



Maryland Association for Justice, Inc.

2020 Position Paper

SB 846 & HB 126 – Peace Orders – Workplace Violence FAVORABLE WITH AMENDMENT

The Maryland Association for Justice (MAJ) supports SB 846 & HB 126 with an amendment to clarify that, while the bill authorizes employers to file a petition for a peace order on behalf of their employees, the Legislature does not intend to impose a new legal duty upon employers to file such petitions.

Under current law, a person may file a petition for a peace order under circumstances where the person has been subjected to certain objectionable conduct enumerated in Md. Cts. & Jud. Procs. Code Ann. § 3-1503. SB 846 & HB 126 simply authorizes an employer to seek a peace order on behalf of an employee under the same circumstances.

However, SB 846 & HB 126 further provides (at page 4, lines 30-32) that “an employer shall be immune from any civil liability that may result from the failure of the employer to file a petition on behalf of an employee under the provisions of this subtitle.” This language goes too far.

In general, civil liability for damages requires all of the following: (a) a person has a legal duty to act, (b) the person fails to act in accordance with his or her legal duty, and (c) the failure to act causes harm to another person. Under current law, employers have no exposure to civil liability because they have no legal duty (indeed, they have no authority) to file a petition for a peace order on behalf of an employee.

In authorizing employers to file petitions for peace orders on behalf of their employees, SB 846 & HB 126 empowers employers to act on behalf of their employees *but does not impose a legal duty upon employers to do so*. However, a legal duty to act may arise in ways other than by statute – e.g., by contract, or (more commonly) as customs and practices change over time. By granting immunity (as opposed to limiting the imposition of a new legal duty), SB 846 & HB 126 precludes forever the possibility of civil liability arising from duties created by contract or otherwise. As such, the immunity language in SB 846 & HB 126 is needlessly broad and should be clarified.

SB 846 & HB 126 should be amended to clarify that the statutory authority granted to employers to file a petition for a peace order on behalf of employees is not intended, in and of itself, to impose a legal duty to act upon employers. Such language would protect employers from the creation of a new legal duty, while protecting employees in cases where such a legal duty exists separate and apart from the statute itself.

The Maryland Association for Justice requests that the immunity language in SB 846 & HB 126 (page 4, lines 30-32) be amended to clarify that SB 846 & HB 126 does not impose a duty upon any employer to file a petition on behalf of an employee.