

Department of Legislative Services  
Maryland General Assembly  
2018 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 1423  
Appropriations

(Delegate Hettleman, *et al.*)

Finance

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State Personnel - Sexual Harassment Prevention Training - Required

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This bill requires all State employees to complete at least a cumulative two hours of in-person or virtual interactive training on sexual harassment prevention within (1) six months of an employee's initial appointment and (2) every two-year period thereafter. The training must address specified items, including additional training for supervisors. For Executive Branch units, the Equal Employment Opportunity (EEO) coordinator must enforce the requirements of the bill and may recommend that a performance audit or review be performed by the Office of Legislative Audits (OLA) if the EEO coordinator determines that a unit has not complied with the bill.

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Fiscal Summary

**State Effect:** General fund expenditures increase, potentially significantly, for the Maryland Commission on Civil Rights (MCCR) to create the specified training program beginning in FY 2019. Expenditures (all funds) increase for State agencies to train employees beginning in FY 2019; agency expenditures may be substantially mitigated, but not eliminated, if the required training is administered through existing online employee training resources. No effect on revenues.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** Training may be incorporated into existing employment training for new employees and supervisors. Each unit must designate a representative to coordinate with

MCCR; MCCR must train each representative on prevention of sexual harassment, discrimination and retaliation, and best practices in sexual harassment prevention. Representatives are encouraged to use Equal Employment Opportunity Commission (EEOC) materials. A unit may require an employee to retake some or all of the training or to participate in additional classes or training if deemed necessary by the appointing authority, and the bill is not meant to discourage or relieve any unit from providing more expansive training on workplace sexual harassment prevention.

Generally, a person may not bring an action against the State for any act or omission resulting from any State employee training or lack of training or the implementation of the training required under the bill. MCCR must adopt regulations to implement the bill.

**Current Law:** The head of each principal unit must appoint a fair practices officer who generally reports directly to the head of the unit and is an assistant secretary or an employee of the unit with stature similar to that of an assistant secretary. The head of each principal unit must also appoint an appropriate number of EEO officers for the unit. If necessary, the fair practices officer of a unit may also be the unit's EEO officer. The Department of Budget and Management (DBM) must provide training, assistance, and advice for EEO officers and fair practices officers.

The fair practices officer implements the State's EEO program, investigates and resolves complaints, and coordinates EEO officer activities. An EEO officer monitors all personnel actions, attests that EEO procedures were followed in personnel actions, and performs other assigned duties.

**Background:** MCCR generally provides sexual harassment training to State agencies and private businesses that request such training, with two positions currently dedicated to providing outreach and training. In fiscal 2017, MCCR conducted 172 education and outreach activities.

Sexual harassment is a form of sex-based discrimination. State law generally prohibits an employer with at least 15 employees from discharging, failing or refusing to hire, or otherwise discriminating against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment because of race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, genetic information, or disability. For the purposes of this prohibition, the State and local governments are considered employers.

The Office of the Statewide EEO Coordinator, within DBM, administers and enforces State and federal EEO laws and policies; promotes a work environment free of any unlawful discrimination, harassment, and retaliation; and assists in the building of a well-diversified workforce of Maryland State government employees and applicants.

**Exhibit 1** shows the number of sexual harassment complaints by State agency from fiscal 2008 to 2017. The annual [Statewide EEO report](#) notes there were 61 sexual harassment complaints reported in State agencies in fiscal 2017, the highest number in the past decade. The Office of the Statewide EEO Coordinator plans to publish sexual harassment prevention training materials on its website in March 2018. The Department of Public Safety and Correctional Services (DPSCS) consistently reports the highest sexual harassment complaints during this time period, with complaints in double digits every year.

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**Exhibit 1**  
**Sexual Harassment Complaints in State Agencies**  
**Fiscal 2008-2017**

| <u>Agency/Function</u>                     | <u>2008</u> | <u>2009</u> | <u>2010</u> | <u>2011</u> | <u>2012</u> | <u>2013</u> | <u>2014</u> | <u>2015</u> | <u>2016</u> | <u>2017</u> |
|--|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Public Safety and<br>Correctional Services | 13          | 19          | 20          | 15          | 13          | 24          | 18          | 24          | 24          | 24          |
| Transportation                             | 5           | 6           | 8           | 6           | 11          | 6           | 12          | 6           | 8           | 15          |
| Health                                     | 3           | 8           | 5           | 0           | 10          | 7           | 3           | 2           | 6           | 7           |
| Juvenile Services                          | 3           | 2           | 2           | 0           | 4           | 3           | 1           | 1           | 1           | 1           |
| State Police                               | 0           | 2           | 2           | 2           | 1           | 2           | 3           | 2           | 1           | 2           |
| Labor, Licensing, and<br>Regulation        | 1           | 2           | 3           | 2           | 1           | 2           | 1           | 0           | 1           | 1           |
| Education                                  | 1           | 1           | 1           | 2           | 0           | 0           | 2           | 0           | 2           | 0           |
| Morgan State University                    | 0           | 0           | 2           | 0           | 0           | 5           | 0           | 6           | 0           | 1           |
| Baltimore City Community<br>College        | 0           | 0           | 2           | 0           | 2           | 0           | 1           | 2           | 2           | 0           |
| Human Services                             | 0           | 0           | 0           | 0           | 0           | 0           | 0           | 0           | 1           | 7           |
| Housing and Community<br>Development       | 3           | 2           | 0           | 0           | 0           | 0           | 0           | 0           | 1           | 0           |
| DBM and DoIT                               | 0           | 0           | 0           | 0           | 0           | 0           | 1           | 0           | 2           | 0           |
| Military                                   | 0           | 1           | 0           | 0           | 0           | 0           | 0           | 1           | 0           | 3           |
| Legal (excluding Judiciary)                | 0           | 0           | 0           | 1           | 1           | 1           | 1           | 2           | 0           | 0           |
| Comptroller of Maryland                    | 1           | 1           | 1           | 1           | 0           | 0           | 0           | 0           | 0           | 0           |
| General Services                           | 0           | 1           | 2           | 0           | 0           | 3           | 0           | 0           | 0           | 0           |
| Other                                      | 1           | 1           | 2           | 0           | 4           | 3           | 0           | 0           | 0           | -           |
| <b>Total</b>                               | <b>31</b>   | <b>46</b>   | <b>50</b>   | <b>29</b>   | <b>47</b>   | <b>56</b>   | <b>43</b>   | <b>46</b>   | <b>49</b>   | <b>61</b>   |

