

Department of Legislative Services
2011 Session

FISCAL AND POLICY NOTE

House Bill 1002
Economic Matters

(Delegate Rosenberg, *et al.*)

The Religious Observance Accommodation Act

This bill requires employers to allow employees to use accrued leave to observe a Sabbath, or other holy day, in accordance with a sincerely held religious belief.

Fiscal Summary

State Effect: Based on the very limited remedies available for employees who have been denied rights established by the bill, Legislative Services assumes that the number of complaints received and subsequently investigated by the Maryland Commission on Human Relations (MCHR) and referred to the Office of Administrative Hearings will be minimal and absorbable within existing resources.

Local Effect: Most, if not all, units of local government in the State already comply with the bill's provisions under the terms of an existing employment policy or collective bargaining agreement.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill applies to employers who provide leave under a bargaining agreement or employment policy; employees may only use earned leave in accordance with the terms of the collective bargaining agreement or employment policy. If an employee has not earned (or is not eligible for) leave with pay, the employer may require the individual to take leave without pay or work additional hours to compensate for the amount of leave requested for religious observance. Employees are not eligible for overtime or other premium wages for time worked to make up for unpaid leave for religious observances.

The bill may not be interpreted to reduce the number of hours that are counted toward the accrual of an employee's seniority, pension, or any premium benefits provided to an employee under the terms of a collective bargaining agreement.

Employers may be exempted from the bill if they can prove that compliance with the requirements creates an undue hardship. The bill requires MCHR to consider an accommodation to be an undue hardship on an employer under specified circumstances.

Employers are prohibited from disciplining, demoting, discharging, or suspending employees who exercise rights granted in the bill. Employees may not make a groundless or malicious complaint against an employer.

Current Law/Background:

Day of Rest Available to Certain Retail Employees

An employee in a retail establishment may choose a day of rest unless the employee is a managerial, professional, or part-time employee. Employees who desire a day of rest must provide employers with written notice. While employed, the individual may change the day of rest by giving written notice to the employer at least 30 days prior to its effective date. If an employer compels an employee to work on his or her day of rest, the employee is entitled to bring civil action against the employer to recover three times the regular rate of pay for the hours worked on that day.

Employers may not discharge, discipline, discriminate against, or otherwise penalize an employee who chooses a day of rest. Employers also may not require an applicant who seeks a work week of at least 25 hours to answer any question that identifies the applicant's desired day of rest. Wicomico County allows part-time employees to choose a day of rest.

An employer who violates the day of rest provisions is guilty of a misdemeanor and is subject to a fine of between \$250 and \$500. In Wicomico County, offenders are fined \$500 for the first offense and \$1,000 for each subsequent offense.

Discrimination in Employment

Employers may not discharge, refuse to hire, or deprive individuals of employment opportunities based on race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability.

Title VII of the federal Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex, and national origin. The Civil Rights Act establishes

that employers must accommodate an employee's religious practice, observance, and belief unless it poses an undue hardship on the conduct of the employer's business. Many states, including Maryland, have codified anti-discrimination language similar to Title VII of the Civil Rights Act.

State law establishes various penalties, including monetary penalties, for actions that constitute discrimination in employment. However, most of these remedies, including all monetary remedies for aggrieved employees are based on a violation that is considered an "unlawful employment practice." It is not specified in the bill that a violation of the bill's provisions rises to the level of an unlawful employment practice. Therefore, the remedies available to an aggrieved employee for a violation of the bill are limited.

An employee may file a complaint with MCHR alleging a violation of the bill as discrimination in employment. MCHR must investigate the complaint and if MCHR determines that a complaint has merit, it may attempt to eliminate the discrimination by conference, conciliation, or persuasion. If a complaint alleging discrimination in employment cannot be resolved by conference, conciliation, or persuasion, then MCHR may require the employer to answer to the complaint at a hearing before an administrative law judge. If an administrative law judge determines that a discriminatory act occurred, the judge may order the employer to cease and desist and no longer act in such a manner. The judge may also order nonmonetary relief to the employee.

State Fiscal Effect: MCHR advises that the bill does not establish an enforcement mechanism to sanction employers who do not comply with the bill's provisions in a manner similar to that established for "unlawful employment practices." Moreover, there are very limited remedies available to employees who have been denied rights established by the bill. Such remedies include an order for the employer to cease and desist such violations and nonmonetary penalties under some circumstances. Due to the limited recourse available against employers who violate the bill's provisions, Legislative Services assumes that the number of alleged violations of the bill is minimal and can be absorbed within the existing resources of MCHR and the Office of Administrative Hearings.

Additional Information

Prior Introductions: None; however, HB 381 of 2010 and HB 13 of 2009 both contained similar provisions but with enforcement by the Commissioner of Labor and Industry. Each bill received an unfavorable report from the House Economic Matters Committee.

Cross File: SB 750 (Senator Manno) - Finance.

Information Source(s): Cities of Baltimore and Bowie; Montgomery County; University System of Maryland; Commission on Human Relations; Maryland Department of Transportation; Judiciary (Administrative Office of the Courts); Department of Budget and Management; Department of Labor, Licensing, and Regulation; Department of Legislative Services

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

Analysis by: Michael T. Vorgetts

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