

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 556
Finance

(Senator Miller, *et al.*)

State Government - Legislative and Executive Branches - Workplace Bullying

This bill establishes the intent of the State is (1) to educate all employees in the Legislative and Executive branches of the State about bullying in the workplace; (2) to ensure that bullying in the workplace is not tolerated; and (3) that bullying in the workplace be dealt with in an appropriate manner. The bill institutes training requirements on bullying and outlines workplace bullying reporting and investigation procedures and disciplinary actions for State employees in the Legislative and Executive branches.

Fiscal Summary

State Effect: The bill codifies existing policy for Executive Branch employees; thus, most Executive Branch agencies can implement the bill with existing resources. However, higher education expenditures for universities may increase beginning in FY 2020 to the extent they do not currently follow the bullying policy. The Department of Legislative Services (DLS) can implement the bill with existing resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: “Workplace bullying” is intentional, persistent, malicious, unwelcome, severe, or pervasive conduct, whether verbal or physical, that harms, intimidates, offends, degrades, or humiliates an employee at the place of work or during employment. “Workplace bullying” can also mean behavior that a reasonable person would find to be

hostile, offensive, and not related to an employer's legitimate business interests. The bill gives examples of what is and is not workplace bullying.

Employees in the Legislative and Executive branches must take refresher workplace bullying prevention and response training every two years to ensure they are aware of their role in preventing and responding to workplace bullying and have appropriate skills to take action when necessary. Additionally, managers and supervisors must be trained in skills that will help develop productive and respectful workplace relationships. The bill specifies what these trainings must address.

The bill requires each manager and supervisor of the Legislative and Executive branches of the State to immediately report to the appointing authority or head of the principal unit, as appropriate, any incident of workplace bullying that is witnessed by the manager or supervisor or is brought to the attention of the manager or supervisor by another employee. These reports must be investigated in the same manner as a complaint is investigated.

An employee who witnesses workplace bullying may report it anonymously to the appointing authority or head of the principal unit, who must investigate it to the extent practicable.

For complaints of workplace bullying not based on a protected status of employment, an employee who believes that he or she is a victim of workplace bullying may file a complaint with the appointing authority or head of the principal unit, as appropriate. The appointing authority or head of the principal unit or a designee must investigate the complaint as specified by the bill, which includes meeting with the complainant, any witnesses of the bullying, and the employee alleged to have engaged in bullying. If an investigation finds that workplace bullying occurred, the appointing authority or head of the principal unit must consider any mitigating circumstances, determine the appropriate disciplinary action, if any, to be imposed, and give the bully a written notice of the disciplinary action to be taken, if any, and the employee's appeal rights. The bill outlines procedures relating to taking disciplinary action and resolving workplace bullying. A complainant may file a grievance under specified circumstances.

If the employee alleges that the workplace bullying was based on the employee's protected status, the employee may file a written complaint with the head of the principal unit or the Equal Employment Opportunity (EEO) officer for the principal unit within 30 days after the employee knew or reasonably should have known of the alleged workplace bullying. Within 30 days after a complaint is filed, the EEO officer must meet with the complainant, investigate the complaint, and make a recommendation to the head of the principal unit. The head of the principal unit or a designee must issue a written decision on the case and may grant any appropriate relief. Within 10 days after receiving the decision, the complainant may appeal the decision to the Office of the Statewide EEO Coordinator.

Within 30 days of receiving an appeal, the Statewide EEO Coordinator must review the complaint and the decision and conduct any necessary investigations. The Statewide EEO Coordinator must then recommend to the Secretary of Budget and Management or a designee whether a violation occurred, after which the Secretary may dismiss the complaint or grant appropriate relief to the complainant.

Each human resources department in a principal unit must collect and share with the Department of Budget and Management (DBM) data regarding complaints and reports filed under the bill and the outcome of any related investigations. This must be tabulated by worksite and principal unit for determining specific problem locations.

Current Law: 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. Unless the individual is subject to the State or local civil service laws, an employee does not include an elected public official, an individual chosen by an elected officer to be on the officer's personal staff, an appointee on the policymaking level, or an immediate adviser with respect to the exercise of the constitutional or legal powers of an elected office.

The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), 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. Most employers with at least 15 employees are covered by EEOC laws (20 employees in age discrimination cases). Most labor unions and employment agencies are also covered.

Antidiscrimination laws apply to all types of work situations, including hiring, firing, promotions, harassment, training, wages, and benefits. EEOC has the authority to investigate charges of discrimination against employers who are covered by the law. If EEOC finds that discrimination has occurred, it tries to settle the charge. If not successful, EEOC has the authority to file a lawsuit to protect the rights of individuals and the interests of the public but does not, however, file lawsuits in all cases in which there was a finding of discrimination.

EEOC states harassment is a form of employment discrimination. Harassment becomes unlawful where (1) enduring the offensive conduct becomes a condition of continued

employment or (2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

Enforcing Employment Discrimination

An individual alleging employment discrimination may file a complaint with the Maryland Commission on Civil Rights (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.

