

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1261
Economic Matters

(Delegate Boaf0)

Employment Discrimination - Intent

This bill alters State statute related to employment discrimination to prohibit a person from acting in a manner, regardless of intent, that has a discriminatory effect against an individual in relation to an act prohibited under § 20-606 of the State Government Article because of the individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, disability, or military status. A person who violates this prohibition without discriminatory intent has not committed an unlawful employment practice if (1) the violation was justified by a legitimate business necessity and (2) there was no other less discriminatory means of accomplishing that business necessity.

Fiscal Summary

State Effect: Potential significant increase in State expenditures, as discussed below. State revenues are not materially affected.

Local Effect: Potential significant increase in local government expenditures, as discussed below. Local revenues are not materially 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, State law generally prohibits discrimination in employment on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, military status, sexual orientation, gender identity, genetic information, or disability (unrelated in nature and extent so as to reasonably preclude the performance of the employment).

Under § 20-606 of the State Government Article, subject to limited exceptions, 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. An employer is also prohibited from failing or refusing to make a reasonable accommodation for the known disability of an otherwise qualified employee or an applicant for employment; however, State law does not require an employer to reasonably accommodate a disability if the accommodation would cause undue hardship on the conduct of the employer's business. Furthermore, an employer may not (1) engage in the harassment (including sexual harassment) of an employee or (2) discriminate or retaliate against an employee or applicant because the employee/applicant has opposed any practice prohibited by State law relevant to employment discrimination or made a charge, testified, assisted, or participated in an investigation, proceeding, or hearing related to such laws. Additional prohibitions – including those specific to interns, employment agencies, and labor organizations – are also specified in statute.

In general, the above prohibitions are applicable to employers that have 15 or more employees (based on the number of employees working in each of 20 or more calendar weeks in the current or preceding calendar year). Provisions relating to harassment allegations apply to employers with 1 or more employees. Statute also specifically prohibits units, officers, or employees of the State, a county, or a municipal corporation from engaging in these discriminatory acts.

Employment Discrimination Complaints – Initial Process, Administrative Proceedings, and Civil Actions

Initial Process: The Maryland Commission on Civil Rights (MCCR) is the independent State agency charged with the enforcement of laws prohibiting discrimination in employment. An individual alleging employment discrimination may file an inquiry with MCCR, which initiates the intake process. Once a complaint has been properly filed, the case is assigned to an MCCR investigator to determine whether there is probable cause that discrimination has occurred. If at the conclusion of the investigatory stage, MCCR believes there is probable cause that discrimination occurred, MCCR issues a finding and attempts to resolve the matter through conciliation. If an agreement to remedy and eliminate the discrimination cannot be reached, the matter is certified for litigation and may proceed in a number of ways, including being heard before an administrative law judge.

A complaint alleging an unlawful employment practice other than harassment must be filed within 300 days after the alleged act (a complaint alleging harassment must be filed within two years). However, complaints filed with a federal human relations commission or a local human relations commission within specified timeframes are deemed to be in compliance with these requirements.

Administrative Proceedings: At an administrative hearing, MCCR's Office of the General Counsel presents the case on behalf of the complainant. Remedies available on a finding by an administrative law judge that the respondent (employer) 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 (including the reinstatement or hiring of employees, with or without back pay); (3) awarding compensatory damages; and (4) ordering any other equitable relief that the 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. The maximum amounts of compensatory damages that may be awarded are as follows:

- \$50,000 for respondents with 15 to 100 employees;
- \$100,000 for respondents with 101 to 200 employees;
- \$200,000 for respondents with 201 to 500 employees; and
- \$300,000 for respondents with 501 or more employees.

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 if 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 circuit court may provide the same remedies that an administrative law judge is authorized to provide (described above).

A complainant may also file a private civil action in circuit court 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 and (2) at least 180 days have elapsed since the filing of the administrative charge or complaint. In addition, the civil action must be filed within two years after the alleged employment practice occurred (or within three years for a harassment allegation), however, these time limitations are tolled while an administrative charge or complaint is pending. 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 in a private civil action 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 (as shown above). 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.

Pursuant to § 20-1015 of the State Government Article, a court may award the prevailing party reasonable attorney's fees, expert witness fees, and costs.

