

EXCEPTIONS TO THE AT-WILL EMPLOYMENT DOCTRINE

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The at-will employment doctrine, that an employee can be terminated for any reason or for no reason, is a doctrine whose validity is dwarfed by its numerous exceptions. Many of the exceptions to the at-will rule are open ended and susceptible to wide interpretation. For example, it is illegal to terminate employees for engaging in "concerted activity" or in violation of "public policy." These exceptions to the at-will doctrine will continue to evolve and broaden.

I am providing two checklists. The first is a five page summary checklist that may be shown to a client, to help him or her flag potential issues for a lawyer to look more closely into. The second list provided below shows many, but not all the illegal reasons for terminating or altering employment, with some citation to legal authority. This second list is very long. For those thinking that the list is too long to be useful, this is an indictment of process that we currently use, which addresses the flaws in the at-will employment doctrine in a piecemeal fashion. There are so many circumstances where the at-will employment doctrine is inappropriate that it is difficult even to consider them all. By the same token, I cannot certify that this list is comprehensive. It contains only a bare, non-specific summary of many of the protections available to employees.

Many of the claims discussed below may be proven through the familiar McDonnell Douglas burden of proof, either under the Federal version, or as modified in Massachusetts. See Harrington v. Aggregate Industries-Northeast Region, Inc., 2012 U.S. App. Lexis 2387, at 11-12 (1st Cir.) (burden-shifting formula is applicable to False Claims Act retaliation cases, and the evidence is considered in its totality and in combination); Psy-Ed Corp. v. Klein, 459 Mass. 697, 711 n.11 (2011) (burden shifting approach applies to c. 151B retaliation claims).

When a new client enters a lawyer's office with questions about a termination, there is a danger that an unlawful motive may be overlooked. How many lawyers ask clients whether the garnishment of wages, or jury duty, could have motivated the termination? It is a scary prospect that a lawyer can not possibly inquire about the entire gamut of illegal forms of discrimination in a session. Therefore, the following list has been developed so that both clients and practitioners can flag the possible legal protections that may apply.

SUMMARY CHECKLIST
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Name

Date

WERE YOU FIRED BECAUSE OF YOUR . . .

Age?
Alienage?
Ancestry? (Were you fired because of animus against your mother or grandfather?).
Citizenship, or immigration status?
Color?
Criminal History?
Disability, or failure to accommodate your disability?
Gender?
Gender Identity?
Genetic Information?
Height?
Illegitimacy?
Immigration documentation?
Marital Status?
National Origin?
Pregnancy?
Race?
Religion, or failure to accommodate a religious practice?
Sexual Orientation?
Veteran?

WERE YOU FIRED BECAUSE YOU

Assisted others in opposing discrimination?
Asserted a legally guaranteed right?
Associated with another person?
Complied with the law?
Are a breastfeeding mother?
Donated Blood?
Are transgendered?
Engaged in Union Activity?
Exercised your right to free speech or association?
Exercised your Fifth Amendment, or other Constitutional right?
Filed a lawsuit, or engaged in other petitioning conduct?

Filed an OSHA claim?
Rented an apartment to a member of a protected minority group?
Filed a Workers Compensation claim or suffered an on-the-job injury?
Opposed any type of discrimination or harassment?
Opposed discrimination in education?
Participated in a proceeding relating to an unfair educational practice?
Of your participation in one or more foreign trade relationships?
Participated in a governmental investigation?
Possessed under an ounce of Marijuana?
Received treatment in a mental health facility?
Received a credit or subsidy under the 2010 Health Care Reform, or reported a violation of that law?
Reported the presence of asbestos?
Reported an abuse of authority?
Reported child abuse or neglect?
Reported mismanagement or danger with respect to a Dept. of Defense contract?
Reported elder abuse
Reported a crime in a federally funded long-term care facility?
Reported a violation of the Consumer Protection laws?
Reported a violation of the Consumer Financial Protection Act?
Reported a violation of the Credit Union Act?
Reported a violation of the Individual Disability Education Act?
Reported a violation of the Food, Drug and Safety Act?
Reported an unsafe or unlawful practice with respect to cosmetics?
Reported an unsafe or unlawful practice with respect to medicines or drugs?
Reported a food safety issue?
Refused to conduct embryonic stem cell research
Reported an environmental risk?
Reported inaccuracies in a financial report?
Reported illegal conduct?
Reported a violation of SEC rules?
Reported a violation of securities law
Reported a violation of the Commodity Exchange Act?
Reported a concern about pipeline safety?
Reported a risk to public health or safety?
Reported a violation of the mining laws?
Reported a violation of the 2010 Health Care Reform?
Reported or refused to participate in a violation of the Emergency Medical Treatment and Active Labor Act
Reported illegal conduct relating to a Federal contract?
Reported mismanagement or gross waste of funds?
Reported misuse of funds from the 2009 Federal Stimulus package?
Reported patient abuse?
Reported a railroad accident?
Reported a safety concern involving airplanes, cargo containers, or commercial motor vehicles?

Reported a safety concern involving nuclear facilities?
Reported a concern involving military atomic energy facilities or laboratories?
Reported a safety concern at a public transportation agency, or investigated such a concern?
Reported a workplace safety concern?
Reported or refused to participate in patient dumping (transferring unstabilized patient)
Reported an instance of fraud on the Federal or a State government?
Reported a violation of the rights of institutionalized persons?
Reported pollution?
Reported research misconduct?
Requested a reasonable accommodation for your disability?
Responded to a subpoena?
Served on a jury?
Served as a witness?
Served in the military or are a reservist?
Sought an accommodation based on disability or religion?
Took sick leave, FMLA leave, maternity, paternity, or other type of leave?
Took leave to be an organ donor?
Took leave for school activities, or medical or dental appointments for family members?
Took leave for Veterans Day or Memorial Day?
Took leave to deal with Domestic Abuse or other forms of abuse?
Took a thirty minutes break for lunch or other meal?
Voted?
Were indicted?
Were seeking payment of your wages?
Were seeking benefits or your benefits were about to vest?

WERE YOU FIRED BECAUSE YOU REFUSED TO . . .

Participate in an abortion?
Take an AIDS test?
Be Vaccinated?
Work on a legal or religious holiday?
Work seven days in a row?
Contribute to, or work on a political campaign?
Take a polygraph test?
Violate the law?

WERE YOU FIRED . . .

Arbitrarily?
In the absence of good cause?
For reasons unrelated to work performance?
For reasons related to your credit history?
Based on favoritism?
Based on defamatory or wrongful conduct by a third person?

Based on information that should have been private or confidential?
In violation of anti-trust/anti-monopoly statutes?

ARE YOU A . . .

Building Inspector or Commissioner?
Temporary Worker?
Assessor in a city
Member of a Town Conservation Commission?
One of the Seven Members of the Massachusetts Port Authority
Chief Medical Examiner?
In a civil service position?
Shareholder in a close corporation?
County Employee?
Employee principally supported by the Funds of a County?
Court Clerk?
Victim of domestic violence?
Seaman under the Maritime statute?
On disability retirement?
Governor's appointee?
Employee in the Office of the President?
Housing authority employee?
Redevelopment authority employee?
Involuntary laborer or subject to peonage?
Jail employee in Suffolk County?
Beneficiary of Rights under a City charter or by-law?
Have you been laid off?
Migrant worker?
Victim of a plant closing?
Police officer?
Public school employee?
Redevelopment authority member?
State employee?
Union member?
Veteran?
Do you have a workers compensation rehiring preference?

HAS THE EMPLOYER

Failed to pay wages?
Failed to pay prevailing wage
Failed to pay equal wage for equal work?
Withheld wages to purchase insurance, but failed to purchase insurance?

DO YOU HAVE . . .

Cancer?
Hypertension?

DO YOU HAVE A CONTRACT . . .

For a term of years?
For termination only for just cause?
For payment of commissions?
For stock options?
For stock repurchase?
Including a non-competition agreement?
Including procedures that must be followed prior to termination?
Including procedures that permit you to challenge your termination?
Do you have a personnel manual?
Have you been relocated?

Illegal Reasons to Discriminate Against An Employee

Abortion--Refusal to Perform, Suggest, Assist or Conscientious Objection to	G.L. c. 112, § 12I
Age Discrimination	G.L. c. 151B, §§ 4(1B), 4(1C), 4(3); G.L. c. 93, § 103(a) (Equal Rights Act, including right to reasonable accommodation); G.L. c. 31, § 1 (civil service); G.L. c. 149, § 24A; 29 U.S.C. §§ 623(a), (b) & (c) (Age Discrimination in Employment Act); 5 U.S.C. § 2301(b)(2); 29 U.S.C. § 1054(b)(1)(H)(i) (ERISA benefits)
Age Discrimination—Opposing or complaining of	G.L. c. 151B, § 4(4); G.L. c. 149, § 24F; 29 U.S.C. § 623(d) (Age Discrimination in Employment Act); 42 U.S.C. § 6102 (federally assisted programs); <u>but see Gomez-Perez v. Potter</u> , 128 S. Ct. 1931 (2008), reversing 476 F.3d 54 (1 st Cir. 2007) (recognizing ADEA retaliation claim for Federal employees, under 29 U.S.C. § 633a(a))
Aiding Others in the Enjoyment of G.L. c. 151B Rights	G.L. c. 151B, § 4(4A)
AIDS Test	G.L. c. 111, § 70f (employer may not condition employment on employee taking HTLV-III antibody or antigen tests)
Air Pollution--Reporting	See "Pollution—Air" in this Index
Airline--Safety	See "Safety—Airline" in this index
Alienage Discrimination	42 U.S.C. § 1983; see also "Citizenship" in this Index
Ancestry	See <u>Espinoza v. Farah Manufacturing Co.</u> , 414 U.S. 86, 88 (1973); <u>St. Francis Coll.</u> , 481 U.S. at 614. Does this mean that someone can not be fired due to animus against one's mother or grandmother? See also "National Origin" in this Index
Arbitrary Firing	G.L. c. 31, § 1 (civil service); 5 U.S.C. § 2301(b)(8)(A) (Federal Employees); see also "Good Cause--Lack of" in this Index
Arbitration	See "Contract – Arbitration" in this Index

Asbestos--Reporting	G.L. c. 149, § 6D; 20 U.S.C. § 3608 (Asbestos School Hazard Detection and Control Act); 20 U.S.C. § 4018 (disclosure of asbestos hazard in school); 15 U.S.C. 2651 (Asbestos Hazard Emergency Response Act of 1986 (AHERA)) (no governmental retaliation against whistleblowers regarding asbestos)
Assessor	G.L. c. 41, § 24 (three year appointment, at least); G.L. c. 43, § 61 (assessor may not be removable by mayor)
Association--Public Employees	Certain public employees may not be terminated due to political association or close personal association. See "Marital Status" and/or "Political Association" in this Index
Association With Others Within a Protected Class	One closely associated with someone within a protected category may be protected as well. <u>Flagg v. AliMed, Inc.</u> , 466 Mass. 23 (2013) (recognizing claim for discrimination based on association with handicapped family member); <u>Perez v. Greater New Bedford Vocational Technical School Dist.</u> , 2013 U.S. Dist. Lexis 61650 (D. Mass) (refusing to recognize discrimination claim based on a school director's advocacy on behalf of disabled students); <u>Thompson v. North American Stainless (NAS), LP</u> , 131 S. Ct. 863 (2011) (employer may not fire the fiancée of individual that opposed discrimination in the workplace); <u>Papa v. Pelosi</u> , 17 MDLR 1467, 1472 (1995); <u>Green v. Trepanier</u> , 12 MDLR 1358, 1371 (1990); <u>Luna v. Lynch</u> , 7 MDLR 1699, 1725 (1985); <u>Romano v. Lowell Paper Box Co.</u> , 4 MDLR 1087, 1097 (1982) (Catholic man held to be a member of protected class because his wife was Jewish); <u>Dittbenner v. Hapco Auto Parts, Inc.</u> , 11 MDLR 1139 (1989) (complainant was protected as handicapped due to her husband's lupus); <u>Reich v. Cambridgeport Air Systems</u> , 8 IER 1614, 1618 (D. Mass. 1993), <u>aff'd</u> 26 F.3d 1187, 1188-9 (1 st Cir. 1994) (where OSHA statute prohibits discrimination against those filing an OSHA complaint, and a worker who filed a complaint and that worker's friend were fired based on the complaint, the friend had a cause of action against the company); <u>MCAD and Grzych v. American Reclamation Corp.</u> , Decision of the Full

