

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1478
Economic Matters

(Delegate Simonaire, *et al.*)

Employment Discrimination - Sexual Harassment - Definition of Employer

This bill alters the definition of “employer” for purposes of a complaint alleging sexual harassment to include a person that has one or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. The bill preempts or prevails over any local ordinance, resolution, law, or rule that requires an employer to have more than one employee for purposes of a complaint alleging employment discrimination based on sexual harassment.

Fiscal Summary

State Effect: General fund expenditures increase, potentially significantly, for the Maryland Commission on Civil Rights (MCCR) to investigate additional complaints. The bill is not anticipated to materially impact the workload of the Judiciary or the Office of Administrative Hearings.

Local Effect: The bill is not anticipated to materially impact the workload of the circuit courts.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Discrimination in employment based on an individual’s race, color, religion, national origin, sex, age, marital status, sexual orientation, gender identity, genetic information, or disability is prohibited. Sexual harassment is a form of employment discrimination. An “employer” is a person that is engaged in an industry or business and

has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

Enforcing Employment Discrimination

An individual alleging employment discrimination may file a complaint with MCCR. If a complaint is filed with MCCR and an agreement to remedy and eliminate the discrimination cannot be reached, the matter may be heard before an administrative law judge. Remedies available on a finding that the respondent is engaging or has engaged in an unlawful employment practice include (1) enjoining the respondent from engaging in the discriminatory act; (2) ordering appropriate affirmative relief; (3) awarding compensatory damages for pecuniary and nonpecuniary losses; and (4) ordering any other equitable relief that the administrative law judge considers appropriate.

A complainant or a respondent may elect to have the claims asserted in a complaint alleging an unlawful employment practice determined in a civil action brought by MCCR on the complainant's behalf if (1) MCCR has found probable cause to believe the respondent has engaged or is engaging in an unlawful employment practice and (2) there is a failure to reach an agreement to remedy and eliminate the practice. MCCR may also elect to have the claims asserted within the complaint determined in a civil action brought on its own behalf under the same conditions. If an election for a civil action is made, MCCR must file, within 60 days after the election, a civil action in the circuit court for the county where the alleged discrimination occurred. On a finding that discrimination occurred, the court may provide the remedies specified above.

A complainant may file a private civil action against the respondent if (1) the complainant initially filed a timely administrative charge or a complaint under federal, State, or local law alleging discrimination; (2) at least 180 days have elapsed since the filing of this complaint or charge; and (3) the civil action is filed within two years after the alleged discrimination occurred. In addition to the remedies specified above, the court may award punitive damages if (1) the respondent is not a governmental unit or political subdivision and (2) the court finds that the respondent has engaged or is engaging in discrimination with actual malice. The filing of a private cause of action automatically terminates any proceeding before MCCR based on the underlying administrative complaint and any amendment to the complaint. Any party may demand a jury trial if a complainant seeks compensatory or punitive damages. Pursuant to § 20-1015 of the State Government Article, a court may award the prevailing party in a civil action reasonable attorney's fees, expert witness fees, and costs.

Background: According to its 2015 annual report, MCCR received 693 complaints regarding employment discrimination, including 115 complaints alleging discrimination based on sex.

State Expenditures: General fund expenditures increase, potentially significantly, to the extent that new complaints are filed. Although MCCR receives federal reimbursement for investigating complaints related to employment discrimination from the Equal Employment Opportunity Commission, because it is only reimbursed for investigating allegations of sexual harassment by employers with 15 or more employees, it is not able to receive federal reimbursement for any expenses incurred relating to investigating complaints pursuant to this bill. Accordingly, MCCR needs to ensure that investigating any additional cases regarding employers with fewer than 15 employees does not negatively impact its case closure rate, which may cause a reduction in federal funding. Although existing staff can likely investigate a small number of additional cases, additional investigators are required to the extent that MCCR receives a large number of complaints, which MCCR advises is possible. *For illustrative purposes only*, for every additional investigator required, general fund expenditures increase by a minimum of \$89,000 annually.

Small Business Impact: Small businesses with fewer than 15 employees are subject to the procedures and remedies as specified above for sexual harassment complaints.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Commission on Civil Rights, Department of Legislative Services

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min/kdm

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