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Legal Analysis

Home Rule Legislation and its Place in Massachusetts Municipal Law

By Mina Makarious

In 2025, the Massachusetts Legislature enacted a total of 101 session laws, well over half of which consisted of "home rule legislation." This form of legislation is enacted by the Legislature as a whole but applies to only *one* city or town. Topics covered by home rule legislation include the broad (e.g., changing various municipalities' charters[1]) to the provincial (e.g., changing the name of various towns' "Board of Selectmen" to "Select Board," permitting the Richmond Public Library to earn interest on its investments, and authorizing a $100 parking fine during snowstorms in Marblehead).

The demand for home rule legislation is not likely to wane in coming years. To the contrary, based on this author's experience as municipal counsel, the number of such petitions on local town meeting warrants and city council agendas—where requests for home rule legislation typically originate—has only been increasing as municipalities look to react to a variety of concerns such as budget shortfalls, gaps in housing availability, and climate change.

The pattern is also reflective of a larger trend: a desire by the electorate to influence Beacon Hill from the outside. With the Commonwealth facing a record number of statewide ballot initiative petitions, it is not at all surprising to see a similar surge in local home rule petitions, many of which are initiated by local citizens. These petitions, which may grow out of frustration with other governmental entities' failure to act, are being made ever more accessible by technological innovations, such as artificial intelligence and social media, that streamline the process for citizens to draft petitions, publicize them, and lobby for them at the local level.

But what are these "home rule" legislative creatures? How do they fit within our state legal scheme more generally? And why are there so many? I address each of these topics below. I also explain *why* home rule legislation is necessary under the Commonwealth's constitutional and statutory scheme and provide examples of the ways in which municipalities utilize home rule legislation to supplement their governmental authority.[2]

The Limits of Municipal Authority Under Massachusetts Law

Understanding home rule legislation begins by understanding what cities and towns *can* and *cannot* do without permission from the Legislature. Section 1 of the "Home Rule Amendment"[3] provides:

> It is the intention of this article to reaffirm the customary and traditional liberties of the people with respect to the conduct of their local government, and to grant and confirm to the people of every city and town the right of self-government in local matters, subject to the provisions of this article and to such standards and requirements as the general court [i.e., the Legislature] may establish by law in accordance with the provisions of this article.

Consistent with this lofty statement, Section 6 of the Home Rule Amendment begins with a broad grant of power to municipalities to do anything the Legislature *could* allow municipalities to do on their own:

> Any city or town may, by the adoption, amendment, or repeal of local ordinances or by-laws, exercise any power or function which the general court has power to confer upon it . . .

But if municipalities can enact local bylaws or ordinances to do everything the Legislature could do, why would Marblehead bother asking the Legislature to allow it to issue a $100 fine during a snow emergency? The answer lies in two additional provisions of the Home Rule Amendment.

First, Section 6 of the Home Rule Amendment goes on to state that no municipal ordinance or bylaw may be "inconsistent with the constitution or laws enacted by the general court." This language, which serves as the Commonwealth's analog to the federal Supremacy Clause, preempts local laws that conflict with state law, severely undercutting the apparent breadth of the preceding clause. *See Bloom v. Worcester*, 363 Mass. 136, 155 (1973) (noting that, under the Home Rule Amendment, determining whether a local ordinance or bylaw is "not inconsistent" with a statute requires the same analysis of legislative intent as is applied in federal preemption cases). Accordingly, while Section 6 *theoretically* permits municipalities to do everything the Legislature can do, the Legislature can just as easily make local action "inconsistent" by enacting state laws[4] or by so thoroughly regulating a field as to leave no room for municipal regulation.[5] In fact, before a town bylaw can take effect, the Attorney General must *first* determine that it is not inconsistent with state law. *See* Validation of by-laws; procedure, G.L. c. 40, § 32. This requirement applies only to town bylaws and not to city ordinances.

Second, Section 7 of the Home Rule Amendment prohibits cities and towns from acting on several enumerated topics, even where the municipality is acting "consistently" with state law. Specifically, the Home Rule Amendment provides that cities and towns lack the power to:

(1) regulate elections, other than through the charter adoption or revision process permitted in other sections of the Home Rule Amendment;
(2) levy, assess, and collect taxes;
(3) borrow money or pledge the credit of the city or town;
(4) dispose of park land;
(5) enact private or civil law governing civil relationships except as an incident to an exercise of an independent municipal power; or
(6) define and provide for the punishment of a felony or to impose imprisonment as a punishment for any violation of law.

These "off-limits" areas of local action are often surprising to newly elected local officials, who may have run with an interest in addressing precisely these sorts of issues and with the understanding that they, like those at other levels of government, would be able to do so. The result, in some cases, may be a substantial gap between what municipal leaders (and residents) want to do and what they can do.

The *Potential* Saving Grace of Home Rule Legislation

Home rule legislation, at least in theory, fills this gap. Where a municipality seeks to act in a manner preempted by state law or in any of the areas prohibited by Section 7 of the Home Rule Amendment, it must seek approval from the Legislature. Acting pursuant to Section 8 of the Home Rule Amendment, the Legislature can pass legislation unique to one municipality either (1) at that municipality's request or (2) by a two-thirds vote of each branch of the Legislature at the request of the governor.

Of these two methods, the first—typically called a "home rule petition"—is more common. The process to adopt and enact a home rule petition is typically identical to the process for adopting a local bylaw or ordinance. In a town, this involves passage by a town meeting (the town's legislative body) of a petition containing the general subject matter of the proposed legislation and, quite often, the specific proposed language for that legislation. In a city, the City Council and mayor must approve the petition, just as they would an ordinance.[6] Thus, to even *request* that the Legislature adopt a home rule petition, its proponents must undergo the same legal and political process to gain approval as they would for any local bylaw or ordinance.
Home rule legislation enacted by the Legislature carries the same weight as any other Session Law or General Law of the Commonwealth. This means that, within the municipality to which it applies, the home rule legislation can provide for rules that *are* inconsistent with generally applicable state law.[7] Accordingly, while the process of enacting home rule legislation can be cumbersome, it remains an attractive option to cities and towns.

