

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE
Revised

House Bill 802
Appropriations

(Delegate Rosenberg, *et al.*)

State Personnel - Violations of Federal Law - Right to Sue State

This bill permits a State employee, former employee, or applicant for State employment who is aggrieved by a violation by the State of specified federal anti-discrimination laws to file a lawsuit in State court. The bill provides that the State consents to be sued in State court for any such action.

The bill applies to any cause of action arising on or after the bill's June 1, 2002 effective date.

Fiscal Summary

State Effect: Significant increase in expenditures from the nonbudgeted State Insurance Trust Fund for claims awarded against the State. Potential increase in general fund expenditures associated with litigation costs.

Local Effect: None -- see above.

Small Business Effect: None.

Analysis

Current Law: The Eleventh Amendment to the U.S. Constitution prohibits private lawsuits against a State in the federal courts without the State consenting to be sued. Moreover, the U.S. Congress (via federal legislation) does not have the authority to subject non-consenting States to private suits for damages in state courts. *Alden v. Maine*, 527 U.S. 706, 712 (1999). The General Assembly does, however, have the authority to authorize such suits in the Maryland courts. *See id.* Notwithstanding the

inability to file a private lawsuit to seek a remedy for a violation of a federal anti-discrimination law, these federal laws are applicable to State and local governments as employers.

The State Personnel and Pensions Article of the Maryland Code outlines the exclusive grievance procedures and remedies available to State employees within the Executive Branch who have a grievance relating to personnel policy or regulations. The intent is to preclude direct judicial actions. *Robinson v. Bunch*, 2002 Md. Lexis 5, 22-23 (2002).

Remedies are limited to restoration of the rights, pay, status, or benefits that the grievant otherwise would have had if the contested policy, procedure, or regulation had been applied appropriately as determined by the final decision maker. Back pay may be awarded in specified circumstances. The final administrative decision is subject to judicial review. By statute, the State waives its sovereign immunity defense in any administrative, arbitration, or judicial proceeding involving an employee grievance or hearing under the State Personnel section of the Code, a regulation under this same section, or a personnel policy or regulation that governs classified employees of the University System of Maryland or Morgan State University.

Background: The Age Discrimination in Employment Act (ADEA) prohibits arbitrary age discrimination in employment. The Americans with Disabilities Act of 1990 (ADA) in part prohibits employment discrimination against qualified individuals with disabilities. The Family and Medical Leave Act of 1993 (FMLA) entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons. The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, record keeping, and child labor standards. The Equal Pay Act of 1963 (EPA), which is part of the FLSA, prohibits sex-based wage discrimination between men and women in the same establishment who are performing under similar working conditions.

The U.S. Equal Employment Opportunities Commission (EEOC) is the federal administrative agency charged with investigating complaints of violations of the ADEA, ADA, and EPA. The Wage and Hour Division of the U.S. Department of Labor (DOL) investigates complaints under FLSA and FMLA.

The U.S. Supreme Court recently heard oral arguments on another case questioning the extent of a State's authority to claim immunity from lawsuits involving personnel disputes. At issue in *Lapides v. Board of Regents of University of Georgia System* (No. 01-298) is whether a state waives its immunity by having the case removed to federal court.

State Expenditures: Expenditures from the nonbudgeted State Insurance Trust Fund could increase significantly due to the bill's expansion of persons who may file grievances and expansion of available remedies. For example, FLSA subjects employers who willfully or repeatedly violate the minimum wage or overtime pay requirements to a civil money penalty of up to \$1,000 for each such violation. Moreover, it is a violation under FLSA to fire or in any other manner discriminate against an employee for filing a complaint or for participating in a legal proceeding under FLSA. Willful violations may be prosecuted criminally and the violator fined up to \$10,000. A second conviction may result in imprisonment. Under most EEOC-enforced laws, compensatory damages may be available where intentional discrimination is found. Damages may be available to compensate for actual monetary losses, future monetary losses, and mental anguish and inconvenience.

The exact fiscal impact cannot be reliably quantified because it is unknown how many cases would be filed as a result of this bill. Constitutional tort claims (unlike other tort claims) against the State do not have a monetary limit. Depending on the number of cases filed, State general fund expenditures could also increase due to increased litigation costs.

Additional Comments: It is unclear whether this bill is meant to allow lawsuits to be filed in court prior to the exhaustion of administrative remedies.

Additional Information

Prior Introductions: None.

Cross File: SB 600 (Senator Kelley) – Finance.

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

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