



LEGISLATIVE POSITION:

Letter of Information

Senate Bill 473

Discrimination in Employment – Reasonable Accommodations for Applicants With Disabilities

Senate Judicial Proceedings Committee

Tuesday, February 18, 2020

Dear Chairman Davis and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 4,500 members and federated partners, and we work to develop and promote strong public policy that ensures sustained economic growth for Maryland businesses, employees and families. Through our work, we seek to maintain a balance in the relationship between employers and employees within the State through the establishment of policies that promote fairness and ease restrictive burdens.

The Maryland Chamber of Commerce is supportive of the spirit of SB 473, however, there are concerns with the bill text as introduced. The employer community believes that applicants with disabilities are already protected by federal law and note that the implementing regulations for Maryland's reasonable accommodations law already includes applicants. See, e.g. COMAR 14.03.02.05(B)(10), (11) and (12), which specifically refer to "applicants" in the context of accommodations, and COMAR 14.03.02.05(A)(3) states an employer "may not deny an employment opportunity to a qualified individual with a disability," which would include applicants seeking to be employed.

The Maryland Chamber of Commerce is supportive in including a reference to applicants in the law itself, becoming consistent both with federal law and how state law has already been interpreted through regulation. However, the inclusion of the list of reasonable accommodations for applicants in the law itself is inconsistent with how reasonable accommodations for existing employees has been handled previously – which has been to list those items in regulation. SB 473 as written makes the list a legal mandate that is seen as inappropriate for the individualized assessment that is required for each accommodation's situation.

Current regulation provides "examples" of reasonable accommodations "that include" a list of possible accommodations. However, the proposed statutory list of accommodations for applicants does not note that they are in fact "examples," but rather states that reasonable accommodations "include" these items. A primary concern with the bill text is that the list can then be interpreted mandatory item to consider, even if they aren't applicable to the situation. An applicant may then have a right to insist on those outlined accommodations that may not be appropriate for the situation. This is problematic as under both state and federal law an employer is required to provide a reasonable accommodation, but it does not have to be the one preferred by the applicant as long as it is effective in allowing the applicant or employee to perform the

essential job functions. See the EEOC's Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, Question 9.

Furthermore, it is noted that the proposed statutory list is duplicative of some existing regulatory requirements, such as modification of testing and examinations or making facilities accessible generally, which would include interviews. Our belief is that if specific items need to be set forth as examples of reasonable accommodations, the appropriate outlet is the regulatory framework where existing examples of reasonable accommodations for applicants and employees currently exist – not in statute itself.

For these reasons, the Maryland Chamber of Commerce urges the bill sponsor to work alongside stakeholder employers to reach consensus language in support of the spirit of this legislation.