Grievances

State employees may file a grievance over any dispute they have with their employer about the interpretation of and application to the employee of (1) a personnel policy or regulation adopted by the Secretary of Budget and Management or (2) any other policy or regulation over which management has control. Grievances are not allowed for disputes between employees.

Employee Assistance Program

The Employee and Labor Relations Division within DBM administers the Employee Assistance Program, which provides confidential and professional referral and assessment services to State employees experiencing personal difficulties that are affecting job performance. It also provides mediation services to assist in resolving workplace disputes.

Background: DBM issued a [policy](#) for Executive Branch employees against bullying in the workplace, which became effective on January 1, 2017. The bill codifies this policy for Executive Branch employees. **Exhibit 1** shows the total number of bullying complaints received in 2018 and related findings for agencies reporting to DBM – primarily agencies within the State Personnel Management System and the Maryland Department of Transportation. Complaints of bullying were concentrated in a few agencies, and most complaints did not result in a finding of bullying.

Exhibit 1

Complaints of Bullying and Bullying Findings in Executive Branch Agencies in 2018

<u>Agency</u>	<u>Complaints</u>	<u>Findings</u>
Administrative Hearings	0	
Aging	0	
Agriculture	0	
Archives	0	
Assessments and Taxation	1	0
Attorney General	1	0
Budget and Management	0	
Civil Rights	0	
Commerce	0	
Comptroller	0	
Contract Appeals	0	
Disabilities	0	
Education	1	1
Environment	2	0

<u>Agency</u>	<u>Complaints</u>	<u>Findings</u>
Executive Department	0	
General Services	1	0
Health	16	3
Health Exchange	0	
Housing and Community Development	0	
Human Services	51	6
Information Technology	0	
Juvenile Services	1	0
Labor, Licensing, and Regulation	6	0
Lottery	2	0
Maryland 529 Plans	0	
Maryland Automobile Insurance Fund	0	
Maryland Higher Education Commission	0	
Maryland Insurance Administration	1	0
Maryland Supplemental Retirement Plan	0	
MD Institute for Emergency Medical Services Systems	0	
Military	0	
Natural Resources	1	0
People's Counsel	0	
Planning	1	0
Property Tax Assessment Appeal Board	0	
Public Defender	7	0
Public Safety and Correctional Services	57	1
Public School Construction	0	
Public Service Commission	0	
Public Television	1	1
State Board of Elections	6	4
School for the Deaf	4	4
State Ethics Commission	0	
State Police	0	
State Prosecutor	0	
State Retirement	0	
Subsequent Injury Fund	0	
Tax Court	0	
Transportation	23	4
Treasurer	0	
Uninsured Employers' Fund	0	
Veterans Affairs	0	
Workers' Compensation	0	
Total	183	24

Source: Department of Budget and Management

The American Psychological Association (APA) defines bullying as “aggressive behavior in which someone intentionally and repeatedly causes another person injury or discomfort. Bullying can take the form of physical contact, words or more subtle actions.” APA notes that bullying in the workplace can lead to increased absenteeism, employee turnover, and even lawsuits. To reduce aggressive behavior among employees, APA recommends that employers foster improved communication skills, teach employees to understand each other, identify root causes of bullying, and establish a policy of respect that defines bullying.

State Expenditures: DLS can implement the bill with existing resources. Since the bill codifies DBM’s policy for Executive Branch employees against bullying in the workplace, DLS does not anticipate any significant changes to operations for most Executive Branch employees. To the extent that units of the Executive Branch are not currently following DBM’s policy on bullying in the workplace, expenditures may increase to train employees, investigate bullying cases, and track bullying, but this can likely be done with existing resources.

However, the University System of Maryland does not currently follow DBM’s bullying policy. The other public universities likewise do not necessarily follow DBM’s bullying policy. Thus, higher education expenditures for universities may increase beginning in fiscal 2020 to train employees, investigate complaints, and track bullying.

The Office of Administrative Hearings (OAH) advises it would need to code workplace bullying appeals so that they can be separately tracked in its case management system, which it can do with existing resources. OAH does not anticipate a significant increase in the number or complexity of appeals related to workplace bullying stemming from the bill so OAH can conduct any additional hearings with existing resources.

Additional Information

Prior Introductions: None.

Cross File: HB 57 (The Speaker) - Rules and Executive Nominations.

Information Source(s): Department of Information Technology; Department of Commerce; Maryland Department of Aging; Comptroller’s Office; Governor’s Office; Maryland State Department of Education; Maryland Higher Education Commission; Baltimore City Community College; University System of Maryland; Morgan State University; St. Mary’s College of Maryland; Maryland Department of Agriculture; Department of Budget and Management; Maryland Department of Disabilities; Maryland Department of the Environment; Department of General Services; Maryland Department

of Health; Department of Housing and Community Development; Department of Human Services; 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; Department of State Police; Maryland Department of Transportation; Department of Veterans Affairs; Office of Administrative Hearings; Maryland State Archives; State Ethics Commission; Maryland Insurance Administration; Maryland State Lottery and Gaming Control Agency; Public Service Commission; State Retirement Agency; American Psychological Association; Department of Legislative Services

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