	Commission, MCAD Docket No. 08-SEM-00144, January 30, 2015 (complainant was engaged to be married to African-american, and so was protected from harassment)
Attorney/Client Privilege	<u>Denius v. Dunlap</u> , 209 F.3d 944 (7 th Cir. 2000) (public employee may not be terminated for refusing to reveal attorney/client privileged communications); see "Association" in this Index
Authority--Reporting Abuse of	5 U.S.C. § 2301(b)(9)(B) (Federal Employees)
Bank--Reporting Violation of Law or Gross Mismanagement	12 U.S.C. § 1831j(a)(1); see Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (CFPA), 12 U.S.C. §5567 (if the allegation involves CFPB regulations); Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002 (SOX), 18 U.S.C. §1514A (if the bank is publicly traded and the allegation involves violations of S.E.C. regulations); see also "Credit Union" in this Index
Benefits--Seeking Benefits, Vesting or Testifying	29 U.S.C. §§ 1140, 1141 (ERISA); <u>Altshuler v. Animal Hospitals, LTD</u> , 2012 U.S. Dist. Lexis 155941, 20-23 (D. Mass.) (front pay is probably available, but back pay is probably not available in an ERISA retaliation case); <u>Rodrigues v. Scotts Co.</u> , 2008 U.S. Dist. Lexis 6682 (D. Mass.) (terminating smoker due to concerns about increased health costs could violate ERISA); see also "Wages-- Compensation Earned or Almost Earned Based on Past Performance of Services"
Blood Donation	Public employees may have eight hours paid leave for blood donation. G.L. c. 149, § 33D.
Breastfeeding	2010 Healthcare Reform Legislation amends the FLSA to require employers with over 50 employees to provide new mothers with reasonable time and privacy to express breast milk for their nursing children, for up to one year after birth. A bathroom does not count as a place of privacy. <u>Currier v. Nat'l Bd. of Med. Examiners</u> , 462 Mass. 1 (2012) (breastfeeding is a sex based characteristic, and disadvantage based on breastfeeding constitutes discrimination based on sex, and modifications may

	be required under the public accommodations statute).
Building Inspectors or Commissioners	G.L. c. 143, § 3Y (entitled to three year terms, removable only for cause and with a hearing)
Cancer	G.L. c. 31, § 21 (civil service); see also "Disability" in this Index
Cargo Containers--Reporting	See "Safety--Cargo Containers" in this Index
Chair	Employers shall provide suitable seating for employees. G.L. c. 149, § 103. See also "Disability – Request for Accommodation" in this Index
Chief Medical Examiner	G.L. c. 38, § 2 (appointed for a term of five years); <u>Flomenbaum v. Commonwealth</u> , 2008 Mass. Lexis 490 (2008) (chief medical examiner properly removed for cause, and letter of hiring does not constitute a contract diluting the Governor's ability to terminate for cause)
Child Abuse or Neglect--Reporting	G.L. c. 119, § 51A; <u>Rosseel v. Fay School</u> , 26 Mass. L. Rptr. No. 28, 516, 517 (April 5, 2010) (internal complaints of abuse are protected); <u>Anderson v. First Student, Inc.</u> , 2011 U.S. Dist. Lexis 87010 (D. Mass.) (51A claims not preempted by the NLRA); <u>Asia v. Res-Care, Inc.</u> , 59 F. Supp. 3d 260, 267-268 (D. Mass. 2014) (reporter need not conduct independent investigation or credibility evaluation prior to reporting—communications to DCF and law enforcement are protected)..
Child Labor	G.L. c. 149, §§ 60-74
City Charter or By-Law	Some cities have charters or by-laws which accord certain employees procedural protections if they are let go, or not reappointed. See <u>Somerville Charter</u> , Division 1, § 23, Division 1, Title 6, § 40D. In some cases, plaintiffs should pursue a writ of mandamus to prevent a violation, as opposed to a claim for damages. <u>Davidson v. Pittsfield</u> , 2014 Mass. App. Unpub. Lexis 100, at 2-5. See also <u>Monfredo v. Worcester</u> , 2013 Mass. Super. Lexis 225; 31 Mass. L. Rptr. No. 30, 648, 650 (April 7, 2014) (city council's removal of plaintiff's position from budget is

	effective approval of City Manager’s decision to terminate, and the elimination of one position fails to trigger “reorganization” provision of city charter). However, cities may not adopt a local option statute, and then attempt to by-pass the rights conferred in that statute, or create restrictions on the benefits accorded. <u>Galenski v. Erving</u> , 471 Mass. 305 (2015).
Citizenship Discrimination	8 U.S.C. § 1324b(a)(1)(B); see EEOC Compliance Manual, Section 13, National Origin Discrimination, December 2, 2002, section VI (Citizenship requirement as a pretext for national origin discrimination)
Citizenship Discrimination--Opposing	8 U.S.C. § 1324b(a)(5)
Citizenship Preference	G.L. c. 149, § 26 (public works preference for citizens of Massachusetts); G.L. c. 149, § 27E (residency preference for department of highways)
Civil Rights	G.L. c. 12, § 11H & I (interfering with constitutional rights by threats, intimidation or coercion); 42 U.S.C. §§ 1981-3 (Civil Rights Acts)
Civil Rights of Institutionalized Persons	See “Institutionalized Persons—Reporting Violations of Civil Rights” in this Index
Civil Service—Interference with Rights	<u>Staveley v. City of Lowell</u> , 71 Mass. App. 400, 409 n.13 (2008) (holding open the possibility that there is a private right of action under G.L. c. 31, § 74).
Civil Service--Just Cause	G.L. c. 31, § 1 et seq.; G.L. c. 31, § 41; G.L. c. 31A, § 1 et seq.; <u>School Committee of Brockton v. Civil Service Commission</u> , 43 Mass. App. 486 (1997) (school custodian could not be dismissed because he engaged in sexual act in a public park); G.L. c. 121B, § 29 (housing authority employees); G.L. c. 30, § 9 (Governor’s appointees may be removed for cause)
Close Corporation	See "Stockholder in Close Corporation" in this Index
COBRA--Health Insurance Continuation Coverage	29 U.S.C. § 1161, et seq. (Federal COBRA); G.L. c. 175, §§ 110G, 110I; G.L. c. 176A, §§ 8D, 8F; G.L. c. 176B, §§ 6A, 6B; G.L. c. 176G, § 5A (Massachusetts COBRA)

Collective Bargaining Activity	See "Union," "Concerted Activity" and/or "Contract--Collective Bargaining Agreement" in this Index
Color	G.L. c. 151B, §§ 4(1), 4(2), 4(3); G.L. c. 93, § 102(a); G.L. c. 31, § 1 (civil service); G.L. c. 149, § 43; 5 U.S.C. § 2301(b)(2); 42 U.S.C. §§ 2000e-2(a), (b), (c), (d), (l), (m), 3(b) (Title VII); <u>Joseph v. Wentworth Institute of Technology</u> , 120 F. Supp. 2d 134, 138 (D. Mass. 2000) (interpreting 24 U.S.C. § 2000d--Title VI)
Color Discrimination—Opposing or complaining of	G.L. c. 151B, § 4(4); 42 U.S.C. § 2000e-3 (Title VII)
Commissions--Seeking Proper Payment	See "Wages--Seeking Salary and Commissions" in this Index. See also "Wages--Compensation Earned or Almost Earned Based on Past Performance of Services" in this Index
Commissions Agreement	May contain rights, such as continuing payment of commissions, to those terminated without cause
Commodity Exchange Act – Whistleblowing	7 U.S.C. § 26(h); 17 C.F.R. § 165
Concerted Activity for Mutual Aid or Protection	29 U.S.C. §§ 157, 158(a); <u>Meyers Industries</u> , 268 NLRB 493, 497 (1984); <u>see also</u> "Union Activity" in this Index, although one need not be a union member to have the right to engage in concerted activity. Requiring employees to sign waivers of the right to participate in class actions is a violation of the NLRA, even if there is an opt out clause. <u>Tigges v. AM Pizza</u> , 2016 U.S. Dist. Lexis 10036 (D. Mass.). Misclassifications of employees as independent contractors has been seen as interference with the exercise of the right to concerted activity. NLRB Advice Memorandum, 12/18/15
Conduct Not Bearing on Work Performance	5 U.S.C. § 2302(b)(10) (Federal Employees); <u>see also</u> "Civil Service--Just Cause" in this Index
Congressional employees	Protection from race, gender, handicap and age discrimination. 2 U.S.C. 1311, 1317(a) (congressional employees)

Conservation Commission	Member of a town conservation commission may be removed for cause after a public hearing. G.L. c. 40, § 8C
Constitutional Right	There may be some kind of judicial remedy for a violation of a provision of the Massachusetts Constitution, even in the absence of an explicit statutory remedy. <u>Phillips v. Youth Dev. Program, Inc.</u> , 390 Mass. 652, 658 (1983); <u>Layne v. Superintendent, Massachusetts Correctional Institution</u> , 406 Mass. 156, 160 (1989). Existing statutory causes of action may “occupy the field” of claims alleging constitutional violations. See <u>Martino v. Hogan</u> , 37 Mass. App. 710, 720 (1994).
Constructive Discharge	Where an employee is harassed, or an employee's working conditions are changed, based on an unlawful motive, such that a reasonable person standing in the employee's shoes would feel compelled to resign. <u>GTE Products Corp. v. Stewart</u> , 421 Mass. 22, 34 (1995)
Consumer Product Safety Act – Whistleblowing	15 U.S.C. § 2087. Added As Of October 2008 involving Consumer Product Safety Act, and the Consumer Product Safety Commission, including hazardous substances and poisons and flammable fabrics, etc.
Contract--Arbitration Provision	<u>Shearson Hayden Stone, Inc. v. Liang</u> , 653 F.2d 310, 312-3 (7 th Cir. 1981) (agreement to arbitrate disputes concerning discharge implies a just cause standard)
Contract--Collective Bargaining Agreement	<u>Eastern Associated Coal Corp. v. United Mine Workers of America, District 17</u> , 121 S. Ct. 462 (2000) (just cause provision in a collective bargaining agreement precluded firing of truck driver after second failure of drug test); <u>Luthy v. Proulx</u> , 464 F. Supp. 2d 69 (D. Mass. 2006) (employee may pursue a civil action based on the violation of a just cause provision in the collective bargaining agreement if the CBA’s grievance procedures are properly exhausted)
Contract – Federal – Reporting violation of law relating to a contract.	Prohibiting retaliation against an employee of a governmental contractor who reports a substantial violation of law relating to a contract with a Federal

	executive agency (including the competition for or negotiation of a contract). 41 U.S.C. § 265 (Federal Acquisitions Streamlining Act)
Contract—Implied Covenant of Good Faith and Fair Dealing	The implied covenant does not merely apply to terminations, but may also address issues relating, for example, to compensation. <u>Eigerman v. Putnam Investments, Inc.</u> , 450 Mass. 281, 290 n.9 (2007). An express provision in an employment contract containing unnecessary and arbitrary barriers to the payment of commissions violates the implied covenant of good faith. <u>Bohne v. Computer Associates International, Inc.</u> , 445 F. Supp. 2d 177, 182-183 (D. Mass. 2006); See also “Public Policy” in this Index. The implied covenant exists so that the objectives of the contract may be realized. It does not extend a general duty on the part of the employer to be “nice.” <u>Ayash v. Dana-Farber Cancer Inst.</u> , 4423 Mass. 367, 385 (2005). It is may be invoked when an employer attempts to withhold compensation earned, or almost earned based on an employee’s past performance. See <u>Fortune</u> and <u>Gram</u> cases discussed herein.
Contract--Just Cause and Due Process Protections	<u>Goldhor v. Hampshire College</u> , 25 Mass. App. 716, 722-3 (1988)
Contract--Lifetime or Permanent Contract	<u>Boothby v. Texon, Inc.</u> , 414 Mass. 468, 476-9 (1993) (Massachusetts recognizes the enforceability of a contract to employ someone for life so long as work exists and the employee performs satisfactorily, if the contract is reasonably clear and the agent of the employer offering the contract has appropriate authority to bind the employer to such contracts)
Contract--Non-Competition or Restrictive Covenant	May imply an employer/employee relationship, as opposed to a contractor relationship. <u>Amero v. Townsend Oil Co.</u> , 25 Mass. L. Rptr. 6, 115 (February 16, 2009). May imply requirement for just cause termination. Staidl, "The Enforceability of Noncompetition Agreements When Employment is At-Will: Reformulating the Analysis, 2 Emp. Rights and Emp. Policy J. 95 ("Employers should not be permitted to discharge covenant-bound employees except for just

