allowing an employee to file a rebuttal and not be fired. The employee appealed.

In its opinion affirming the dismissal, the Appeals Court first noted that at-will employment allows the termination of employment for any reason or no reason at all, save for certain, narrow exceptions that are in accordance with public policy. Specifically, to permit such an exception, the public policy must be "well defined, important, and preferably embodied in a textual law source." In other words, the policy must be clearly defined and have an effect on the community at large.

Under this rubric, the Appeals Court found that the right of rebuttal is an internal or administrative matter to the employer-employee relationship rather than one that involves public policy. Therefore, it cannot be the basis for an exception to the at-will employment rule. The court further noted that Massachusetts law does not protect at-will employees for complaints about organizational or internal matters, even if making or resolving those complaints may be "socially desirable." The court did not view the issue as affecting the community at large because the employee's personnel record contains information pertaining to that individual alone and therefore only affected that individual.

In dissenting from the majority's view, Judge Vickie L. Henry noted that the majority's decision would essentially negate the statutory right to file a rebuttal. By denying redress to an employee who is fired for filing a rebuttal, there would be little to no reason for an employee to exercise her right under section 52C as she could face the threat of being terminated from her employment. In addition, Judge Henry noted that employee rebuttals serve the public by encouraging employers and employees to have open communication regarding personnel files, which in turn helps ensure that the employee is given a fair evaluation by prospective employers.

While further appeal has not been filed as of this printing, we expect that the parties will seek further appellate review in the Supreme Judicial Court.

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