

Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 536

(Delegate Smith, *et al.*)

Government, Labor, and Elections

Judicial Proceedings

**Employment Discrimination - Reasonable Accommodations - Disabilities Due to
Childbirth, Menopause, and Related Medical Conditions**

This bill expands certain protections against employment discrimination based on an individual’s disability to include those temporary disabilities caused or contributed to by childbirth, menopause, or a “related medical condition”. The bill generally incorporates childbirth, menopause, or related medical condition into statutory provisions that govern reasonable accommodations that are required based on disabilities caused or contributed to by pregnancy. The bill authorizes an employer to consider the operational impact of any staffing gap created by an employee’s transfer request to a less strenuous or hazardous position for the duration of the disability, including the availability of other personnel to perform the duties of the transferred employee and the cost and feasibility of temporary coverage. “Related medical condition” includes (1) lactation or the need to express breast milk for a nursing child and (2) the need to manage the effects of vasomotor symptoms related to menopause.

Fiscal Summary

State Effect: It is assumed that the Maryland Commission on Civil Rights (MCCR), Judiciary, and the Office of Administrative Hearings (OAH) can handle any additional complaints arising under the bill using existing resources. The bill is otherwise not anticipated to materially affect State operations or finances, as discussed below.

Local Effect: The bill is generally not anticipated to materially affect local government operations or finances, as discussed below.

Small Business Effect: Minimal.

Analysis

Current Law: In general, statute provides protections for an individual experiencing disabilities due to pregnancy and childbirth.

Disabilities caused or contributed to by pregnancy or childbirth are temporary disabilities for all job-related purposes and must be treated as temporary disabilities under any health or disability insurance or sick leave plan available in connection with employment. Further, written and unwritten policies and practices involving certain matters (*e.g.*, the commencement and duration of leave, the availability of extensions of leave, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any insurance or sick leave plan), whether formal or informal, must be applied to disabilities due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

Accommodations: If an employee requests a reasonable accommodation, the employer must explore with the employee all possible means of providing the reasonable accommodation, including (1) changing the employee's job duties; (2) changing the employee's work hours; (3) relocating the employee's work area; (4) providing mechanical or electrical aids; (5) transferring the employee to a less strenuous or less hazardous position; or (6) providing leave. If an employee requests transfer to a less strenuous or less hazardous position as a reasonable accommodation, the employer must transfer the employee for a period of time up to the duration of the employee's pregnancy, as specified.

Certification of Medical Advisability: An employer may require an employee to provide a certification from the employee's health care provider concerning the medical advisability of a reasonable accommodation to the same extent a certification is required for other temporary disabilities. A certification must include the date the reasonable accommodation became medically advisable, the probable duration of the reasonable accommodation, and an explanatory statement as to the medical advisability of the reasonable accommodation.

Notice of Employee's Rights: An employer must post in a conspicuous location, and include in any employee handbook, information concerning an employee's rights to reasonable accommodations and leave for a disability caused or contributed to by pregnancy.

Miscellaneous: An employer may not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right described above. Statute may not be construed to affect any other provision of law relating to discrimination on the basis of sex or pregnancy or diminish in any way the coverage of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

Maryland Commission on Civil Rights

Initial Process: MCCR is the independent State agency charged with the enforcement of laws prohibiting discrimination in employment. An individual alleging employment discrimination may file an inquiry with MCCR, which initiates the intake process. Once a complaint has been properly filed, the case is assigned to an MCCR investigator to determine whether there is probable cause that discrimination has occurred. If at the conclusion of the investigatory stage, MCCR believes there is probable cause that discrimination occurred, MCCR issues a finding and attempts to resolve the matter through conciliation. If an agreement to remedy and eliminate the discrimination cannot be reached, the matter is certified for litigation and may proceed in a number of ways, including being heard before an administrative law judge.

A complaint alleging an unlawful employment practice other than harassment must be filed within 300 days after the alleged act (a complaint alleging harassment must be filed within two years). However, complaints filed with a federal human relations commission or a local human relations commission within specified timeframes are deemed to be in compliance with these requirements.

