

Workplace Harassment Legislation Passed During the 2018 Session

Senate Bill 1010/House Bill 1596 establish that, except as prohibited by federal law, a provision in an employment contract, policy, or agreement that waives any substantive or procedural right or remedy to a claim that accrues in the future of sexual harassment, or retaliation for reporting or asserting a right or remedy based on sexual harassment, is null and void as being against the public policy of the State. An employer with 50 or more employees must annually for two years submit a short survey – by July 1, 2020, and by July 1, 2022 – to the Maryland Commission on Civil Rights on sexual harassment settlements. The commission must publish aggregated information from the surveys on its website, retain responses for public inspection on request, and create an executive summary on a random selection of surveys by December 15, 2020, and by December 15, 2022.

House Bill 1228 requires Executive Branch units to include information about sexual harassment policies and prevention training and a summary of sexual harassment complaints filed, investigated, resolved, and pending in the required annual report that is submitted to the Equal Employment Opportunity (EEO) coordinator. Each unit of the Executive Branch of State government must submit an annual report to the EEO coordinator about the activities that the unit undertook in that fiscal year to implement the EEO program, including (1) information about personnel practices within the unit; (2) a summary of complaints filed, investigated, resolved, and pending; and (3) information about relations with other units of State government. House Bill 1228 (passed) requires each Executive Branch unit to include information about sexual harassment policies and prevention training and a summary of sexual harassment complaints filed, investigated, resolved, and pending in its annual report to the EEO coordinator.

House Bill 1342 is an emergency bill that makes several changes related to antiharassment procedures, policies, and training applicable to State government, including (1) prohibiting Executive Branch officials from unlawfully harassing or discriminating against an official, employee, intern, page, fellow, lobbyist, or member of the press; (2) requiring the Legislative Policy Committee (LPC) to update its antiharassment policy and procedures governing members and employees of the General Assembly; (3) requiring the Joint Committee on Legislative Ethics (Ethics Committee) to review complaints involving General Assembly members that allege violations of the policy and procedures adopted by the LPC; (4) establishing antiharassment duties and procedures for the State Ethics Commission relating to regulated lobbyists; and (5) establishing specific prohibitions relating to sexual harassment for lobbyists.

The bill requires that, unless the victim objects, the Ethics Committee must refer harassment or discrimination complaints against members of the General Assembly to an outside and independent investigator. The investigator shall evaluate and investigate the complaint unless the investigator recommends dismissal. After the investigation is completed, the investigator must submit findings and recommendations to the Ethics Committee, which are relayed to the complainant. The investigation can be delayed if the matter has been referred to a prosecuting authority. The bill prohibits State funds from being used to settle a claim of harassment or discrimination filed against a State official or employee.

On or before December 15, 2018, LPC must update the antiharassment policies and procedures governing members and employees of the General Assembly, and include provisions prohibiting harassment of members of the press. Going forward, LPC is required to review and update antiharassment policies and procedures at least once every two years in order to create and maintain an environment in which all members and employees are treated with respect and are free from unlawful discrimination and harassment. The Executive Director of the Department of Legislative Services (DLS) must maintain electronic records of each member of the General Assembly, each General Assembly employee, and each DLS employee who completes workplace harassment prevention training. These records must be published on the General Assembly website. The bill also prohibits lobbyists from harassing or discriminating against an official, employee, intern, page or fellow of any branch of State government; a lobbyist; or a member of the press. The State Ethics Commission is required to provide training to lobbyists on discrimination and harassment. Finally, the bill provides that a current or former member of the Workplace Harassment Commission may not serve as an outside and independent investigator.

House Bill 1423 requires all State employees to complete a cumulative two hours of in-person or virtual interactive training on sexual harassment prevention within six months of an employee's initial appointment and every two years thereafter. For Executive Branch units, the EEO coordinator must enforce the requirements of the bill and may recommend that a performance audit or review be performed by the Office of Legislative Audits if the EEO coordinator determines that a unit has not complied with the bill.