

## Associational Discrimination: Perfectly Healthy Employee Can Have Disability Claim

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A recent Massachusetts Supreme Court decision highlights a form of discrimination that employers may not always remember – associational discrimination. Associational discrimination is workplace discrimination against one for his relationship with another, and is expressly recognized in the Americans with Disabilities Act. In this case, the court recognized such a claim under a counterpart state law. In *Flagg v. Alimed, Inc.*, a long-time employee's wife had surgery for a brain tumor and the employee needed extra time to care for his children. The employee's manager told him "to take the time needed" and permitted the employee to leave for short periods without punching out. However, the employer discovered the employee's practice of failing to punch out and terminated him.

The employee filed suit under the Massachusetts' antidiscrimination statute, citing the true reason for his termination as the employer's aversion to paying substantial medical expenses resulting from his wife's disability. He thus claimed he was fired for his association with his handicapped wife. However, the trial court found that "the state statute did not recognize associational discrimination" and dismissed the suit.

The Massachusetts Supreme Court analyzed the statute's language to determine its meaning and purpose. It focused specifically on the definition of "handicap" as also "being *regarded* as having [a mental or physical] impairment." This language "signal[ed] [to the court] that [the law] was intended 'to prevent employer's animus against disability from adversely affecting not just those employees with actual handicaps but essentially all members of its workforce, because every employee theoretically has the potential for being regarded by the employer as having an impairment.'" The court also found it persuasive that federal antidiscrimination statutes have been interpreted to cover associational discrimination.

Ultimately, the court reversed the lower court's ruling and held that associational discrimination based on handicap was prohibited under the state statute. Employers need to be vigilant about the liabilities associated with an employee's family members, as it is less intuitive to remember that employees with an ill family member are in fact in a "protected class" such that terminations need to be approached carefully.

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