The Civil Rights Act of 1964 – Disparate Impacts

Title VII of the Civil Rights Act prohibits employment discrimination on the basis of race, color, religion, sex, or national origin and generally applies to employers with 15 or more employees. Title VII violations may involve actions and policies that are intentionally discriminatory, as well as those that, despite being applied neutrally and without intent to discriminate, have a discriminatory effect (disparate impact). The disparate impact theory was first recognized in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), a case that examined an employer’s policy that required employees to have a high school diploma or pass an “intelligence test” to qualify for certain positions. Although these requirements appeared neutral, they disproportionately excluded Black employees and were not shown to be necessary for job performance. As a result, the U.S. Supreme Court held that employment practices that have a discriminatory effect, even if unintentional, may violate Title VII of the Civil Rights Act., unless the employer can prove that the practice is related to job performance.

Pursuant to federal statute, an unlawful employment practice based on disparate impact is established only if (1) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity or (2) the complaining party makes a certain demonstration with respect to an alternative employment practice, as specified.

To demonstrate that a particular employment practice causes a disparate impact, the complaining party must generally demonstrate that each particular challenged employment practice causes a disparate impact. If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent must not be required to demonstrate that such practice is required by business necessity. A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination, as otherwise prohibited by federal statute. Notwithstanding any other provision of the Civil Rights Act, these provisions do not apply to a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as otherwise specified in statute.

State and Local Fiscal Effect: State and local expenditures may increase, *potentially* significantly, to the extent additional complaints of employment discrimination are filed under the bill. While some State entities that were asked to provide an estimate of the bill’s operational and fiscal impact indicate there is no expected effect, generally noting that the bill largely codifies existing case law, others advise of the need for additional resources to handle an anticipated increase in complaints and investigations. The estimates from certain entities are detailed further below for informational purposes only, as the Department of

Legislative Services (DLS) notes that the magnitude of any impact depends on the bill's effect on employment discrimination claims, which cannot be reliably predicted beforehand.

Judiciary: The Judiciary advises that although there are existing protections against particular employer practices that have a disparate impact on a protected characteristic, the bill appears to expand such protections. Specifically, the Judiciary notes that while existing protections also do not require proof of intent to discriminate, the provisions in the bill appear to apply to any acts that have a discriminatory effect, instead of only particular employment practices that have such an effect. Consequently, employers in the State, including the Judiciary, may be subject to increased allegations that certain acts have a discriminatory effect; costs associated with litigation, training, and an extensive review of a wide variety of employment acts that could fall within the broad scope of the bill may be incurred. There may also be an increase in the number of employment discrimination cases handled in the circuit courts.

Maryland Commission on Civil Rights and Office of the Attorney General: Conversely, MCCR and the Office of the Attorney General each advise that they can implement the bill using existing budgeted resources. DLS notes for context that in fiscal 2024, MCCR received 388 complaints alleging unlawful employment discrimination, representing over half of its annual complaint volume.

Department of Budget and Management: The Department of Budget and Management (DBM) estimates the need for additional staff to facilitate an anticipated increase in claims and to develop trainings, policy, and guidance for executive branch agencies. DBM specifically advises of the need for three additional personnel (one assistant Attorney General, one paralegal, and one administrator), with associated expenditures of approximately \$325,000 on an annual basis.

State Treasurer's Office: The State Treasurer's Office (STO) anticipates a minimal fiscal and operational impact on the office and the State Insurance Trust Fund (SITF). According to STO, employment claims may increase slightly under the legislation. STO further advises that any potential resulting payments/settlement awards may be administered by the individual agency (and not SITF); however, STO also specifically notes the potential for an increase in Sheriff claims, with associated effects on SITF and the office. STO advises, however, that because office staff are already working at capacity, additional staff are needed to handle the anticipated increase in claim volume and complexity; associated costs are approximately \$200,000 on an annual basis.

Local Governments: Local governments may be impacted to the extent that increased employment discrimination complaints are filed against local government employers. For instance, the Maryland Municipal League generally notes that if municipal government

employers violate the provisions of the bill, the additional liability may increase costs, such as those associated with insurance premiums.

Small Business Effect: Small businesses may face additional costs (*e.g.*, legal expenses) to the extent employment discrimination claims are filed under the bill's provisions.

Additional Information

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

Designated Cross File: None.

Information Source(s): Maryland Commission on Civil Rights; Maryland Municipal League; Office of the Attorney General; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Department of Budget and Management; Department of Legislative Services

Fiscal Note History: First Reader - February 27, 2025
km/jkb

Analysis by: Amanda L. Douglas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510