Administrative Proceedings: At an administrative hearing, MCCR's Office of the General Counsel presents the case on behalf of the complainant. Remedies available on a finding by an administrative law judge that the respondent (employer) is engaging or has engaged in an unlawful employment practice include (1) enjoining the respondent from engaging in the discriminatory act; (2) ordering appropriate affirmative relief (including the reinstatement or hiring of employees, with or without back pay); (3) awarding compensatory damages; and (4) ordering any other equitable relief that the judge considers appropriate.

Compensatory damages that are awarded (for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, or nonpecuniary losses) are in addition to back pay, interest on back pay, and any other equitable relief that the complainant may recover under any other provision of law. The maximum amounts of compensatory damages that may be awarded are as follows:

- \$50,000 for respondents with 15 to 100 employees;
- \$100,000 for respondents with 101 to 200 employees;
- \$200,000 for respondents with 201 to 500 employees; and
- \$300,000 for respondents with 501 or more employees.

If back pay is awarded, the award must be reduced by any interim earnings or amounts earnable with reasonable diligence by the person discriminated against. In addition to any

other authorized relief, a complainant may recover back pay for up to two years preceding the filing of the complaint if the unlawful employment practice that has occurred during the complaint filing period is similar or related to an unlawful employment practice with regard to discrimination in compensation that occurred outside the time for filing a complaint.

Civil Actions: A complainant or a respondent may elect to have the claims asserted in a complaint alleging an unlawful employment practice determined in a civil action brought by MCCR on the complainant's behalf if (1) MCCR has found probable cause to believe the respondent has engaged or is engaging in an unlawful employment practice and (2) there is a failure to reach an agreement to remedy and eliminate the practice. MCCR may also elect to have the claims asserted within the complaint determined in a civil action brought on its own behalf under the same conditions. On a finding that discrimination occurred, the circuit court may provide the same remedies that an administrative law judge is authorized to provide (described above).

A complainant may also file a private civil action in circuit court against the respondent if (1) the complainant initially filed a timely administrative charge or a complaint under federal, State, or local law alleging an unlawful employment practice by the respondent and (2) at least 180 days have elapsed since the filing of the administrative charge or complaint. In addition, the civil action must be filed within two years after the alleged employment practice occurred (or within three years for a harassment allegation); however, these time limitations are tolled while an administrative charge or complaint is pending. The filing of a civil action automatically terminates any proceeding before MCCR based on the underlying administrative complaint.

In addition to the remedies described above, a circuit court may also award punitive damages in a private civil action if the respondent is not a governmental unit or political subdivision, and the court finds that the respondent is engaging or has engaged in an unlawful employment practice with actual malice. If the court awards punitive damages, the sum of the amount of compensatory damages and punitive damages may not exceed the applicable limitations on compensatory damages (as shown above). If a complainant seeks compensatory or punitive damages in a circuit court action, any party may demand a jury trial, and the court may not inform the jury of the statutory limitations on compensatory and punitive damages.

Pursuant to § 20-1015 of the State Government Article, a court may award the prevailing party reasonable attorney's fees, expert witness fees, and costs.

Americans with Disabilities Act (ADA), Amendments Act of 2008

Pursuant to 42 U.S.C. § 12102, “disability” means, with respect to an individual (1) a physical or mental impairment that substantially limits one or more major life activities of such individual; (2) a record of such an impairment; or (3) being regarded as having such an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. The ADA was amended in 2008, requiring the definition of “disability” be construed in favor of broad coverage of individuals to the maximum extent permitted.

In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include, among other things, (1) the nature and cost of the accommodation needed; (2) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; and (3) the effect on expenses and resources, or the impact otherwise of such accommodation on the facility.

State/Local Fiscal Effect: Generally, State and local expenditures are not anticipated to be materially impacted under the bill. The Department of Legislative Services notes that employers may already provide accommodations for recognized medical needs arising from childbirth and menopause in accordance with the ADA; further, while there may be an increase in requests for certain accommodations, requests will still have to meet the threshold of being reasonable.

For example, Charles County advises that any disability caused by a medical need would be accommodated under current practice. Similarly, Howard and Baltimore counties anticipate, despite a potential increase in requests for accommodations, implementing the bill with existing resources. Anne Arundel County, however, advises that expenditures may increase indeterminately.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Maryland Commission on Civil Rights; Anne Arundel, Baltimore, Charles, Dorchester, Garrett, and Howard counties; Judiciary (Administrative Office of the Courts); Department of Budget and Management; Office of Administrative Hearings; Department of Legislative Services

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