DBM: Department of Budget and Management

DoIT: Department of Information Technology

Source: *Annual Statewide Equal Employment Opportunity Report* Fiscal Year 2008-2017, Department of Budget and Management

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## *Maryland State Employee Policy on Sexual Harassment in the Workplace*

The State employee [sexual harassment policy](#) defines “sexual harassment” as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment; (2) submission to or rejection of such conduct by an individual is used as the basis of employment decisions affecting an individual; or (3) such conduct has the effect of interfering with an individual’s work performance or creating an intimidating, hostile, or abusive work environment. Tangible psychological injury is not a necessary element of a hostile work environment; rather, an environment that is perceived by the victim as hostile or abusive, and that a reasonable person would find hostile or abusive, is sufficient to meet the standard.

An employee who believes that he or she is the victim of sexual harassment should report the alleged incident promptly to the agency’s fair practices officer, EEO officer, supervisor, or any other management representative. A prompt and thorough investigation of the complaint must be conducted by the EEO officer or other designee assigned to investigate the complaint to determine whether a violation has occurred. Any employee found to have engaged in sexual harassment is subject to appropriate disciplinary action, up to and including dismissal from employment. Retaliation against an employee for filing a complaint or participating in an investigation is not permitted.

All State government employees are provided the opportunity to work in an environment free from sexual harassment. Cabinet Secretaries and other agency heads have the responsibility to ensure compliance with this policy, including the prompt investigation and resolution of all complaints of sexual harassment.

**State Revenues:** MCCR has a work-sharing agreement with the U.S. EEOC to investigate employment discrimination complaints and with the U.S. Department of Housing and Urban Development for investigating housing discrimination complaints where the State and federal law overlap. MCCR is estimated to receive \$772,022 in federal fund revenues for fiscal 2019. To the extent that MCCR investigative staff are used to implement the bill, any reduction in MCCR’s case production numbers for these two areas could result in a reduction in federal fund revenues. However, the Department of Legislative Services (DLS) assumes additional staff will be hired instead of redirecting the investigative staff to implement the bill; thus, State revenues are not affected.

**State Expenditures:** MCCR advises that the bill has a significant impact on its operations and finances. MCCR needs to hire additional legal staff to develop the training materials and to train the designated representatives in each State unit.

Some State units already perform sexual harassment prevention training. For example, DLS already conducts training for new and existing members of the Maryland General Assembly and for Maryland General Assembly employees, including sexual harassment prevention training. The Judiciary (Administrative Office of the Courts) has plans to develop and implement mandatory training on sexual harassment prevention. The Department of Labor, Licensing, and Regulation provides orientation training and periodic training on a variety of topics, including sexual harassment prevention. Some other units that do not currently provide sexual harassment prevention training can do so with existing resources. Thus, the bill's training requirements can be accommodated within existing resources for some units.

Other agencies may incur additional costs to administer the training specified in the bill. An electronic learning management system, the HUB, provides State Personnel Management System (SPMS) employees the ability to attend web-based courses, so if the HUB were used to provide the sexual harassment training, much of the cost for agencies covered under SPMS could be mitigated. However, expenditures for agencies outside of SPMS may increase even if online training were used. For example, the University of Maryland, College Park Campus estimates \$30,000 in additional costs for software licenses on sexual harassment training. Although DPSCS has mandated that correctional staff receive a one-hour class on sexual harassment prevention annually, it estimates revising its Learning Management System and needing one administrative employee to keep records of the trainings for all employees in its system.

For units in the Executive Branch, the EEO coordinator may recommend that OLA perform an audit but has no authority to compel an audit, so to the extent that OLA chooses to conduct additional audits under the bill, it can be done using existing budgeted resources.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Information Technology; Department of Commerce; Maryland Commission on Civil Rights; Judiciary (Administrative Office of the Courts); University System of Maryland; Maryland Department of Agriculture; Department of Budget and Management; Maryland Department of Disabilities; Department of General Services; Department of Housing and Community Development; Department of Juvenile Services; Department of Labor, Licensing, and Regulation; Department of Natural Resources; Maryland Department of Planning; Department of Public Safety and Correctional Services; Board of Public Works; Maryland Department of

Transportation; Department of Veterans Affairs; Department of Legislative Services -  
Office of Legislative Audits; Department of Legislative Services

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