

# Mass. Justices Exempt Agencies From Courts' COVID Pause

By **Chris Villani**

Law360 (July 11, 2023, 11:53 AM EDT) -- Massachusetts' highest court said Tuesday that matters before administrative agencies cannot be included in COVID-19 extensions granted to civil cases, holding that the court's power to put cases on pause does not apply to the executive branch.

The state's Supreme Judicial Court held that a fired employee of a Bay State fiberoptics company waited too long to pursue claims that his termination had been in retaliation for speaking out about alleged sexual harassment by the company's president.

Matthew Dunn waited 361 days before filing a complaint with the Massachusetts Commission Against Discrimination, when MCAD requires such complaints to be submitted within 300 days of the alleged conduct.

Dunn argued that the deadlines were paused due to the COVID-19 pandemic, but Associate Justice Scott L. Kafker, writing for the unanimous court, held that the SJC's emergency order tolling civil cases was issued only pursuant to the top court's authority over lower courts.

"Regardless of which path a claimant ultimately chooses — continuing with the MCAD or commencing a civil action — his or her claim must begin at the MCAD," Justice Kafker wrote. "And the MCAD, as an independent agency of the executive branch ... is not subject to our superintendence powers."

"Just as our emergency orders did not extend deadlines at the Registry of Deeds, so too do they not affect the 300-day deadline for filing at the MCAD," the justice added, referencing an SJC decision last year in a similar pandemic tolling case focused instead on a filing of a mechanics lien with the Registry of Deeds.

In that case, the court likewise found that the deadlines were not extended by the COVID-19 order.

The SJC also rejected Dunn's argument that he should be able to move ahead with his case because it was reasonable for him to think that the deadline pause would apply in his case. Justice Kafker wrote that precedent requires the SJC to consider equitable tolling on a narrow basis, such when a claimant is misled by an agency or is "excusably ignorant" about the deadlines at hand.

"The 300-day filing deadline was missed. There was also no attempt to toll the filing deadline at the MCAD, even though the MCAD had provided instructions for doing so on its website," Justice Kafker wrote. "There is no suggestion of misconduct by the MCAD or even excusable neglect by the plaintiff. To address the problems created by COVID-19, the MCAD's website contained instructions for requesting tolling of its filing deadlines."

Dunn's lawyer, Benjamin Rudolf of Murphy & Rudolf LLP, told Law360 that he and his client "are very disappointed with the court's decision, which in our view is inconsistent with decades of precedent and has troubling implications for future litigation of discrimination complaints."

The SJC hinted at Tuesday's ruling during **oral arguments in March**, when some of the justices expressed concerns that they would be running afoul of the separation of powers if they were to exert authority over another equal branch of government.

Dunn sued Phoenix Communication and its chief executive, Mark Langevin, in July 2020 for unpaid

wages after he was fired in November 2019. Later in 2020, Dunn filed a complaint with the MCAD for sexual harassment and related retaliation.

The bias claims were thrown out by a Massachusetts Superior Court justice on statute of limitations grounds, a ruling the SJC upheld Tuesday. An attorney for the defendants declined to comment, citing the ongoing case and the remaining wage counts against his clients.

Dunn is represented by Benjamin C. Rudolf of Murphy & Rudolf LLP.

Phoenix and Langevin are represented by Thomas J. Conte of Mirick O'Connell DeMallie & Lougee LLP.

The case is Dunn v. Langevin et al., case number SJC-13364, in the Supreme Judicial Court of Massachusetts.

--Additional reporting by Brian Dowling. Editing by Gemma Horowitz.