But there is an important catch. Getting political support at the local level is not enough to guarantee success. Once a municipality asks for local legislation to be approved, the Legislature is under no more obligation to approve it than any other legislation. Politics, including the micropolitics and relationships between legislators, can stall home rule legislation, just as they can stall changes to General Laws. And, broadly speaking, home rule legislation is subject to the same procedural steps as other state legislation, including adherence to committee rules and traditions. As a result, only a fraction of the hundreds of home rule petitions filed each year come to a vote, and many die with a whimper in committee. Further, municipal counsel report that their cities and towns rarely receive meaningful feedback on why their requests went unanswered or hear any further debate on their proposals.

Motivations for Home Rule Legislation

Despite these challenges, municipalities clearly have not given up on home rule petitions. An in-depth discussion of all possible reasons for their persistence exceeds the scope of this article. Some common reasons, however, include:

1. **They want to do something they *know* state law does not currently allow.** A basic rationale for home rule legislation is simply that one city or town wants to do something that makes sense for it, but not for others. The City of Boston, which has nearly four times the population of the next largest municipality, provides the paradigm for this. Boston operates under a special zoning act (rather than G.L. c. 40A) that recognizes the greater complexity of the city's planning needs. It is also, among other things, has a

unique procurement strategy intended to incentivize bidding by small and disadvantaged businesses**.**

The major hurdle to using home rule petitions for local experimentation, of course, is that the state Legislature is made up of representatives of the whole state, who may not agree that an experiment is necessary or advisable. That appears to be the case (at least so far) with respect to a bill initiated by Boston Mayor Michelle Wu to allow the city to levy a higher proportion of taxes on commercial properties relative to residential ones. While the legislation has passed the City Council multiple times, it was once again rejected by the Massachusetts Senate this past January, in favor of its own alternate tax relief measures. *See* Katie Lannan, *State Senate votes down Wu's property tax plan, passes alternative measure*, GBH, Jan. 15, 2026.

2. **They have to (or think they have to)**. Certain municipal actions require legislative action to take effect. For example, under Article 97 of the Massachusetts Constitution, "[l]ands and easements taken or acquired" for conservation purposes "shall not be used for other purposes or otherwise disposed of" without the approval of a two-thirds vote of each branch of the Legislature. The "relatively imprecise" language of Article 97 has been the subject of significant litigation. *See* *Smith* v. *City of Westfield,* 478 Mass. 49, 56 (2017) (citation omitted). Accordingly, municipalities at times seek Article 97 legislation as a precaution, even where it is not entirely clear it is necessary.

   Relatedly, when municipalities are unsure of whether state law allows them to act on their own, they may seek special legislation out of an abundance of caution. For example, during the COVID-19 pandemic, many municipalities sought means to run town meetings by hybrid or remote means. Faced with the inability to meet in-person, several municipalities considered whether they could rely on statutory language permitting town meetings to be "in one or more places . . . connected by means of a public address system and loudspeakers so that the proceedings in all such places may be heard and participated in by all the voters present therein." G.L. c. 39, § 10. Compelling arguments exist in favor of interpreting this provision to allow for remote meetings. The language, written in 1959, appeared to contemplate the means of technology available then, and could easily be adapted to remote or hybrid meetings, where the "places" would be individual homes or offices.

   But, when enough doubt was raised about the counterargument that the statute did not contemplate the possibility of individualized spaces, the state passed emergency legislation authorizing such meetings in certain circumstances and for a limited time. *See* An Act Relative to Municipal Governance During the COVID-19 Emergency, St. 2020, c. 92, § 8. That legislation has since been renewed several times and is set to expire in 2027. *See, e.g.*, An Act Making Appropriations for the Fisal Year 2022 to Provide for supplementing Certain Existing Appropriations and for Certain Other Activities and Projects, St. 2022, c. 22, § 26; An Act Extending Certain COVID-19 Measures Adopted During the State of Emergency, St. 2025, c. 2, § 3. The issue of whether it is even necessary has never been settled. Accordingly, municipalities have felt "stuck" in seeking legislation, and several have asked for home rule legislation authorizing continued use of the practice. After all, a member of the public (or a skeptical court) could wonder why a town believed it needed *express* authority in 2020 to conduct such meetings but could read authority into Chapter 39 thereafter.

While the COVID emergency has largely passed, unfortunately it has proven much harder to get timely action on these local requests, leading instead to several last-minute extensions of the prior statewide legislation. For example, in 2025, the Legislature extended the prior expiration date of March 31, 2025, with only three days to spare. An Act Extending Certain COVID-19 Measures Adopted During the State of Emergency, St. 2025, c. 2, § 4. And to date, only one town (Plymouth) has received permanent authorization to hold remote town meetings. *See* An Act Authorizing the Town of Plymouth to Hold Remote Representative Town Meetings, St. 2022, c. 291.

This example provides a cautionary tale for those considering the use of special legislation to clarify existing state law. When a municipality *asks* the Legislature to say it *can* do something, it effectively leaves itself at the mercy of the Legislature, rather than testing the potential limits of its own home rule authority. When the Legislature fails to act, and especially when it fails to address *why* it has not acted, there is no way of knowing whether the Legislature believes the municipality is already empowered to act or whether the Legislature is denying it the ability to act.[8]

3. **To persuade the Legislature to act on a statewide basis.** Some special legislation has been filed with full understanding that it may not lead immediately to law but that, if an issue is raised by enough municipalities, it may spur statewide action.

