

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 191
Finance

(Senator Patterson)

Labor and Employment - Hiring - Higher Education Requirements (Give Me a
Chance Act)

This bill generally prohibits an employer from (1) developing or implementing an application (or a hiring process) that uses a college or other higher education degree as a limitation for who can apply for a specified position; (2) using an applicant's lack of a college or other higher education degree to deny an applicant the opportunity to apply for a position; (3) prohibiting an employee from applying for (or pursuing) internal advancement within the employer's organization on the basis of an employee lacking a college or other higher degree; or (4) inquiring about an applicant's lack of a college or other higher education degree during the interview process. Nevertheless, an employer may take such actions if a minimum educational qualification is necessary to perform the duties of the position.

Fiscal Summary

State Effect: The bill does not apply to the State as an employer. Any change in State activities does not materially affect State finances, as discussed below.

Local Effect: The bill does not apply to local governments as employers. Local revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: An employer may inquire as to the applicant's achievement of a college or higher education degree only after the employer makes an initial offer of employment.

The bill prohibits an employer from rescinding an initial offer of employment based on the applicant's response to such an inquiry.

If an employer violates the bill's requirements, an affected applicant (or an employee) may bring an action against the employer (1) for injunctive relief and (2) to recover the greater of actual damages or special damages (of up to \$10,000).

The bill's requirements may not be construed to prohibit an applicant from *voluntarily* sharing information regarding the applicant's achievement of a college or other higher education degree.

If the Commissioner of Labor and Industry determines that an employer has violated the bill's requirements, the commissioner must issue an order compelling compliance and may (according to the commissioner's discretion) assess a penalty of up to \$1,000 for each applicant for whom the employer was not in compliance. In determining the amount of the penalty, the commissioner must consider specified factors, such as the gravity of the violation. If the commissioner assesses a penalty, the penalty is subject to the notice and hearing requirements set forth in State law.

Current Law: Maryland law does not prohibit private-sector employers from inquiring into the educational history of an applicant.

Except as otherwise specified, the commissioner may conduct an investigation to determine whether a provision of law related to employment standards and conditions has been violated – either on the commissioner's own initiative or after receiving a written complaint.

State Fiscal Effect: The Commissioner of Labor and Industry advises that, although the bill's requirements can be handled with existing resources, the agency does not have the proper investigatory or regulatory authority to enforce the bill. The Department of Legislative Services notes, however, that the commissioner is authorized by statute to conduct investigations into whether any provision related to employment standards and conditions has been violated. Given the bill's narrow application, it is assumed that the bill generates few complaints and that the commissioner can investigate those complaints and process any civil penalties with existing resources.

The Judiciary can handle any increase in caseloads resulting from the bill with existing budgeted resources.

The Office of Administrative Hearings (OAH) advises that it would need to create a mechanism to code and track this type of administrative case. In addition, OAH would also have to train its administrative law judges on the substantive provisions of the law.

Nevertheless, OAH advises that it does not anticipate a significant increase in cases under the bill and can otherwise handle any cases with existing resources

General fund revenues may increase minimally as a result of the bill's civil penalty provision.

Small Business Effect: Small businesses in the State that require an applicant to have a college or other higher education degree for jobs that do not require a degree may need to revamp their hiring practices and/or job advertisements to remove unnecessary requirements, as specified in the bill. The commissioner advises that it is unknown how many small business employers in the State may be affected by the bill's requirements. However, any small businesses that have such requirements in place are meaningfully affected by the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Higher Education Commission; Maryland Department of Labor; Office of Administrative Hearings; Department of Legislative Services

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