

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 393

(Delegate Rosenberg, *et al.*)

Health and Government Operations

Judicial Proceedings

Discrimination in Employment - Expansion of Disability Rights

This bill expands the definition of disability for provisions of law relating to employment discrimination. Under the bill, “disability” includes a record of having a physical or mental impairment or being regarded as having a physical or mental impairment. The bill prohibits an employer from failing or refusing to make a reasonable accommodation for the known disability of an otherwise qualified employee; however, an employer is not required to make reasonable accommodations for an employee’s disability if the accommodation would cause undue hardship on the conduct of the employer’s business. The bill prohibits an employer or labor organization from retaliation against any employee, applicant, or member who has opposed any prohibited employment practice or participated in an investigation, proceeding, or hearing relating to a discrimination charge.

Fiscal Summary

State Effect: None. The bill codifies State law to be more consistent with the Americans with Disabilities Act (ADA) and the Maryland Commission on Human Relations (MCHR) regulations.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Employers, employment agencies, and labor organizations are prohibited from discrimination in various aspects of employment because of an individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment.

Under State law prohibiting employment discrimination on the basis of a disability, a disability is defined as: (1) a physical disability, infirmity, malformation, or disfigurement that is caused by bodily injury, birth defect, or illness, including epilepsy; or (2) a mental impairment or deficiency.

Employers and labor organizations are prohibited from discriminating against employees, members, or applicants who have opposed any prohibited employment practice or made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing relating to employment discrimination.

Background: The bill is intended to protect employees from discrimination because they are perceived to be disabled or have a record of disability and to ensure that their disabilities will be reasonably accommodated. The provisions of this bill are intended to be more consistent with the provisions in the ADA.

Under the ADA, an employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if it would not impose an "undue hardship" on the operation of the employer's business. "Undue hardship" is defined as an action requiring significant difficulty or expense when considered in light of an employer's size, financial resources, and the nature and structure of its operation. Reasonable accommodations may include making existing facilities used by employees more readily accessible, modifying work schedules, adjusting or modifying examinations or training materials, and providing qualified readers or interpreters.

MCHR advises the changes under this bill are also consistent with the Code of Maryland Regulations.

Additional Information

Prior Introductions: None.

Cross File: SB 670 (Senator Raskin, *et al.*) - Judicial Proceedings.

Information Source(s): Office of the Deaf and Hard of Hearing, Department of Disabilities, Department of Health and Mental Hygiene, Human Relations Commission, U.S. Equal Employment Opportunity Commission, Department of Legislative Services

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JB/kdm

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