	<p>cause. . . . [W]hen employees enter into such covenants, they are foregoing opportunities to work for other employers in the field. If the covenant is entered into voluntarily, the employee implicitly expects job security with the present employer"); <u>See Economy Grocery Stores Corp. v. McMenemy</u>, 290 Mass. 549, 195 N.E. 747, 748 (1935) (restrictive covenant not enforced where employer exhibits bad faith); <u>Light v. Centel Cellular Co. of Texas</u>, 883 S.W.2d 642, 644-5 (Tex. 1994) (non-competition agreement not enforceable where employer provides as consideration promise of at-will employment).</p> <p>One Court refused to issue a preliminary injunction to enjoin competition, even though it clearly violated the agreement, in the absence of proof of irreparable harm. <u>National Engineering Service Corp.</u>, 23 Mass. L. Rep. 451, 23-24 (2008)</p>
Contract--Personnel Manual	<p><u>O'Brien v. New England Tel. & Tel. Co.</u>, 422 Mass. 686, 690-4 (1996) (personnel manual could give employee rights beyond ordinary at will employment); <u>Goldhor v. Hampshire College</u>, 25 Mass. App. 716, 722-3 (1988) (personnel manual required employer to attempt to counsel employee prior to terminating the employee for poor performance); <u>LeMaitre v. Mass. Turnpike Authority</u>, 70 Mass. App. 634 (2007) (manual created vested rights to payment for accrued sick leave, despite the provision that the policy could be changed unilaterally).</p>
Contract--Stock Options	See "Stock Option Agreement" in this Index
Contract--Specific Period or Year-to-Year Contract	<p><u>Goldhor v. Hampshire College</u>, 25 Mass. App. 716, 722-3 (1988) (an employment contract lasting a specific period of time may only be terminated prior to that time with justifiable cause); <u>National Medical Care, Inc. v. Zigelbaum</u>, 18 Mass. App. 570 (1984) (an employee wrongly terminated before the expiration of an employment contract is entitled to the wages he would have earned under the contract, and where the employer has the unilateral right to terminate, conditions to such termination, such as proper written notice, are strictly applied against the employer); <u>Hannam v. Worcester County Sheriff's</u></p>

	Office, 21 Mass. L. Rptr. No. 21, 477, 478 (November 6, 2006) (“It is the general rule of common law apart from statute that a public officer cannot give an appointee a tenure of office beyond his own”).
Corporate Fraud--Reporting	See "Fraud-Corporate" in this Index
Cosmetics—Reporting unsafe or unlawful practices that violate the FSMA	21 U.S.C. § 399d
County Employee or an Employee of an Entity Principally Supported by the Funds of a County, such as a School or Board	<p>County employees subject to G.L. c. 35, §§ 48-56, with five years of service may only be terminated for just cause, and are entitled to due process rights. G.L. c. 35, § 51. See <u>Puorro v. Commonwealth</u>, 59 Mass. App. 61 (2003) (employee must appeal to personnel board before going to court, even if due process provisions are violated).</p> <p>Employees of the Suffolk County Sheriff’s Department are not entitled to the protections of c. 35, § 51. <u>Scanlon v. Cabral</u>, Endorsement, C.A. No. 04-10418, Lasker J. (D. Mass. March 10, 2005) (holding that St. 1991, c. 138, §§ 363(c) is constitutional); <u>Corrections Officers v. Weld</u>, 768 F. Supp. 397 (D. Mass. 1991) (goal of St. 1991, c. 138, §§ 363(c) is to provide a uniform personnel law for employees of the Suffolk County Sheriff’s department and former Boston employees transferred into the department). See “Jail Employees of Suffolk County” in this Index.</p>
Court Clerks	Assistant Court Clerks may be removed only for cause, after a hearing. G.L. c. 218, § 10; G.L. c. 211B, § 8; <u>Whalen v. Commonwealth of Massachusetts</u> , 21 Mass. L. Rptr. No. 9, 193 (August 14, 2006) (state sovereign immunity waived for these statutes)
Credit History	15 U.S.C. § 1681m (employees must be shown credit reports relied on by employers); see G.L. c. 93, §§ 51, 53, 56, 62 (credit information inquiries limited and information must be provided to the employee); 15 U.S.C. § 1674 (garnishment of wages)

Credit Union--Reporting Violations of FCUA	12 U.S.C. § 1790b(a) (Federal Credit Union Act)
Criminal Record--Discrimination	G.L. c. 151B, § 4(9) (prohibition on inquiry to employee or applicant concerning arrests, and certain misdemeanors); <u>see</u> G.L. c. 6, § 172 (prohibitions on requiring an individual to provide criminal record, and inappropriate use of criminal record); 803 CMR 2.17, 2.18 (requires that CORI information used as a basis for rejection must be provided to the applicant, and give the applicant an opportunity to dispute the accuracy of the report. G.L. c. 151B, § 9 ½ (Criminal record inquiry may not be on an initial employment application).; EEOC Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 (where exclusions based on criminal record operate disproportionately on people of a particular race or national origin, the employer must show those exclusions to be job related and consistent with business necessity). When an application seeks criminal information that has been sealed, the applicant may respond “no record” in certain circumstances. G.L. 276, § 100A. See "Indictment" in this Index
Criminal Record--Juvenile Delinquency	G.L. c. 119, § 60 (shall not preclude public employment); <u>Wheeler v. Town of Franklin</u> , 15 Mass. L. Rptr. No. 31, 748 (March 31, 2003) (consequence of delinquency action, loss of ability to carry firearm, may preclude employment as police officer). When an application seeks criminal information that has been sealed, the applicant may respond “no record” in certain circumstances. G.L. 276, § 100A.
Criminal Record—Refusal to Provide, or to be Truthful Concerning	G.L. c. 151B, § 4(9) & 4(9½) (generally, criminal record inquiries may not be included in the initial application form); <u>see Kraft v. Police Com’r of Boston</u> , 410 Mass. 155 (1991). When an application seeks criminal information that has been sealed, the applicant may respond “no record” in certain circumstances. G.L. 276, § 100A.
Day of Rest—Refusal to Work Seven or More Days in a Row	<u>Bujold v. EMC Corp.</u> , 23 Mass. L. Rptr. No. 15, 347 (January 14, 2008) (broadly interpreting G.L. c. 149, § 48, and categorizing EMC as a “mechanical”

	establishment)
Defamation	<u>Draghetti v. Chmielewski</u> , 416 Mass. 808, 811-815 (1994) (tort claim for superior's statement to press); <u>Codd v. Velger</u> , 429 U.S. 624, 637-8 (1997) (where public employee is terminated in such a manner as to be stigmatizing to her reputation, she may request a hearing to refute untrue charges against her)
Dept. of Defense contract – Mismanagement and danger to safety	10 U.S.C. § 2409(a) (whistleblowing of employee of Federal contractor is protected)
Disability Benefits	ERISA; G.L. c. 41, § 111F; c. 32, §§ 7, 8.
Disability Discrimination	G.L. c. 151B, §§ 4(2), 4(3), 4(16); G.L. c. 93, § 103(a) (Mass. Equal Rights Act); G.L. c. 31, § 1 (civil service); Article 114 of the Massachusetts Constitution; <u>Layne v. Superintendent</u> , 406 Mass. 156, 161 n.6 (1989) (under art. 114, the plaintiff has a cause of action for damages, the plaintiff need not demonstrate subjective desire to deny constitutional rights, and the burden is on the defendant to justify discrimination via an overriding state interest); 42 U.S.C. § 12112 (Americans with Disabilities Act); 29 U.S.C. §§ 793, 794 (Rehabilitation Act) (non-discrimination and affirmative action required); 5 U.S.C. § 2301(b)(2) (Federal civil service); G.L. c. 31, § 21 (civil service protection for applicants with cancer); G.L. c. 31, § 61A, as interpreted by <u>Carleton v. Commonwealth of Massachusetts</u> , 447 Mass. 791, 809-810 (2006) (HRD may establish initial health and physical fitness criteria for hiring police officers and firefighters, where those standards are not the produce of prejudice, stereotypes, or unfounded fear based on medical impairment)
Disability Discrimination— Opposing or complaining of	G.L. c. 151B, § 4(4); 42 U.S.C. § 12203(a), (b) (ADA)
Disability--Hiring Preference	5 C.F.R. §§ 213.3101-99 (certain Federal Agencies may make preferential appointments of certain handicapped individuals); 5 C.F.R. 330.703(b)(4) (compulsory hiring for certain Federal Agencies of those who retired with disability but whose disability annuity has been terminated); see also <u>O'Neill v.</u>

	<u>Healy</u> , 7 Mass. L. Rptr. No. 16, 370 (construing civil service statute G.L. c. 32, § 8)
Disability—Request for Accommodation	G.L. c. 151B, §§ 4(4), 4(16); 42 U.S.C. § 12203(a), (b) (ADA); <u>Soileau v. Guilford of Maine, Inc.</u> , 105 F.3d 12, 16 (1 st Cir. 1997); <u>Cullinane v. Massachusetts Institute of Technology</u> , 7 Mass. L. Rptr. No. 13, 287 (October 6, 1997)
Disability—Refusing to Respond Truthfully to Job Application Questions Regarding Disability	G.L. c. 151B, § 4(16); 42 U.S.C. § 12112(d) (ADA); see <u>Kraft v. Police Com’r of Boston</u> , 410 Mass. 155 (1991)
Disability—Reports of Abuse of, or Death of, Disabled Persons	G.L. c. 19C, § 2, 11 (prohibiting retaliation for reporting to the Disabled Persons Protection Commission); <u>Gichuhi v. Alternative Supports, Inc.</u> , 2016 Mass. App. Unpub. Lexis 868, at 5 (internal complaints are not covered by c. 19C, and consequently, there is no public policy extended to internal whistleblowing concerning mistreatment of special needs clients).
Disability Education	See “Education—Reporting noncompliance with IDEA”
Disability Retirement--Restoration to Service	G.L. c. 32, § 8 (civil service provision requiring restoration to work of disability retirees found qualified by a Regional Medical Panel)
Discrimination	This is a very broad concept. Ask yourself what type of discrimination you suspect, such as sex or race, and then look up those subjects in this index
Domestic Violence or Abuse Leave	Executive Order 378 (employees have 15 paid days off for activities involving redressing domestic abuse); G.L. c. 149, § 52E, ch. 260 of the Acts of 2014 (employers with 50 or more employees must provide up to 15 days of unpaid leave in any 12 month period to employees impacted by domestic violence other types of abuse).
Domestic Violence or Abuse Leave – Retaliation	No retaliation or interference with people obtaining domestic abuse leave. G.L. c. 149, § 52E.
Dress Code	<u>Bock Imps. v. NLRB</u> , 2016 U.S. App. Lexis 11005 (1 st Cir.) (dress code ban on pins, insignia and

