

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 451

(Senators Smith and Lee)

Judicial Proceedings

Economic Matters

Unlawful Employment Practice - Statute of Limitations - Tolling

This bill establishes that the timing limitations within which a person may file a civil action in circuit court alleging an unlawful employment practice (*i.e.*, within two years after the alleged unlawful employment practice occurred, or within three years for a harassment allegation) are *tolled* while an administrative charge or complaint is pending.

Fiscal Summary

State Effect: Potential increase in general and special fund expenditures for litigation expenses (and associated payments of judgment awards) in cases involving unlawful employment practices. Revenues are not affected.

Local Effect: Potential increase in local government expenditures to litigate claims and pay judgment awards, as well as potential increased insurance premiums for liability coverage. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Discrimination in Employment – Generally

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 or because of an individual's refusal to submit to or make available the results of a genetic test, 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 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. Additional prohibitions are also specified in statute.

Employment Discrimination Actions – Initial Process and Remedies

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. An individual alleging employment discrimination may file a complaint with MCCR within specified timeframes. 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 by an administrative law judge 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; and (4) ordering any other equitable relief that the administrative law judge considers appropriate.

Compensatory damages that are awarded (for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, or nonpecuniary losses) are in addition to back pay, interest on back pay, and any other equitable relief that the complainant may recover under any other provision of law.

If back pay is awarded, the award must be reduced by any interim earnings or amounts earnable with reasonable diligence by the person discriminated against. In addition to any other authorized relief, a complainant may recover back pay for up to two years preceding the filing of the complaint, where the unlawful employment practice that has occurred during the complaint filing period is similar or related to an unlawful employment practice with regard to discrimination in compensation that occurred outside the time for filing a complaint.

Civil Actions

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. On a finding that discrimination occurred, the court may provide the same remedies that an administrative law judge is authorized to provide (described above).

A complainant may also file in circuit court 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 an unlawful employment practice by the respondent; (2) at least 180 days have elapsed since the filing of the administrative charge or complaint; and (3) the civil action is filed within two years after the alleged unlawful employment practice occurred (or within three years for a harassment allegation). The filing of a civil action automatically terminates any proceeding before MCCR based on the underlying administrative complaint.

In addition to the remedies described above, a circuit court may also award punitive damages if the respondent is not a governmental unit or political subdivision, and the court finds that the respondent is engaging or has engaged in an unlawful employment practice with actual malice. If the court awards punitive damages, the sum of the amount of compensatory damages and punitive damages may not exceed the applicable limitations on compensatory damages. Additionally, 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.

If a complainant seeks compensatory or punitive damages in a circuit court action, any party may demand a jury trial, and the court may not inform the jury of the statutory limitations on compensatory and punitive damages.

State/Local Fiscal Effect: State and local expenditures may increase to the extent that tolling the statute of limitations for filing suit in circuit court leads to an increased number of lawsuits, along with corresponding litigation costs and/or payments of judgment awards. The magnitude of any impact depends in part on the number and nature of employment discrimination claims filed, which cannot be reliably predicted beforehand. Any potential impact may be mitigated to the extent that, under current law, a complainant may already terminate a proceeding before MCCR and file a private action in circuit court if at least 180 days have elapsed since filing the administrative charge or complaint. Additionally,

given that filing a timely administrative charge or complaint remains a prerequisite to filing a private civil action under the bill, tolling the statute of limitations will not necessarily lead to a greater number of lawsuits resulting from previously unknown or unraised claims.

According to the State Treasurer's Office (STO), if an employment discrimination claim against the State is filed in circuit court, once STO receives the suit, it is subject to review by the Office of the Attorney General to determine if there are torts involved and whether the claim remains under the Maryland Tort Claims Act (MTCA)/STO or with the State agency involved in the claim. If the claim falls under MTCA, special funds from the State Insurance Trust Fund may be used to pay for subsequent litigation costs and judgment awards. If claims do not involve a tort, any resulting costs are generally paid by the impacted agency or as otherwise directed by the Board of Public Works.

In addition to the impacts discussed above, local governments may also be subject to increased insurance premiums for liability coverage.

The bill is not anticipated to materially affect the operations or finances of MCCR, the Office of Administrative Hearings, the Judiciary, or the circuit courts.

Small Business Effect: Small businesses face potential costs associated with the increase in litigation that may result from tolling the statute of limitations under the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Commission on Civil Rights; Maryland Association of Counties; Maryland Municipal League; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Department of Budget and Management; Board of Public Works; Maryland Department of Transportation; Office of Administrative Hearings; Department of Legislative Services

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