

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 214
Finance

(Senator Ellis)

**Employment - Harassment and Intimidation - Reporting (Workplace
Psychological Safety Act)**

This bill establishes a new standard of “harassment and intimidation” within the Maryland Occupational Safety and Health (MOSH) Act and requires the Commissioner of Labor and Employment to create a standard “victim of harassment or intimidation reporting form” for employers and employees to report incidents of harassment or intimidation to the Maryland Department of Labor (MDL). However, existing penalties under MOSH do not apply to any violation of the bill’s requirements. The bill also requires the commissioner to submit an annual report based on the information received through reporting forms for the previous year, authorizes the commissioner to establish an anonymous electronic tip program to report incidents of harassment or intimidation, and requires the commissioner to adopt regulations to implement the bill by January 1, 2024.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$179,700 in FY 2024; future years reflect ongoing operating expenditures and the elimination of one-time costs. The estimate does not reflect any costs associated with the establishment of an optional electronic tip line, as discussed below. Revenues are not affected.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	179,700	158,700	165,700	173,200	182,300
Net Effect	(\$179,700)	(\$158,700)	(\$165,700)	(\$173,200)	(\$182,300)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Harassment or Intimidation Defined

“Harassment or intimidation” means intentional conduct, including oral, physical, or written conduct or intentional electronic communication that creates a hostile work environment by substantially interfering with an employee’s benefits, opportunities, or performance, or with an employee’s psychological well-being and is (1) motivated by an actual or perceived characteristic of an employee, including race, national origin, marital status, sex, sexual orientation, gender identity, religion, ancestry, physical attributes, socioeconomic status, or physical or mental ability or disability and (2) threatening or seriously intimidating.

“Harassment or intimidation” includes (1) the hiring of incompetent subordinates; (2) the assignment of unsuitable, inappropriate, or offensive tasks; (3) the assignment of an excessive workload; (4) the sabotage of an employee’s work; (5) the public disciplining or reprimanding of an employee in a manner that can be seen or heard by an employee’s colleagues, customer, or clients; and (6) the taking of credit for another employee’s work.

Reporting of Harassment or Intimidation

The Commissioner of Labor and Industry must create a standard victim of harassment or intimidation reporting form. The form must allow for the inclusion of specified information, including, among other things, (1) instructions on how to fill out and submit the form; (2) the identity of the victim and, if known, the alleged perpetrator; and (3) a description of the harassment or intimidation alleged to have been committed, as specified. Each employer must post a notice of the availability and purpose of the reporting form in a place accessible to all employees.

If an employer receives a report of an incident of harassment or intimidation, the employer must report the incident to the commissioner using the reporting form. The form may be submitted to the commissioner or to an employer by (1) the employee against whom the harassment or intimidation was committed; (2) another employee who witnessed the harassment or intimidation; or (3) any other person who has knowledge of the harassment or intimidation.

The information contained in a victim of harassment or intimidation reporting form or received through the tip program (which is discussed in the following section) is confidential and may not be disclosed except by order of a court. An employer may not

take retaliatory action against an employee for submitting a reporting form or a tip through the tip program.

By December 1, 2024, and each year thereafter, the Commissioner of Labor and Industry must submit a report to specified committees of the General Assembly that summarizes the information included in the reporting forms submitted during the immediately preceding year, including specified information.

Electronic Tip Program

The Commissioner of Labor and Industry may establish an anonymous electronic tip program that allows employees and other persons to report incidents of alleged harassment or intimidation. If a tip program is established, each employer must post information about the tip program in a place accessible to all employees. After receiving a tip, the recipient of the report, or the recipient's designee, must complete a victim of harassment or intimidation reporting form and include a transcript of any relevant communication received through the tip program with the form.

The Governor may include funding in the State budget to provide grants to MDL to establish the tip program.

Current Law:

Occupational Safety and Health

The Division of Labor and Industry within MDL administers the MOSH program, which is codified in the MOSH Act. In general, MOSH safety and health requirements parallel the safety standards established by the federal Occupational Safety and Health Administration (OSHA) within the U.S. Department of Labor. OSHA specifies that states may elect to assume the responsibility for development and management of a state occupational safety and health program as long as the standards under the state program are "at least as effective as" OSHA standards.