   For example, between 2019 and 2022, several municipalities sought to limit the use of fossil fuel infrastructure in new construction in their communities. After the Attorney General's office rejected Brookline's attempt to do so by bylaw, determining it as "inconsistent" with state law provisions requiring uniformity in the building code, *see* Massachusetts Office of the Attorney General, Municipal Law Unit Case #9725 (July 21, 2020), Brookline and several other communities filed home rule petitions seeking the authority to do so on their own. Although the Legislature did not immediately take these bills up, it included provisions in the 2022 Act Driving Clean Energy and Offshore Wind, St. 2022, c. 179, mandating that the Department of Energy Resources (DOER) implement a "demonstration project" allowing up to 10 municipalities to prohibit most fossil fuels in new construction. As a nod to the municipalities that provided the impetus for the statewide legislation, the Legislature directed DOER to give preference to communities who had already requested a home rule petition to that effect.

   Other home rule petition activity has been more symbolic, giving municipalities an opportunity to add their voices to those of others seeking statewide changes that, to date, have failed to materialize. The City of Cambridge, for instance, has passed legislation seeking to permit 16-year-olds to vote in local elections at least three times since 2002. The Legislature has never approved. Nevertheless, over time, several other municipalities have joined this cause, and others have considered it at town meetings and city council meetings. Even recognizing that their chances of success are low, activists often use such petitioning as a tool to demonstrate to Beacon Hill that there is widespread support for an idea for which they are *also* advocating at the state level.

Conclusion

As long as the Massachusetts Constitution constrains municipalities' ability to address local problems on their own, cities and towns are likely to continue to seek home rule legislation to fill their governance needs. In addition, as citizens make clear that they want all levels of government to act more quickly and forcefully on a range of issues, home rule petitions are only likely to increase. Of course, this may have the unintended consequence of further slowing down the Legislature, bogging it down with relatively insignificant and narrowly applicable bills.

How the Legislature will react to the constant demand for home rule legislation is less certain. Local petitions may spur more general legislation to address areas of concern. Or legislators may find it easier to authorize localized experiments while working through broader solutions. Whatever the result, home rule petitions are likely to remain central to the Legislature's work for years to come.

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Endnotes

1. Legislation amending and establishing charters relies, in a technical legal sense, on a different source of home rule authority than home rule *petition* authority, which is the focus of this article. *See* Esteban Gutierrez-Alvarez, *Superintending the City: An Administrative Law for Home Rule*, 59 Colum. J.L. & Soc. Probs. 209, 233-39 (2026).
2. For a deeper analysis of the Home Rule Amendment and home rule legislation, including a review of data collected from various municipal officials, the author strongly recommends: David J. Barron et al., *Dispelling the Myth of Home Rule: Local Power in Greater Boston*, Rappaport Institute for Greater Boston, chap. 1 (2004). While the paper is now over two decades old, the complaints expressed to the authors about the limitations of home rule, and the authors' conclusions regarding home rule legislation's benefits and drawbacks, will be quite familiar to municipal lawyers today.
3. In the late 1960s, the Legislature passed Article 89 of the Articles of Amendment to the Massachusetts Constitution, which revised Article 2 of the Amendments (the "Home Rule Amendment"). The Legislature also passed the Home Rule Procedures Act, G.L. c. 43B, which implements the Home Rule Amendment.
4. *See, e.g.*, Subjects which zoning may not regulate; exemptions; public hearings; temporary manufactured home residences, G.L. c. 40A, § 3 (limiting in several respects municipal zoning control); *New England LNG Co. v. City of Fall River*, 368 Mass. 259, 267 (1975) (determining that local ordinance could not regulate gas facilities as to matters where the relevant authority was expressly delegated to the state Department of Public Utilities).
5. *See, e.g.*, *Del Duca* v. *Town Adm'r of Methuen*, 368 Mass. 1, 12 (1975) ("[T]he Legislature has, as it has power to do, taken the entire subject of the establishment, powers, and duties of local, regional, and State planning boards in hand, and has thereby

precluded any local action which would impair the operation and effect of the statutes in that field.”).

6. *But see Opinion of the Justs. to the House of Representatives*, 375 Mass. 843, 845-46 (1978) (holding that in cities with a Plan E form of government, where the mayor has no power to approve ordinances, the approval of the mayor is not required to file a home rule petition).
7. A case filed in December 2025, *Lab 9 Modular, LLC v. Dep’t of Lab. Standards and Michael Flanagan, Dir. of the Dep’t of Lab. Standards*, No. 2584-CV-03451-BLS2 (Suffolk Sup. Ct.), raises an interesting question regarding what happens when legislation that originated as an act proposed by a town or city leads to consequences beyond the filing town’s or city’s borders. The case involves the application of legislation sought by Somerville, which exempted a public housing project in the city from certain public procurement requirements but stated that the project would be subject to prevailing wage requirements. However, some aspects of the project also involved preparation of “modular” units in Littleton, to be later moved to Somerville. The complaint alleges that the Department of Labor Standards incorrectly read the legislation to require the same prevailing wage requirements for work done in Littleton as the legislation requires for Somerville. The case remains pending at the time of publication.
8. *See* Barron, *supra*, at p. 11 for further discussion of this issue.

Heads Up

Defense Counsel's Obligations to Convey Plea Offers - *Commonwealth v. Mosso*.

By Cailin Campbell

Does defense counsel have a constitutional obligation to initiate plea negotiations when no formal plea offer has been made by the prosecutor? In *Commonwealth v. Mosso*, 496 Mass. 768 (2025), the Supreme Judicial Court ("SJC") answered: it depends.

Facts

In 1984, after a joint jury trial, Gary E. Mosson and his co-defendant were convicted of joint venture first-degree murder. More than 20 years later, the defendant filed a motion for a new trial, alleging his trial counsel was ineffective for failing to convey to the prosecutor prior to trial that the defendant was willing to plead guilty to the lesser-included offense of second-degree murder.

