

Chapter 739

(Senate Bill 1010)

AN ACT concerning

~~Labor and Employment – Sexual Harassment – Contractual Waivers and
Reporting Requirements~~
Disclosing Sexual Harassment in the Workplace Act of 2018

FOR the purpose of providing that, ~~except as provided~~ prohibited by federal law, a provision in certain employment contracts, policies, or agreements that waive certain rights or remedies to a claim of sexual harassment, ~~discrimination~~, or certain retaliation is null and void as being against the public policy of the State; prohibiting an employer from taking certain adverse actions against certain employees; providing that certain employers are liable for certain attorney's fees; requiring certain employers to submit a certain ~~report~~ survey to the Commission on Civil Rights on or before ~~a~~ certain ~~date~~ dates each year; requiring employers to submit a certain survey electronically; requiring the Commission to include a certain space in a certain survey for a certain purpose; requiring the Commission to publish and make accessible to the public on the Commission's website certain reports; certain information in a certain manner; requiring the Commission to take certain actions related to certain surveys and submit a certain executive summary to the Governor and certain committees of the General Assembly on or before a certain date each year; dates; providing for the termination of certain provisions of this Act; defining certain terms; providing for the application of this Act; and generally relating to sexual harassment in the workplace.

BY adding to

Article – Labor and Employment
Section 3-715
Annotated Code of Maryland
(2016 Replacement Volume and 2017 Supplement)

~~BY repealing and reenacting, without amendments,~~

~~Article – State Government
Section 20-101(a) and (b)
Annotated Code of Maryland
(2014 Replacement Volume and 2017 Supplement)~~

~~BY adding to~~

~~Article – State Government
Section 20-208
Annotated Code of Maryland
(2014 Replacement Volume and 2017 Supplement)~~

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Labor and Employment

3-715.

(A) ~~(1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A~~ EXCEPT AS PROHIBITED BY FEDERAL LAW, A PROVISION IN AN EMPLOYMENT CONTRACT, POLICY, OR AGREEMENT THAT WAIVES ANY ~~FUTURE~~ SUBSTANTIVE OR PROCEDURAL RIGHT OR REMEDY TO A CLAIM THAT ACCRUES IN THE FUTURE OF SEXUAL HARASSMENT, DISCRIMINATION, 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.

~~(2) PARAGRAPH (1) OF THIS SECTION MAY NOT BE CONSTRUED TO APPLY TO THE TERMS OF A COLLECTIVE BARGAINING AGREEMENT.~~

(B) (1) AN EMPLOYER MAY NOT TAKE ADVERSE ACTION AGAINST AN EMPLOYEE BECAUSE THE EMPLOYEE FAILS OR REFUSES TO ENTER INTO AN AGREEMENT THAT CONTAINS A WAIVER THAT IS VOID UNDER SUBSECTION (A) OF THIS SECTION.

(2) ADVERSE ACTION PROHIBITED UNDER THIS SUBSECTION INCLUDES:

~~(I) FAILURE TO HIRE;~~

~~(II) DISCHARGE;~~

~~(III) (II)~~ SUSPENSION;

~~(IV) (III)~~ DEMOTION;

~~(V) (IV)~~ DISCRIMINATION IN THE TERMS, CONDITIONS, OR PRIVILEGES OF EMPLOYMENT; OR

~~(VI) (V)~~ ANY OTHER RETALIATORY ACTION THAT RESULTS IN A CHANGE TO THE TERMS OR CONDITIONS OF EMPLOYMENT THAT WOULD DISSUADE A REASONABLE EMPLOYEE FROM MAKING A COMPLAINT, BRINGING AN ACTION, OR TESTIFYING IN AN ACTION REGARDING A VIOLATION OF THIS SECTION.

(C) AN EMPLOYER WHO ENFORCES OR ATTEMPTS TO ENFORCE A PROVISION THAT VIOLATES SUBSECTION (A) OF THIS SECTION SHALL BE LIABLE FOR THE EMPLOYEE’S REASONABLE ATTORNEY’S FEES AND COSTS.

~~Article State Government~~

~~20-101.~~

~~(a) In Subtitles 1 through 11 of this title the following words have the meanings indicated.~~

~~(b) “Commission” means the Commission on Civil Rights.~~

~~20-208.~~

~~(A) IN THIS SECTION, “EMPLOYER” MEANS AN EMPLOYER WITH 50 OR MORE EMPLOYEES.~~

~~(B) (1) ON OR BEFORE JANUARY JULY 1 EACH YEAR, AN EMPLOYER SHALL SUBMIT A REPORT SHORT SURVEY TO THE COMMISSION ON:~~

~~(1) (I) THE NUMBER OF SETTLEMENTS MADE BY OR ON BEHALF OF THE EMPLOYER AFTER AN ALLEGATION OF SEXUAL HARASSMENT BY AN EMPLOYEE;~~