Employers must provide each employee with employment and a place of employment that is safe and healthful and free from each recognized hazard that is causing or likely to cause death or serious physical harm to the employee.

Employers must keep their employees informed of their protections and duties under the MOSH program by posting notice where notices to employees normally are posted or using other appropriate means. The commissioner may require an employer to keep records of work-related deaths, illness, and injury (other than minor injuries). An employer must report to the commissioner an employment accident within eight hours after it occurs if the

accident results in an employee's death or the hospitalization of at least three employees. An employer or other person may not discharge or discriminate against an employee because the employee filed a complaint, brings an action or causes an action to be brought, testifies, or exercises a right relating to the MOSH program, or the employee filed a complaint or exercises a right relating to essential worker rights. An employee who believes that an employer or other person has retaliated against the employee may submit a complaint to the commissioner, and the commissioner may investigate it.

Unlawful Employment Practices – Harassment

Employers in the State, including public-sector employers, are expressly prohibited from taking certain discriminatory or adverse actions against their employees, including engaging in harassment of an employee. "Harassment" includes sexual harassment and other unwelcome and offensive conduct, which need not be severe or pervasive, when (1) the conduct is based on race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, gender identity, or disability and (2) affects someone's working environment or employment, as specified.

When an instance of harassment occurs, the employer is liable for the acts or omissions toward an employee or applicant for employment committed by an individual who directs, supervises, or evaluates the work activities of the employee or who otherwise undertakes or recommends tangible employment actions for the affected individual. An employer is also liable if the negligence of the employer led to the harassment or continuation of harassment.

The Maryland Commission on Civil Rights is granted authority to receive harassment complaints and may take specified enforcement actions, including the assessment of a civil penalty and the bringing of a civil action against the offending employer. Complaints alleging harassment against an employer must be filed within two years after the harassment allegedly occurred. Civil penalties range from \$500 to \$2,500, based on the previous number of unlawful employment practices committed by the employer, and accrue to the general fund.

State Expenditures: The requirements of the bill are placed within the MOSH Act and although the bill specifies that existing penalties do not apply for violations, the other provisions of the MOSH Act do apply. Among other things, the MOSH Act authorizes the commissioner to investigate violations and requires the commissioner to issue citations when a violation has occurred. MDL anticipates the issuance of citations under the bill when it determines that an employer (1) fails to report an alleged harassment or intimidation claim; (2) fails to post the required information; or (3) retaliates against an employee for reporting an instance of harassment.

MDL cannot absorb these new duties with its existing resources and anticipates needing at least one additional administrative staff to receive and evaluate complaints and one additional compliance officer to perform investigation duties; substantially more staff may be required, including legal support, if MDL receives a significant number of reporting forms in any given year.

Generally, MDL's costs to administer MOSH are funded through a combination of federal funds and a special fund appropriation from the Workers' Compensation Commission. However, any such spending must be consistent with federal grant requirements and agreements and is subject to approval by the federal government under the authority of OSHA. MDL does not believe, and the Department of Legislative Services concurs, that implementation of the bill is an allowable expense. Therefore, general funds are needed to implement the bill.

Thus, general fund expenditures for MDL increase by \$179,680 in fiscal 2024 for MDL to hire one administrator and one compliance officer. The estimate accounts for the bill's October 1, 2023 effective date and includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. Any additional travel expenses due to more compliance officers being in the field are minimal and absorbable. The estimate also includes a one-time cost for MDL to establish a database to receive and enter the reports.

Positions	2.0
Salaries and Fringe Benefits	\$119,962
Database Costs	44,900
Operating Expenses	<u>14,818</u>
Total FY 2024 State Expenditures	\$179,680

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. The estimate does not include any costs related to the electronic tip program because implementation of the program is optional and costs to implement such a program would likely total in the hundreds of thousands of dollars to establish the line and hire staff or a contractor to take calls.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Maryland Department of Labor; Judiciary (Administrative Office of the Courts); University System of Maryland; Department of Budget and Management; Maryland Department of Transportation; Maryland Association of Counties; Maryland Municipal League; Department of Legislative Services

Fiscal Note History: First Reader - February 7, 2023
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