The defendant, a defense expert, and the trial prosecutor testified at a subsequent evidentiary hearing on the defendant's motion. The defendant testified that, prior to his trial, he asked his attorney about the possibility of a plea and told his attorney that he was willing to plead guilty to second-degree murder. The trial prosecutor testified that the defendant's attorney never came to him with this plea offer. The trial prosecutor also testified that, while he would have considered a second-degree murder plea, the acceptance of a second-degree murder plea offer would have had to include both the defendant and his co-defendant. The co-defendant had not indicated a willingness to plead guilty to second-degree murder prior to the trial. The co-defendant did express a willingness to plead guilty to manslaughter pre-trial, which was rejected by the trial prosecutor. Two weeks into trial, the co-defendant eventually offered to plead guilty to second-degree murder, but the prosecutor was unwilling to even entertain the offer, because the victim's family had already been subjected to the trauma of trial.

The motion judge denied the defendant's motion for new trial, reasoning that there was no realistic probability that the defendant could have pleaded guilty to second-degree murder, as defense counsel never sought such a plea deal, and the prosecutor would have only considered such a deal if both defendants had agreed to it prior to trial.

Holding

Under the Sixth Amendment to the United States Constitution and Article 12 of the Massachusetts Declaration of Rights, a criminal defendant is constitutionally entitled to effective assistance of counsel in negotiating and entering a plea pre-trial. While effective assistance of counsel is a recognized constitutional right, a criminal defendant has no constitutional right to receive a plea offer, to have a plea offer accepted by a prosecutor, or to have a plea offer accepted by a judge.

Never previously considered by the SJC was whether a constitutionally effective attorney must convey a defendant's offer to plea to a lesser offense when the prosecutor has not first made a plea offer. The SJC answered that, while defense counsel does not have "an absolute duty to engage in plea negotiations," a constitutionally effective attorney must inform a prosecutor of a defendant's plea offer if the offer is "reasonable in the circumstances." *Mosso*, 496 Mass. at 778. Whether an offer is reasonable depends on the desired disposition in light of the nature of the underlying crime and the strength of the Commonwealth's case. *Id.* The SJC reiterated that plea discussions should be considered the norm and that failure to engage in such discussions should be the exception. *Id. at 778-79.* Moreover, the SJC ruled that an attorney may not reject a defendant's reasonable request to begin such discussions based on a belief that the prosecutor will not be open to or accept the defendant's offer. *Id.*

Turning to the case at bar, the SJC applied the standard test for ineffective assistance of counsel established under [*Commonwealth v. Saferian*], 366 Mass. 89, 96 (1974), which requires a defendant to prove first, that defense counsel's performance was constitutionally deficient, and second, that the defendant was prejudiced by this deficiency. Where counsel's deficiency occurs in the context of a plea negotiation, a defendant must show that "counsel's constitutionally ineffective performance affected the outcome of the plea process." *Id.*

As to the first prong, the SJC held that defense counsel offered constitutionally deficient representation for failing to inform the prosecutor of the defendant's willingness to plead guilty to second-degree murder. *Mosso*, 496 Mass. at 780. However, the SJC held that the defendant failed to satisfy the second prong—that he was prejudiced by this deficiency. *Id.* at 781–82. The SJC reasoned that although the trial prosecutor would have considered a pre-trial second-degree murder plea offer, the prosecutor's willingness to accept the plea was conditioned upon *both* defendants agreeing to plead guilty, a scenario that never presented itself given the co-defendant's pre-trial unwillingness to plead guilty to second-degree murder. *Id.* Thus, the defendant failed to establish that the outcome of the plea process was affected by his counsel's performance, and the defendant's motion was properly denied. *Id.*

Takeaways

- An attorney should explore all alternatives to trial, including a negotiated plea deal.
- An attorney may not ignore a client's reasonable request to open or pursue plea negotiations based on a belief that the offer will not be accepted by the prosecutor.
- Such an obligation exists even when the prosecutor has made no formal offer.
- Whether the failure to convey an offer to plea amounts to ineffective assistance of counsel depends on whether the plea offer is reasonable under the circumstances, a standard that considers the plea offer, the nature of the crime, and the strength of the Commonwealth's case.
- To prevail on a post-conviction claim on this issue, a defendant must show not only that his counsel's performance was deficient but also that the defendant was prejudiced, meaning that the offer would have been accepted by the prosecutor and presented to and accepted by the Court, and that the plea sentence would have been less severe than the judgment and sentence imposed after trial.

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Practice Tips

Floating Closer to Wages? "Floating" Holidays Under the Massachusetts Wage Act

By Andrea M. Sullivan

In an effort to provide employees with more flexible benefits, employers often offer "floating" holidays. Depending on the employer's policy, these floating holidays fall into two categories: those that can be used any day of the year and those that can only be exercised on certain days specified by the employer. Floating holidays are often offered in addition to set holidays, such as Christmas Day or New Year's Day, but do not have to be.

While these benefits may be attractive to employers and employees alike, the present ambiguity concerning whether they are considered wages under the Massachusetts Wage Act (the "Wage Act"), G.L. c. 149, § 148 should give employers pause.

In Massachusetts, pursuant to G.L. c. 149 § 148, when an employee is terminated or fired, the employee must be paid all earned wages in full on their last day of work. If the employee resigns or voluntarily leaves, the employee must be paid all earned wages on the next regular pay day. Under either scenario, the employer must determine what earned wages are due and owing to the employee. While the Wage Act does not expressly define "wages," Massachusetts courts have concluded that, to qualify as "wages," the amounts in question must be "earned," meaning that they must be "acquire[d] by labor, service or performance." *Birnbach v. Antenna Software, Inc.*, Civil No. 14-11651, 2014 WL 2945869, at *2 (D. Mass. June 26, 2014) (quoting *Massachusetts. State Police Commissioned Officers Ass'n. v. Commonwealth*, 462 Mass. 219, 226 (2012)). The Wage Act gives some guidance, specifying that "'wages' shall include any holiday or vacation payments due an employee under an oral or written agreement." G.L. c. 149, § 148. Further, a Massachusetts Attorney General advisory clarifies that "[e]mployers who choose to provide paid vacation to their employees must treat those payments like any other wages." Andrea Campbell, *Advisory 99/1*, Fair Labor Division of the Commonwealth's Attorney General's Office, 1999. Whether floating holidays are considered wages under the Wage Act is not addressed in the Wage Act and has not been squarely resolved by any Massachusetts court or the Massachusetts Attorney General.

