

Chapter 43

(Senate Bill 604)

AN ACT concerning

Human Relations – Employment Discrimination – Protection for Interns

FOR the purpose of establishing certain protections for interns and applicants for internships from certain discriminatory acts; prohibiting an employer from printing or causing to be printed or published a certain notice or advertisement relating to an internship; authorizing a notice or an advertisement indicating a certain bona fide occupational qualification for an internship; providing that a certain intern shall have access to a certain complaint resolution procedure or, under certain circumstances, may file a complaint with the Maryland Commission on Civil Rights for certain nonmonetary administrative remedies; providing that this Act does not create an employment relationship between an employer and an intern for the purposes of certain remedies or certain other provisions of law; defining a certain term; and generally relating to protections for interns from certain discriminatory acts.

BY repealing and reenacting, without amendments,

Article – State Government
Section 20–601(a), (c), and (d)
Annotated Code of Maryland
(2014 Replacement Volume)

BY adding to

Article – State Government
Section 20–610
Annotated Code of Maryland
(2014 Replacement Volume)

Preamble

WHEREAS, Before decisions by federal courts and the U.S. Equal Employment Opportunities Commission holding that civil rights protections do not extend to unpaid interns, interns were generally believed to have legal protection from discrimination and harassment in the workplace; and

WHEREAS, The changing requirements of educational programs and the economic downturn have greatly increased the number of unpaid internships; and

WHEREAS, Interns, who are often young, inexperienced, or seeking recommendations or regular employment, are especially vulnerable; and

WHEREAS, Interns have the right to feel protected from discrimination and harassment in the workplace; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – State Government

20–601.

(a) In this subtitle the following words have the meanings indicated.

(c) (1) “Employee” means an individual employed by an employer.

(2) Unless the individual is subject to the State or local civil service laws, “employee” does not include:

(i) an individual elected to public office;

(ii) an individual chosen by an elected officer to be on the officer’s personal staff;

(iii) an appointee on the policy making level; or

(iv) an immediate adviser with respect to the exercise of the constitutional or legal powers of an elected office.

(d) (1) “Employer” means:

(i) a person that:

1. is engaged in an industry or business; and

2. has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year; and

(ii) an agent of a person described in item (i) of this paragraph.

(2) “Employer” includes the State to the extent provided in this title.

(3) Except for a labor organization, “employer” does not include a bona fide private membership club that is exempt from taxation under § 501(c) of the Internal Revenue Code.

20–610.

(A) IN THIS SECTION, “INTERN” MEANS AN INDIVIDUAL WHO PERFORMS WORK FOR AN EMPLOYER FOR THE PURPOSE OF TRAINING IF:

(1) THE EMPLOYER IS NOT COMMITTED TO HIRE THE INDIVIDUAL AT THE CONCLUSION OF THE TRAINING PERIOD;

(2) THE EMPLOYER AND THE INDIVIDUAL AGREE THAT THE INDIVIDUAL IS NOT ENTITLED TO WAGES FOR THE WORK PERFORMED; AND

(3) THE WORK PERFORMED:

(I) SUPPLEMENTS TRAINING GIVEN IN AN EDUCATIONAL ENVIRONMENT THAT MAY ENHANCE THE EMPLOYABILITY OF THE INDIVIDUAL;

(II) PROVIDES EXPERIENCE FOR THE BENEFIT OF THE INDIVIDUAL;

(III) DOES NOT DISPLACE REGULAR EMPLOYEES; AND

(IV) IS PERFORMED UNDER THE CLOSE SUPERVISION OF EXISTING STAFF.

(B) AN EMPLOYER MAY NOT:

(1) FAIL OR REFUSE TO ~~HIRE, DISCHARGE~~ OFFER AN INTERNSHIP, TERMINATE AN INTERNSHIP, OR OTHERWISE DISCRIMINATE AGAINST AN INDIVIDUAL WITH RESPECT TO THE TERMS, CONDITIONS, OR PRIVILEGES OF ~~EMPLOYMENT AS AN INTERN~~ AN INTERNSHIP BECAUSE OF THE INDIVIDUAL’S RACE, COLOR, RELIGION, SEX, AGE, NATIONAL ORIGIN, MARITAL STATUS, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY UNRELATED IN NATURE AND EXTENT SO AS TO REASONABLY PRECLUDE THE PERFORMANCE OF THE INTERNSHIP;