~~(2) (II) THE NUMBER OF TIMES THE EMPLOYER HAS PAID A SETTLEMENT TO RESOLVE A SEXUAL HARASSMENT ALLEGATION AGAINST THE SAME EMPLOYEE OVER THE PAST 20 10 YEARS OF EMPLOYMENT; AND~~

~~(3) (III) THE NUMBER OF SETTLEMENTS MADE AFTER AN ALLEGATION OF SEXUAL HARASSMENT THAT INCLUDED A PROVISION REQUIRING BOTH PARTIES TO KEEP THE TERMS OF THE SETTLEMENT CONFIDENTIAL.~~

~~(2) (I) AN EMPLOYER SHALL SUBMIT THE SURVEY REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION TO THE COMMISSION ELECTRONICALLY.~~

~~(II) THE COMMISSION SHALL INCLUDE IN THE SURVEY A SPACE FOR AN EMPLOYER TO REPORT WHETHER THE EMPLOYER TOOK PERSONNEL ACTION AGAINST AN EMPLOYEE WHO WAS THE SUBJECT OF A SETTLEMENT INCLUDED IN THE SURVEY UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION.~~

~~(C) (1) THE COMMISSION SHALL PUBLISH AND MAKE ACCESSIBLE TO THE PUBLIC; ON THE COMMISSION’S WEBSITE EACH EMPLOYER’S ANNUAL REPORT REQUIRED UNDER SUBSECTION (B) OF THIS SECTION.~~

~~(I) BY POSTING ON THE COMMISSION'S WEBSITE, THE AGGREGATE NUMBER OF RESPONSES FROM EMPLOYERS FOR EACH ITEM LISTED UNDER SUBSECTION (B) OF THIS SECTION; AND~~

~~(II) BY RETAINING FOR PUBLIC INSPECTION ON REQUEST, THE RESPONSE FROM A SPECIFIC EMPLOYER REGARDING THE NUMBER OF SETTLEMENTS INCLUDED IN THE SURVEY UNDER SUBSECTION (B)(1)(II) OF THIS SECTION.~~

~~(2) ON OR BEFORE DECEMBER 15 EACH YEAR, THE COMMISSION SHALL:~~

~~(I) REVIEW A RANDOM SELECTION OF SURVEYS SUBMITTED UNDER SUBSECTION (B) OF THIS SECTION;~~

~~(II) CREATE AN EXECUTIVE SUMMARY OF THE RANDOMLY SELECTED SURVEYS, REDACTING ANY IDENTIFYING INFORMATION FOR SPECIFIC EMPLOYERS; AND~~

~~(III) SUBMIT THE EXECUTIVE SUMMARY TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THIS ARTICLE, THE SENATE FINANCE COMMITTEE AND THE HOUSE ECONOMIC MATTERS COMMITTEE.~~

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) (1) In this section the following words have the meanings indicated.

(2) "Commission" means the Maryland Commission on Civil Rights.

(3) "Employer" means an employer with 50 or more employees.

(b) (1) On or before July 1, 2020, and on or before July 1, 2022, an employer shall submit a short survey to the Commission on:

(i) the number of settlements made by or on behalf of the employer after an allegation of sexual harassment by an employee;

(ii) the number of times the employer has paid a settlement to resolve a sexual harassment allegation against the same employee over the past 10 years of employment; and

(iii) the number of settlements made after an allegation of sexual harassment that included a provision requiring both parties to keep the terms of the settlement confidential.

(2) (i) An employer shall submit the survey required under paragraph (1) of this subsection to the Commission electronically.

(ii) The Commission shall include in the survey a space for an employer to report whether the employer took personnel action against an employee who was the subject of a settlement included in the survey under paragraph (1)(ii) of this subsection.

(c) (1) The Commission shall publish and make accessible to the public:

(i) by posting on the Commission's website, the aggregate number of responses from employers for each item listed under subsection (b) of this section; and

(ii) by retaining for public inspection on request, the response from a specific employer regarding the number of settlements included in the survey under subsection (b)(1)(ii) of this section.

(2) On or before December 15, 2020, and on or before December 15, 2022, the Commission shall:

(i) review a random selection of surveys submitted under subsection (b) of this section;

(ii) create an executive summary of the randomly selected surveys, redacting any identifying information for specific employers; and

(iii) submit the executive summary to the Governor and, in accordance with § 2-1246 of the State Government Article, the Senate Finance Committee and the House Economic Matters Committee.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall apply to any employment contract, policy, or agreement executed, implicitly or explicitly extended, or renewed on or after the effective date of this Act.

SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2018. Section 2 of this Act shall remain effective for a period of 4 years and 9 months and, at the end of June 30, 2023, Section 2 of this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.

Approved by the Governor, May 15, 2018.