

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 479
Appropriations

(Delegate Rosenberg)

State Violations of Federal Laws - Enforcement by Aggrieved Individuals in State Courts

This bill permits any person 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, 2003 effective date.

Fiscal Summary

State Effect: Potentially 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. From 1997 to 2001, the State paid settlements or judgments totaling \$435,635 in 15 employment discrimination cases, an average of \$29,042 per case, exclusive of litigation costs. These figures provide a frame of reference for possible lawsuits under this bill.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: This bill applies to causes of action arising under the following federal acts:

- Age Discrimination in Employment Act;
- Americans with Disabilities Act of 1990;
- Family and Medical Leave Act of 1993;
- Fair Labor Standards Act; and
- Equal Pay Act of 1963.

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, recent decisions by the U.S. Supreme Court have established that under the acts to which this bill relates, a state is immune from civil suit in state court unless the state has clearly waived immunity under the Eleventh Amendment by statute. 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.

Title 7 of the Federal Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex, and national origin. Persons who allege violations of this Act may file suit against states in federal court. The due process clause of the fourteenth amendment to the U.S. Constitution also authorizes certain other types of discrimination cases to be filed against states in federal court.

Maryland personnel law prohibits discrimination based on age; ancestry; color; creed; marital status; mental or physical disability; national origin; race; religious affiliation, belief, or opinion; or sex. 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*, 367 Md. 432 (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 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 ADEA, ADA, and EPA. The Wage and Hour Division of the U.S. Department of Labor (DOL) investigates complaints under FLSA and FMLA.

In the past year and a half, the State has begun to successfully utilize the claim of sovereign immunity in lawsuits filed against the State pursuant to federal anti-discrimination laws. From 1997 to 2001, the State paid settlements or judgments in 15 employment discrimination cases:

- five racial discrimination cases, in amounts ranging from \$4,145 to \$40,000; and
- ten gender discrimination or sexual harassment cases, in amounts ranging from \$6,000 to \$110,000.

The average award amount was \$29,042. These cases provide a rough estimate of the potential awards under this bill. They do not include litigation costs.

Minnesota and North Carolina have enacted laws waiving their sovereign immunity to suits filed under ADEA, FLSA, FMLA, and ADA.

State Expenditures: Expenditures from the nonbudgeted State Insurance Trust Fund could increase significantly due to the bill's expansion of persons who may file suit. 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. Attorney's fees may also be recoverable. In addition, litigation costs can be significant in employment discrimination cases. Since these cases are very fact-based, they require substantial discovery, including depositions and the use of expert witnesses, to gather the necessary evidence. The recent U.S. Supreme Court decisions have allowed the State to

cut litigation costs (as well as eliminating damages awards) by simply using sovereign immunity as its defense, without having to delve into the facts of the case.

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.

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: Cross filed similar bills, SB 600 and HB 802, were introduced in 2002. SB 600 passed the Senate and received a hearing in the House Appropriations Committee, but no further action was taken. HB 802 received a hearing in the House Appropriations Committee, but no further action was taken.

Cross File: None.

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

Fiscal Note History: First Reader - February 25, 2003
lc/cer

Analysis by: Rita A. Reimer

Direct Inquiries to:
(410) 946-5510
(301) 970-5510