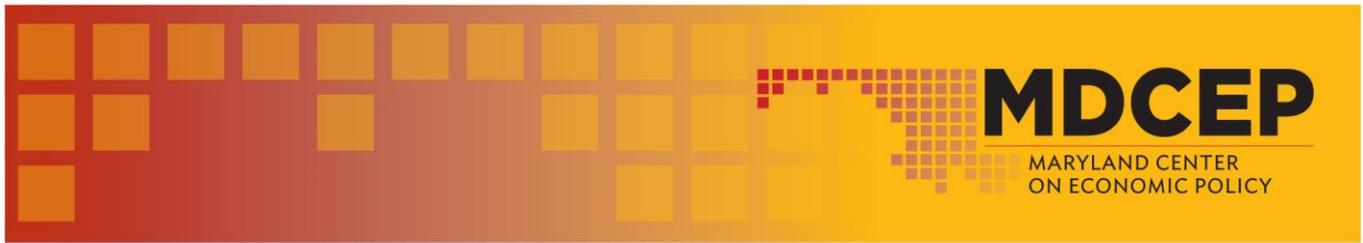


SB449_MD Center on Economic Policy_FAV.pdf

Uploaded by: Kali Schumitz

Position: FAV



FEBRUARY 15, 2022

For a Healthy Economy, Strengthen Marylanders' Rights in the Workplace

Position Statement in Support of Senate Bill 449

Given before the Senate Judicial Proceedings Committee

Every Marylander deserves the chance to get a good job that pays enough to support a family – regardless of their race, ethnicity, gender, or any other aspect of their identity. However, the labor market we have today is far from this ideal. While the majority of workers of all backgrounds have seen poor wage growth over the last half century, our policy choices have pushed the greatest harms onto workers of color, women, workers with disabilities, and workers belonging to other marginalized groups. These harms are the result of an array of stacked, structural barriers – and at the same time, straightforward discrimination by employers remains among the most important of these barriers. The Maryland Center on Economic Policy supports Senate Bill 449 because it would strengthen Maryland's protections against discrimination in the workplace.

Maryland's labor market offers deeply unequal opportunities to workers based on their race, ethnicity, gender, disability, or other aspects of their identity:ⁱ

- On average, 7.5% of Black workers in Maryland were unemployed in 2021 – meaning that they were actively seeking a job but unable to find one. In comparison, 4.7% of white workers in Maryland were unemployed in 2021. Single-year unemployment data are not available for other racial and ethnic groups.
- In 2019 (the most recent year for which relatively complete wage data are available), typical Black workers in Maryland took home \$18.42 per hour, compared to \$26.33 per hour among typical white workers. Latinx workers typically took home only \$16.63 per hour.ⁱⁱ
- In 2001, typical Black workers took home 17% less for each hour worked than their white counterparts; in 2019, they took home 30% less than typical white workers.
- In 2019, men in Maryland typically took home \$24.92 per hour, compared to \$20.48 among women. Women in Maryland typically took home 10% less per hour than men in 2009, but as of 2019 they took home 18% less.
- Across nearly all demographic groups, Marylanders with disabilities have a higher unemployment rate than those without a disability. This means that a larger share of workers who want a job are unable to find one. For example, the unemployment rate among men with a disability in Maryland is 13.0%, compared to 4.5% among men without a disability.
- When workers with disabilities do find a job, they typically take home less than workers who do not have a disability. For example, employed Latinx workers with a disability typically take home \$26,100 per year, compared to \$32,400 among those who do not have a disability.

- Among working-age adults, American Indian Marylanders are most likely to have an identified disability, followed by Black and multiracial Marylanders. Asian and Latinx Marylanders are less likely than those in other racial groups to report a disability.

These unequal opportunities hold back even highly educated workers:

- Workers of color – especially, but not only, Black workers – have a harder time finding any job than white workers with the same level of education.
- Workers of color who have a four-year college degree have a harder time than white workers in finding a job that matches their qualifications.
- Workers of color typically take home less than white workers, even those with the same level of education and working in the same occupation.
- The combination of race-based and gender-based pay discrimination takes an especially large toll on women of color. For example, Latinx women with a four-year degree who worked in an occupation requiring a four-year degree typically took home only \$69,000 between 2015 and 2019, compared to \$107,000 among white men.

Hiring and pay discrimination are important contributors to these structural barriers:

- Employers pervasively discriminate against workers of color in hiring decisions, according to two recent comprehensive literature reviews. In fact, research shows that discrimination against Black job applicants has not declined at all over the last 25 years, while discrimination against Latinx applicants may have modestly declined.
- Black applicants are less than half as likely to get a call-back as otherwise-similar white applicants, and in fact Black applicants without a prior criminal conviction are no more likely to get a call-back than white applicants with a conviction.

