

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1262

(Delegate Hill)

Health and Government Operations

Judicial Proceedings

Human Relations – Employment Discrimination and Discriminatory Housing
Practices – Time to File Complaint

This bill increases the time for filing a complaint of an alleged discriminatory act by an employer, under specified circumstances, and increases the time for filing a complaint of an alleged discriminatory housing practice from within one year to within 18 months of the occurrence or termination of the alleged discriminatory practice.

Fiscal Summary

State Effect: The bill’s requirements can likely be handled with existing budget resources, as discussed below. Revenues are not affected, as discussed below.

Local Effect: Any additional cases filed in the circuit courts can be handled with existing resources.

Small Business Effect: Minimal.

Analysis

Bill Summary: If a complaint is alleging an unlawful employment practice, it must be filed within 300 days of the date when the alleged discriminatory act occurred.

If a complaint is alleging an unlawful discriminatory compensation practice under § 20-607 of the State Government Article, it must be filed within 300 days of the date on which the person making the claim first knew or should have known that the alleged discriminatory act occurred.

A complaint of an alleged discriminatory act by an employer that is filed with a federal or local human relations commission within the applicable specified time periods is deemed to have complied with the statute of limitations.

Current Law:

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).

Discrimination in Housing: Under § 20-702 of the State Government Article, it is State policy to provide for fair housing throughout the State, regardless of race, color, religion, sex, familial status, national origin, marital status, sexual orientation, gender identity, or disability. As such, discriminatory practices with respect to residential housing, as specified by any person are prohibited.

Discriminatory housing practices include (1) the refusal to rent, sell, or otherwise make available a dwelling; (2) discrimination with regard to terms or conditions of sale or rentals of dwellings; and (3) discrimination with regard to the making or purchasing of loans or providing other financial assistance. Prohibited practices also include retaliation, coercion, intimidation, or threats because a person exercises the rights and protections granted by State law to prevent discrimination.

Statute of Limitations: A person claiming to have been injured by an unlawful employment practice or by a discriminatory housing practice may file a complaint with the Maryland Commission on Civil Rights (MCCR) or file a civil action in circuit court.

Employment: Complaints regarding discrimination in employment must be filed with MCCR within six months of when the alleged discriminatory act occurred.

If an administrative law judge (ALJ) finds that the respondent has engaged in an unlawful employment practice, the ALJ may order appropriate equitable relief including injunctive relief, affirmative relief (including reinstatement or hiring of employees, with or without back pay), and compensatory damages (in addition to any award of back pay).

Civil actions in circuit court must be filed within two years of when the alleged unlawful employment practice occurred, but only if the complainant initially filed a timely administrative complaint under federal, State, or local law and 180 days have elapsed since the filing of the administrative complaint.

If a court finds that an unlawful employment practice occurred, the court may award punitive damages, in addition to any equitable relief an ALJ is authorized to award in an administrative action.

Housing: Complaints regarding a discriminatory housing practice must be filed with MCCR within one year of the occurrence or termination of the alleged discriminatory housing practice.

If an ALJ finds that the respondent has engaged in a discriminatory housing practice, the ALJ may order appropriate relief, including actual damages and injunctive or other relief, and may assess a civil penalty against the respondent.

Civil actions in circuit court must be filed within two years of the occurrence or termination of the alleged discriminatory housing practice, whichever is later. This two-year period does not include the time while an administrative proceeding for a complaint based on the same alleged discriminatory housing practice was pending. Further, the civil action may not be filed within 130 days of when a complaint was filed with MCCR.

If a court finds that a discriminatory housing practice occurred, the court may award actual and punitive damages, grant injunctive relief, and allow reasonable attorney's fees and costs.

Background:

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%, while housing discrimination complaints accounted for 10% of the total complaints received by MCCR for fiscal 2018.

State Revenues: MCCR has a work-sharing agreement with EEOC to investigate employment discrimination complaints and with the U.S. Department of Housing and Urban Development (HUD) to investigate housing discrimination complaints where the State and federal laws converge. MCCR advises that the bill's provisions related to the statute of limitations for discrimination in employment conforms with federal law; therefore, MCCR does not anticipate any negative impact on MCCR's work-sharing agreement with the EEOC. However, the bill's provisions related to the statute of limitations for discrimination in housing diverges from federal law, where the statute of limitations is one-year. Therefore, MCCR advises that any complaints received after one-year, but before the 18-month limitation will not qualify for reimbursement under its work-sharing agreement with HUD. To the extent that MCCR complaints increase and 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 any increase in the number of complaints is likely to be minimal and thus, absorbable within existing resources. As such, State revenues are not affected.

State Expenditures: 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 employment complaints and 130 housing discrimination complaints. MCCR further advises that it can likely handle any additional cases and comply with the bill with existing resources. To the extent that complaints and cases increase substantially beyond what is anticipated, general fund expenditures increase to hire additional civil rights officers. The salary and benefits for one full-time civil rights officer in fiscal 2020 is \$77,536.

Additionally, MCCR delegates some employment and housing 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 the increase in complaints is likely minimal, MCCR may still need to delegate more employment and housing discrimination cases to OAH. Therefore, reimbursable expenditures for OAH may minimally increase. However, any operational impact to train administrative law judges on the bill's provisions can be accomplished within the existing budgeted resources of OAH.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Commission on Civil Rights; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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