

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

House Bill 229

(Delegate Dumais, *et al.*)

Health and Government Operations

Judicial Proceedings

Human Relations - Employment Discrimination - Protection for Interns

This bill extends prohibitions against specified discriminatory acts to include acts against “interns” and applicants for internships.

Fiscal Summary

State Effect: The expansion of protections for “interns” is not anticipated to materially affect State finances or operations, including those of the Maryland Commission on Civil Rights (MCCR), which can handle any increase in complaints using existing resources.

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: Minimal, as discussed below.

Analysis

Bill Summary/Current Law: The bill defines an “intern” as an individual who performs work for an employer for the purpose of training if (1) the employer is not committed to hire the individual performing the work at the conclusion of the training period and (2) the employer and the individual agree that the individual is not entitled to wages for the work performed. In addition, the work performed by the individual must (1) supplement training given in an educational environment that may enhance the employability of the individual; (2) provide experience for the benefit of the individual; (3) not displace regular employees; and (4) be performed under the close supervision of existing staff.

Under current law, discrimination in employment based on an individual’s race, color, religion, national origin, sex, age, marital status, sexual orientation, gender identity, or disability is prohibited. This includes discrimination by employers with 15 or more

employees, employment agencies, labor organizations, and training programs. Employers are also prohibited from failing or refusing to make a reasonable accommodation for the known disability of otherwise qualified employee. Discrimination is also prohibited against individuals who have opposed any discriminatory practice or made a charge, testified, assisted, or participated in any manner in an investigation, proceedings, or hearing relating to an alleged discriminatory act. Employment discrimination includes actions related to the printing or publishing of notices or advertisements, as specified. This bill extends these prohibitions to include acts against interns or applicants for internships.

Individuals alleging employment discrimination may file a complaint with MCCR. A complaint must be filed within six months from the date the alleged violation occurred. MCCR may also issue a complaint in its name in the same manner as if the complaint had been filed by an individual, as specified. Following an investigation, if there is a finding of probable cause that a discriminatory act has been or is being committed, MCCR's staff must immediately attempt to eliminate the discrimination by conference, conciliation, or persuasion. If an agreement is reached, MCCR must enter an order setting forth the terms of the agreement. If an agreement is not reached, MCCR staff must make written findings to that effect and certify the file to the general counsel of MCCR. The Executive Director of the Maryland Commission on Civil Rights must issue a written notice, to be served in the name of MCCR, requiring the respondent to answer the charges at a public hearing before an administrative law judge (ALJ). If MCCR finds no probable cause, a request for reconsideration may be filed, as specified.

Following an administrative hearing, on a finding that the respondent has engaged in a discriminatory act, the ALJ must issue a decision and order stating the judge's findings of fact and conclusions of law. The ALJ must also issue and cause to be served on the respondent an order requiring the respondent to cease and desist from engaging in the discriminatory acts and take appropriate affirmative action. Other remedies may include ordering the reinstatement or hiring of employees, with or without back pay, or awarding damages. Nonmonetary relief may also be granted. If the ALJ finds that the respondent has not engaged in an alleged discriminatory act, the ALJ must state findings of fact and conclusions of law and issue an order dismissing the complaint. Unless a timely appeal is filed in accordance with MCCR regulations, a decision and order issued by the ALJ is the final order.

Under the bill, an intern claiming to be aggrieved by an alleged discriminatory act must have access to any internal procedure the employer has for resolving a complaint by an employee of sexual harassment or other discrimination. If the employer does not have an internal procedure, the individual may file a complaint with MCCR, as specified above, for nonmonetary administrative remedies.

The bill's provisions do not create an employment relationship between an employer and an intern for the purposes of (1) statutory provisions authorizing a civil action to be brought by a complainant or MCCR on behalf of a complainant or monetary damages or (2) any provision of the Labor and Employment Article or the State Personnel and Pensions Article.

Background: In 2013, Oregon enacted legislation extending employment discrimination protection to interns. The legislation created a limited employment relationship between interns and employers for the purpose of allowing interns recourse under the state's discrimination laws for workplace violations including sexual harassment, unlawful discrimination, and retaliation for whistleblowing. California, Illinois, and New York also enacted laws in 2014 providing protection for interns.

Small Business Effect: Small businesses must extend additional protections to "interns" as defined under the bill. However, because the bill limits remedies to those designated as nonmonetary (*e.g.*, ordering the reinstatement or hiring of the intern, requiring employer training on harassment, or reinstating other benefits lost because of the discrimination, such as work assignments or access to mentors), it is anticipated that any impact on small businesses is minimal.

Additional Information

Prior Introductions: HB 381 of 2014, a similar bill regarding employment discrimination and protection for interns, received a hearing in the House Health and Government Operations Committee, but was subsequently withdrawn. Its cross file, SB 237, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: SB 604 (Senator King, *et al.*) – Judicial Proceedings.

Information Source(s): Maryland Commission on Civil Rights; Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - February 9, 2015
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