



Maryland

DEPARTMENT OF BUDGET
AND MANAGEMENT

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SENATE BILL 834 Harassment and Sexual Harassment – Definitions – Employment Discrimination and Sexual Harassment Prevention Training (Smith)

STATEMENT OF INFORMATION

DATE: February 24, 2021

COMMITTEE: Senate Judicial Proceedings

SUMMARY OF BILL: SB 834 alters the definition of “harassment” and “sexual harassment” in employment discrimination claims against public and private employers by removing the long-established legal precedent that requires the harassment/sexual harassment to be “sufficiently severe or pervasive” to be actionable; and requires sexual harassment training for State employees to be modified accordingly.

EXPLANATION: The Statewide Equal Employment Opportunity (EEO) Coordinator, under the direction of the Deputy Secretary of the Department of Budget and Management, administers Maryland's Equal Employment laws and policies. The Coordinator assists and educates State agency personnel responsible for fair practices, equal employment opportunities, and the Americans with Disabilities Act. The EEO Coordinator investigates charges of discrimination, unfair employment practices, and whistleblower complaints, and reviews appeals of decisions in equal employment opportunity cases filed against State agencies. In addition, the EEO Coordinator is responsible for implementing the sexual harassment/harassment training of Department of Budget and Management personnel and enforcement of state agencies' compliance, as required by St. Personnel & Pensions Art., Section 2-203.1.

The bill alters the State definition of “harassment” and “sexual harassment” in employment discrimination claims by removing the long-established legal precedent that requires the harassment to be “sufficiently severe or pervasive” for a violation to occur. Removing that standard makes the determination of the EEO investigation and Coordinator much more subjective and prone to varying interpretations.

Under the current standard, announced by the United States Supreme Court and cited by the Maryland courts, for alleged harassing behavior to be actionable the decision maker looks to its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. As stated by the United States Supreme Court, this current standard guards against an anti-discrimination law becoming a “general civility code.” EEO would no longer be able to rely upon the multitude of decisions made in both the federal and Maryland courts in analyzing whether a harassment claim meets the "severe or pervasive" standard so as to be actionable under anti-discrimination laws.

This bill would result in more internal complaints being filed with state agencies and with Maryland Commission on Civil Rights. Broadening the definition of harassment invites additional complaints, necessitating additional EEO officers to investigate complaints. The bill provides great potential for disparate outcomes.

**For additional information, contact Barbara Wilkins at
(410) 260-6371 or barbara.wilkins1@maryland.gov**