

Workplace Harassment Commission

Subcommittee on Scope of Work

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Initial Compilation of Issues/Recommendations for Commission Consideration

Please note that this list is not represented to be comprehensive, nor are the items in any particular order.

Potential Amendments to HB 1342 (2018)

1. The General Assembly workplace includes both the press and lobbyists; both groups are addressed in HB 1342, however, questions remain about who should address complaints involving these groups.
2. The definition of “workplace” may need revision or clarification. The “workplace” of the General Assembly includes public spaces, but also legislative receptions and, potentially, other locations. What is included in the term “workplace” and does this include establishments in downtown Annapolis (or elsewhere) during the legislative session?
3. The enactment of HB 1342 set an indefinite time limit (i.e., the wording would suggest no expiration) banning members of the Commission being from participating in any future investigatory contracts on sexual harassment matters arising from the General Assembly (and the Executive Branch?). Based on national best practices standards, that waiting period should probably be limited to a specific time period from Commission conclusion (or resignation from membership) and be extended to also include a waiting period for anyone after service in the General Assembly or any Maryland elective or judicial office, or any salaried employment by the State of Maryland.
4. The intent of the legislature appears to include ensuring that a variety of individuals or firms would be contracted as independent investigators to complete reviews of specific sexual harassment incidents. It might make sense to set a cap on the number of contracts that could be awarded consecutively to any individual or firm – such as no more than 1 out of 4, or 1 out of 5 – to ensure a diverse pool of vendors was contracted and developed expertise.

Potential New Legislation

1. The National Women’s Law Center has identified several statutory changes that would assist victims of sexual harassment. These are listed below with annotations regarding Maryland law:
 - a. **# and type of workers protected under anti-discrimination law**

Federal Law: Employers with 15 or more employees, independent contractors not covered

Maryland Law: Employers with 15 or more employees (State Government Article § 20-601 (d)), statute applies to “employees,” independent contractors not covered

Note: Balt. County: “employers” = 1 or more employee (§ 29-2-201(b) of Balt. County Code).

Suggested statutory change: amend code to expand definition of “employee” and “employer”

Note: Maryland House Bill 1659 (2017 session) would have changed the definition of “employer” to person who employs one or more employee.

California’s law prohibits harassment of employees, job applicants, unpaid interns, volunteers, and any person “providing service pursuant to a contract.”

b. **Who can be held liable?**

Federal Law: individuals cannot be held liable. Employers have a heightened obligation to address harassment by a supervisor. *Vance v. Ball State* 133 S.Ct. 2434 (2013) held that low-level supervisors without hiring/firing power are classified as co-workers.

Maryland Law: Individuals cannot be held liable. Only “employers,” “employment agencies,” “labor organizations,” and “training programs” (State Government Article § 20-606).

Note: Howard, Montgomery, and Prince George’s County permits a civil action for a discriminatory act prohibited by the county code against “the person that committed the alleged discriminatory act” (State Government Article § 20-1202).

Suggested statutory change: expand definition of “supervisor,” and legislation to enable victims to sue individuals under Maryland antidiscrimination law.

c. **Time Limits**

Federal Law: 180 days to file with federal EEOC, 300 days if the local state agency has a similar law.

Maryland Law: 6 months to file with local or federal Unit (State Government Article § 20-1004).

Civil actions: If the commission finds probable cause to believe that a discriminatory act occurred, and no agreement was reached, either party may elect to have the claim asserted in a civil action within 30 days. The commission may elect to assert the action with no time restriction.

Note re: civil actions – In Howard, Montgomery, and Prince George’s County, an employee may bring a civil action for employment discrimination no sooner than 45 days after the person has filed a complaint with the county unit and up to two years after the discriminatory act (State Government Article § 20-1202).

In Baltimore County, A person employed by an employer with *fewer than 15 employees* may commence an employment discrimination action in the Circuit Court no sooner than 60 days after filing a complaint and within 2 years after the (State Government Article § 20-1203).

Suggested statutory change: Expanded time-frame (*cf.* recent changes in statute of limitations on civil actions involving child sexual abuse).

Aligning Procedures Across Agencies:

1. Compilation of Statistics – the Commission might consider recommending that statistics compiled by various state agencies be synchronized to follow identical formats, which would include matrices for intersection of various types of harassment (as defined in Maryland law) and methods for indicating when incidents involved either repeat violators or victims.
2. Training – A variety of questions have been raised about training quality and effectiveness, across the gamut of training needs: for employees, supervisors, and specialized training for personnel dedicated to handling harassment complaints. The Commission might examine training requirements and what types of training have proven more or less effective.

Best Practices

1. Mandatory Reporting / 3rd Party Reporting – the Commission has heard advocacy on both sides of mandatory reporting – that it helps create a culture of prevention and that it undermines efforts to get more victims to come forward and may be disrespectful to the individual decisions of victims. Concerns have also been raised about the effectiveness of creating pathways for 3rd party reporting. The Commission may wish to examine these issues in more depth.
2. Anonymous Complaints – questions about how to deal with anonymous complaints raise a host of issues, from constitutionality concerns for the rights of the accused to creating mechanisms that capture patterns of potential serial violators without allowing for abuse (by a single complainant that files multiple anonymous reports, or as another means for harassment by filing unfounded reports). The Commission may wish to examine these issues in more depth.
3. Self-help for Victims – respect for individual decision-making and autonomy of victims is an important consideration when developing responses to harassment. Some states and institutions have developed materials and training to support victims who wish to respond to harassment directly; others have expressed concern that “self-help” procedures can continue patterns of hiding harassment. The Commission may wish to examine these issues in more depth.

Longer-Term Issues

1. Longer-Term Issues – After examining the panoply of issues raised, the Commission may wish to refer some for further exploration, either by the legislature or by a future incarnation of the Commission. If there are specific categories of harassment that prove to need handling distinctly different from sexual harassment cases, the Commission may also recommend that another body be established to examine those issues.