	message clothing was an unfair labor practice);
Drugs and Medicines— Reporting Violations of Food, Drug and Cosmetic Act.	21 U.S.C. § 399d
Due Process	42 U.S.C. § 1983; <u>Cotnoir v. University of Maine Systems</u> , 35 F.3d 6, 11 (1 st Cir. 1994) (fair procedure must be used prior to terminating certain individuals); <u>Marrero-Mendez v. Calixto-Rodriguez</u> , 2016 U.S. App. Lexis 13178 (1 st Cir.), at 15-20 (no qualified immunity even where there is a lack of specific precedent involving the same fact pattern); <u>see also</u> "Contract--Personnel Manual" in this Index
Education – participating in a proceeding concerning an unfair or discriminatory educational practice	G.L. c. 151C, § 2(b) (unlawful to penalize school employees for participating or assisting in a proceeding relating to an unlawful or discriminatory educational practice); G.L. c. 151C, § 2A(c) (same, in the context of vocational training institutions)
Education—retaliation for opposing sex discrimination in education	<u>Jackson v. Birmingham Board of Education</u> , 125 S. Ct. 1497 (2005) (Title IX provides an implied right of action for retaliation against an employee for complaining of sex discrimination in education); <u>see also</u> 34 CFR § 100.7(e) (same).
Education—Reporting noncompliance with IDEA, relating to education of disabled students	<u>Houlihan v. Sussex Tech.</u> , 461 F. Supp. 2d 252 (D. Del. 2006) (retaliation for reporting school’s non-compliance with Individuals With Disabilities in Education Act (IDEA) is violation of Rehabilitation Act)
Elder Abuse -- Reporting	G.L. c. 19A, § 15(d)
Elective Office	G.L. c. 268A, § 4 does not prohibit a State employee from running for or holding an elective office, however, the State may enter a collective bargaining agreement barring a State employee from continuing as an employee where the employee is elected to an office. <u>LaBarge v. Chief Administrative Justice of the Trial Court</u> , 402 Mass. 462, 466-467 (1988).
Embryonic Stem Cell Research – Refusal to participate	G.L. c. 111L, § 7

Employment--Interference With	G.L. c. 149, § 19 (preventing interference with employment by threat or force); <u>Draghetti v. Chmielewski</u> , 416 Mass. 808, 816-8 (1994) (intentional interference with contractual relations claim where defamatory statements by supervisor caused an employee to lose his job); see also 18 U.S.C. 1513(e).
Encouraging Others in the Enjoyment of Rights to Non-Discrimination	G.L. c. 151B, § 4(4A) (age, race, religion, disability, criminal record, national origin, color, sexual orientation, gender); 42 U.S.C. § 12203(b) (disability)
Environment--Reporting Risk to Environment--Public Employees	G.L. c. 149, § 185; see Section 211 of the Asbestos Hazard Emergency Response Act of 1986 (AHERA), 15 U.S.C. §2651; Section 322 of the Clean Air Act, Amendments of 1977 (CAA), 42 U.S.C. §7622; Section 110 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §9610; Section 507 of the Federal Water Pollution Control Act of 1972 (FWPCA), 33 U.S.C. §1367; Section 1450 of the Safe Drinking Water Act of 1974 (SDWA), 42 U.S.C. §300j-9(i); Section 7001 of the Solid Waste Disposal Act of 1976 (SWDA), 42 U.S.C. §6971.)
Environment—Reporting Risk to Environment—Private Sector Employees	see Section 211 of the Asbestos Hazard Emergency Response Act of 1986 (AHERA), 15 U.S.C. §2651; Section 322 of the Clean Air Act, Amendments of 1977 (CAA), 42 U.S.C. §7622; Section 110 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §9610; Section 507 of the Federal Water Pollution Control Act of 1972 (FWPCA), 33 U.S.C. §1367; Section 1450 of the Safe Drinking Water Act of 1974 (SDWA), 42 U.S.C. §300j-9(i); Section 7001 of the Solid Waste Disposal Act of 1976 (SWDA), 42 U.S.C. §6971; Section 23 of the Toxic Substances Control Act of 1976 (TSCA), 42 U.S.C. §2622.
Equal Pay	See "Sex Discrimination" in this Index
Equal Protection	42 U.S.C. § 1983; Fifth and Fourteenth Amendments of the United States Constitution. The “class-of-one theory of Equal Protection does not apply to the public employment context. <u>Enquist v. Oregon Dept. of Agriculture</u> , 128 S. Ct. 2146 (2008); <u>Marrero-</u>

	<u>Mendez v. Calixto-Rodriguez</u> , 2016 U.S. App. Lexis 13178 (1 st Cir.), at 15-20 (no qualified immunity even where there is a lack of specific precedent involving the same fact pattern).
False Claims	See “Fraud—Reporting Fraud to Federal Government” in this Index
Family Medical Leave Act-- Exercising or Attempting to Exercise FMLA Rights.	<u>Hodgens v. Gen. Dynamics, Corp.</u> , 144 F.3d 151, 164 (1 st Cir. 1998); 29 U.S.C. § 2615(a)(1); 29 C.F.R. § 825.220; 2 U.S.C. §§ 1312, 1317(a) (congressional employees); <u>Esler v. Silvia-Reardon</u> , 2016 Mass. 99, 10 n. 7 (use burden shifting formula).
Favoritism	5 U.S.C. § 2301(b)(8)(A) (Federal Employees)
Financial Reports— Whistleblowing that Financial Institutions are Not Complying With Law Regarding Financial Reports	31 U.S.C. § 5328; Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002 (SOX), 18 U.S.C. §1514A (if corporation is publicly traded and the allegation involves violations of S.E.C. regulations.); <u>Lawson v. FMR LLC</u> , 2014 U.S. Lexis 1783 (extending SOX anti-retaliation protection to employees of private contractors and subcontractors would be consistent with the stated purposes of the statute).
Fifth Amendment	See "Self-Incrimination" in this Index
Food, Drug and Cosmetic Act— Reporting Violation of	21 U.S.C. § 399d
Food Safety—Reporting	Protecting those reporting violations, or reasonably perceived violations of the Food Safety, or Drug Safety laws. 21 U.S.C. § 399d (For example, employees are now protected from retaliation if they complain about (1) storing food products at the wrong temperature which could lead to spoilage or growth of harmful bacteria; (2) use of allegedly harmful food additives; (3) storing foods in facilities infested with flies and rodents; (4) failure to recall contaminated raw food products; and (5) use of harmful chemical lubricants in food processing and packaging). Complaints must be filed with the Secretary of Labor within 180 days of the violation. Concerns about toxic chemicals must be asserted within 30 days.

Foreign Trade Relationship	G.L. c. 151E, § 2 (discrimination based on foreign trade relationships due to agreements with foreign governments or foreign organizations)
Fourth Amendment	<u>Ontario v. Quon</u> , 130 S. Ct. 2619, 2627-2628 (2010) (Fourth Amendment right against unreasonable searches protects public employees, but employer's warrantless review of employees text messages from employer's pager was lawful).
Fraud--Bank	See also "Bank" and "Credit Union" in this Index
Fraud--Corporate, Retaliation for Reporting	Sarbanes-Oxley Act of 2002, (SOX) (requiring reporting mechanism and according whistleblower protections); 18 U.S.C. 1514A (civil action for retaliation for reporting violations); 15 U.S.C. § 78j-1(m)(4) (mechanism for filing complaints); 18 U.S.C. § 1513(e) (criminal penalty for retaliation); 18 U.S.C. § 1514 (remedy for harassment of victims or witnesses); <u>Lawson v. FMR LLC</u> , 2014 U.S. Lexis 1783 (extending SOX anti-retaliation protection to employees of private contractors and subcontractors would be consistent with the stated purposes of the statute). Also see Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act (CFPA), 12 U.S.C. § 5567, protects financial services employees, their whistleblowing activities involve Consumer Financial Protection Bureau (CFPB) regulations, or if the employee refuses to break the law.
Fraud—Federal Government, Reports of Defrauding--Retaliation	31 U.S.C., § 3730(h) (False Claims Act); <u>Graham County Soil & Water Conservation District v. United States ex rel. Wilson</u> , 125 S. Ct. 2444 (2005) (valid qui tam claim is not an element of a retaliation claim); Fraud Enforcement Recovery Act of 2009 (False claim act amended to cover all false claims to the government, regardless of whether the claim was submitted directly to a governmental official, and broadening the reach of protected conduct to include efforts to prevent a violation of the FCA, and including agents and contractors as among the protected class); <u>Fauci v. Genentech, Inc.</u> , 2007 U.S. Dist. Lexis 75924 (D. Mass.) (simply initiating an investigation of employer practices, without

	conscious regard to the False Claims Act, is protected); Dodd-Frank Act (associated parties are protected; 3 year statute of limitations—31 U.S.C. § 3730(h)(1)&(3).
Fraud--Massachusetts State or Local Government, Reports of Defrauding--Retaliation	G.L. c. 12, § 5J
Fraud—Stimulus Package of February 2009 – Reporting waste fraud or misuse	The McCaskill Amendment (S.Amdt. 196) to the American Recovery and Reinvestment Act of 2009, H.R. 1, 111 th Cong. (2009), Pub. L. No. 111-5, § 1553, 123 Stat. 115, 297-302 (2009), included robust whistleblower protections to prevent fraud in stimulus spending—includes a prohibition on mandatory arbitration, and overrules Garcetti
Fraud--Misrepresentation	See "Misrepresentation" in this Index
Free Speech	See "Speech--Public Concern" in this Index
Garnishment of Wages	See "Credit History" in this Index
Gender	See "Sex" in this Index
Gender Identity	New protection added to G.L. c. 151B, § 4(1), effective July 2012. Transgender woman is protected from discrimination under Title VII. <u>Macy v. Holder</u> , EEOC Appeal No. 0120120821 (2012).
Genetic Information	G.L. c. 151B, § 4(19); Executive Order 13145; see G.L. c. 111, § 70g; Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA) (prohibiting employment discrimination and obtaining genetic information, although refusing to recognize disparate impact claims); Title I of GINA (prohibiting use of genetic information with respect to insurance plans)
Genetic Information -- Retaliation	Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA) 42 U.S.C. § 2000ff-6(f)
Good Cause--Lack of	<u>Gram v. Liberty Mut. Ins. Co.</u> , 384 Mass. 659, 671 (1981) (unlawful to terminate employee without good cause, resulting in a deprivation of reasonably ascertainable future compensation based upon past services); <u>Cort v. Bristol-Myers Co.</u> , 385 Mass. 300,

	303-4 (1982)
Governor's Appointees	G.L. c. 30, § 9 (removed for cause); <u>Flomenbaum v. Commonwealth</u> , 2008 Mass. Lexis 490, at 10 (2008) (chief medical examiner may be properly removed, upon mere showing of neglect of duty, incompetence, inefficiency or poor supervision, as opposed to malfeasance, and great deference is accorded the decision of the Governor, which may be overturned only if it is arbitrary or capricious. The termination was affirmed, despite a hiring letter acknowledging that a period of years would be needed to fix problems in the department. While a hiring letter from the Governor may potentially constitute a contract that limits the Governor's authority to remove, this letter did not do so.)
Handicap	See "Disability" in this Index
Harassment – Criminal-- Prevention Orders	G.L. c. 209A, §§ 3, 4 (involving household member and those with substantive dating relationship); <u>MacDonald v. Caruso</u> , 467 Mass. 382 (2014) (discussing standards for creating and terminating 209A orders); G.L. c. 258E (restraining order for acts that cause fear, intimidation, or that through duress or force causes another to engage in sexual relation, and claim for damages)); G.L. c. 265, § 43A (criminal harassment that seriously alarms a person); G.L. c. 265, § 43 (stalking prohibited)
Hazardous Substances	See "Pollution--Hazardous Substances"
Health Information--Protection Against Inappropriate Use or Disclosure	45 C.F.R. § 160.101, et seq. (Health care plans, including certain employers with self-insured health care plans or business associates of covered entities (including health care providers and health plans), may not improperly use or disclose protected health information); see also confidentiality provisions of the ADA and the Rehabilitation Act, 42 U.S.C. § 12112(d)(3)(B); 28 C.F.R. § 42.513(d); and "Privacy" in this Index
Health--Reporting Risk to Public Health--Health Care Providers	G.L. c. 149, § 187
Health--Reporting Risk to Public	G.L. c. 149, § 185; 5 U.S.C. § 2301(b)(9)(B)

