

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 455
Appropriations

(Delegate Wells)

State Personnel - Implicit Bias Awareness Training - Required

This bill requires each State employee to complete at least a cumulative two hours of in-person or virtual, interactive training on implicit bias awareness within six months after the employee's initial appointment and annually thereafter. Each unit in the Executive, Judicial, and Legislative branches must designate a representative to coordinate with the Maryland Commission on Civil Rights (MCCR) to implement the training and may incorporate the training into existing employment training for new employees and supervisors. For Executive Branch units, the Equal Employment Opportunity (EEO) Coordinator must enforce the bill's requirements and may recommend that the Office of Legislative Audits (OLA) conduct a performance audit or review of a unit, if the coordinator determines that the unit has not complied with the bill's requirements. MCCR must adopt regulations to implement the bill.

Fiscal Summary

State Effect: General fund expenditures increase beginning in FY 2023 for MCCR to develop a training program and provide training to designated representatives, as discussed below. Expenditures (all funds) increase beginning in FY 2023 for State agencies to administer employee training requirements, as discussed below. Agency expenditures may be mitigated to the extent that the required training is administered through existing online employee training platforms. OLA can absorb any additional workload with existing resources. No effect on revenues.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill states that the General Assembly finds that implicit bias exists and often contributes to unequal treatment of people based on race, ethnicity, gender identity, sexual orientation, age, disability, and other characteristics.

The bill defines “implicit bias” as the attitudes or internalized stereotypes that affect perceptions, actions, and decisions in an unconscious manner. “Cultural competency” is defined as a set of integrated attitudes, knowledge, and skills that enable a State employee to effectively perform the employee’s job with, and on behalf of, persons from diverse cultures, groups, and communities.

Elements of Required Training

The training must include:

- understanding the definition of implicit bias;
- a requirement that each employee take a self-evaluation that measures the employee’s positive or negative attitude toward a particular concept or social group;
- information on the impact of implicit bias on interpersonal relationships and encounters in the workplace;
- information on strategies to address the negative effects of implicit bias in the workplace and the performance of the employee’s job; and
- encouraging cultural competency in the workplace.

The required self-evaluation must be a behavioral assessment tool and require the employee to describe their own self-understanding of any unconscious attitudes, implicit biases, or stereotypes following the evaluation. The self-evaluation may be modeled after the Harvard Implicit Association Test.

The training required under the bill is a minimum requirement and may not be construed to discourage or relieve any unit from providing a longer, more frequent, or more informative training on workplace implicit bias. Each Executive Branch unit must include information about implicit bias awareness training in its annual report to the EEO Coordinator.

Designated Representatives

MCCR must train each representative designated under the bill in the prevention of implicit bias. Representatives are encouraged to use Equal Employment Opportunity Commission materials to prevent implicit bias in the workplace.

Immunity from Liability

Unless the acts or omissions of an employee who completed the training are willful, wanton, or grossly negligent, a person may not bring an action against the State for any act or omission resulting from (1) any training or lack of training of a State employee or (2) the implementation of the training required under the bill.

Current Law: Title 5, Subtitle 2 of the State Personnel and Pensions Article establishes the EEO program in the Executive Branch, under the authority of the Secretary of Budget and Management, for the purpose of ensuring a merit-based system that provides equal opportunity in employment on the basis of merit and fitness. The EEO Coordinator, appointed by the Governor with the advice and consent of the Joint Committee on Fair Practices and Personnel Oversight, must administer the program and investigate and resolve complaints.

For each fiscal year, each Executive Branch unit must submit an annual report to the coordinator by the following October 15 on the activities the unit undertook in that fiscal year to implement the EEO program, including (1) information about personnel practices within the unit; (2) a summary of complaints filed, investigated, resolved, and pending; (3) information about relations with other units of State government; (4) information about sexual harassment policies and prevention training; and (5) a summary of sexual harassment complaints filed, investigated, resolved, and pending. Each unit must also provide a copy of the annual report to MCCR.

