

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 600
Finance

(Senator Raskin, *et al.*)

Labor and Employment - Abusive Work Environments - Employee Remedies

This bill prohibits an employer, or an employee of an employer, from subjecting an employee to an “abusive work environment” that includes “abusive conduct” so severe that it injures the mental or physical health of the victim employee. An employee may seek remedies through a civil cause of action for a violation of the bill.

The bill applies prospectively and does not create a cause of action based on the acts of an employer or employee prior to the bill’s October 1, 2011 effective date.

Fiscal Summary

State Effect: Potential increase in State expenditures due to litigation expenses and the payments of awards in civil cases. Revenues are not affected.

Injured Workers’ Insurance Fund Effect: In some cases the Injured Workers’ Insurance Fund (IWIF) may be repaid for workers’ compensation benefits awarded to an injured employee. Any reduction in IWIF expenditures is expected to be negligible. IWIF revenues are not affected.

Local Effect: Potential increase in local government expenditures due to the payment of civil damages and litigation costs. Any increase in the workload of the circuit courts cannot be estimated but is expected to be minimal and absorbable within existing resources. Local government revenues are not affected.

Small Business Effect: Potential minimal. However, similar to the effect on governmental employers, small businesses may be subject to increased litigation costs and awards stemming from civil cases.

Analysis

Bill Summary: An employer or employee is individually liable for a violation that is committed by the employer or employee, respectively. An employer of an employee who commits a violation is vicariously liable for the actions of the employee. An employer may not retaliate in any manner, including taking adverse employment action against an employee who has (1) opposed or resisted abusive conduct in the work environment; or (2) filed or otherwise participated in an investigation or civil action involving a violation of the bill's provisions.

If an employee experiences abusive conduct in the workplace, the employee may, within one year of the final action that is the subject of the suit, file a civil action in circuit court to enjoin the employer or employee from engaging in abusive conduct and to be reinstated to a prior job assignment, if the employer took unwarranted adverse action against the employee. An aggrieved employee may also seek (1) back pay; (2) reimbursement of medical expenses; (3) compensation for emotional distress; (4) punitive damages; and (5) attorney's fees. The court may award such relief and order removal of the employee who engaged in the abusive conduct.

If the employer did not take adverse action against an employee who suffered abusive conduct in the workplace, the liability of the employer for damages related to emotional distress is capped at \$7,500 and punitive damages may not be awarded. If an employee receives a monetary award stemming from a civil action, the employee must repay any monetary damages awarded as workers' compensation that resulted from the same injury.

The bill establishes several affirmative defenses that may rebut an employee's claim that a violation of the bill occurred.

The definition of employer under the bill includes the State and units of government.

Current Law/Background:

Discrimination in Employment

Employers, employment agencies, and labor organizations are prohibited from discrimination in various aspects of public- and private-sector 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.

Individuals alleging employment discrimination may file a complaint with the Maryland Commission on Human Relations (MCHR). A complaint must be filed within six months from the date the alleged violation occurred. On a finding of an unlawful employment practice, administrative remedies may include enjoining the respondent from engaging in

the discriminatory act, the reinstatement or hiring of employees with or without back pay, compensatory damages, and any other appropriate equitable relief. Any back pay awarded is offset by any earnings or amounts that may be earned with reasonable diligence by the aggrieved party.

Equal Employment Opportunity Program

The purpose of the State's Equal Employment Opportunity (EEO) program is to promote a work environment free of any unlawful discrimination, harassment, and retaliation and to ensure a system that provides equal opportunity in employment on the basis of merit and fitness. It covers all employees in any Executive Branch agency (including those with an independent personnel system) and applicants for a position in the skilled, professional, and management services (or comparable positions) in those agencies.

