

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 964 (Delegate Wilson)
Economic Matters

Employment Discrimination – Definitions of “Employee” and “Harassment”
(Workplace Civility Act)

This bill alters the definition of “employee,” for the purposes of employment discrimination actions, to include an individual elected to public office and an appointee on the policy making level. The bill also specifies that “harassment” includes acts or omissions that a reasonable person would find abusive, based on the severity, nature, and frequency of the conduct, including (1) repeated verbal abuse such as the use of derogatory remarks, insults, and epithets; (2) verbal, nonverbal, or physical conduct of a threatening, intimidating, or humiliating nature; and (3) the sabotage or undermining of an employee’s work performance.

Fiscal Summary

State Effect: Potential increase in liability risk for the State due to the expanded definition of “employee” under the bill, as discussed below.

Local Effect: Potential increase in liability risk for local governments due to the expanded definition of “employee” under the bill, as discussed below.

Small Business Effect: None.

Analysis

Current Law: Under § 20-602 of the State Government Article, it is State policy to assure that all persons have equal opportunity in employment and in all labor management-union relations. As such, discrimination in employment is prohibited on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, gender

identity, or disability (unrelated in nature and extent so as to reasonably preclude the performance of the employment).

On any of these bases or because of an individual's refusal to submit to or make available the results of a genetic test, an employer may not (1) fail or refuse to hire, discharge, or otherwise discriminate against any individual with respect to the individual's compensation, terms, conditions, or privileges or (2) limit, segregate, or classify its employees or applicants for employment in any way that deprives or tends to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee. An employer is also prohibited from (1) requesting or requiring genetic tests or genetic information as a condition of hiring or determining benefits or (2) failing or refusing to make a reasonable accommodation for the known disability of an otherwise qualified employee. Additionally, acts of harassment and retaliation against an employee by an employer are prohibited.

In an action alleging harassment, an employer is liable for the acts or omissions toward an employee or applicant for employment committed by an individual who (1) undertakes or recommends tangible employment actions affecting another employee or an applicant, including hiring, firing, promoting, demoting, and reassigning another employee or an applicant or (2) directs, supervises, or evaluates the work activities of another employee. An employer is also liable if the employer's negligence led to the harassment or continuation of harassment.

Enforcing Employment Discrimination

An individual alleging employment discrimination may file a complaint with the Maryland Commission on Civil Rights (MCCR). If a complaint is filed with MCCR and an agreement to remedy and eliminate the discrimination cannot be reached, the matter may be heard before an administrative law judge. Remedies available on a finding that the respondent is engaging or has engaged in an unlawful employment practice include (1) enjoining the respondent from engaging in the discriminatory act; (2) ordering appropriate affirmative relief; (3) awarding compensatory damages for pecuniary and nonpecuniary losses; and (4) ordering any other equitable relief that the administrative law judge considers appropriate.

A complainant or a respondent may elect to have the claims asserted in a complaint alleging an unlawful employment practice determined in a civil action brought by MCCR on the complainant's behalf if (1) MCCR has found probable cause to believe the respondent has engaged or is engaging in an unlawful employment practice and (2) there is a failure to reach an agreement to remedy and eliminate the practice. MCCR may also elect to have the claims asserted within the complaint determined in a civil action brought on its own

behalf under the same conditions. On a finding that discrimination occurred, the court may provide the remedies specified above.

A complainant may file a private civil action against the respondent under specified circumstances. In addition to the remedies specified above, the court may award punitive damages in specified circumstances. Any party may demand a jury trial if a complainant seeks compensatory or punitive damages. Pursuant to § 20-1015 of the State Government Article, a court may award the prevailing party in a civil action reasonable attorney's fees, expert witness fees, and costs.

State/Local Fiscal Effect: While the bill is not anticipated to materially affect the workload of the Judiciary or MCCR, the risk of liability increases for the State and local governments depending on who is considered the employer of an individual elected to public office or an appointee on the policy making level. For example, if the Maryland General Assembly is considered a legislator's employer, its risk of liability increases.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Montgomery and Prince George's counties; Baltimore City; cities of Annapolis and Bowie; Department of Budget and Management; Maryland Commission on Civil Rights; Governor's Office; Judiciary (Administrative Office of the Courts); Maryland Association of Counties; Maryland Municipal League; Department of Legislative Services

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