Whether floating holidays are considered wages under the Wage Act will likely depend on the employer's policy that provides for such floating holidays. If the employer treats floating holidays like vacation—i.e., time off that is granted and can be used whenever the employee chooses—those floating holidays will likely be considered wages that must be paid out at separation. For example, if an employer provides its employees with three floating holidays that can be used any day of the year, unused days will likely have to be paid out upon separation. However, if the employer only allows the floating holidays to be used on certain dates, those floating holidays would be more akin to regular holidays, and an argument could be made that they are not wages that need to be paid out at separation. For example, the employer offers employees one floating holiday that can be used on Veteran's Day or the day after Thanksgiving.

At this point, in the absence of any direct guidance from the Massachusetts courts, the legislature through amendment to the Wage Act, or an advisory from the Attorney General, and in light of the severe penalties facing employers that fail to pay wages, the safest and most risk-averse approach is to treat floating holidays as wages that must be paid out at separation.

To understand how the U.S. District Court for the District of Massachusetts may be leaning on the issue, Massachusetts employers and employees should pay close attention to a recent case filed in Middlesex Superior Court and later removed to the United States District Court of Massachusetts at the end of 2025: *Anna Weick v. President and Fellows of Harvard College.*, No. 1:25-cv-13123 (D. Mass. filed Oct. 24, 2025). In that putative class action, the plaintiffs claim that, following their separation from the defendant employer, their unused "personal" time was not paid out. The amended complaint, referring to Harvard's "policy and practice," defines personal time as time that "may be used for any purpose and [that is not] connected to any specific contingencies, such as sickness, bereavement, jury duty or similar issues." As such, the plaintiffs claim that their unused personal time should be considered wages under the Wage Act and should have been paid out at separation. Amended Complaint at 14, *Weick*, No. 1:25-cv-13123 (D. Mass. filed Oct. 30, 2025).

The defendant moved to dismiss the case on three grounds, arguing: (1) the case is preempted by federal labor law because the plaintiffs are parties to a collective bargaining agreement providing that "[e]mployees leaving the University will not be paid for their unused personal days;" (2) the plaintiffs have failed to exhaust administrative remedies as required by the collective bargaining agreement; and (3) personal time is not a wage under the Wage Act. Memorandum of Law in Support of Defendant President and Fellows of Harvard College's Motion to Dismiss Plaintiff's Complaint, *Weick*, No. 1:25-cv-13123 (D. Mass. filed November 13, 2025). Assuming the federal court reaches the issue of whether the paid personal time in this case is considered wages under the Wage Act, the ruling could be highly persuasive authority on the larger issue of whether floating holidays are also considered wages.

While employers and employees wait for guidance on this issue from the courts or the Attorney General's Office, below are some practice considerations and implications for employers and employees alike:

- For employers:
  - Be explicit: clearly state in written policies whether floating holidays accrue, whether unused days are paid out at termination, any caps or forfeiture rules, and procedures for scheduling.
  - Consistency matters: inconsistent practice can undermine a policy that denies payout.
  - Consider legal review: ensure handbook language complies with state rules and minimizes the risk of floating holidays being treated as wages.
- For employees:
  - Review employer policies, offer letters, and union contracts for language on accrual and payout.
  - If an employer promised payout or a policy indicates accrued days are earned, you may have a claim for unpaid wages if not paid at separation.

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Viewpoint

Protected at Work: Massachusetts Should Close The Gaps in Employment Law That Leave Domestic Violence Victims, Their Employers, and Their Workplaces Unprotected

By Andrea Kramer

Though domestic violence ("DV") is often framed as a private matter, it also is a pervasive workplace issue, one that affects workplace safety, employee productivity, and employers' bottom lines. Many employers rightly recognize the importance of addressing DV as a workplace issue, but not all. And, Massachusetts law does not require them to do so. Under current Massachusetts law, employees in Massachusetts can be—and often are—fired or denied employment opportunities simply because they are victims, and employers have no obligation to provide victims with reasonable accommodations that would permit them to continue to work productively and safely. An Act Relative to Employment Protections for Victims of Abusive Behavior (the "Protected at Work Bill") (H.2143/S.1294) offers a necessary and overdue correction. Massachusetts should join the eight other states that already have similar legislation by passing this bill, which is once again awaiting a vote by the Massachusetts House of Representatives.

(Note: This article uses the words "survivor" and "victim" interchangeably while recognizing that different communities prefer different words. Statutes and legal contexts generally use "victim" while DV advocates often prefer "survivor" because it de-stigmatizes, and captures the resilience of, the person who has experienced the abuse.)

Domestic violence, which includes physical violence, sexual assault, stalking, psychological and emotional abuse, and coercive control, has consequences in the workplace. Nationally, each year, there are over 12 million victims of these crimes in the US, and nearly three in 10 women and one in 10 men have reported that their experience of DV has had an impact on their functioning, including their participation in the workforce. Survivors nationwide lose nearly eight million days of paid work annually, and as many as half of all survivors lose their jobs for reasons related to abuse, such as absenteeism due to injury or being prevented from going to work, having to relocate for safety, poor work performance due to emotional strain or pain, and discrimination or lack of reasonable accommodation that would permit the survivor to continue to work. Even when survivors continue working, DV can enter the workplace in numerous ways. Abusers frequently harass victims at work through repeated phone calls, text messages, and emails; telling lies about the victim to the employer; or showing up at the victim's workplace. On the other side, abusers often spend work time and use their employers' resources, including company cars, emails, and phones, to perpetuate the abuse, thus impacting the abuser's work productivity and opening employers up to liability.