Maryland’s civil rights laws can provide an important protection against workplace discrimination, but they can only be effective if they are well designed and robustly enforced. Maryland falls short on both counts today:

- Both funding (adjusted for inflation and population growth) and staffing at the Maryland Commission on Civil Rights have fallen steadily since the early 2000s. These declines are partly, but not entirely, driven by federal funding trends. However, the state’s hands are not tied – to protect workers of color, women, and workers with disabilities from unlawful discrimination, the state should increase its own investment in the commission to ensure adequate staffing.
- Policymakers have not adjusted the caps on compensatory damages – monetary recompense for harms caused by discrimination ranging from psychological harm to health problems to reduced future earning potential – since the General Assembly first authorized this measure in 2007.ⁱⁱⁱ Consumer prices have increased by 30% in the intervening years.^{iv}

Senate Bill 449 would improve Maryland’s employment nondiscrimination protections in two ways:

- The bill increases the cap on compensatory damages administrative law judges may award when they find that an employer has illegally discriminated against a worker. The initial increase would approximately restore the purchasing power of the 2007 caps, and subsequent adjustments would prevent the value of the

caps from eroding over time and gradually strengthen protections.

- The bill allows collection of back pay for up to three years before a worker filed a complaint, versus two years under current law. This is important because an employer that is willing to engage in illegal discrimination is also likely to use intimidation tactics to prevent or delay workers exercising their rights.

For these reasons, the Maryland Center on Economic Policy respectfully requests that the Senate Judicial Proceedings Committee make a favorable report on Senate Bill 449.

Equity Impact Analysis: Senate Bill 449

Bill summary

Senate Bill 449 would increase the caps on compensatory damages in employment discrimination cases and extend the maximum period for which employees can receive back pay.

Background

The Maryland General Assembly in 2007 authorized administrative law judges in employment discrimination cases to award compensatory damages for “future pecuniary losses, emotional pain, 20 suffering, inconvenience, mental anguish, loss of enjoyment of life, or nonpecuniary losses.” The 2007 law capped compensatory damages at \$50,000 per worker at companies with up to 100 employees, increasing to a maximum of \$300,000 for companies with more than 500 employees. These caps remain in effect today, despite a 30% increase in the consumer price index between 2007 and 2021.

Both funding (adjusted for inflation and population growth) and staffing at the Maryland Commission on Civil Rights have fallen steadily since the early 2000s. These declines are partly, but not entirely, driven by federal funding trends. However, the state’s hands are not tied – to protect workers of color, women, and workers with disabilities from unlawful discrimination, the state should increase its own investment in the commission to ensure adequate staffing.

Equity Implications

Maryland’s labor market offers deeply unequal opportunities to workers based on their race, ethnicity, gender, disability, or other aspects of their identity:

- Workers of color and workers with disabilities in Maryland face persistently higher unemployment rates – people who are actively looking for a job but unable to find one – than their white and able-bodied counterparts.
- Workers of color, women, and workers with disabilities in Maryland typically take home lower wages than their white, male, and able-bodied counterparts.
- These unequal opportunities remain even among highly educated workers. Even among those holding a four-year college degree, workers of color in Maryland are more likely to be unemployed, are more likely to work in an occupation that does not match their qualifications, and typically take home lower wages than otherwise-similar white workers.

- Policymakers have not adjusted the caps on compensatory damages – monetary recompense for harms caused by discrimination ranging from psychological harm to health problems to reduced future earning potential – since the General Assembly first authorized this measure in 2007. Consumer prices have increased by 30% in the intervening years.

Hiring and pay discrimination are important contributors to these structural barriers:

- Employers pervasively discriminate against workers of color in hiring decisions, according to two recent comprehensive literature reviews. In fact, research shows that discrimination against Black job applicants has not declined at all over the last 25 years, while discrimination against Latinx applicants may have modestly declined.
- Black applicants are less than half as likely to get a call-back as otherwise-similar white applicants, and in fact Black applicants without a prior criminal conviction are no more likely to get a call-back than white applicants with a conviction.

Senate Bill 449 would increase the maximum compensation available to workers who have faced illegal workplace discrimination and would strengthen employers' incentive to obey the law.

Impact

Senate Bill 449 would likely **improve racial, gender, disability, and economic equity** in Maryland.

ⁱ See discussion in Christopher Meyer, “Budgeting for Opportunity: Maryland’s Workforce Development Policy Can Be a Tool to Remove Barriers and Expand Opportunity,” Maryland Center on Economic Policy, 2021, <http://www.mdeconomy.org/budgeting-for-opportunity-workforce/>

ⁱⁱ Economic Policy Institute of Current Population Survey microdata.

ⁱⁱⁱ See Ch. 177, Maryland General Assembly 2007 regular session.

^{iv} MDCEP analysis of Bureau of Labor Statistics consumer price index data.

SB 449 - Unlawful Employment Practices - Remedies.