Health--Public Employees	
Health Care Reform	Section 18C of the FLSA is added to protect those receiving a credit or subsidy under the Patient Protection and Affordable Care Act, H.R. 3590, 111 th Cong., section 1558, 29 U.S.C. § 218C, as well as protecting those who report violations of that act. This protects people who report, or refuse to participate in a violation involving denial of coverage based on preexisting conditions, reporting requirements, and discrimination based on receipt of health insurance subsidies. Remedies are set forth at 15 U.S.C. § 2087(b).
Health Care Provider--Reporting Violation Posing Risk to Health or Safety or Patient Dumping	G.L. c. 149, § 187; 42 U.S.C. §§ 1395dd(i) (EMTALA, relating to patient dumping – refusing to transfer unstabalized patient, or reporting a violation); <u>O’Connor v. Jordan Hospital</u> , 2013 U.S. Dist. Lexis 84655, 16 (D. Mass.) (applying Title VII retaliation standards to EMTALA)
Health Insurance – Non-Discrimination	All Massachusetts employers must offer the same benefits to all full-time Massachusetts employees. There are exceptions for unionized employees, and for distinctions based on length of service. Chapter 58 of the Acts of 2006; Massachusetts Division of Insurance Notice 2007-0; Section 1558 of the Patient Protection and Affordable Care Act (ACA), 29 U.S.C. §218C (Federal)
Health Insurance Continuation Coverage	See "COBRA" in this Index
Heart Disease	G.L. c. 32, § 94 (presumed in civil service context to be acquired in the line of duty); see "Disability" in this Index
Height	G.L. c. 31, § 58 (height restrictions for certain firefighters and police officers must be validated).
Hiring Authority – Exercise of	Where an employee has statutory authority to make decisions, he or she may not be terminated for refusing an order to hire someone that he or she does not want to hire. <u>Larch v. Mansfield Municipal Electric Dept.</u> , 272 F.3d 63, 68-69 (1 st Cir. 2001).

Holiday Discrimination	G.L. c. 136, § 13 (retail establishments may not discriminate against employees for refusing to work on certain legal holidays)
Holiday Pay	G.L. c. 136, § 13 (retail establishments must pay employees working on certain holidays one and a half times their regular pay, and may not discriminate based on an employee's refusal to work on that day).
Homosexuality	See "Sexual Orientation" in this Index
Housing Authority or Redevelopment Authority Employee	G.L. c. 121B, §§ 6, 29 (certain housing authority employees get just cause protections)
Hypertension	G.L. c. 32, § 94 (presumed in civil service context to be acquired in the line of duty); see "Disability" in this Index
Illegal Conduct	See "Law--Violations of, Reporting"
Illegitimacy	42 U.S.C. § 1983
Immigration—Reporting violation of law relating to H-1B visas	8 U.S.C. § 1182(n)(2)(C)(iv); 20 C.F.R. § 655.801.
Immigration	G.L. c. 149, § 19C (employer not liable for employing an alien, where the employer made a good faith inquiry regarding the person's work status).
Immigration--Requiring Excessive Documentation	8 U.S.C. § 1324b(a)(6); see also "Citizenship" in this Index
Indictment of Public Employee	G.L. c. 30, § 59 (public employees' suspensions must be lifted where criminal prosecutions fail, and back pay and seniority must be restored); G.L. c. 268A, § 25 (municipal officers or employees); <u>Brittle v. Boston</u> , 439 Mass. 580 (2003) (may request reinstatement after indictment is lifted); <u>Boston v. International Association of Firefighters</u> , 6 Mass. L. Rep. 358 (November 13, 1996) (collective bargaining agreement may not interfere with employer's discretion to suspend an indicted employee)
Institutionalized Persons—	42 U.S.C. § 1997d

Reporting Violations of Civil Rights	
Insurance – An employer withholding wages to buy insurance must actually purchase the insurance	G.L. c. 149, § 150C
Intentional Infliction of Emotional Distress	<u>Agis v. Howard Johnson Co.</u> , 371 Mass. 140 (1976) (summary, random and humiliating termination of waitress); however, these types of claims are often preempted by the Workers Compensation Act. <u>Carmack v. National Railroad Passenger Corp.</u> , 486 F. Supp. 2d 58, 83 & n.9 (D. Mass. 2007) (Federal Employers’ Liability Act, 45 U.S.C. §§ 51-60, FELA, provides for compensation for emotional distress that is caused by, or threatens employees imminently with physical impact).
Intentional Interference with Contractual Relations	See "Employment--Continued" in this Index
Investigation--Cooperating with Governmental Investigation	<u>Flesner v. Technical Communications Corp.</u> , 410 Mass. 805, 811 (1991)
Jail Employees in Suffolk County	Acts 1960, c. 135 (employees with seven years tenure in the Suffolk county jail are not subject to arbitrary removal); <u>Hogarth v. Sheriff of Suffolk County</u> , 29 Mass. App. 1009, 1010 n.2 (1990) (employee’s position must be specifically identified in the law in order to receive protection); St. 1991, c. 138, § 361 (also covering the “house of correction”), but see <u>Scanlon v. Cabral</u> , Endorsement, C.A. No. 04-10418, Lasker, J. (D. Mass. March 10, 2005) (employees of the Suffolk County Sheriff’s Department are not protected by G.L. c. 35, § 51).
Jury Service	G.L. c. 268, § 14A; G.L. c. 234A, § 48 (right to compensation); 28 U.S.C. § 1875
Law--Asserting a Legally Guaranteed Right	<u>Upton v. JWP Businessland</u> , 425 Mass. 756, 757 (1997) (public policy)
Law--Doing what the Law Requires	G.L. c. 149, § 185 (Whistleblower Protection Act); <u>Upton v. JWP Businessland</u> , 425 Mass. 756, 757 (1997) (public policy)

Law--Refusing to Disobey	G.L. c. 149, § 185 (Whistleblower Protection Act); <u>Upton v. JWP Businessland</u> , 425 Mass. 756, 757 (1997) (public policy)
Law, violation of--Reporting	G.L. c. 149, § 185 (Whistleblower Protection Act); <u>Quazi v. Barnstable County</u> , 70 Mass. App. 780, 783-784 (2007) (written notice provisions of the WPA are narrowly applied); 5 U.S.C. § 2302(b)(8)(A) (Federal Civil Service); <u>Department of Homeland Security v. MacLean</u> , 2015 U.S. Lexis 755 (disclosures are protected even if prohibited by regulation); <u>Upton v. JWP Businessland</u> , 425 Mass. 756, 757 (1997) (public policy). See 18 U.S.C. § 1513(e) (penalty for interference with employment against those reporting violation of Federal law). An employee's internal complaint that a supervisor improperly took a computer belonging to the employer was protected by public policy. <u>Cappucci v. Boston University</u> , Memorandum and Order Pursuant to Rule 1:28, 70 Mass. App. 1102 (2007); see also 18 U.S.C. § 1513(e) (retaliation in employment for reporting possible Federal offense is a criminal violation)
Lawsuit--Filing a lawsuit or being a witness in one	42 U.S.C. § 1983; 42 U.S.C. § 1985(2); <u>Powell v. City of Pittsfield</u> , 221 F. Supp. 2d 119, 140-141, 144 (D. Mass. 2002); see "Petitioning" in this Index.
Layoff--Reemployment Preference	G.L. c. 31, §§39, 40
Leave--FMLA rights	<u>Hodgens v. Gen. Dynamics, Corp.</u> , 144 F.3d 151, 164 (1 st Cir. 1998); 29 U.S.C. § 2615(a)(1); 29 C.F.R. § 825.220. The DOL has issued a broad interpretation of the <i>In Loco Parentis</i> standard, for people acting in the place of a parent.
Leave--Parental	See "Parental Leave" in this Index
Leave—Military Caregivers	February 15, 2012 proposed regs. for amendments to the NDAA of 2010. See 77 Fed. Reg. 8960. FMLA leave to address the consequences of a deployment to a foreign country.
Leave--Reasonable Accommodation	See "Sick Leave" in this Index

Leave--Small Necessities Leave Act	G.L. c. 149, § 52D (to participate in school activities, medical and dental appointments for certain family members)
Leave--Veterans Day or Memorial Day for Veterans	G.L. c. 149, § 52A1/2
Leave--Voting	See "Voting" in this Index
Libel	See "Defamation" in this Index
Lie Detector Test	See "Polygraph Test" in this Index
Lunch	See "Meal Break" in this Index
Life Insurance Continuation	G.L. c. 175, § 134A (requires employers to provide written notice to employees insured under a group life insurance policy who are entitled to convert to another type of life insurance within a specified time). This provision may be affected by ERISA preemption.
Long-Term Care Facility – Reporting a Crime	Patient Protection and Affordable Care Act, H.R. 3590, 111 th Cong., section 6703 (Health Care Reform), 42 U.S.C. 1150A.
Marijuana - Medical	Nothing in the Medical Marijuana law requires accommodation of any on-site medical use of marijuana in a place of employment. Chapter 369, Acts of 2012, § 7D. Any person meeting the requirements of the medical marijuana law shall not be penalized under the law, or denied any right or privilege. <i>Id.</i> , § 4.
Marijuana Possession, Under an Ounce	Possession of under an ounce of marijuana should not go on one's criminal record, nor should it be the basis for withholding unemployment benefits. G.L. c. 94C, § 32L. Nothing in the law requires accommodation of any on-site medical use of marijuana in a place of employment. Chapter 369, Acts of 2012, § 7D. Any person meeting the requirements of the medical marijuana law shall not be penalized, or denied any right or privilege. <i>Id.</i> , § 4.
Marital Status	G.L. c. 31, § 1 (civil service); G.L. c. 161A, §

	25(ii)(b) (MBTA employee); 5 U.S.C. § 2301(b)(2), 2302(b)(1)(E) (Federal Employees); <u>Roberts v. United States Jaycees</u> , 468 U.S. 609, 617-8 (1984) (intimate human associations protected from governmental interference); 42 U.S.C. § 1983; <u>see also</u> "Political Association" in this Index
Massachusetts Port Authority Member	The seven members of the MPA authority may be removed only for misfeasance, and wilfull neglect of duty, with notice and a public hearing. St. 1956, c. 465, § 2. A member from a labor organization must be from an organization that is “free of communist influence.” <u>Id.</u>
Maternity Leave	See “Parental Leave” in this Index
Meal Break	G.L. c. 149, 100 (one thirty minute meal break is required for those working more than six hours in one calendar day)
Medical Leave--Exercising or attempting to exercise FMLA rights	<u>Hodgens v. Gen. Dynamics, Corp.</u> , 144 F.3d 151, 164 (1 st Cir. 1998); 29 U.S.C. § 2615(a)(1); 29 C.F.R. § 825.220
Medical-Related Resignation--Reemployment Preference	G.L. c. 31, § 40 (civil service) (request for reinstatement must be submitted within two years to administrator)
Mental Health Facility or Treatment—Refusal to Truthfully Provide Information Relating to Treatment in Mental Facility	G.L. c. 151B, §§ 4(9)
Migrant Workers--Exercising Rights	29 U.S.C. § 1855 (Migrant and Seasonal Agricultural Worker Protection Act); 29 U.S.C. § 1856 (no waiver of rights permitted)
Military Atomic Energy Facilities or Lab—Reporting concerns	50 U.S.C. § 2702(a)
Military Discrimination	38 U.S.C. § 4311(a); G.L. c. 151B, § 1D. In 2011, the USERRA definition of “benefit of employment” was changed so as to allow for hostile environment claims. G.L. c. 33, § 13 & 13A.