In 2014, Massachusetts took an important step toward supporting survivors by enacting the Abusive Behavior Leave Law, G.L. c. 149, § 52E, which permits certain employees to take up to 15 days of leave in a 12-month period for certain reasons relating to DV, including court proceedings, medical care, and relocation. That statute does not, however, apply to people who work for employers with fewer than 50 employees, does not restrict employers from discriminating against DV victims, and does not require employers to provide reasonable accommodations to DV victims. And it does not apply to applicants or prospective employees.

The Protected at Work Bill, designed to work with existing Massachusetts law, addresses these gaps directly by integrating survivor status into the Commonwealth's anti-discrimination framework. First, the bill adds "status as a victim of abusive behavior" as a protected class under unlawful practices in G.L. c. 151B, which prohibits discrimination in hiring, firing, and other terms of employment. Second, the bill requires employers to provide reasonable accommodations, such as schedule adjustments, safety planning, or changes in work location, unless doing so would impose an undue hardship to the employer, and mandates a good-faith interactive process for the reasonable accommodation. Additionally, the bill extends these protections, as well as ones in the Abusive Behavior Leave Law, to job applicants and prospective employees.

Overall, the Protected at Work Bill treats DV as a workplace reality requiring legal protections for both survivors and employers. The bill helps stabilize the employment of victims, which is necessary to enable victims to secure the financial resources needed to escape abuse. And the bill is designed to help reduce employer costs associated with DV by promoting accommodations that increase retention and reduce interruptions and distractions in the workplace. The bill also creates clarity for employers, many of whom want to "do the right thing" but do not know what that is. The bill recognizes that firing or refusing to hire a survivor is often rooted in stereotypes or victim-blaming, e.g., erroneous beliefs that survivors "permit" the abuse to happen, or on the mistaken belief that doing so will decrease the risk of violence in the workplace. The bill is based on an understanding that the best way to increase workplace safety is for victims to feel safe in disclosing the DV to their employers and for employers to work with them on safety plans. In this way, the bill seeks to make workplaces safer for all.

Massachusetts has long positioned itself as a leader in employment law and civil rights. Yet, on this issue, it lags behind the realities of modern workplaces and the lived experiences of survivors and employers. When an abuser calls, stalks, or appears at a workplace, or prevents an employee from going to work, or causes an employee to leave employment, the line between "personal" and "professional" dissolves. The law must reflect that reality.

The Protected at Work Bill offers a measured, well-calibrated solution. For this reason, both the Associated Industries of Massachusetts and the Massachusetts Restaurant Association, as well as many employment defense attorneys, support the Protected at Work Bill.

By enacting this bill, Massachusetts can ensure that survivors are not penalized for circumstances beyond their control and that employers have clear, consistent guidance on how to respond. The time to close the gap in workplace protection is now.

Andrea Kramer is an accomplished general litigator with Kramer Law LLC, who focuses on business/commercial cases and employment disputes. Recognized by her peers as a top attorney, Andrea is currently working pro bono in support of the Protected at Work Bill, recently authored an amicus brief for the WBA in a case involving the Massachusetts Equal Pay Act, and has long been an advocate for women's rights.

Viewpoint

Stays of Transfer Out of Strict Scrutiny

By Alexandra August

Throughout Massachusetts, facilities licensed and operated by the Department of Mental Health ("DMH") are gripped by a "bed space crisis," operating at such maximum capacity that beds cannot reliably be found for patients requiring either evaluation or treatment in a DMH facility. This issue is particularly pressing for patients transferring to a DMH facility from Bridgewater State Hospital ("BSH"). Such transfers occur after a court finds, beyond a reasonable doubt, that the patient presently held at BSH does not require strict security and can be treated in the less-restrictive DMH facilities, with due process mandating transfer out of BSH upon entry of the order of commitment to DMH.

Based on the lack of beds, courts routinely issue orders that stay a patient's detention within BSH's strict security for up to two weeks. While these orders may ease the burden on DMH to accommodate transfers, it is not a neutral waiting period for patients at BSH. This systemic delay forces vulnerable individuals to remain in a medium-security prison operated by the Department of Corrections, rather than a therapeutic mental health facility.

Bridgewater State Hospital Versus Department of Mental Health Facilities

BSH, a male-only, medium-security psychiatric facility operated by the Department of Corrections, is the "only psychiatric facility in the country overseen by a state correctional authority rather than a mental health authority." Disability Law Center, *Bridgewater State Hospital: Prison by Another Name* at 2, Disability Law Center, Feb. 2026 ("BSH: Prison by Another Name"). Correctional officers manage entry and exit from the facility and stand guard during internal court proceedings, sometimes intervening with use of force. Care and treatment and internal security, up to and including physical and chemical restraint of patients, are managed by an independent contractor, Recovery Solutions.

The physical deficiencies of BSH are documented: mold contamination, lack of air conditioning during extreme heat, and general disrepair leading to unsafe conditions. Disability Law Center, *Public Report: The Commonwealth's Treatment of Individuals with Mental Health Disabilities Committed to Bridgewater State Hospital and Patient Continuity of Care* at 47–50, Disability Law Center, Feb. 2026 ("Public Report"). Patients live and are locked in for hours at a time in prison cells managed by Recovery Solutions security staff permitted to use chemical restraint and force. Reports indicate that "staff verbally abuse and intimidate" patients, that "forced medication regularly involve[s] excessive force and prison tactics," and that "BSH subjects patients to unnecessary and illegal forced psychotropic medication." *See* BSH: Prison by Another Name at 6–7. Patients, in turn, describe these experiences as "'traumatizing,' 'unnecessary,' and 'humiliating,'" and suffer consequences that "range from physical injuries to feelings of paranoia, fear, and humiliation and a reticence to ask staff for help in the future." *Id* at 7.