Uploaded by: Michelle Siri

Position: FAV

BILL NO: Senate Bill 449
TITLE: Unlawful Employment Practices – Remedies
COMMITTEE: Judicial Proceedings Committee
HEARING DATE: February 15, 2022
POSITION: **Favorable**

Senate Bill 449 seeks to address inequities and outdated remedies within the Maryland Fair Employment Act for employees who have been discriminated against in their workplace. It does so by incrementally increasing the caps on compensatory damages that can be awarded to victims of unlawful employment discrimination after the respondent is found guilty by the Office of Administrative Hearings or State court. Additionally, it allows victims to seek up to 3 years of back pay (current law only permits up to 2 years).

The Women's Law Center of Maryland supports SB 449 because it recognizes the caps on compensatory damages have remained stagnant over the course of many years and are in need of updating. Compensatory damages can act as an incentive to employers to become compliant, thereby potentially reducing the instances of discrimination in the workplace, but will only act as a deterrent if the amount of damages is significant enough to warrant a change in behavior.

Furthermore, whenever discrimination is found, the goal of the law is to put the victim of discrimination in the same position (or nearly the same) that they would have been if the discrimination had never occurred. The types of relief will depend upon the discriminatory action and the effect it had on the victim. For example, if someone is not selected for a job or a promotion because of discrimination, the remedy may include placement in the job and/or back pay and benefits the person would have received. Under current law, however, an individual is only entitled to two years' worth of backpay, regardless of the length or egregiousness of the discriminatory practice.

Unlawful employment practices are serious violations that have a negative impact on workers and our communities. Penalties should be in place to reflect the seriousness of those behaviors and to provide meaningful opportunities to make the employees whole. For those reasons, and the reasons stated above, the WLC urges a favorable report on SB 449.

The Women's Law Center of Maryland operates statewide Family Law and Employment Law Hotlines, the Protection Order Advocacy and Representation Projects in Baltimore City, Baltimore County and Carroll County, and the statewide Collateral Legal Assistants for Survivors and Multi-Ethnic Domestic Violence Projects.

SB449 - MHLA - Rohrer - UNF.pdf

Uploaded by: Amy Rohrer

Position: UNF

MHILA
Maryland Hotel
Lodging Association

SB449 – Oppose
Unlawful Employment Practices – Remedies
Judicial Proceedings Committee
February 15, 2022

Chair Smith, Vice Chair Waldstreicher and Honorable Members of the Committee:

As the sole statewide trade association dedicated to advocacy for Maryland’s lodging industry, with 75,000+ hotel rooms and 34,000 direct employees (pre-pandemic), we urge an unfavorable report on Senate Bill 449.

Senate Bill 449, which would amend existing law, would seek to increase the compensatory and punitive damages that may be awarded to a complainant in an unlawful employment practice case and increase the period of time the complainant would be eligible for back pay.

As mentioned, a law exists that addresses compensation for unlawful employment practices and our members are not opposed to that law. We are, however, opposed to this legislation as it would increase award limits and expand backpay.

Our industry is still recovering from the effects of COVID-19. Increases in operating expenses, coupled with inflation, have significantly tightened already razor thin margins. Given inflationary pressures, true adjusted recovery will not take place until 2025 according to STR and Tourism Economics. **The bill’s fiscal note states that “small businesses face potentially significant costs associated with the increase in damages caps and the increase in years for which a claimant can claim back pay.”** Any further increase in operational expenses passed on to hotels by insurers will reduce the amount our members can invest in their employees, their properties and in their communities while further hampering recovery.

For the reasons expressed in this letter, we oppose SB 275 and request an unfavorable report.

Respectfully submitted,

Amy Rohrer, CAE
President & CEO

SB 449_Unlawful Employment Practices-Remedies_UNFA

Uploaded by: Maddy Voytek

Position: UNF



LEGISLATIVE POSITION:

Unfavorable

Senate Bill 449

Unlawful Employment Practices – Remedies

Senate Judicial Proceedings Committee

Tuesday, February 15, 2022

Dear Chairman Smith and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 5,500 members and federated partners working to develop and promote strong public policy that ensures sustained economic recovery and growth for Maryland businesses, employees, and families.

SB 449 would increase the caps on the amounts of compensatory damages and punitive damages that may be awarded to a complainant in an unlawful employment case. Additionally, SB 449 would increase the statute of limitations, from 2 years to 3 years, for which a claimant may recover back pay in an unlawful employment case and the time in which a complainant may file a civil action that alleges an unlawful employment practice.

Relating to the increase of the caps on compensatory damages, Maryland law currently mirrors federal law. Removing those caps, which were carefully calibrated to balance employee rights against an employer's cost of doing business, would create greater liability and uncertainty for employers in these specific cases. Similarly, the 2-year statute of limitations was also designed to balance employee and employer interests. Extending the statute of limitations would make it more difficult and costly for employers to defend themselves in these cases, as witnesses leave, document retention becomes more challenging (an employer may not know that a claim is pending), and memories fade.

Since current Maryland law strikes the appropriate balance between employee and employer interests relating to these cases, the Maryland Chamber of Commerce respectfully requests an **unfavorable report** on SB 449.