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SB 250
Human Relations – Employment Discrimination –
Waiver of Immunity From Suit in Federal Court and Venue

Hearing before the Judicial Proceedings Committee, February 4, 2020

Position: FAVORABLE

SB 250 would explicitly waive Eleventh Amendment immunity for employment discrimination claims brought by state employees, overriding the recent holding in *Pense v. DPSCS*, 926 F.3d 97 (4th Cir. 2019). There is no sound reason for the state to deny its employees remedies that are available to workers in the private sector.

Employment with the State is a significant source of opportunity and dignity for workers, including disproportionately for women and people of color.

This has been true since the mid-20th century and is in part because state employers are required to be fairer to their workers than private sector employers. State employers also offer better pay, job security, and opportunities for advancement than the private sector.

Historically, women and African-Americans are a larger share of state employees than they are of the population as a whole. African-Americans are 30% more likely to be employed in the public sector, and women are 50% more likely.

State employees are also more likely to belong to unions. This in turn means that women and people of color have higher union representation rates than other groups, with Black women having the highest.

The well-established wage gaps for women and people of color are smaller and shrinking faster in state employment than in the private sector. This is due to greater transparency and union representation. Here again, Black and Latinx women reap the greatest benefits in closing the wage gap through public employment.

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In part through union representation, state employment also provides better benefits and working conditions than private sector employment. State employees are more likely to have

- ✓ pensions and retirement plans,
- ✓ better and more affordable health insurance,
- ✓ paid sick, family and parental leave,
- ✓ better working conditions,
- ✓ more stable, predictable work schedules,
- ✓ less involuntary part-time work,
- ✓ better workplace safety,
- ✓ professional development and training,
- ✓ career advancement,
- ✓ protection from discrimination (including for workers with disabilities and LGBTQ workers)

State employment provides dignity, pride, and satisfaction for working people arising from the opportunity to contribute to society. Such service strongly correlates with professional satisfaction.

Thus, State employment is good employment and an engine of change in addressing institutional and structural racism and sexism.

Unless the State of Maryland waives its Eleventh Amendment immunity, state workers will face difficult choices between state and federal claims when seeking to enforce their rights in court. This is particularly significant in a state like Maryland that actually has an Equal Rights Amendment.

There is no rational policy reason for the State to treat its workforce differently, and worse, than private sector workers when it comes to enforcement of their rights. State workers should not have to choose between state and federal claims when enforcing their rights when others are not forced to choose.

Relying on Eleventh Amendment immunity is a significant step backwards in the value of State employment. And for the reasons set forth above, it will disproportionately harm women and people of color. Waiving Eleventh Amendment immunity will be consistent with the State's commitment to eradicating employment discrimination and advancing civil rights.

The PJC urges a FAVORABLE REPORT on SB 250. If you have any questions, please feel free to contact Debra Gardner, Legal Director, gardnerd@publicjustice.org, 410-625-9409 x228.