SENATE BILL 688

By: Senators Raskin, Conway, Feldman, Ferguson, Kelley, King, Madaleno, Manno, Montgomery, Peters, Pinsky, Pugh, and Rosapepe

Introduced and read first time: January 31, 2014
Assigned to: Judicial Proceedings

A BILL ENTITLED

AN ACT concerning

Fair Employment Preservation Act of 2014

FOR the purpose of providing that an act or omission of a certain employee may be construed to be an act or omission of a certain employer under certain circumstances; providing for the application of this Act; and generally relating to discrimination and retaliation in employment.

BY adding to
    Article – State Government
    Section 20–610
    Annotated Code of Maryland
    (2009 Replacement Volume and 2013 Supplement)

Preamble

WHEREAS, The State of Maryland seeks to provide increased protections to employees who are the victims of discrimination in the workplace; and

WHEREAS, The laws of Maryland governing employment discrimination have been based, in large part, on federal statutory provisions, and decisions of the U.S. Supreme Court interpreting those federal laws may have implications for the interpretation of Maryland’s fair employment laws; and

WHEREAS, The Supreme Court’s decision in Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. 618 (2007), significantly impaired federal statutory protections against discrimination in employment by allowing employees who are the victims of discrimination only a limited opportunity under the Civil Rights Act to seek relief for their unequal pay; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
WHEREAS, The General Assembly of Maryland responded by passing the Lilly Ledbetter Civil Rights Restoration Act of 2009 (Chapters 56 and 57 of the Acts of the General Assembly of 2009); and

WHEREAS, The Lilly Ledbetter Civil Rights Restoration Act of 2009 allowed employees who are the victims of discrimination greater relief by ensuring that each discriminating paycheck constitutes a separate act of discrimination; and

WHEREAS, Federal protections against discriminatory actions were again impaired by the Supreme Court in Vance v. Ball State University, 133 S.Ct. 2434 (2013); and

WHEREAS, The Supreme Court ruled in Vance that under the Civil Rights Act an employer is liable for the discriminatory actions of a supervisor only if the supervisor has the power to hire, fire, transfer, or affect the status of another employee; and

WHEREAS, Justice Ginsburg dissented in Vance, asserting that an employee is a supervisor liable for discriminatory actions if the supervisor has the power to direct the work of other employees; and

WHEREAS, Adopting Justice Ginsberg’s definition of supervisor is an accord with the vision of the Lilly Ledbetter Fair Pay Act to ensure that employees who are the victims of discrimination have expanded avenues to challenge workplace discrimination; and

WHEREAS, The General Assembly believes that the legal standards and burdens developed and applied by the courts with respect to claims brought under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., 42 U.S.C. 1983, Title 20, Subtitle 6 of the State Government Article, and Article 46 of the Maryland Declaration of Rights prior to the Vance decision should be preserved; and

WHEREAS, It is the intent of the General Assembly that the standards set forth in this Act shall be interpreted and applied for these claims in a manner consistent with legal precedent developed by the Maryland and federal courts before the issuance of the Vance decision; now, therefore,

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

Article – State Government

20–610.

IN AN ACTION CONCERNING A VIOLATION OF THIS SUBTITLE FOR UNLAWFUL EMPLOYMENT HARASSMENT, AN EMPLOYER IS LIABLE FOR THE ACT OR OMISSION OF AN EMPLOYEE WHO:
(1) Undertakes or recommends tangible employment actions affecting another employee or an applicant for employment, including hiring, firing, promoting, demoting, and reassigning another employee or an applicant for employment; or

(2) Directs, supervises, or evaluates the work activities of another employee.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.