The State's EEO program (1) reviews discrimination complaints; (2) investigates whistleblower complaints; (3) monitors agencies' fair practices and EEO programs and policies; (4) provides training and technical assistance to managers and supervisors; (5) ensures compliance with federal, State, and local laws prohibiting discrimination; (6) evaluates State agencies' EEO efforts; and (7) reports annually to the Governor. It also manages the Employee Assistance Program, which provides confidential and professional referral and assessment services to State employees who are experiencing personal difficulties that are adversely affecting their work performance. An employee must file a complaint that alleges an EEO violation within 30 days after the complainant first knew of or reasonably should have known of the alleged violation.

An employee found to have violated EEO provisions is subject to disciplinary action, including termination. An employee who files an EEO complaint may receive various remedies if a complaint is found to be valid. The Secretary of Budget and Management may (1) order the removal of detrimental information from the complainant's State personnel records; (2) require that the complainant be reinstated to a previously held position of employment; (3) award back pay; (4) grant the complainant leave or seniority; and (5) take appropriate disciplinary action against any individual who caused the violation.

Workers' Compensation

Since the early 1900s, every state has required employers to provide some form of protection for employees who are injured while working. Workers' compensation laws are based on a no-fault system designed to compensate workers who sustain accidental injuries arising out of and in the course of their employment. The forms of compensation may include payment for medical services, rehabilitation services, lost or replacement income, and permanent partial or permanent total disabilities that the worker may sustain as a result of the work-related injury or occupational disease.

IWIF administers workers' compensation for the State and provides workers' compensation insurance to firms unable to procure insurance in the private market. IWIF was established in 1914 as the State Accident Fund, part of the State Industrial Accident Commission. In 1941, it became a separate agency and took its current name in 1990. IWIF only writes policies in Maryland and is the exclusive residual workers' compensation insurer in the State. In Maryland, IWIF is a major insurer with approximately 25% share of the market.

Under the Maryland Tort Claims Act (MTCA), State personnel are immune from liability for acts or omissions performed in the course of their official duties, so long as the acts or omissions are made without malice or gross negligence. Under MTCA, the State essentially waives its own common law immunity. However, MTCA limits State liability to \$200,000 to a single claimant for injuries arising from a single incident. MTCA covers a multitude of personnel, including some local officials and nonprofit organizations. In actions involving malice or gross negligence or actions outside of the scope of the public duties of the State employee, the State employee is not shielded by the State's color of authority or sovereign immunity and may be held personally liable.

State/Local/IWIF Fiscal Effect: The bill allows employees to pursue a private right of action in circuit court against another employee or the employer (including the State) in cases where an employee may have been injured by abusive conduct in the workplace. The Department of Budget and Management (DBM) advises that State expenditures increase due to the bill as employees may sue the State to recover damages as a result of a violation of the bill. If a court determines that a violation occurred, a State employee may receive back pay, reimbursement for medical expenses, compensation for emotional distress, punitive damages, and attorney's fees. The Office of the Attorney General is responsible for investigating any such matters and providing legal representation. The extent to which the State may become involved in litigation – and pay claims resulting from civil cases – due to the bill cannot be reliably estimated; however, costs may be significant. It is unclear how the remedies under the bill relate to MTCA. Similar to the effect on the State, local governments, as employers, may be liable for civil damages resulting from violations of the bill.

If an employee is awarded damages as the result of a civil action against an employer due to a violation of the bill, the employee must repay any workers' compensation benefits received for the same injury. IWIF advises that it is not possible to determine how many employees who receive monetary awards through a civil action would also have received workers' compensation benefits. Nevertheless, IWIF, and the State, may be reimbursed for workers' compensation benefits in some cases. The effect on the State and IWIF is expected to be negligible.

Additional Comments: DBM advises that, under the bill, a State employee may file a complaint under the EEO program and pursue a private right of action. Thus, a State employee may have two opportunities to receive damages for one workplace violation.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): City of Baltimore; Montgomery, Washington, and Worcester counties; Injured Workers' Insurance Fund; Judiciary (Administrative Office of the Courts); Office of the Attorney General; Department of Budget and Management; Department of Labor, Licensing, and Regulation; Department of Legislative Services

Fiscal Note History: First Reader - March 2, 2011
ncs/mcr

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