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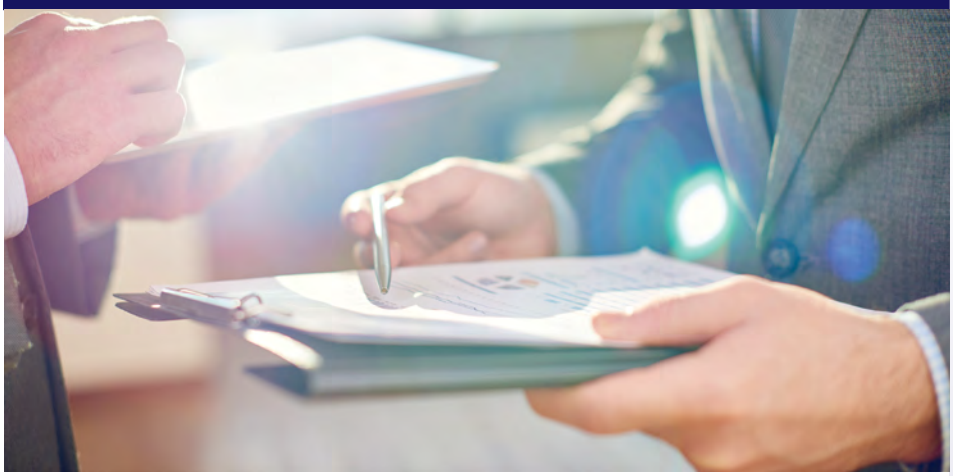
IN BRIEF



NEWSLETTER • FEBRUARY 2022

Employers Cannot Terminate Employees Merely for Filing a Rebuttal in Their Personnel File

Early last year, the Massachusetts Appeals Court affirmed a controversial ruling that an employer could terminate an at-will employee for exercising the right to file a rebuttal in their personnel file. Employers should be aware that the Supreme Judicial Court has since reversed that ruling in Terence Meehan v. Medical Information Technology, Inc., protecting the rights of employees to file rebuttals without the threat of termination.

By way of background, Terrence Meehan began working for Meditech as a sales representative in 2010. In 2017, the company moved Meehan to a new position that substantially changed his responsibilities and decreased his commissions. As a result, Meehan's performance declined and he was placed

> ... in order to challenge being fired as an at-will employee there must exist circumstances implicating public policy -- it must affect the general public, not just the individual.

on a performance improvement plan. In response, Meehan sent his supervisor a written statement regarding the situation and asked for the statement to be included in his employee file. Members of Meditech's management team met to discuss the rebuttal and terminated Meehan on the same day.

In response, Meehan filed suit alleging that he was wrongfully discharged. Meehan claimed that his termination violated Gen. Laws c. 149, § 52C

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Firm News

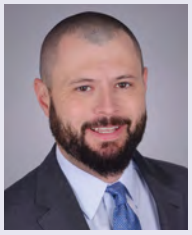
Payal Salsburg

Payal Salsburg is the elected Co-President of the South Asian Bar Association of Greater Boston and the Vice President of the Board of Directors for Boston Court Appointed Special Advocates.

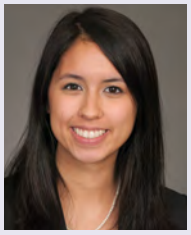
Payal is also serving as the Boston Bar Association's 2021-2022 Business & Commercial Litigation Section Co-Chair.

Mark Smith

Marc Laredo



Brendan Cox



Jessica Conklin

Boston Magazine's inaugural *Top Lawyers List* names Marc Laredo, Mark Smith, Payal Salsburg, Brendan Cox and Jessica Conklin.

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that allows employees to submit a rebuttal statement to be included in their personnel record in the event of a disagreement between the employee and their employer. Meditech moved to dismiss. The Superior Court allowed Meditech's motion, explaining that in order to challenge being fired as an at-will employee there must exist circumstances implicating public policy -- it must affect the general public, not just the individual. The judge described the circumstances as merely "involv[ing] matters internal to an employer's operation" and that to rule otherwise would go against the principles of at-will employment.

The Appeals Court agreed in a split decision that it was an internal company matter. The court stated that even if it did implicate public policy, the matter was "neither sufficiently important nor clearly defined, both of which are required to justify the exception."

Late last year, the Supreme Judicial Court reversed. The SJC re-examined the public policy exception to at-will employment, and recognized that an exercise of the right to file a rebuttal did implicate the public policy exception to employment at-will and a right guaranteed by statute need not be "important" to qualify for protection. The SJC also noted the importance of analyzing the content contained in the rebuttal as opposed to the "tone" of the statement. For instance, if a rebuttal were to include "threats of personal violence, abuse, or similarly egregious responses," that could be sufficient grounds for termination. But the mere fact of filing a rebuttal, even an angry one, is insufficient on its own to support lawful termination.

Moving forward, employers should be aware that employees have the right to file a rebuttal and have it included in the employee's personnel file. Before taking any adverse action against the employee for doing so, employers should examine and consider the contents of the rebuttal and, based on the analysis of the content of the rebuttal, determine whether termination is appropriate under the particular circumstances.

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