

Department of Legislative Services  
Maryland General Assembly  
2023 Session

FISCAL AND POLICY NOTE  
Third Reader

House Bill 309  
Appropriations

(Delegate Simpson, *et al.*)

Finance

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State Employee Rights and Protections - Personnel Actions and Harassment -  
Complaints

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This bill expands the timeframe for a State employee in the Executive Branch, or an applicant to an Executive Branch agency, to file a complaint alleging that political affiliation, belief, opinion, or other nonmerit factors were used in an employment decision. The bill also expressly allows a State employee in the Executive Branch, or an applicant to an Executive Branch agency, to file a complaint that alleges harassment by an employer and requires such a complaint to be filed within two years after the alleged violation that is the basis for the complaint.

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Fiscal Summary

**State Effect:** State expenditures (all funds) may increase beginning in FY 2024 to the extent that the bill results in additional complaints; however, any such impact cannot be reliably predicted or estimated without actual experience under the bill. Revenues are not affected.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Bill Summary/Current Law:** State law governs both personnel actions by public-sector employers, (such as State agencies and local governments), and private-sector employers through various rights granted to employees and prohibitions against certain activities and actions. For example, *all* employers are expressly prohibited from, among other things,

(1) requesting or requiring genetic tests or genetic information as a condition of hiring or determining benefits; (2) failing or refusing to make a reasonable accommodation for the known disability of an otherwise qualified employee or an applicant for employment; and (3) (directly related to the bill and discussed more thoroughly in the following section) engaging in harassment of an employee.

Specific to State employees in, and applicants to be employed by the Executive Branch of State government, most employment and appointment decisions (with limited exceptions for certain special appointments) must be made without regard to the applicant or employee's political affiliation, belief, or opinion. For a general employee, any other nonmerit factor is also prohibited from being considered; however, this prohibition does not apply for management positions and appointments. An applicant or employee may file, with the head of a principal unit, a written complaint that alleges a violation of this requirement; however, under current law, the complaint must be filed within 30 days after the complainant first knew of or reasonably should have known of the alleged violation that is the basis for the complaint.

Under the bill:

- the aforementioned 30-day time limit for a complainant to file a complaint is increased to one year after the complainant first knew or reasonably should have known of the alleged violation that is the basis for the complaint; and
- a State employee in, or an applicant to be employed by the Executive Branch of State government, may file with the head of a principal unit a written complaint that alleges harassment by the employer; such a complaint must be filed within two years after the alleged violation that is the basis for the complaint.

### *Unlawful Employment Practices – Harassment*

Employers in the State, including public-sector employers, are expressly prohibited from taking certain discriminatory or adverse actions against their employees, including engaging in harassment of an employee. "Harassment" includes sexual harassment and other unwelcome and offensive conduct, which need not be severe or pervasive, when (1) the conduct is based on race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, gender identity, or disability and (2) affects someone's working environment or employment, as specified.

When an instance of harassment occurs, the employer is liable for the acts or omissions toward an employee or applicant for employment committed by an individual who directs, supervises, or evaluates the work activities of the employee or who otherwise undertakes or recommends tangible employment actions for the affected individual. An employer is

also liable if the negligence of the employer led to the harassment or continuation of harassment.

The Maryland Commission on Civil Rights (MCCR) is granted authority to receive harassment complaints and may take specified enforcement actions, including the assessment of a civil penalty and the bringing of a civil action against the offending employer. Complaints alleging harassment against an employer must be filed within two years after the harassment allegedly occurred. Civil penalties range from \$500 to \$2,500, based on the previous number of unlawful employment practices committed by the employer, and accrue to the general fund.

**State Expenditures:** The bill's significant extension of the timeframe during which an individual may file one of the complaints affected by the bill (which are commonly referred to as equal employment opportunity complaints) and express authorization to file an equal employment opportunity complaint about harassment may increase the number of complaints filed throughout State government. The Department of Budget and Management advises that many agencies have only a single staff to handle equal employment opportunity issues; thus, if a significant number of complaints is filed, affected State agencies are likely to experience additional costs for staff or contractual assistance to investigate and otherwise manage the complaint process. Moreover, complaints that are made near the end of the extended timeframes established by the bill may be particularly difficult and/or costly to investigate if the employees involved in the complaint are in different positions, or cannot remember details about an alleged incident, or if potential witnesses are no longer employed by the State.

However, any such impact wholly depends on whether additional complaints are filed and the timing of their filing, which cannot be reliably predicted or estimated without actual experience under the bill.

Regarding the express authorization to file a complaint of harassment, as noted above, the State already has a regulatory process in place to handle harassment through MCCR. It is unclear at this time if and how the two regulatory processes would interact under the bill.

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### **Additional Information**

**Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** SB 574 (Senators Lewis Young and Salling) - Finance.

**Information Source(s):** Department of Budget and Management; Maryland Department of Transportation; University System of Maryland; Office of Administrative Hearings; Judiciary (Administrative Office of the Courts); Department of Legislative Services

**Fiscal Note History:** First Reader - February 19, 2023  
km/mcr Third Reader - March 20, 2023

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