DMH, on the other hand, houses patients in locked, but therapeutic, facilities. Reports indicate DMH's policies and practices encourage patient participation and autonomy. Staff is described as "respectful, kind, and supportive," therapeutic and social groups "provide more options for pursuing clinically indicated treatment goals and empowering patients," and facilities offer "significant quality-of-life improvements compared to BSH." *See* Public Report at 53. DMH maintains uniform regulations regarding patient privileges and discipline. The use of seclusion and restraint is carefully circumscribed by state regulations, with use only permitted in the case of "substantial risk of, or the occurrence of, serious self-destructive behavior, or a substantial risk of, or the occurrence of, serious physical assault." Prevention of Restraint and Seclusion and Requirements When Used, 104 CMR 27.12.

To Maintain Patients in "Strict Security" Conditions Pursuant to DMH's Request is a Violation of Due Process

To detain patients at BSH, following a finding they do not require strict security, is a direct violation of these patients' due process rights. It is well established that the Commonwealth's power to confine civil committees is limited by their "right to be deprived of [their] liberty only under circumstances representing the least restrictive alternative for each individual consistent with the needs for his treatment and security." *Gallup v. Alden*, 57 Mass. App. Div. 41, 57 (1975); *see also* *Garcia v. Commonwealth*, 487 Mass. 97, 103 (2021); *Matter of a Minor*, 484 Mass. 295, 309 (2020). Without a finding beyond a reasonable doubt "that [the patient] is not a proper subject for commitment to any facility of the [DMH]; and . . . failure to retain such person in strict custody would create a likelihood of serious harm," any further detention within strict security far surpasses the Commonwealth's power to confine. Proceedings to commit dangerous persons; notice; hearing; orders; jurisdiction, G.L. c. 123, § 8(b)-(c); *see also* *Commonwealth v. Nassar*, 380 Mass. 908, 916 (1980); *Superintendent of Worcester State Hosp. v. Hagburg*, 374 Mass. 271, 276–77 (1978).

When strict security is no longer required, "the court shall order the commitment of the person to a facility designated by the department," where "DMH has the obligation to provide [the] level of intermediate security that the plaintiff's condition requires." G.L. c. 123, § 8(b); *Bradley v. Comm'r of Mental Health*, 386 Mass. 363, 366 (1982). And yet, in these situations, DMH, without formally intervening, consistently asks BSH to inform the court that DMH would like the patient's transfer out of strict security be stayed.

Conclusion

Stays of transfer extend detention in a volatile correctional setting and overwrite the explicit finding that a patient would not pose a likelihood of serious harm if transferred to a DMH facility. There is a stark difference between treatment in a DMH facility and detention at BSH, one that creates lasting impacts on patients. Although these orders may ease the burdens placed on DMH to accommodate transfers out of strict security created by the ongoing "bed space crisis," this ostensible benefit does not outweigh the violation of constitutional due process rights created by ongoing detention within BSH.

The opinions stated in this article are those of the author and do not necessarily reflect the position of the Committee for Public Counsel Services.

Alexandra August is a trial attorney with the Brockton Commitment Defense Unit of the Mental Health Litigation Division at the Committee for Public Counsel Services, where she primarily represents indigent men admitted and committed to Bridgewater State Hospital. In addition to her work as a trial attorney, Attorney August is the chair of the Brockton MHLD intern program, supervising 3:03 certified law students over the course of a semester, and serves as an Adjunct Professor of Mental Health Litigation at both New England University School of Law and University of Massachusetts - Dartmouth School of Law.

New Lawyer Corner Interview

The Board of Editors interviewed five members of Boston's legal community, spanning different career stages and practice areas, to get their reflections on what drew them to the profession, how their paths have evolved, and what they hope for in the years ahead.

Kristy A. Lavigne is an Assistant Bar Counsel with the Office of Bar Counsel. Before joining the Office of Bar Counsel in August 2020, Kristy was an Assistant Attorney General prosecuting insurance and unemployment fraud at the Massachusetts Attorney General's Office for seven years and an Assistant District Attorney at the Cape and Islands' District Attorney's Office for nine years.

1. **Why did you enter the profession?** If you asked my family members, they would say the reason is that I like to argue, even as a small child differentiating between a "couch" and a "loveseat." From a more serious and broader perspective, I would say that my goal in becoming a lawyer stemmed from looking for a profession that was both rewarding and fulfilling while also helping people and achieving some good in the world.

2. **Why did you choose this career path?** Public service has always been an integral part of my life generally and by extension, my career path. Knowing that, I concentrated throughout college and law school on criminal prosecution, interning in the Middlesex, Plymouth, and Suffolk County District Attorneys' Offices. From there, I worked for 16 years as a criminal prosecutor in local and then state government. When the time came for a change, I wanted to continue my dedication to public service. That desire landed me at the Office of Bar Counsel, where I can both help people and protect the integrity of the profession.

3. **What are your hopes?** My hopes are that we can live in a country and a world where all people are encouraged, loved, and accepted regardless of gender, gender identity, race, color, religion, national origin, age, disability, and/or sexual orientation. My hopes are that legal professionals mentor others as I have tried to do throughout my career, leading to less burnout and less overall dissatisfaction. My hopes are that everyone both likes and loves their career and, if not, that they have the courage to switch paths.

4. **What worries you?** I am worried and bothered when attorneys discourage individuals from entering law school and/or the profession. I have constantly and consistently loved being a lawyer. I routinely share my opinion in that regard when I hear others disparaging the profession in such a way.

Prasanna Rajasekaran has a solo criminal defense and employment law practice and works part-time as an Assistant City Solicitor for the City of Malden. He graduated from Boston University School of Law in 2023 and clerked for Justice Dalila Wendlandt at the Supreme Judicial Court.

1. **Why did you enter the profession?** In high school, I had a vague notion of becoming a lawyer because I liked history, politics, and language arts. After college, I worked as a

housing policy researcher, but the job was too academic for me. I wanted to engage with those issues on a more direct level. So, I decided to become a public interest lawyer.