(2) LIMIT, SEGREGATE, OR CLASSIFY ITS INTERNS OR APPLICANTS FOR INTERNSHIPS IN ANY WAY THAT WOULD DEPRIVE OR TEND TO DEPRIVE ANY INDIVIDUAL OF INTERNSHIP OPPORTUNITIES OR OTHERWISE ADVERSELY AFFECT THE INDIVIDUAL’S STATUS AS AN INTERN BECAUSE OF THE INDIVIDUAL’S RACE, COLOR, RELIGION, SEX, AGE, NATIONAL ORIGIN, MARITAL STATUS, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY UNRELATED IN NATURE AND EXTENT SO AS TO REASONABLY PRECLUDE THE PERFORMANCE OF THE INTERNSHIP;

(3) FAIL OR REFUSE TO MAKE A REASONABLE ACCOMMODATION FOR THE KNOWN DISABILITY OF AN OTHERWISE QUALIFIED INTERN; OR

(4) DISCRIMINATE OR RETALIATE AGAINST ANY OF ITS INTERNS OR APPLICANTS FOR INTERNSHIPS BECAUSE THE INDIVIDUAL HAS:

**(I) OPPOSED ANY PRACTICE PROHIBITED BY THIS SUBTITLE;
OR**

(II) MADE A CHARGE, TESTIFIED, ASSISTED, OR PARTICIPATED IN ANY MANNER IN AN INVESTIGATION, A PROCEEDING, OR A HEARING UNDER THIS SUBTITLE.

(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN EMPLOYER MAY NOT PRINT OR CAUSE TO BE PRINTED OR PUBLISHED ANY NOTICE OR ADVERTISEMENT RELATING TO AN INTERNSHIP WITH THE EMPLOYER THAT INDICATES ANY PREFERENCE, LIMITATION, SPECIFICATION, OR DISCRIMINATION BASED ON RACE, COLOR, RELIGION, SEX, AGE, NATIONAL ORIGIN, MARITAL STATUS, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY.

(2) A NOTICE OR AN ADVERTISEMENT MAY INDICATE A PREFERENCE, LIMITATION, SPECIFICATION, OR DISCRIMINATION BASED ON RELIGION, SEX, AGE, NATIONAL ORIGIN, MARITAL STATUS, OR DISABILITY IF RELIGION, SEX, AGE, NATIONAL ORIGIN, MARITAL STATUS, OR DISABILITY IS A BONA FIDE OCCUPATIONAL QUALIFICATION FOR THE INTERNSHIP.

(D) AN INTERN CLAIMING TO BE AGGRIEVED BY AN ALLEGED DISCRIMINATORY ACT PROHIBITED UNDER THIS SECTION:

(1) SHALL HAVE ACCESS TO ANY INTERNAL PROCEDURE THE EMPLOYER HAS FOR RESOLVING A COMPLAINT BY AN EMPLOYEE OF SEXUAL HARASSMENT OR OTHER DISCRIMINATION; OR

(2) IF THE EMPLOYER DOES NOT HAVE AN INTERNAL PROCEDURE FOR RESOLVING A COMPLAINT OF SEXUAL HARASSMENT OR OTHER DISCRIMINATION, MAY FILE A COMPLAINT WITH THE COMMISSION FOR THE NONMONETARY ADMINISTRATIVE REMEDIES PROVIDED UNDER SUBTITLE 10 OF THIS TITLE.

(E) THIS SECTION DOES NOT CREATE AND MAY NOT BE CONSTRUED AS CREATING AN EMPLOYMENT RELATIONSHIP BETWEEN AN EMPLOYER AND AN INTERN FOR THE PURPOSES OF:

(1) A CIVIL CAUSE OF ACTION OR MONETARY DAMAGES UNDER SUBTITLE 10 OF THIS TITLE;

(2) ANY PROVISION OF THE LABOR AND EMPLOYMENT ARTICLE; OR

(3) ANY PROVISION OF THE STATE PERSONNEL AND PENSIONS ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2015.

Approved by the Governor, April 14, 2015.