

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 381 (Delegate Dumais)
Health and Government Operations

Human Relations - Employment Discrimination - Protections for Interns

This bill expands protections for “interns” by establishing that an intern is considered to be in an employment relationship with an employer for specified purposes, including protection against discrimination.

Fiscal Summary

State Effect: The expansion of protections for “interns” is not anticipated to materially affect State finances or operations, including those of the Maryland Commission on Civil Rights (MCCR), which can handle any increase in complaints using existing resources.

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: Minimal, as discussed below.

Analysis

Bill Summary/Current Law: The bill defines an “intern” as an individual who performs work for an employer for the purpose of training if (1) the employer is not committed to hire the individual performing the work at the conclusion of the training period and (2) the employer and the individual performing the work agree in writing that the individual performing the work is not entitled to wages for the work performed. In addition, the work performed must (1) supplement training given in an educational environment that may enhance the employability of the individual performing the work; (2) provide experience for the benefit of the individual performing the work; (3) not displace regular employees; (4) be performed under the close supervision of existing staff; and (5) provide no immediate advantage to the employer providing the training and may occasionally impede the operations of the employer.

The bill establishes that an intern is considered to be in an employment relationship with an employer for the purposes of (1) the employee protections and administrative remedies under the State employment discrimination laws and (2) access to any internal procedure the employer has for resolving a complaint by an employee of sexual harassment or other discrimination. The bill's provisions do not create an employment relationship between an employer and an intern for the purposes of certain monetary and injunctive remedies under the State employment discrimination laws and any provision of the Labor and Employment Article or the State Personnel and Pensions Article.

Discrimination in employment based on an individual's race, color, religion, national origin, sex, age, marital status, sexual orientation, or disability is prohibited. This includes discrimination by employers with 15 or more employees, employment agencies, labor organizations, and training programs. Discrimination is also prohibited against individuals who have opposed any discriminatory practice or made a charge, testified, assisted, or participated in any manner in an investigation, proceedings, or hearing relating to an alleged discriminatory act.

Individuals alleging employment discrimination may file a complaint with MCCR. A complaint must be filed within six months from the date the alleged violation occurred. MCCR may also issue a complaint in its name in the same manner as if the complaint had been filed by an individual, as specified. Following an investigation, if there is a finding of probable cause that a discriminatory act has been or is being committed, MCCR's staff must immediately attempt to eliminate the discrimination by conference, conciliation, or persuasion. If an agreement is reached, MCCR must enter an order setting forth the terms of the agreement. If an agreement is not reached, MCCR staff must make written findings to that effect and certify the file to the general counsel of MCCR. The Executive Director of MCCR must issue a written notice, to be served in the name of MCCR, requiring the respondent to answer the charges at a public hearing before an administrative law judge (ALJ). If MCCR finds no probable cause, a request for reconsideration may be filed, as specified.

Following an administrative hearing, on a finding that the respondent has engaged in a discriminatory act, the ALJ must issue a decision and order stating the judge's findings of fact and conclusions of law. The ALJ must also issue and cause to be served on the respondent an order requiring the respondent to cease and desist from engaging in the discriminatory acts and take appropriate affirmative action. Nonmonetary relief may also be granted. If the ALJ finds that the respondent has not engaged in an alleged discriminatory act, the ALJ must state findings of fact and conclusions of law and issue an order dismissing the complaint. Unless a timely appeal is filed in accordance with MCCR regulations, a decision and order issued by the ALJ is the final order. The bill establishes that the remedies specified above, in addition to any internal procedures

available for resolving complaints of sexual harassment or other discrimination, are the exclusive remedies for an alleged violation of a prohibited act against an “intern.”

The bill does not create an employment relationship between an employer and an intern for purposes of (1) provisions authorizing a civil action to be brought by a complainant or MCCR on behalf of a complainant alleging an unlawful employment practice or (2) remedies, including the reinstatement or hiring of employees with or without back pay, compensatory damages, and any other appropriate equitable relief.

Background: In 2013, Oregon enacted legislation extending employment discrimination protection to interns. The legislation created a limited employment relationship between interns and employers for the purpose of allowing interns recourse under the state’s discrimination laws for workplace violations including sexual harassment, unlawful discrimination, and retaliation for whistleblowing.

The definition of “intern” within this bill is consistent with guidelines used to determine if an employment relationship exists under the Fair Labor Standards Act, which governs minimum wage and overtime provisions.

Small Business Effect: Minimal. Small businesses will have to extend additional protections to “interns” as defined under the bill. However, because the bill limits remedies to those specified above, it is anticipated that any impact on small businesses is minimal.

Additional Information

Prior Introductions: None.

Cross File: SB 237 (Senator King, *et al.*) - Judicial Proceedings.

Information Source(s): Department of Budget and Management; Maryland Commission on Civil Rights; Department of Labor, Licensing, and Regulation; Department of Legislative Services

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mc/kdm

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