

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 595 (Delegate Davis)
Economic Matters

Workers' Compensation - Retaliation by Employer - Prohibition

This bill prohibits an employer from retaliating *in any way* against a covered employee because the employee files a claim for workers' compensation. Existing criminal penalties apply. In addition, the bill authorizes a covered employee who is aggrieved by a violation of the prohibition on retaliation to bring a civil action against the employer.

Fiscal Summary

State Effect: Potential increase in State expenditures due to the payment of civil damages and litigation costs. The bill's application of existing criminal penalties to other forms of retaliation is not expected to materially affect State finances.

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. The bill's application of existing criminal penalties to other forms of retaliation is not expected to materially affect local government finances.

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: Notwithstanding any other provision of law, if the trier of fact in a civil action finds in favor of the covered employee, the court may (1) enjoin the employer from engaging in retaliation; (2) order appropriate affirmative relief, including the

reinstatement or hiring of the covered employee, with or without back pay; (3) award compensatory damages; (4) award back pay and benefits; or (5) order any other equitable relief that the court considers appropriate. Any party to the action may elect a jury trial.

It is not a defense to the civil action that an employer was found not guilty in a criminal proceeding of a violation of the prohibition on retaliation.

The bill does not limit the right of any person to maintain a civil action for damages or other remedies otherwise available under any other provision of law.

Current Law: An employer may not discharge a covered employee from employment *solely* because the covered employee files a claim for workers' compensation. A person that violates this prohibition is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$500 and/or imprisonment for up to one year.

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.

Similarly, the Local Government Tort Claims Act (LGTCA) limits the liability of a local government to \$200,000 per individual claim and \$500,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions (including intentional and constitutional torts). It further establishes that the local government is liable for the tortious acts or omissions of its employees acting within the scope of employment. Thus, LGTCA prevents local governments from asserting a common law claim of governmental immunity from liability for such acts or omissions of its employees. The Act defines local government to include counties, municipal corporations, Baltimore City, and various agencies and authorities of local governments such as community colleges, county public libraries, special taxing districts, nonprofit community service corporations, sanitary districts, housing authorities, and commercial district management authorities.

State/Local/Small Business Fiscal Effect: The bill allows an employee to pursue a private right of action in circuit court against an employer (including the State) in cases where an employer retaliates in any way against the employee for filing a claim for

workers' compensation. Accordingly, the Department of Budget and Management advises – and the Department of Legislative Services concurs – that State expenditures may increase under the bill due to the payment of civil damages (including compensatory damages and back pay) and litigation costs. (The Office of the Attorney General is responsible for investigating any such matters and providing legal representation.) The extent to which the State may, under the bill, become involved in such litigation and pay additional claims cannot be reliably estimated.

Similar to the effect on the State, local governments and small businesses may, as employers, be liable for civil damages resulting from violations of the bill.

Claims under MTCA are paid out of the State Insurance Trust Fund (SITF), which is administered by the Treasurer's Office. (Agencies pay to SITF premiums that comprise an assessment for each covered employee and payments for torts committed by the agency's employees; the portion of the assessment attributable to losses is allocated over five years.) It is unclear how the remedies under the bill relate to MTCA. However, to the extent that the bill increases the number of MTCA claims, special fund expenditures for SITF increase.

Additional Information

Prior Introductions: None.

Cross File: SB 609 (Senator Klausmeier) - Finance.

Information Source(s): Department of Budget and Management; Worker's Compensation Commission; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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