Fair Practices and Equal Employment Opportunity Officers

The head of each principal unit must appoint a fair practices officer who reports directly to the head of the unit and is an assistant secretary or employee of the unit with stature similar to that of an assistant secretary. The head of each principal unit must also appoint an appropriate number of EEO officers for the unit. If necessary, the fair practices officer of a unit may also be the unit's EEO officer. The Department of Budget and Management must provide training, assistance, and advice for EEO officers and fair practices officers.

Each fair practices officer is responsible for implementing the EEO program within the unit, investigating and resolving complaints, and coordinating EEO officer activities. An EEO officer is responsible for monitoring all personnel actions adopted by the unit, attesting that EEO procedures were followed by the unit in personnel actions, and performing other assigned duties.

Sexual Harassment Prevention Training

The bill is modeled on provisions enacted under Chapter 791 of 2018, which requires sexual harassment prevention training for State employees. Each employee must complete at least a cumulative two hours of in-person or virtual, interactive training on sexual harassment prevention within six months after the employee's initial appointment and every two-year period thereafter. Each unit must designate a representative to coordinate with MCCR to implement the required training and may incorporate the training into existing employment training for new employees and supervisors.

If determined to be necessary by the appointing authority, a unit may require an employee to retake any part or all of the training or to participate in additional classes or training. For Executive Branch units, the EEO Coordinator must enforce the training requirements and may recommend that OLA conduct a performance audit or review of a unit, if the coordinator determines that the unit has not complied with the requirements. A person may not bring an action against the State for any act or omission resulting from any training or lack of training of a State employee unless the acts or omissions of the employee are willful, wanton, or grossly negligent.

State Expenditures: The bill requires MCCR to train each representative designated under the bill in the prevention of implicit bias. MCCR advises that, unlike with sexual harassment prevention training, it does not have the internal expertise to conduct trainings on implicit bias as required under the bill and must hire an outside subject-matter expert to develop the training program and conduct the trainings. Related costs have not been quantified at this time. However, it is assumed that general fund contractual expenditures for MCCR likely increase annually beginning in fiscal 2023 for consulting services.

Several State agencies advise that the bill's employee training requirement can be incorporated into existing employee training and/or otherwise administered with existing budgeted resources. However, other agencies advise that they may incur additional costs to develop and/or administer the required training. For some agencies, costs are potentially mitigated to the extent that existing online learning management systems are utilized, such as the HUB, which provides web-based courses to employees in the State Personnel Management System. However, the precise impact on State expenditures cannot be reliably quantified, as it largely depends on how agencies choose to implement the bill's requirements and regulations issued by MCCR.

Under the bill, the EEO Coordinator may recommend to the Legislative Auditor, the Joint Audit and Evaluation Committee (JAEC), or the Executive Director of the Department of Legislative Services (DLS) that OLA conduct a performance audit or review of a unit's compliance with the bill's requirement. To the extent that OLA conducts such audits or reviews on recommendation of the EEO Coordinator and/or upon the direction of JAEC or

the Executive Director of DLS, it is assumed that such work can be accomplished within existing budgeted resources.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Department of Commerce; Maryland Commission on Civil Rights; Maryland Institute for Emergency Medical Services Systems; Maryland Department of Aging; Maryland Department of Emergency Management; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Maryland State Department of Education; Maryland School for the Deaf; Maryland Higher Education Commission; Maryland State Library Agency; University System of Maryland; St. Mary's College of Maryland; Maryland Department of Agriculture; Department of Budget and Management; Maryland Department of Disabilities; Maryland Department of the Environment; Department of General Services; Maryland Department of Health; Department of Housing and Community Development; Department of Juvenile Services; Maryland Department of Labor; Department of Natural Resources; Maryland Department of Planning; Department of State Police; Maryland Department of Transportation; Department of Veterans Affairs; State Department of Assessments and Taxation; Maryland State Board of Elections; Maryland Insurance Administration; Maryland State Lottery and Gaming Control Agency; Military Department; State Retirement Agency; Maryland Stadium Authority; Department of Legislative Services

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