



LEGISLATIVE POSITION:

Unfavorable

Senate Bill 214

Employment – Harassment and Intimidation - Reporting

Senate Finance Committee

Thursday, February 9, 2023

Dear Chairwoman Griffith 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 6,400 members and federated partners working to develop and promote strong public policy that ensures sustained economic health and growth for Maryland businesses, employees, and families.

SB 214 would establish a new standard of “harassment and intimidation” within the Maryland Occupational Safety and Health (MOSH) Act and requires the Commissioner of Labor and Employment to create a standard “victim of harassment or intimidation reporting form” for employers and employees to report incidents of harassment or intimidation to the Maryland Department of Labor (MDDOL). The bill would also authorize the commissioner to establish an anonymous electronic tip program to report incidents of harassment or intimidation.

The Maryland Chamber respects the positive intent by the introduction of SB 214, however, the continued expansion of the definition of unlawful harassment dilutes and diminishes the harm suffered by victims of more egregious forms of unlawful harassment, as defined under federal law. In 5-1301(C)(1), the definition of “harassment or intimidation” is significantly more stringent than the definition of unlawful harassment under Maryland law effective October 1, 2022. It requires that the conduct be “threatening or seriously intimidating.” Thus, defining intimidation as conduct that is seriously intimidating is circuitous and not helpful.

Further, in section 5-1301(C)(2) the examples of conduct that would be considered “harassment or intimidation” include those significantly broader than what is under current Maryland Law, including “hiring of incompetent subordinates,” “offensive tasks” or “excessive workloads.” Anecdotally, any HR professional would be hard pressed to think of a business day that doesn’t go by without someone expressing frustration about their “excessive workload,” including management, or the perception that a new team member is “incompetent,” or that someone does not feel they were given due credit for

a job well done. Yet, it is a stretch to see where one of these activities would meet the definition of being “threatening or seriously intimidating.”

In section 5-1302(A), the requirement that every concern must be reported would lead to significant administrative burden for the both the employer and state. SB 214 lacks any direction as to whom will serve as the employer’s representative. As a result, it is likely the state would receive multiple reports about the same incident, such as from the manager who overheard it; a coworker who heard about it; and the HR representative who investigated it.

Section 5-1302(C)(2) (V) calls for the reporting of psychological effects. If an employee is reporting an incident the coworker observed, is the coworker supposed to speculate about what psychological effects the coworker imagines the employee experienced and/or those that the coworker feels having observed or witnessed the incident, or both? What expertise might the reporting individual have to speculate to such effects?

The protections laid out in 5-1304 does not apply to complaints reported to the state by employers or others. It creates an inequity for the report created by the state’s recipient to be given greater protections than a report created by an employer. All reports, regardless of who filed them, should be made confidential.

Section 5-1305 requires specified reports be produced by the state and that they include the number of unsubstantiated complaints, among other things. SB 214 does not direct or empower the state, or anyone in fact including an employer, to conduct investigations of complaints. As a result, how would the state know which claims are unsubstantiated?

Finally, SB 214 places the responsibility for the collection of this information with the MDDOL, and not the Maryland Commission on Civil Rights (MCCR), which is the state agency charged with enforcing the harassment and discrimination laws of Maryland. Involving MDDOL would bring in an agency with little to no expertise or responsibility for harassment and discrimination on an extremely important topic. Moreover, Maryland’s system is currently set up for employees to report complaints of harassment to the MCCR, which has the authority and expertise to investigate such complaints. SB 214 would create significant confusion for employees and employers to set up an alternative reporting system, especially one in which the employee’s complaint will not result in any tangible action by the MDDOL.

For these reasons, the Maryland Chamber of Commerce respectfully requests an **unfavorable report** on **HB 214**.

