

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 504 (Delegate Rosenberg, *et al.*)
Health and Government Operations

Employment Discrimination - Unlawful Employment Practices - Motivating
Factor

This bill clarifies that an unlawful employment practice is established when a complainant demonstrates that race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability was a motivating factor for any employment practice, even though other factors also motivated the practice.

Fiscal Summary

State Effect: Although the bill's clarification may increase court filings relating to employment discrimination and unlawful employment practices, it is not expected to significantly affect State operations or finances.

Local Effect: The bill is not expected to significantly affect local government operations or finances although the bill's clarification may increase court filings relating to employment discrimination and unlawful employment practices.

Small Business Effect: Minimal.

Analysis

Current Law: Employers, employment agencies, and labor organizations are prohibited from discrimination in various aspects of employment because of an individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment.

Background: According to the Administrative Office of the Courts, for most of the forms of discrimination listed in the bill, a mixed motive causation standard of proof can already be found in federal law.

The Age Discrimination in Employment Act of 1967 (ADEA), codified as Chapter 14 of Title 29 of the U.S. Code, prohibits employment discrimination against persons 40 years of age or older in the United States. The law also sets standards for pensions and benefits provided by employers and requires that information about the needs of older workers be provided to the general public.

Gross v. FBL Financial Services, Inc., 557 U.S. ____ (2009) was an age discrimination case brought pursuant to ADEA. In this case, the Supreme Court held (June 18, 2009) that “the question presented by the petitioner in this case is whether a plaintiff must present direct evidence of age discrimination in order to obtain a mixed-motives jury instruction in a suit brought under [ADEA] ... [W]e hold that such a jury instruction is never proper in an ADEA case ...” The Court held that a plaintiff bringing a “disparate-treatment” claim under ADEA must prove by a preponderance of evidence that age was a “but for” cause of the challenged employment action.

According to *Larson’s Employment Discrimination*, the U.S. Supreme Court holding means that ADEA “provides no authority for mixed-motive claims. The ADEA’s only liability standard for age discrimination prohibits adverse actions taken ‘because of’ an individual’s age.

Section 107 of the 1991 federal Civil Rights Act does not list age among its mixed motive factors. The Act says that “... an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.”

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Budget and Management, Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - March 2, 2010
mam/kdm

Analysis by: Guy G. Cherry

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

