

Maryland Sexual Harassment Reporting Requirements About to Take Effect

By Sadina Montani and Aleksandra Rybicki

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Maryland's Disclosing Sexual Harassment in the Workplace Act (the "Act") became law on October 1, 2018. The Act prohibits employers, regardless of size, from requiring employees to arbitrate claims of sexual harassment. The Act also provides that employers with at least 50 employees must report certain information about sexual harassment settlements to the Maryland Commission on Civil Rights ("MCCR") on or before July 1, 2020.

The Act Effectively Bans Private Arbitration Requirements

The Act prohibits all Maryland employers from including in an employment agreement, contract, or policy any provision that waives any substantive or procedural right or remedy to a future claim of sexual harassment or retaliation for reporting sexual harassment. In addition, the Act prohibits employers from taking adverse action against an employee who refuses to enter into an agreement containing such a waiver. An employee who defends against an employer's attempts to enforce a prohibited contract or policy is entitled to attorneys' fees and costs.

Employer Reporting Requirements

The Act also requires Maryland employers with at least 50 employees to respond to a survey from the MCCR with the following information:

- (1) The number of settlements made by or on behalf of the employer of an allegation of sexual harassment by an employee;
- (2) The number of times the employer paid a settlement to resolve a sexual harassment allegation against the same employee over the past 10 years of employment;
- (3) 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; and
- (4) Whether the employer took personnel action against an employee who was the subject of a settlement.

The Act does not specify the period of time for which employers must report this information and, for prong two, the Act does not identify the starting point of the ten-year period of paid settlements. When contacted for clarity regarding the reporting timeframes, the MCCR advised Vedder Price that it will defer to employers completing the survey to determine these time frames.

The Act also is silent as to whether employers must report settlements and personnel actions that occurred in Maryland exclusively, or those that occurred in any other state in which the employer operates. Here, again, the MCCR advised Vedder Price that it will defer to employers completing the survey to determine which information they will include in their response.

The survey is [available online](#) and responses must be submitted on or before July 1, 2020, and resubmitted two years later, on or before July 1, 2022. The Act does not provide for any penalties or enforcement mechanisms if an employer fails to comply with the mandatory reporting requirements.

Following the upcoming July 1, 2020 deadline, the MCCR will publish the aggregate results of the survey online. Upon request, the MCCR will make available for public inspection the results filed by a specific employer revealing the number of times that employer paid a settlement to resolve a sexual harassment allegation against the same employee over the past 10 years of employment. This reporting requirement contains a sunset provision and will expire on June 30, 2023, unless the Maryland General Assembly takes further action to make this reporting requirement a permanent obligation of employers in Maryland.

If you have questions about these mandates, please contact **Sadina Montani** at +1 (202) 312-3363, **Aleksandra Rybicki** at +1 (202) 312-3336 or any other Vedder Price attorney with whom you have worked.

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