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Judicial Proceedings Committee

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

**Testimony Regarding SB 455
Employment Discrimination – Time for Filing Complaints
Before the Senate Judicial Proceedings Committee
On February 9, 2021**

Good afternoon Mr. Chairman, members of the Judicial Proceedings Committee

Maryland has been dedicated to ensuring equal employment opportunity for over half a century.¹ The Maryland Commission on Civil Rights empowers employees to enforce their rights to equal employment. The power to correct employment discrimination, however, is limited by time. It takes time to obtain representation, to reach out to the Commission, or to generally build a case.

Discrimination claims are not clean cut. Direct evidence of employer discrimination is very rare,² so most claimants must rely on circumstantial evidence to establish an employment discrimination complaint:

Absent direct evidence. . . plaintiff must first demonstrate a prima facie case of disparate treatment, which requires Plaintiff to show that: (1) he is a member of a protected class; (2) he was performing at a level that met his employer’s legitimate expectations at the time of the adverse employment action; (3) he suffered an adverse employment action; and (4) his employer treated similarly situated employees outside his protected class more favorably.³

Time is critical in establishing an employment discrimination claim because a claimant usually must demonstrate that the adverse employment action is close in time to the discriminatory treatment.⁴ If a discriminatory remark is deemed a “stray comment,” or if retaliation lags after an inciting event, then valid claims may be dismissed as a matter of

¹ MD. CODE ANN., STATE GOV’T § 20-602. State Policy.

² See Kerri Lynn Stone, *Shortcuts in Employment Discrimination Law*, 56 ST. LOUIS L.J. 111, 135 (2011) (“bias in the workplace tends, due to cultural, social, and even legal pressures, to be repressed and unexpressed explicitly.”)

³ *Dones v. Donahoe*, 987 F.Supp. 2d 659, 667 (D. Md. 2013).

⁴ Stone, *supra* note 2, at 134–41.

law before addressing the merits.⁵ The implicit need to establish a pattern means that claimants need time to build their cases.

Currently, Marylanders have only six months (180 days) in which to file an employment discrimination complaint with the MCCR.⁶ Senate Bill 455 will extend the time for filing from 180 days to 300 days, allowing employees facing discrimination more time in which to recover from the discriminatory event and to obtain assistance in taking action against the discrimination. Extending the filing time in Maryland to 300 days will also put the State in sync with federal law, which permits employees 300 days to file an employment discrimination complaint in the event that they have already filed a complaint with their local or state agency.⁷

Marylanders are routinely impacted by the limited timeframe in which to file complaints. Glendora Hughes, general counsel to the Maryland Commission on Civil Rights, reported that the agency receives “3 to 8” untimely complaints per month.⁸ This does not account for the employees who report directly to the EEOC, or those who are discouraged from filing at all.

Our laws should reflect the reality that vindicating a claim of employment discrimination takes time, and six months is not good enough. For these reasons, I urge you to vote in support of SB 455.

⁵ *Id.*

⁶ MD. CODE ANN., STATE GOV'T § 20-1004(c)(1)(i).

⁷ 42 U.S.C. § 2000e-5(e)(1).

⁸ Email correspondence 01/31/2021.