

State of Maryland

Commission on Civil Rights

"Our vision is to have a State that is free from any trace of unlawful discrimination."



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February 24, 2021

Senate Bill 834 – Harassment and Sexual Harassment – Definitions – Employment Discrimination and Sexual Harassment Prevention Training POSITION: Letter of Concern

Dear Chairperson Smith, Vice Chairperson Waldstreicher, and Members of the Senate Judicial Proceedings Committee:

The Maryland Commission on Civil Rights ("MCCR"; "The Commission") is the State agency responsible for the enforcement of laws prohibiting discrimination in employment, housing, public accommodations, and state contracts based upon race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, gender identity, genetic information, physical and mental disability, and source of income.

Senate Bill 834 removes the definition of harassment, which includes sexual harassment, currently codified in the State Personnel & Pensions Article of the Code of Maryland. It further rewrites these definitions for both "harassment" and "sexual harassment" in Title 20 of the State Government Article, which is MCCR's statute of jurisdiction.

While the Maryland Commission on Civil Rights supports the intent behind SB834 to place the definition in MCCR's statute, we have concerns that the proposed revisions may have an adverse and unintended impact on protecting individuals from unlawful harassment. The current definition in §2-203.1 of the State Personnel & Pensions Article is based on decades of established case law recognized across the United States, including the United States Equal Employment Opportunity Commission ("EEOC"). The definitions in SB834, however, broaden the types of interpersonal interactions that could potentially be considered harassment by an aggrieved individual. The added language to the definitions of harassment and sexual harassment SB834 is unclear.

Additionally, SB834 uses the term "reasonable victim of discrimination" which is not defined in the bill, existing law, or case law. Guidance and clarity is needed for compliance and for enforcement to carry out the legislative intent of the bill's provisions.

The Maryland Commission on Civil Rights welcomes the opportunity to further discuss this bill in order to address the agency's concerns, while simultaneously ensuring that any amendment to Title 20 equally and effectively protects all in Maryland from unlawful discrimination, harassment, and retaliation.

Thank you for your time and consideration of the information contained in this letter. The Maryland Commission on Civil Rights looks forward to the continued opportunity to work with you to improve and promote civil rights in Maryland.