Military Discrimination--Opposition to	38 U.S.C. § 4311(b); G.L. c. 151B, § 4(4); G.L. c. 33, § 13 & 13A.
Military Service--Leave	Providing 12 weeks of leave to an employee, whose family member is on active duty, upon occurrence of a “qualifying exigency.” 29 U.S.C. § 2612(a)(1)(E) (FMLA). In addition, a family relation of a servicemember is entitled to 26 workweeks of leave to care for the servicemember. 29 U.S.C. § 2612(a)(3)
Military Service--Reemployment Rights and Continued Benefits	Acts of 1941, c. 708(4) (reinstatement to civil service list status); 38 U.S.C. § 4312-4319 (right to reinstatement, reasonable accommodation, qualification, just cause termination, benefit continuation); <u>Lapine v. Town of Wellesley</u> , 2001 U.S. Dist. LEXIS 5319 (D. Mass.); G.L. c. 33, § 13 & 13A.
Military Training	G.L. c. 149, § 52A; 38 U.S.C. § 4312; G.L. c. 33, § 13 & 13A.
Minimum Wage	See "Wages" in this Index
Mining--Reporting Violations	30 U.S.C. § 1293 (Surface Mining Control and Reclamation Act); 30 U.S.C. § 815(c)(1) (Federal Mine Safety and Health Act) (governs workplaces such as quarries)
Mismanagement, or abuse of authority--Reporting	5 U.S.C. § 2301(b)(9)(B), 2302(b)(8)(A)(ii) (Federal Employees) (including gross waste of funds); 10 U.S.C. § 2409(a) (employee of Federal Contractor relating to a Dept. of Defense contract).
Misrepresentation	<u>Della Croce v. General Electric Co.</u> , 2 IER 1548, 1550 (D. Mass. 1988) (false statements inducing employee to transfer); <u>Baker v. A.W. Chesterton Co.</u> , 8 Mass. L. Rptr. No. 18, 408, 408-9 (July 6, 1998) (false statement that plaintiff would be passed through training course, inducing the plaintiff to quit other job); <u>Vitagliano v. The Interface Group--Massachusetts, Inc.</u> , 49 Mass. App. 1119, 2000 WL 1476091 (unpublished decision)
Monopoly/Anti-Trust	A contract or conspiracy amounting to a restraint of

	trade in the Commonwealth, resulting in a decrease of competition. See <u>Reyad v. Caritas Norwood Hospital, Inc.</u> , 29 Mass. L. Rptr. No. 79, 84 (December 5, 2011)
Motor Vehicle Safety	See “Safety—Commercial Motor Vehicles” in this Index
National Origin Discrimination	G.L. c. 151B, §§ 4(1), 4(2), 4(3); G.L. c. 93, § 102(a); G.L. c. 31, § 1 (civil service); G.L. c. 149, § 43; 5 U.S.C. § 2301(b)(2), 2302(b)(1)(A); 8 U.S.C. § 1324b(a)(1)(A) (IRCA); 42 U.S.C. §§ 2000e-2(a), (b), (c), (d), (l), (m), 3(b) (Title VII); 42 U.S.C. §§ 1981, 1983; <u>Joseph v. Wentworth Institute of Technology</u> , 120 F. Supp. 2d 134, 138 (D. Mass. 2000) (interpreting 24 U.S.C. § 2000d--Title VI)
National Origin Discrimination—Opposing or complaining of	G.L. c. 151B, § 4(4); 8 U.S.C. § 1324b(a)(5) (IRCA); 42 U.S.C. § 2000e-3 (Title VII)
Negligent Infliction of Emotional Distress	<u>Sullivan v. Boton Gas Co.</u> , 414 Mass. 129 (1993) (requirement for physical harm). The tort claim may be preempted by workers compensation. <u>Carmack v. National Railroad Passenger Corp.</u> , 486 F. Supp. 2d 58, 83 & n.9 (D. Mass. 2007) (Federal Employers’ Liability Act, 45 U.S.C. §§ 51-60, FELA, provides for compensation for emotional distress that is caused by, or threatens employees imminently with physical impact).
Non-Competition Agreement	See "Contract--Non-Competition" in this Index
Nuclear Facilities	See “Safety—Nuclear Facilities” in this Index
Occupational Safety	See "Safety--Occupational" in this Index
Organ Donation – 30 day leave for certain public employees	G.L. c. 149, § 33E
Overtime Wage	See "Wages" in this Index
Parental Leave	G.L. c. 149, § 105D; G.L. c. 151B, § 4(11A), effective April 2015, extends maternity leave to both parents, and extends protections beyond eight weeks when an employer voluntarily extends the leave,

	unless there is clear notice that taking a longer leave will result in loss of rights. Ch. 484 of the Acts of 2014.
Patient Abuse--Reporting	G.L. c. 111, § 72G; <u>Guevin v. Amick</u> , 11 Mass. L. Rptr. No. 26, 599, 600 (July 31, 2000) (public policy)
Peonage	42 U.S.C. § 1992 (involuntary labor to liquidate debt prohibited)
Personnel File--Rights to Request Copy, Respond to Negative Materials, and Expunge False Materials	G.L. c. 149, § 52C (Chapter 240, section 148 of the Acts of 2010 requires employers to provide notice, within 10 days, whenever the personnel record includes a document that is or may be used to negatively affect the employee); see also G.L. c. 151, § 15 (payroll records)
Personnel Manual	See "Contract--Personnel Manual" in this Index
Petitioning, Filing Lawsuit or Grievance—Retaliation for	It is unlawful to terminate a public employee for petitioning the government, for example, by initiating a lawsuit, where the lawsuit or other petitioning conduct touches on a matter of public concern. Everyday employment disputes, without more, do not touch upon public concerns. Petitioning does not require use of formal procedures. <u>Duryea v. Guarnieri</u> , 2011 U.S. Lexis 4564. See also, <u>Lane v. Franks</u> , 2014 U.S. Lexis 4302 (testifying on public corruption is protected).
Pipeline Safety – Reporting concerns, or refusal to engage in unlawful conduct	49 U.S.C. § 60129(a)
Plant Closing	G.L. c. 151A, §§ 71A, et seq.; 29 U.S.C. § 2101, et seq.
Police Officers	G.L. c. 41, §§ 96, 97A (permitting removal only for cause, after a hearing); <u>Massachusetts Coalition of Police v. Northborough</u> , 416 Mass. 252 (1993) (a failure to reappoint is not a removal, and under § 97A, a board of selectmen’s decision not to reappoint a police officer is a nondelegable managerial prerogative).
Political Association and Speech	G.L. c. 31, §§ 1, 2(b) (civil service); <u>Fletcher v.</u>

	<u>Szostkiewicz</u> , 190 F. Supp. 2d 217, 225 (D. Mass. 2002) (civil service prohibits political discharge); 42 U.S.C. § 1983; First Amendment of the U.S. Constitution; 5 U.S.C. §§ 2301(b)(2), 2301(b)(8)(A); G.L. c. 161A, § 25(ii)(b) (MBTA employee).
Political Service or Contribution	G.L. c. 55, § 16 (no public employee is obligated to contribute to a political fund or render political service); <u>Flynn v. City of Boston</u> , 59 Mass. App. 490 (2003) (“political service” does not include advice on how to engage in political patronage); 42 U.S.C. § 1983; First Amendment of the U.S. Constitution
Polygraph Test--Refusal to Take	G.L. c. 149, § 19B; 29 U.S.C. § 2002; <u>Furtado v. Town of Plymouth</u> , 451 Mass. 529 (2008) (police department may administer polygraph test to officer to investigate allegations of child abuse, even if the officer has been granted transactional immunity).
Polygraph Test--Reporting or Complaining of Unlawful Use	29 U.S.C. § 2002; 2 U.S.C. § 1314, 1317(a) (congressional employees)
Pollution—Air, Reporting Complaints	42 U.S.C., § 7622(a) (Clean Air Act)
Pollution--Hazardous Substances, Reporting Complaints	42 U.S.C. § 9610 (Comprehensive Environmental Response, Compensation and Liability Act)
Pollution--Mining	See "Mining" in this Index
Pollution--Solid Waste	42 U.S.C. § 6971 (Solid Waste Disposal Act)
Pollution--Toxic	15 U.S.C. § 2622 (Toxic Substances Control Act)
Pollution--Water	33 U.S.C. § 1367(a) (Federal Water Pollution Control Act); 42 U.S.C. § 300j-9(i) (Safe Drinking Water Act)
Pregnancy	G.L. c. 151B, § 4(1); G.L. c. 149, § 105(D) (maternity leave); 42 U.S.C. §§ 2000e(k), 2000e-2(a), (b), (c), (d), (l), (m), 3(b) (Title VII); see also "Leave-FMLA" and "Disability--Reasonable Accommodation" in this Index. The Court has asserted that where UPS provided accommodations for lifting requirements for non-pregnant workers, but

	refused to provide similarly accommodations for similarly impaired pregnant workers, that difference in treatment can raise the inference of intentional discrimination. <u>Young v. United Parcel Service, Inc.</u> , 2015 U.S. Lexis 2121, at 37-38.
President's Office	Employees accorded various rights. 3 U.S.C. § 417(a)
Privacy	G.L. c. 31, § 1 (civil service); 5 U.S.C. §§ 552a, 2301(b)(2) (Federal Employees); G. L. c. 214, § 1B; <u>Rodrigues v. Scotts Co.</u> , 2008 U.S. Dist. Lexis 6682 (D. Mass.) (requiring employees to take urine test to detect nicotine may violate G.L. c. 214, § 1C privacy rights); <u>Cort v. Bristol-Myers Co.</u> , 385 Mass. 300, 306-7 (1982) (public policy); <u>Ontario v. Quon</u> , 130 S. Ct. 2619, 2627-2628 (2010) (Fourth Amendment right against unreasonable searches protects public employees, but employer's warrantless review of employee's text messages from the employer's pager was reasonable).
Promissory Estoppel	Reasonable reliance on statements to employee's detriment. See also "Misrepresentation" and "Relocation" in this Index. <u>Hadfield v. A.W. Chesterton Co.</u> , 26 Mass. L. Rptr. No. 24, 443 (March 8, 2010) (employee who was told his vacation would "accrue" and was never informed of a use-it-or-lose-it policy, and who failed to take vacations over a period of many years, may be entitled to his accrued vacation); <u>Merricks v. Savers, Inc.</u> , 2012 U.S. Dist. Lexis 1568, at 8-10 (D. Mass.) (pre-employment agreement to permit an at will employee leave is basis for promissory estoppel claim, and employee might not be terminable for taking such leave, but post-employment agreements of at will employee might not be a proper basis for a promissory estoppel claim)
Psychiatric Facility or Treatment—Refusal to Truthfully Provide Information Relating to Treatment in Mental Facility	G.L. c. 151B, §§ 4(9A)
Public Accommodation	42 U.S.C. § 2000a-2 (individual may not be punished

