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SENATE BILL 1061 Employee Autoimmune Disorder Protection Act

STATEMENT OF INFORMATION

DATE: March 12, 2024

COMMITTEE: Finance

SUMMARY OF BILL: Senate Bill 1061 would prohibit an employer in the State from requiring an employee diagnosed with an autoimmune disorder to work on-site at the employer's workplace. To be eligible, an employee must be diagnosed with an autoimmune disorder or any other qualifying illness and provide documentation from a physician or other licensed healthcare practitioner to their employer. The documentation must include an assessment by the physician that on-site work, or travel to and from the workplace, would be unsafe for the employee. To be eligible, an employee must further be able to reasonably do their work from home and not be deemed an essential worker as defined in this bill.

EXPLANATION: The Department of Budget and Management (DBM) and, more broadly, the State as an employer would be subject to the provisions of Senate Bill 1061. The bill would prohibit the State from mandating certain employees with autoimmune disorders or another qualifying illness to report to work on-site if the employee provides documentation from a physician. The bill's language does not apply to an employer in an "essential industry" that has on-site work as part of its core operation (3-1802, pg. 4). In the instance of the State, it is not clear if an entire agency with on-site work as part of its core operation would be determined to be an essential industry or if the agency would have to categorize its units as essential industries.

The bill would require the State to allow certain employees to telework indefinitely 100% of the time. The legislation does not permit an employer to request or obtain recertification documentation. This legislation removes the interactive process from the evaluation of a request to telework and allows a physician to unilaterally determine if an employer's workplace is unsafe without any substantive assessment of the workplace or employer's input. The result is that a physician can fundamentally alter an employer's operations by certifying that an employee is diagnosed with a condition and that onsite work would be unsafe.

The legislation also expands the definition of a workplace by including travel to and from the workplace. Courts have consistently held that the commute from an employee's home to the work site does not require accommodation. This legislation will permit a physician to implement

indefinite, full-time telework based on an employee's commute, which is neither an essential function nor part of the employee's job responsibilities.

This legislation may further require the reworking of the State's telework policy, which would have to subsequently be renegotiated with the State's bargaining units.

Agencies also could face additional grievances around the implementation of this bill and be subject to fines up to \$10,000 dollars per incident as outlined in 1-1804(c)(2) of this bill.

From an EEO perspective, an autoimmune disorder is a disability recognized under the federal Americans with Disabilities Act (ADA), ADA Amendment Act; Title 20, subtitle 6 of the Md. Code, State Government Article; SPP 2-302 Discrimination, harassment prohibited; Executive Order 01.01.2007.16 Code of Fair Employment Practices and the State of Maryland, Reasonable Accommodation Policy and Procedure. As such, existing laws and policy provide an employee, with an autoimmune disorder, the right to request a reasonable accommodation, including telework. A reasonable accommodation is defined as modifications, adjustments, or changes to a job or work environment or the manner or circumstances under which the position held or desired is customarily performed, enabling a qualified individual with a disability to perform the essential functions of their position. The employee's designated agency ADA Coordinator will engage the employee and their supervisor in an interactive process to determine whether the request for an accommodation (e.g., modified work location) is deemed reasonable and effective to approve without causing an undue hardship on business operations. An undue hardship is a significant difficulty or expense incurred by the employer to provide a reasonable accommodation. The employer must prove that reasonable accommodation would impose such an undue hardship.

In addition to the existing right to request and receive reasonable accommodation, there are existing channels by which an employee can file a complaint against an employer. If an employer fails to provide a reasonable accommodation or the employee believes they are being subjected to discrimination, they may file an EEO complaint with their agency's EEO Officer or an external EEO agency, such as the federal EEOC or the Maryland Commission on Civil Rights (MCCR).

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