

Publications

Labor and Employment Alert: Maryland Prohibits Arbitrating Sexual Harassment Claims

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Maryland recently enacted the “Disclosing Sexual Harassment in the Workplace Act,” which becomes effective on October 1, 2018. The act prohibits arbitrating sexual harassment claims and requires large employers to report on sexual harassment settlements.

Under the act, except as prohibited by federal law (such as the Federal Arbitration Act), a provision in an employment contract, policy or agreement that waives any substantive or procedural right or remedy of sexual harassment or retaliation for reporting or asserting a right based on sexual harassment is null and void. An employer is prohibited from taking adverse actions against an employee who fails or refuses to enter into an agreement that contains a void waiver. “Adverse action” includes discharge; suspension; demotion; discrimination in the terms, conditions, or privileges of employment; and any other retaliatory action that changes the terms or conditions of employment that would dissuade reasonable employee from making a complaint or testifying concerning a violation of the act.

An employer who enforces or attempts to enforce an employment contract, policy or agreement that contains a waiver that is void is liable for the employee’s attorney’s fees and costs. The act applies to any employment contract, policy or agreement that is executed, extended, or renewed on or after October 1, 2018.

Additionally, by July 1 of 2020 and 2022, an employer with 50 or more employees must submit a short survey electronically to the Maryland Commission on Civil Rights on:

- the number of settlements made by or on behalf of the employer after an allegation of sexual harassment by an employee;
- 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
- 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.

It is currently unclear whether this reporting pertains only to employees located in Maryland. The commission must include space in the survey for an employer to report whether the employer took personnel action against an employee who was the subject of a specified settlement. The commission must post the aggregate number of responses from employers for each item listed in the survey and retain for public inspection the response from a specific employer regarding a specific survey question. By December 15 of 2020 and 2022, the commission will review a random selection of submitted surveys, create an executive summary of the sample (redacting any identifying information for specific employers), and submit the executive summary to the governor, the Maryland Senate Finance Committee, and the Maryland House Economic Matters Committee.

Maryland employers should review their employment agreements and policies to ensure they comply with the act's requirements, which includes determining whether their agreements are covered by the Federal Arbitration Act. Employers should also begin to track their settlements to ensure they have the information needed to report to the commission. Contact your Vorys lawyer if you have questions about sexual harassment, equal employment, and alternative dispute resolution procedures.