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Maryland Law Creates Jury Trial Right for Employee Claims

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On October 1, 2007, several changes to the Maryland Fair Employment Practices Act (“Maryland FEP Act”) came into law which affect all Maryland employers with fifteen (15) or more employees. Employees now have the right, under certain circumstances, to bring a private cause of action against employers in state court for alleged violations of the Maryland FEP Act. In addition, the potential scope of relief for employees has been significantly expanded to include compensatory and punitive damages, as well as attorney’s fees, expert witness fees, and costs.

As a result of the amendments, employees no longer have to wait indefinitely for the Maryland Human Relations Commission (the “Commission”) to process their charges of discrimination before obtaining relief. Employees will likely find the option of filing suit in state court particularly attractive due to the availability of a jury trial, punitive damages, attorney’s fees, expert witness fees, and costs, none of which are currently available during a hearing before an administrative law judge at the Commission.

Under the Maryland FEP Act, an aggrieved employee (“complainant”) must file an administrative complaint with the Commission or a federal human relations commission. The Commission will investigate the administrative complaint and determine whether there is probable cause to believe that a discriminatory act occurred. Prior to October 1, 2007, if the Commission found such probable cause and the parties could not agree on measures to eliminate the discrimination, then the complainant’s only option was a to proceed with a public hearing before a hearing examiner. The hearing examiner could have ordered only reinstatement, back pay, and other equitable relief. An award of back pay was capped at 36 months of back pay.

Amendments

The most significant changes to the Maryland FEP Act allow civil actions to be brought in state court. The Maryland FEP Act still requires that the complainant first file an administrative complaint. However, once 180 days have passed from the date of filing the administrative complaint, the complainant is entitled to file a civil action in state court, regardless of the outcome of the administrative complaint. If the state court finds that the employer engaged in an unlawful employment practice, the court may award to the complainant an uncapped amount of back pay, and award interest on the back pay, compensatory damages, reasonable attorney’s fees, expert witness fees, and costs. Except where the employer is a government entity, the court may also award punitive damages if it finds that the employer acted with actual malice. There are caps on the sum of the amount of compensatory and punitive damages that may be awarded. The caps vary with the size of the employer, with a \$300,000 cap for employers with 501 or more employees. Finally, where compensatory or punitive damages are sought, any party can demand a jury trial.

Additional amendments to the Maryland FEP Act allow the Commission to bring a civil action on the Commission’s behalf or on the complainant’s behalf upon the complainant’s election. The complainant must make the election within 30 days of service of the administrative complaint. The Commission may bring such civil actions if the Commission first makes a finding that the employer engaged in discriminatory conduct, and if the parties cannot agree on the remedy and elimination of

the discriminatory conduct. Unlike civil actions brought by the complainant, punitive damages, attorney's fees, expert witness fees, and costs may not be awarded in civil actions brought by the Commission. However, compensatory damage awards are subject to similar caps based on the size of the employer.

Last, there are new remedies for administrative complaints that are not brought to state court. Even if the complaint is not filed in state court by the complainant or the Commission, the complainant is still entitled to an administrative hearing before an administrative law judge. As of October, an administrative law judge is now able to award an uncapped amount of back pay and interest *and* can award compensatory damages. Again, the amount of compensatory damages is limited by the employer's size.

What the Amendments Mean for Employers

The new remedies that the amendments provide to complainants increase the likelihood that complainants who believe that they have been discriminated against will file lawsuits. Because the Maryland FEP Act provides the options of a jury trial and punitive damages to those who choose to litigate, a trial may likely be more attractive to a complainant than an administrative hearing that does not provide these options. Further, the process of filing a lawsuit under the Maryland FEP Act is easier than filing a lawsuit under Title VII of the Civil Rights Act. Under the Maryland FEP Act, a complainant need only wait 180 days after filing the administrative complaint to file a lawsuit, whereas a complainant wishing to file a lawsuit based on discrimination in violation of Title VII generally needs to wait until a right-to-sue letter has been issued, which can take more than 180 days.