

# CIVIL RIGHTS LAWS FOR BUSINESSES

**Problem: When government entities issued face mask and vaccination mandates, they often required private entities to violate civil rights laws.**

## 1. DISCRIMINATION BASED ON DISABILITY

Disabilities may be of a physical, cognitive, psychological, or other nature. A person's disabilities are often not obvious or known to others. Some people have medical contraindications to using the masks/vaccines/other medical treatments that may be mandated. Both Massachusetts and federal laws prohibit discrimination and segregation on the basis of such disabilities.

### A. (Federal) Americans with Disabilities Act

- i. Prohibits discrimination in essentially all public entities, employers, and private entities open to the public. Violations carry penalties.

### B. Massachusetts' Constitution and multiple civil rights laws (Article CXIV of MA Constitution; M.G.L. Ch. 151B; M.G.L. Ch. 272 §§ 92A, 98)

- i. Prohibit discrimination in essentially all public entities, employers, and private entities open to the public. Violations carry civil and criminal penalties.

## 2. DISCRIMINATION BASED ON RELIGION

People may hold religious objections to being compelled to comply with various mandates. The U.S. Supreme Court instructs that "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection."

### A. (Federal) U.S. Constitution's 1<sup>st</sup> Amendment

- i. Prohibits all federal, state, and municipal entities from violating any citizen's free exercise of their religious beliefs and practices.

### B. (Federal) Civil Rights Act of 1964

- i. Prohibits most businesses open to the public from religious discrimination.

### C. Massachusetts' Constitution and civil rights laws

- i. Prohibit discrimination in essentially all public entities, employers, and private entities open to the public. Violations carry civil and criminal penalties.

### 3. CIVIL AND CRIMINAL LIABILITY FOR CIVIL RIGHTS VIOLATIONS

Private entities and their personnel can be held liable or prosecuted for violating the above civil rights under the Massachusetts Civil Rights Act, M.G.L. Ch. 12 § 11I, as well as various federal laws:

- 18 U.S.C. § 241 Conspiracy against rights (criminal)
- 18 U.S.C. § 242 Deprivation of rights under color of law (criminal)
- 42 U.S.C. § 1983 Civil Action for Deprivation of Rights
- 42 U.S.C. § 1985 Conspiracy to Interfere with Civil Rights
- 42 U.S.C. § 1986 Action for Neglect to Prevent

#### QUESTIONS AND ANSWERS:

- Aren't businesses or other private entities entitled to set their own policies and discriminate on whatever basis they want?
  - No. The federal and state civil rights laws cited above apply to private entities as well as public entities.
- Didn't the U.S. Supreme Court's ruling in *Jacobson v. Massachusetts* back in 1905 establish that nobody has a legal right to refuse a vaccination?
  - No. Most of the above civil rights laws did not exist back then. And in 2020 the U.S. Supreme Court unanimously ruled in *Roman Catholic Diocese of Brooklyn v. Cuomo* that even in pandemics such as COVID-19, the Constitution cannot be disregarded and people have the right to religious liberty regardless of such circumstances.
- What about if a government entity issues a mandate of some kind that requires our business to enforce it?
  - A mandate, order, or other such directive is not a law. Any such directives are subordinate to the Massachusetts and federal Constitutions and civil rights laws. Under some of the Massachusetts and federal laws cited above, your business and you personally could be prosecuted or sued for such violations.