

PUBLICATION

Maryland to Increase Sexual Harassment Protections and Require Settlement Disclosures

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The #MeToo movement has not only increased social awareness regarding sexual harassment in the workplace, but it has also spawned new legal requirements for Maryland employers. On May 15, 2018, Governor Hogan signed the Disclosing Sexual Harassment in the Workplace Act of 2018 (the Act), which will take effect on October 1, 2018. The Act prohibits employers from including certain terms in employment and related agreements, and imposes reporting requirements relating to sexual harassment settlements.

Prohibitions on Waivers

The Act prohibits all employers from asking employees to waive their substantive or procedural rights or remedies in an employment agreement, policy, or other agreement related to a future claim of sexual harassment or a retaliation claim. Employers are also prohibited from taking any adverse action against an employee who refuses to sign an agreement that contains any of the above limitations on their rights and remedies for sexual harassment claims. Employers who enforce or attempt to enforce a prohibited waiver in an employment agreement, policy, or other agreement would be liable for the employee's reasonable attorneys' fees and costs.

Requirement to Report Sexual Harassment Settlements

In addition to the prohibition on certain waivers of rights and remedies, the Act requires employers with 50 or more employees to report their history of sexual harassment settlements to the Maryland Commission on Civil Rights (MCCR). Specifically, covered employers must disclose:

- the number of settlements the employer has made after an employee's alleged sexual harassment;
- the number of times the employer has paid a settlement to resolve a sexual harassment allegation against *the same* employee over the past ten years of employment;
- the number of settlements made after an allegation of sexual harassment that included non-disclosure provisions; and
- information on whether the employer took any personnel action against the employee who was the subject of the settlement.

The MCCR will conduct the survey in December 2020 and again in December 2022. The MCCR will make the information publically available, including employers' identities, but it will not release the identities of the alleged harassers or victims. This disclosure requirement contains a sunset provision, which means that no additional surveys will be conducted after 2022 unless mandated by a new law.

Maryland employers should carefully review their existing contracts, policies, and agreements to determine whether they contain any impermissible waivers, such as an arbitration clause, a jury trial waiver, or a provision that cuts short an employee's statutory right to bring a sexual harassment claim. Any such waiver provisions must be eliminated by October 1, 2018. Additionally, employers subject to the reporting requirement should begin reviewing their records of sexual harassment claims in preparation for the MCCR's survey. No doubt, in light of this new law, employers should take a close look at their relevant policies and practices to make clear

the company's expectations regarding workplace civility and anti-harassment in addition to training their supervisors, managers, and employees regarding the same.