2. **Why did you choose this career path?** In law school, I was terribly indecisive about my area of practice. I never liked the idea of specializing. I worked in legal services for a judge and at a law firm that focused on affordable housing development. I liked pretty much everything I tried, but I wanted to keep trying new things. That is why I figured it would be best to start my own practice, where I could continue exploring random interests.

3. **What are your hopes?** I now have a wide variety of cases. In my own practice, I do criminal defense and plaintiff-side employment work. I also work part-time for the City of Malden, where I mostly see land use, contract, and municipal law issues. I hope to continue learning as much substantive law as possible, hone my skills as a trial lawyer, and eventually build a generalist practice that can handle any type of case.

4. **What worries you?** The economics of law can be difficult. Getting private clients is hard and takes more of a business mind than a legal mind. I am not a salesperson by nature, but it is a muscle I need to build. I also want to provide quality representation to all my clients, and as a young lawyer, the anxiety of inexperience constantly hangs over me. I am not sure if that ever fully goes away.

Maxwell James is a litigation associate at Skadden, Arps, Slate, Meagher & Flom LLP. Maxwell graduated from Boston University School of Law in 2025 with a Juris Doctor and LL.M. in Banking & Financial Law.

1. **Why did you enter the profession?** I knew from an early age that I wanted to be a lawyer. Both of my parents are lawyers. I grew up around that way of life—and the constant reruns of Law & Order. In middle school, I asked my mother for a "law book." She brought home her law school textbook, *Fundamentals of Trial Techniques* by Thomas A. Mauet, which I read cover-to-cover multiple times. In high school, I joined the mock trial team. It was there that I learned that law is about telling stories, and I found my calling: I had to be a litigator.

2. **Why did you choose this career path?** After realizing I had to be a litigator, I knew I needed to find a place where I could learn from the best. At its core, litigation is storytelling. I wanted to work at a firm where the issues were never routine and I would be pushed to be better every day. Skadden is that place. As a summer associate, I worked alongside some of the smartest lawyers I have ever met. Very quickly, I knew I was in the right place.

3. **What are your hopes?** I hope the collaborative environment at the firm, and in the legal community generally, continues. There is a quote that says, "No one at Skadden does it alone"—and that is true. Whether it is a partner taking time to walk me through our strategy or colleagues workshopping arguments for an oral argument, that collaborative culture is what I love about the firm. I hope that never changes.

4. **What worries you?** AI is reshaping the legal industry, generating both considerable excitement about its transformative potential and legitimate questions about the uncertainty and risk it introduces. Much remains to be seen regarding how AI will ultimately influence legal practice and what regulatory frameworks may emerge in response. Nevertheless, I am optimistic that the skills I am building now—skills I genuinely enjoy developing and applying—will, in the near future, be meaningfully enhanced and amplified by AI tools. Rather than displacing the work I find most rewarding, I believe these technologies will free me to focus on the higher-level strategy and advocacy that lie at the heart of effective legal practice.

Neva Payson is a law clerk at the Massachusetts Appeals Court for Chief Justice Amy Lyn Blake. Neva graduated from New England Law in 2025 with a Juris Doctor and previously clerked in the Division of Administrative Law Appeals and the Porcello Law Offices, as well as interned at Salem City Hall, the Massachusetts Office of the Inspector General, the U.S. Attorney's Office for the District of Massachusetts, for Congressmen Seth Moulton and Richard Neal, and Senator Elizabeth Warren.

1. **Why did you enter the profession?** I decided to enter this profession because I wanted to have the skills to help others better understand complicated issues. For a summer internship in undergrad, I worked in constituent services and felt that I did not have enough legal knowledge to understand and assist people with the issues they were facing. By choosing to attend law school, I wanted to be an advocate and a resource for others.

2. **Why did you choose this career path?** I wanted to clerk after law school to further develop my research and writing skills and gain exposure to different areas of law. In law school, most of my internships focused on administrative law, and I wanted the opportunity to work on other topics before deciding what to pursue long term. After clerking, I will be working in municipal law. I decided to pursue municipal law because I wanted to continue working in public service and serve local communities, while also working on a broad range of legal issues.

3. **What are your hopes?** My hope is that in whatever I am doing, I am still working towards my initial goals in entering the profession and being a helpful resource for others. I also hope to continue learning something new every day, while also gaining expertise in municipal law.

4. **What worries you?** I am worried about beginning my career in an area of law where I have not worked directly. It can be overwhelming to feel like you are starting over, even though every person must start somewhere. I am nervous about this upcoming transitionary period out of my clerkship, but I am excited to see what is ahead.

Hannah Feeney is a 2L evening student at Suffolk University Law School. She has a professional background in philanthropic fundraising for arts and academic institutions.

1. **Why did you enter the profession?** I worked as a fundraiser before coming to law school and continued working full-time through my first three semesters. I decided to pursue a

law degree after working with colleagues in planned giving, who had received JDs and used them in their fundraising work. I originally chose Suffolk's evening program so I could continue working while earning my degree.

2. **Why did you choose this career path?** My career path has evolved significantly since starting law school. My original plan was to continue working as a fundraiser. Since coming to Suffolk, I have been fortunate to learn from wonderful professors and mentors who have helped me see the full range of possibilities in a legal career. I now plan to join a law firm after graduation. I am very grateful for my experience at Suffolk and for the many attorneys who have shared their advice and perspectives with me.

3. **What are your hopes?** I am excited about the future. I am looking forward to upcoming experiences as a judicial intern this summer and as a summer associate next year, and I am grateful to those who have supported me and helped make those opportunities possible. I hope for fulfilling experiences that challenge me and help me continue to refine my path. I am also looking forward to a few more semesters of learning from great professors at Suffolk.

4. **What worries you?** I feel fortunate that my biggest worries are typical law school concerns: studying for finals, navigating class registration, and figuring out how to fit in everything I still hope to do while in law school.