	for exercising right to non-discrimination in public accommodation); 42 U.S.C. § 12132 (disabled people entitled to access to public entities); see <u>Smith v. Public Schs. of Northborough-Southborough Mass.</u> , 2015 U.S. Dist. Lexis 128429 (D. Mass.), at 8-11 (retaliation for advocating for students rights under IDEA, under retaliation provisions under the ADEA and the Rehabilitation Act); Proposed Reg. 804 CMR 5.05(6)(b); <u>Cappucci v. Boston University</u> , 70 Mass. App. 1102 (2007) (unpublished decision under Rule 1:28); 49 U.S.C. § 40127(a) (air carriers not permitted to discriminate)
Public Policy	<u>Federici v. Mansfield Credit Union</u> , 399 Mass. 592, 595 (1987) (unlawful to terminate employee in violation of a clearly defined public policy);
Public School Employee	G.L. c. 71, §§ 41, 42
Qui Tam	31 U.S.C. § 3729 (individual may recover for reporting fact that an entity is defrauding the Federal government); G.L. c. 12, § 5A (same for Massachusetts governmental entities); <u>Scannell v. Attorney General</u> , 70 Mass. App. 46, 51 (2007) (only relator commencing suit may seek recovery, and simply serving as an informant is not enough); see also “Fraud—Reports of Defrauding the Government--Retaliation” in this Index. Patient Protection and Affordable Care Act, H.R. 3590, 111 th Cong., section 10104(j)(2) (2010 Health Care Reform) (expanding the definition of original source in 31 U.S.C. § 3730(e)(4)(A)) .
Race	G.L. c. 151B, §§ 4(1), 4(3); G.L. c. 93, § 102(a); G.L. c. 151A, § 25(e) (unemployment protection for victims of racial harassment); G.L. c. 31, § 1 (civil service); G.L. c. 149, § 43; 5 U.S.C. § 2301(b)(2), 2302(b)(1)(A); 42 U.S.C. §§ 2000e-2(a), (b), (c), (d), (l), (m), 3(b) (Title VII); 42 U.S.C. §§ 1981, 1983; <u>Joseph v. Wentworth Institute of Technology</u> , 120 F. Supp. 2d 134, 138 (D. Mass. 2000) (interpreting 24 U.S.C. § 2000d--Title VI); Fifth Amendment of the U.S. Constitution (which theoretically could grant greater rights against discrimination for Federal employees, asserting reverse discrimination claims, than Title VII); G.L. c. 151E, § 2 (discrimination due

	to agreements with foreign governments or organizations)
Race discrimination—Opposing or Complaining of	G.L. c. 151B, § 4(4); 42 U.S.C. § 2000e-3 (Title VII); <u>CBOCS West, Inc. v. Humphries</u> , 128 S. Ct. 1951 (2008) (42 U.S.C. § 1981 embraces a claim for retaliation); <u>Velazquez-Ortiz v. Vilsack</u> , 657 F.3d 64, 72 (1st Cir. 2011) (retaliation against Federal employees is barred by Title VII).
Racketeering	See "Fraud" in this Index; <u>but see Beck v. Prupis</u> , 120 S. Ct. 1608 (2000) (RICO statute generally does not protect employee who was fired by employer in order to cover up racketeering)
Railroads--Accident Reports	45 U.S.C. § 60 (Railroad Employers Act)
Railroads--Safety	See "Safety--Railroads" in this Index
Redevelopment Authority Member	G.L. c. 121B, §§ 6, 29 (certain redevelopment authority members get just cause protections)
Religion Discrimination	G.L. c. 151B, §§ 4(1), 4(2), 4(3); G.L. c. 31, § 1 (civil service); 5 U.S.C. § 2301(b)(2); 42 U.S.C. §§ 2000e-2(a), (b), (c), (d), (l), (m), 3(b); G.L. c. 151E, § 2 (discrimination due to agreements with foreign governments or organizations)
Religion Discrimination—Opposing or complaining of	G.L. c. 151B, § 4(4); 42 U.S.C. § 2000e-3 (Title VII)
Religious Practices	G.L. c. 151B, § 4(1A); <u>see City of Boerne v. Flores</u> , 117 S. Ct. 2157 (1997) (invalidating Religious Freedom Restoration Act, 42 U.S.C. § 2000bb)
Religious Practices—Request for Accommodation	G.L. c. 151B, § 4(1A); <u>MBTA v. MCAD</u> , 450 Mass. 327 (2008) (employer failed to reasonably accommodate Sabbath request, and failed to investigate the possibility of accommodation)
Relocation	<u>Mailloux v. Littleton</u> , 473 F. Supp. 2d 177, 187 (D. Mass. 2007) (promise to recommend employee for hire if he quit his other jobs and moved into town); Rath, <u>How Relocation Affects the Employment At Will Relationship</u> , 12 <u>The Labor Lawyer</u> , Number 2, 207; <u>Billings v. Dual Manufacturing & Engineering</u> ,

	<u>Inc.</u> , 1991 Mass. App. Div. 166; <u>Presto v. Sequoia Systems, Inc.</u> , 633 F. Supp. 1117 (D. Mass. 1986) (estoppel claim)
Register of Probate and Insolvency	May be suspended with pay, without any further action or approval by the SJC. <u>Campatelli v. Chief Justice of the Trial Court</u> , 468 Mass. 455 (2014)
Rented to a Member of a Minority group	<u>Smith v. Stechel</u> , 510 F.2d 1162, 1164 (9 th Cir. 1975) (Title VIII non-interference provision)
Research Misconduct	42 U.S.C. § 289b (research funded by Public Health Service)
Reservists--Military	G.L. c. 149, § 52A
Residency Preference	See Citizenship Preference
Restraining Order	See G.L. c. 258E
Retaliation	This is a very broad concept. Ask yourself what type of retaliation you suspect, such reprisals based on complaints of race discrimination, and then look up those subjects in this index
Retirement--Protection from Involuntary Retirement of Public Employees	G.L. c. 32, §§ 16(1)(a), (b) & (c)
Retirement Plan--Public Employees	G.L. c. 32, §§ 1, et seq.
Safety--Airline	49 U.S.C. § 42121
Safety--Asbestos	See "Asbestos--Reporting"
Safety--Cargo Containers	46 U.S.C. App. § 1506 (International Safe Container Act)
Safety—Commercial Motor Vehicles, Reporting Complaints	49 U.S.C. § 31105(a) (Surface Transportation Assistance Act); <u>Clean Harbors Environmental Services v. Herman</u> , 146 F.3d 12 (1 st Cir. 1998) (internal complaints can be protected conduct); <u>R & B Transportation v. U.S. Dept. of Labor</u> , 618 F.3d 37, 46 (1 st Cir. 2010) (legal framework)

Safety—Food	See “Food Safety”
Safety--Health Care Providers	G.L. c. 149, § 187; <u>Hobson v. McLean Hosp. Corp.</u> , 402 Mass. 413, 416 (1988) (public policy)
Safety--Mining	See "Mining" in this Index
Safety—Nuclear Facilities, Reporting Complaints	42 U.S.C. § 5851(a) (Energy Reorganization Act)
Safety--Occupational, Reporting Complaints	29 U.S.C. 660(c)(1) (Occupational Safety and Health Act “OSHA”); 29 C.F.R. § 1977.3; <u>see also</u> G.L. c. 149, § 6 (persons aggrieved by employer's failure to follow AG's safety rules may file a complaint in District Court); <u>Solis v. Fayad</u> , 2012 U. S. Dist. Lexis 184479 (D. Mass.) (individual liability might be applicable for OSHA retaliation)
Safety—Public Transportation Agencies, Reporting Complaints or Investigating	6 U.S.C. § 1142 (National Transit Systems Security Act – NTSSA)
Safety--Railroads	49 U.S.C. § 20109 (Federal Railroad Safety Authorization Act); <u>Worcester v. Springfield Terminal Ry. Co.</u> , 2016 U.S. App. Lexis 11941 (1 st Cir.), at 6-8 (adopting federal common law punitive damages standard)
Safety--Risk to Safety--Public Employees	G.L. c. 149, § 185; 5 U.S.C. § 2301(b)(9)(B)
School	See “Education” in this Index
Seaman—Reporting violations of maritime law, or unsafe conditions, or accurately reported hours	46 U.S.C. § 2114(a)
Securities law—Reporting violation	See Sarbanes-Oxley Act, 18 U.S.C. § 1514A (whistleblowers of publicly traded companies). <u>See Lawson v. FMR LLC</u> , 2014 U.S. Lexis 1783 (extending SOX anti-retaliation protection to employees of private contractors and subcontractors would be consistent with the stated purposes of the statute). The Dodd-Frank Act protects

	whistleblowers that provide information to the Commission, participating in an investigation, or making disclosures that are required by SOX, the Securities Exchange Act, or regulation of the Commission. 15 U.S.C. § 78u-6(h). Payouts involving percentage of sanctions recovered are available. 15 U.S.C. § 78u-6(b). Similar provisions govern the Commodity Exchange Act, 7 U.S.C. § 26(h)
Self-Incrimination--Fifth Amendment	<u>Bellin v. Kelley</u> , 435 Mass. 261, 272 (2001); <u>Carney v. Springfield</u> , 403 Mass. 604 (1988) (Public employees may not be terminated merely because they invoke the Fifth Amendment, although sometimes employees can be fired for refusing to ask specific questions); <u>Garrity v. New Jersey</u> , 87 S. Ct. 616 (1967)
Sex Discrimination	G.L. c. 151B, §§ 4(1), 4(2), 4(3); G.L. c. 93, § 102(a); G.L. c. 149, § 105A (equal pay); G.L. c. 31, § 1 (civil service); 29 U.S.C. § 206(d) (Equal Pay Act); 5 U.S.C. § 2301(b)(2); see G.L. c. 31, § 21 (civil service); 42 U.S.C. §§ 2000e-2(a), (b), (c), (d), (l), (m), 3(b); 42 U.S.C. § 1983; G.L. c. 151E, § 2 (discrimination due to agreements with foreign governments or organizations). <u>Currier v. Nat'l Bd. of Med. Examiners</u> , 462 Mass. 1 (2012) (breastfeeding is a sex based characteristic, and disadvantage based on breastfeeding constitutes discrimination based on sex, and modifications may be required under the public accommodations statute). Amendments to the Equal Pay Act, effective 2018, expands coverage of the act, while providing an affirmative defense to those conducting pay equity studies, and striving to eliminate disparities. Furthermore, inquiries into salary history are prohibited, as are restrictions on employees to share wage information with co-workers. Executive Order 13665 (applicants and employees may share salary information with each other, without retaliation).
Sex Discrimination—Opposing or complaining of	G.L. c. 151B, § 4(4); G.L. c. 149, § 105B (pay disparity); 42 U.S.C. § 2000e-3 (Title VII); <u>Velazquez-Ortiz v. Vilsack</u> , 657 F.3d 64, 72 (1st Cir. 2011) (retaliation against Federal employees is barred

	by Title VII)
Sexual Harassment	G.L. c. 151B, §§ 4(1), 4(16); c. 214, § 1C; G.L. c. 151A, § 25(e) (unemployment protection for victims of sexual harassment); 42 U.S.C. §§ 2000e-2(a) (Title VII)
Sexual Harassment—Opposing or complaining of	G.L. c. 151B, § 4(4); 42 U.S.C. § 2000e-3 (Title VII)
Sexual Orientation Discrimination	G.L. c. 151B, §§ 4(1), 4(2), 4(3); see <u>Rosa v. Park West Bank & Trust Co.</u> , 214 F.3d 213, 215 (1 st Cir. 2000) (Federal laws may be implicated if discrimination is based on failure of plaintiff to conform with defendant's stereotyped view of how genders should act, as opposed to discrimination based on sexual orientation); Executive Order 13672 (federal contractors and subcontractors).
Sexual Orientation Discrimination—Opposing or complaining of	G.L. c. 151B, § 4(4)
Sick Leave	Ballot measure effective July 1, 2015 requires forty hours of sick leave for all employees, and paid leave for employers with more than 11 employees, commencing ninety days after employment begins, and accruing at the rate of one hour of sick time for every 30 hours worked. Sick time can be used for the employee or family members, to attend routine medical appointments or attend to domestic violence issues of the employee or dependent child. G.L. c. 149, § 148C. The earned sick time law is preempted by the Railroad Unemployment Insurance Act (RUIA), 45 U.S. C. § 351, <i>et seq.</i> . <u>CSX Transp. V. Healey</u> , 2016 U.S. Dist. Lexis 90985 (D. Mass.). See also Executive Order 13706 (Federal contractors must provide seven paid sick leave days, every year)
Sick Leave – Retaliation	G.L. c. 149, § 148C(i)
Sick Leave--Exercising or attempting to exercise FMLA rights	<u>Hodgens v. Gen. Dynamics, Corp.</u> , 144 F.3d 151, 164 (1 st Cir. 1998); 29 U.S.C. § 2615(a)(1); 29 C.F.R. § 825.220.
Sick Leave--As Reasonable	<u>Criado v. IBM Corp.</u> , 145 F.3d 437, 443-4 (1 st Cir.

