

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 661
Economic Matters

(Delegate Ivey, *et al.*)

Employment Discrimination - Definition of Employer

This bill repeals the requirement that an “employer” have at least 15 employees to be subject to administrative enforcement of the prohibitions against discrimination in State law by altering the definition of “employer” to mean a person, including an agent of a person, who is engaged in an industry or business; and has *at least 1 employee* for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

Fiscal Summary

State Effect: Significant increase in expenditures, as discussed below. Revenues are not affected, as discussed below.

Local Effect: Potential minimal.

Small Business Effect: Potential significant.

Analysis

Current Law:

Definitions

Under § 20-601 of the State Government Article, “employer” means a person, including an agent of 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. “Employer” includes the State to the extent specified, but does

not include a bona fide private membership club that is exempt from federal taxation, as specified. “Employer” also includes a labor organization.

Discrimination in Employment

Under § 20-602 of the State Government Article, it is State policy to assure that all persons have equal opportunity in employment and in all labor management-union relations. As such, discrimination in employment is prohibited on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, gender identity, or disability (unrelated in nature and extent so as to reasonably preclude the performance of the employment).

On any of these bases, an employer may not: (1) fail or refuse to hire, discharge, or otherwise discriminate against any individual with respect to the individual’s compensation, terms, conditions or privileges on any of the above bases; or (2) limit, segregate, or classify its employees or applicants for employment in any way that deprives or tends to deprive any individual of employment opportunities or otherwise adversely affect the individual’s status as an employee. Additionally, an employer may not (1) request or require genetic tests or genetic information as a condition of hiring or determining benefits; or (2) fail or refuse to make a reasonable accommodation for the known disability of an otherwise qualified employee. Additionally, acts of harassment and retaliation against an employee by an employer are prohibited.

Survey of Case Law

In 1981 the Maryland Court of Appeals ruled that employers with fewer than 15 employees are not permitted to discriminate in their employment practices; they simply are not covered by the administrative procedures created in State law to resolve employment discrimination cases. (*National Asphalt Pavement Ass’n v. Prince George’s County*, 292 Md. 75 (1981)).

Additionally, in 1996, the Court stated that while the definition of employer excludes small businesses (those with fewer than 15 employees) these small employers are not exempt from the anti-discrimination policy established in § 20-602 of the State Government Article. The Court further noted that it was not the intent of the General Assembly to permit small employers to discriminate against their employees, but rather to promote a policy of ending discrimination statewide. (*Molesworth v. Brandon*, 341 Md. 621 (1996)).

Federal Law

Under federal law, it is illegal to discriminate against a job applicant or an employee because of the person’s race, color, religion, sex (including pregnancy, gender identity, and

sexual orientation), national origin, age (40 or older), disability, or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. It is the responsibility of the U.S. Equal Employment Opportunity Commission (EEOC) to enforce these laws. Employers with at least 15 employees are covered by EEOC laws (except in age discrimination cases, where employers must have 20 employees to be subject to EEOC enforcement).

Background:

Maryland Commission on Civil Rights

The Maryland Commission on Civil Rights (MCCR) is the State agency charged with the enforcement of laws prohibiting discrimination in employment, housing, public accommodations, and State contracting. MCCR works to ensure equal opportunity to all citizens of Maryland by engaging in the investigation, mediation, and litigation of discrimination complaints in administrative and State court proceedings. In its 2018 annual report, MCCR reported that employment discrimination complaints accounted for 81% of the total complaints received by MCCR for fiscal 2018.

Workplace Harassment Commission

The Workplace Harassment Commission created by the Presiding Officers of the General Assembly in January 2018, issued its final [report](#) in November, 2018. The commission was charged with reviewing State workplace harassment policies, soliciting input from policy experts, and making recommendations to the Legislative Policy Committee to make the Maryland General Assembly “the safest legislative workplace in the country.” In its report, the commission made a number of recommendations, including expanding the definitions of “employee” and “employer” to apply administrative enforcement of State anti-discrimination laws to independent contractors and employers with fewer than 15 employees.

State Revenues: MCCR has a work-sharing agreement with the EEOC to investigate employment discrimination complaints where the State and federal law converge. 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 revenue attainment. However, this analysis assumes that additional staff are likely to be hired to implement the bill’s provisions. As such, State revenues are not affected.

State Expenditures: An increase in caseloads likely requires that MCCR hire additional civil rights officers as MCCR advises that existing staff are unable to handle additional

cases. While the data is not readily available to determine the magnitude of such an increase, it is assumed that this increase is potentially significant as many more small businesses become subject to the administrative process to resolve discrimination allegations based on the altered definition of “employer” under the bill.

MCCR advises that investigative staff handle an average of 85 cases each on an annual basis. During fiscal 2018, MCCR handled a total of 1,223 cases. *For illustrative purposes only*, if caseloads increase by just 10%, or approximately 122 additional cases annually, MCCR would need to hire at least 1 full-time and 1 half-time employees to address the increased caseloads. The salary and benefit for 1 full-time civil rights officer in fiscal 2020 is \$77,536.

Additionally, MCCR delegates some employment discrimination claims to the Office of Administrative Hearings (OAH) to conduct contested case hearings and issue decisions under the Administrative Procedure Act. The number of cases delegated to OAH is small. Although the Department of Legislative Services assumes that additional staff are required to implement the bill, MCCR may also need to delegate more employment discrimination cases to OAH, especially in the first fiscal year of implementation, while MCCR is in the process of hiring and training new staff. Therefore, reimbursable expenditures for OAH minimally increase in fiscal 2020. However, any operational impact to train administrative law judges on the bill’s provisions can be accomplished within the existing budgeted resources of OAH.

Small Business Effect: The bill allows for employees of small businesses, specifically small businesses with less than 15 employees, to file discrimination complaints with MCCR. Under current law, an employee who works for an employer with less than 15 employees must file discrimination complaints through the court system’s civil process, which is a considerable barrier to employees who seek to bring discrimination complaints. Accordingly, more small business owners may be subject to monetary penalties based on additional employment discrimination complaints.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Commission on Civil Rights; Judiciary (Administrative Office of the Courts); Department of Budget and Management; Office of Administrative Hearings; Maryland Court of Appeals; Workplace Harassment

Commission; U.S. Equal Employment Opportunity Commission; Department of
Legislative Services

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