

# Get Ready for Maryland's New Employment Laws Going into Effect October 1

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New Maryland laws governing the workplace will take effect on October 1, 2019. These laws:

- Amend the state's Fair Employment Practices Act (FEPA) with respect to harassment claims and with respect to the definition of "employee";
- Require unpaid leave and provide additional protections for employees serving as organ or bone marrow donors;
- Promote gender diversity in the boardroom;
- Provide additional civil penalties with respect to Equal Pay violations; and
- Prohibit non-compete agreements for low-wage earners.

### Expanded Protections under Anti-Discrimination Law

**House Bill 679** (the "Amendments") makes key changes to Maryland's anti-discrimination law, the FEPA.

*Coverage:* The Amendments expand the definition of *employee* to include independent contractors, who will be entitled to FEPA's protections. Currently, Maryland's FEPA applies to employers with at least 15 employees. Under the Amendments, *for purposes of harassment claims only*, the law will apply to employers with at least one employee.

*Harassment, Employer Liability:* The Amendments add *harassment* to the list of activities prohibited by FEPA and define harassment as including "harassment based on race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, gender identity, or disability." The Amendments also note that harassment "retains its judicially determined meaning, except to the extent it is expressly or impliedly changed" under the Amendments.

The Amendments expand the definition of *supervisor* in harassment actions. They provide that, in a harassment action, an employer is liable not only for acts of an individual who makes or recommends a tangible employment action affecting the employee, but also for the acts of an individual who "directs, supervises, or evaluates the work activities of the employee." Additionally, an employer is liable if its negligence led to the harassment, or the continuation of harassment, of an employee.

*Statutes of Limitations for Claims of Harassment:* The Amendments significantly extend the time for filing a harassment complaint with a local human relations commission (such as the Maryland Commission on Civil Rights or a county equivalent) from six months to two years after the date on which the alleged harassment occurred. Additionally, the Amendments extend the time for filing a lawsuit alleging harassment from two years to three years after the alleged harassment occurred.

*Harassment Training Requirements for State Employees:* The Amendments add several training requirements for state employees. The new training requirements do not apply to private employers.

## Organ Donation Leave

[House Bill 1284](#) (Organ Donation Leave Law) requires most private employers in Maryland to provide *unpaid* leave for employees serving as organ or bone marrow donors.

Under the Organ Donation Leave Law, employers with at least 15 employees working anywhere in Maryland are required to provide eligible employees with up to 60 business days of unpaid leave (in any 12-month period) to serve as an organ donor, and up to 30 business days of unpaid leave (in any 12-month period) to serve as a bone marrow donor.

An eligible employee must have worked for the employer for at least 12 months and at least 1,250 hours during the previous 12 months.

To receive organ donation leave, the employee must provide a written physician verification to the employer stating that (a) the employee is an organ donor or a bone marrow donor, and (b) there is a medical necessity for the donation of the organ or bone marrow.

Organ donation leave may not be taken concurrently with leave under the federal Family and Medical Leave Act.

*Taking Organ Donation Leave:* The law provides the following:

- An employer is prohibited from considering any time during which the employee takes organ donation leave as a break in the employee's continuous service for purposes of the employee's rights to salary adjustment, sick leave, vacation, paid time off, annual leave, or seniority.
- The employer must maintain the employee's group health insurance coverage during the time the employee is on leave for organ donation.
- For an employee working on a commission basis, while the employee is on organ donation leave, the employer must pay the employee any commissions that become due as a result of work the employee performed before taking the organ donation leave.
- Upon the employee's return from organ donation leave, the employer must restore the employee to the position the employee held when the organ donation leave began. Alternatively, the employee may be returned to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

*Implementation and Enforcement:* The Commissioner of Labor and Industry will adopt regulations implementing the Organ Donation Leave Law.

The Commissioner may attempt to informally mediate any violations of the Organ Donation Leave Law. The Commissioner also may ask the Attorney General to bring an action on behalf of an aggrieved employee. In such an action, the Attorney General may seek injunctive relief, damages, or other relief in the county where the violation allegedly occurred.

## Gender Diversity in the Boardroom

[House Bill 1116](#) requires tax-exempt nonstock corporations with an operating budget of over \$5 million, and domestic stock corporations with sales exceeding \$5 million, to report to the state the total number of board members and the number of board members who are female.

This new law does not apply to privately held corporations where at least 75 percent of the

company's shareholders are family members. Further, the new law will remain effective only for 10 years (until September 30, 2029).

### Additional Civil Penalties for Equal Pay Violations

[House Bill 790](#) increases the penalties for violations of the Equal Pay for Equal Work law (Amended Equal Work Law). The Amended Equal Work Law authorizes the Commissioner or a court to require an employer to pay a civil penalty equal to 10 percent of the amount of damages owed by the employer for violating the Amended Equal Work Law if the employer is found to have violated the law at least two times within a three-year period. All civil penalties assessed for violations of the Amended Equal Work Law are to be paid to the state General Fund.

### Non-Compete Law for Low-Wage Employees

Maryland banned non-compete agreements for low-wage workers by passing [Senate Bill 328](#). The new law bars employers from entering into non-compete agreements with workers who earn equal to or less than (a) \$15 per hour; or (b) \$31,200 annually. For additional information on new non-compete law, see our blog post, [Virginia Attempts, Maryland Succeeds, in Limiting Non-Competes For Low-Wage Employees](#).

If you have any questions regarding these laws and how they may affect your business, please contact a Jackson Lewis attorney.

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