Accommodation for Handicap	1998); G.L. c. 151B, § 4(16)
Speech--Public Concern	42 U.S.C. § 1983 (enforcing First Amendment protections); <u>Pereira v. Commissioner of Social Services</u> , 432 Mass. 251 (2000); 5 U.S.C. § 2301(b)(2); <u>Duryea v. Guarnieri</u> , 2011 U.S. Lexis 4564, 35 (ordinary employment disputes, without more, fail to address public concerns); <u>Lane v. Franks</u> , 2014 U.S. Lexis 4302 (testifying in court on public corruption, that politically connected individual had a no-show job, is protected).
State Employees	G.L. c. 30, § 9B (certain state employees in the department of mental health, mental retardation, public health, public welfare, correction, youth services, soldiers' home, or education, who are not covered by Civil Service, may be terminated only for just cause, after serving in the position for six months
Stockholder in Close Corporation	A minority shareholder in a close corporation with an employment contract is protected not only by the explicit terms of the contract, but also by an implied covenant for the utmost good faith and loyalty. <u>King v. Driscoll</u> , 424 Mass. 1, 3 (1996); <u>Blank v. Chelmsford Ob/Gyn</u> , 420 Mass. 404, 408 (1995); <u>Donahue v. Rodd Electrotpe Co. of New England, Inc.</u> , 367 Mass. 578, 586-587 (1975).
Stock Option Agreement	An employee's stock option agreement may contain provisions according the employee certain rights if terminated without cause
Stock Repurchase Agreement	<u>King v. Driscoll</u> , 418 Mass. 576 (1994) (damages for wrongful termination include losses resulting from premature repurchase of stock from employee based on otherwise valid, and unbreached stock repurchase agreement)
Subpoena for Criminal Action-- Responding to	G.L. c. 268, § 14B
Suffolk County Jail Employees	See "Jail Employees in Suffolk County," in this Index
Sunday Pay	G.L. c. 136, § 6 (certain employees get one and a half times their regular pay); G.L. c. 149, § 180A

Takeover Laws	G.L. c. 149, § 183; <u>but see Simas v. Quaker Fabric Corp.</u> , 6 F.3d 849 (1 st Cir. 1993) (tin parachute law preempted by ERISA); G.L. c. 149, §20E
Taxes – IRS Bounty Program	17 C.F.R. § 240.21F-17(a)
Teacher	See "Public School Employee" in this Index
Temporary Workers	Limitations on transportation charges and other fees, notice of work and pay, for temporary workers other than professional workers or administrative assistants. G.L. c. 149, § 159C.
Tenant Complaint	G.L. c. 186, § 18; <u>Mogilevsky v. Keating</u> , 11 Mass. L. Rptr. No. 15, 332, 334 (May 15, 2000)
Tips -- Servers of Food and Beverages Get to Retain Tips	G.L. c. 149, § 152A; <u>but see Fraser v. Pears Co.</u> , 16 Mass. L. Rptr. No. 11, 255 (June 23, 2003) (employers may require wait staff to pool tips and allocate tips among staff)
Town Manager Act	St. 1968, c. 753, § 2 (certain Town Managers may terminate certain employees only for cause); <u>McSweeney v. Town Manager of Lexington</u> , 379 Mass. 794 (1980).
Transgender	See Gender Identity in this index
Trial Court Personnel	G.L. c. 211B, § 8 (removal for cause, with review by committee); <u>Anzalone v. Administrative Office of the Trial Court</u> , 457 Mass. 647, 658-659 (2010) (where statute permits 14 days to reject an appointment, there is no remedy for a rejection after that deadline).
Union – Refusing to commit an unfair labor practice. E.g., an HR person refusing to fire someone in violation of the collective bargaining agreement	<u>Howard Johnson v. NLRB</u> , 702 F.2d 1, 4 (1 st Cir. 1983); <u>Gerry’s Cash Market, Inc. v. NLRB</u> , 602 F.2d 1021 (1 st Cir. 1979); <u>The Lorge School</u> , 352 NLRB 119, 126 (2008).
Union Activity or Testifying	G.L. c. 150A, §§ 4, 4A; G.L. c. 150E, § 10; 29 U.S.C. § 158(a)(1) & (a)(3); G.L. c. 150A, § 3A (rights of domestic service employees); <u>see Hospital Cristo Redentor, Inc. v. NLRB</u> , 488 F. 3d 513, 518 (1 st Cir. 2007) (retaliatory termination prohibited by two provisions of the NLRA); <u>Bock Imps. v. NLRB</u> , 2016

	U.S. App. Lexis 11005 (1 st Cir.) (dress code ban on pins, insignia and message clothing was an unfair labor practice); <u>NLRB v. Horizons Hotel Corp.</u> , 49 F.3d 795, 805 (1 st Cir. 1995) (refusal to rehire union members); G.L. c. 161A, § 25(ii)(b) (MBTA employee); 5 U.S.C. § 7116 (unfair labor practices by federal agencies); 22 U.S.C. § 4115 (unfair labor practices by Department of State. For the NLRB, the claim must be filed and served within six months, 29 U.S.C. § 160(b), and under c. 150E, it must be filed within six months, unless there is good cause to justify an extension. 456 CMR 15.03.
Vaccination – Refusal to Be Vaccinated	May be protected based on religion or handicap status. EEOC, Pandemic Preparedness in the Workplace and the Americans with Disabilities Act § III(15) (2009).
Vehicle Safety	See “Safety—Commercial Motor Vehicles” in this Index
Veteran Discrimination	38 U.S.C. § 4311(a); G.L. c. 33, § 13 & 13A.
Veteran Discrimination--Opposition to	38 U.S.C. § 4311(b); G.L. c. 33, § 13 & 13A.
Veteran—Just Cause	G.L. c. 30, § 9A (State employee not protected by Civil Service, who is a veteran and has been employed for at least three years is not subject to arbitrary removal, or for lack of funding when similar positions exist); <u>Hanley v. Commissioner of Ins.</u> , 355 Mass. 784 (1969) (c. 30, § 9A does not apply to Deputy Commissioner of Insurance position, for which the legislature indicated an intention that the statute did not apply).
Veteran--Leave for Veterans Day or Memorial Day	See "Leave--Veterans Day" in this Index
Veteran Preference	G.L. c. 149, § 26 (public works); G.L. c. 31, § 26 (civil service eligibility lists); G.L. c. 31, § 12 (civil service positions for which there is no list); 38 U.S.C. § 4212, 4214; 5 U.S.C. § 2302(b)(11); see also Military Service--Reemployment Rights
Voting	G.L. c. 56, §§ 32, 33 (prohibiting influence of

	employee's votes); G.L. c. 149, § 178 (right for leave to vote); G.L. c. 56, § 37 (influence of referendum); 5 U.S.C. §§ 2301(b)(2), 2301(8)(A)
Wages--Compensation Earned or Almost Earned Based on Past Performance of Services	<u>Fortune v. National Cash Register Co.</u> , 373 Mass. 96, 104-5 (1977) (termination to avoid paying commissions); <u>Gram v. Liberty Mut. Inc. Co.</u> , 384 Mass. 659, 372 (1981); see <u>York v. Zurich Scudder Invs., Inc.</u> , 66 Mass. App. 610, 616 (2006) (where an employee is discharged without good cause, the employer is liable for compensation earned or almost earned, even where the employer has not acted in bad faith).
Wages--Employment Benefits	See "Benefits--Seeking Benefits or Vesting" in this Index
Wages--Garnishment	See "Credit History" in this index
Wages--Prevailing--Public Works	G.L. c. 149, § 26, 27, et seq.
Wages--Overtime	G.L. c. 151, § 1A; G.L. c. 149, § 30B (state workers), FLSA, 2 U.S.C. 1313, 1317(a) (congressional employees)
Wages--Seeking Minimum Wage or Overtime Wage	G.L. c. 151, §§ 19(1), (4), (5); 29 U.S.C. § 215(a)(3) (Fair Labor Standards Act); 2 U.S.C. 1313, 1317(a) (congressional employees)
Wages--Seeking Salary and Commissions	G.L. c. 149, § 148A. Courts have held that such a claim requires that the plaintiff first file a charge with the Attorney General. <u>Micciche v. N.R.I. Data and Business Products, Inc.</u> , 2011 U.S. Dist. Lexis 109969 (D. Mass.), at 26-27. See also c. 154, § 8, limiting coverage of G.L. c. 149, § 148 to payments other than deduction from wages for the purpose of paying union dues, repayment of loans, purchase of stock, etc. <u>Fernandes v. Attleboro Housing Authority</u> , 2014 Mass. Lexis 849, at 23-24 (no remedy of reinstatement under Wage Act).
Worker Adjustment and Retraining Notification Act (WARN Act)	2 U.S.C. 1315, 1317(a) (congressional employees)

Water	See "Pollution--Water" in this Index
Weingarten--Requesting a Witness at an Investigative Conference with an Employer	<u>Epilepsy Foundation of Northeast Ohio</u> , 331 NLRB 92 (2000) (applying rule to non-unionized employees); <u>IBM Corp.</u> , 341 NLRB 1288 (2004) (rule does not apply to non-union employees); <u>Mason v. Mass. Dept. of Environmental Protection</u> , 774 F. Supp. 2d 349, 355 (D. Mass. 2011) (no private claim in the absence of union involvement).
Whistleblowing	This is a very broad concept. Ask yourself what type of whistleblowing is applicable, such as reporting fraud, pollution or safety problems, and then look up those subjects in this index. See also "Law, violation of--Reporting"
Wiretapping	Unlawful to use illegally intercepted communication to discipline a subordinate. See <u>Bartnicki v. Vopper</u> , 121 S. Ct. 1753, 1761 n.10 (2000), citing <u>Dorris v. Absher</u> , 959 F. Supp. 813, 815-7 (M.D. Tenn. 1997), <u>aff'd in part, rev'd in part</u> , 179 F.3d 420 (6 th Cir. 1999).
Witness or Victim--Criminal Trial Participation	G.L. c. 268, § 14B; G.L. c. 258B, § 3(j); <u>Haddle v. Garrison</u> , 119 S. Ct. 489 (1998) (42 U.S.C. § 1985(2) interpreted to prevent an employer from retaliating against an employee for testifying at a criminal trial or for attending grand jury proceedings)
Witness--Requesting a Witness at an Investigative Conference with an Employer	See "Weingarten" in this Index
Work-Related Injury	G.L. c. 152, § 75B(1) (work related injury is considered a handicap under c. 151B)
Work-Related Injury--Right to Reasonable Accommodation	G.L. c. 152, § 75B(1)
Workers Compensation – Failure to pay premiums	Employees have a private right of action against employers that misclassify them, in an effort to avoid paying workers compensation premiums. 2010 Amendment
Workers Compensation--Rehiring Preference	G.L. c. 152, § 75A

Workers Compensation--Seeking Rights or Testifying	G.L. c. 152, § 75B(2); 33 U.S.C. § 948a (Longshore and Harbor Workers' Compensation Act)
Work-related Injury—Retaliation for Reporting	Section 11(c) of the Occupational Safety and Health Act of 1970 (OSHA), 29 U.S.C. §660(c) (private sector employees); Federal Railroad Safety Act (FRSA), 49 U.S.C. §20109 (railroad employees)

Checklist5