MARYLAND

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I. AT-WILL EMPLOYMENT

A. Statute

No Maryland statute numerated the at-will employment rule, but many statutes limit an employer's right to terminate an employee. See, e.g., Md. Code Ann., Com. Law § 15-606 ("An employer may not discharge his employee because the employee's wages are subjected to attachment for any one indebtedness within a calendar year."); Md. Code Ann., Lab. & Empl. § 5-604(a)(1) ("An employer or other person may not discharge or otherwise discriminate against an employee on the basis of information gained through participation of the employee in group medical coverage."); Md. Code Ann., State Gov't § 20-606(a) ("An employer may not: (1) fail or refuse to hire, discharge, or otherwise discriminate against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment because of: (i) the individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment; or (ii) the individual's refusal to submit to a genetic test or make available the results of a genetic test."); Md. Code Ann., Lab. & Empl. § 9-1105(a) (An employer cannot fire a covered employee because the employee files a claim for workers' compensation benefits).

B. Case Law

Maryland follows the common law rule that an at-will employment contract—an employment contract of indefinite duration—can be legally terminated at any time, by either party, and for any reason, without giving rise to a breach of contract. Parks v. Alpharma, Inc., 25 A.3d 200, 208, 421 Md. 59, 73 (2011) (quoting Adler v. Am. Standard Corp., 432 A.2d 464, 467, 291 Md. 31, 35 (1981)).

II. EXCEPTIONS TO AT-WILL EMPLOYMENT

A. Implied Contracts

1. Employee Handbooks/Personnel Materials

If the employer's policy limits the employer's discretion to terminate an indefinite employment or sets forth certain procedures for the termination, the at-will employment rule will not apply. To rise to the level of a contractual undertaking, the employer must properly express and communicate the policy to the employee. See Spacesaver Sys. v. Adam, 98 A.3d 264, 440 Md. 1 (2014) (finding employee was not at-will where employment contract enumerated the causes for which employee could be terminated); see also Staggs v. Blue Cross of Md., 486 A.2d 798, 61 Md. App. 381 (1985) (finding whether employer was bound by personnel policy requiring counseling sessions before dismissal was a question for the jury). In essence, the employee must be able to rely on the policy. Castiglione v. Johns Hopkins Hosp., 517 A.2d 786, 794, 69 Md. App. 325, 341 (1986). In Maryland, courts held that an employment relationship is presumptively at will without a clear showing that the parties "clearly and expressly set forth their agreement that the contract is to last for a specific period of time." See Spacesaver Sys. Inc., at 271, 440 Md. at 12-11.

2. Provisions Regarding Fair Treatment

Not every statement made in a personnel handbook or other publication will rise to the level of an enforceable covenant. Staggs, at 803–04, 61 Md. App. at 392. Indeed, general statements that are not couched in mandatory or promissory language will not usually rise to the level of an enforceable covenant. Specifically, aspirational statements of fair treatment cannot serve as the basis for an implied contract claim. See MacGill v. Blue Cross of Md., 551 A.2d 501, 77 Md. App. 613 (1989); see also Bender v. Suburban Hosp., Inc., 758 A.2d 1090, 134 Md. App. 7 (2000) (rejecting claim that non-discrimination provision in hospital bylaws created a definite and specific benefit of protection against discriminatory discharge).

3. Disclaimers

An employer may avoid contractual liability arising from its policy statements by an additional statement that clearly and conspicuously disclaims contractual intent. See Castiglione, 517 A.2d 786, 69 Md. App. 325. (finding employee provisions in a published handbook distributed to employees were not contractual undertakings where employee handbook also expressly negated, in a clear and conspicuous manner, any contract based upon the provisions in the handbook). Whether the disclaimer is in the employee handbook or in the employment contract itself is irrelevant. See Fournier v. U. S. Fid. and Guar. Co., 569 A.2d 1299, 82 Md. App. 31 (1990) (finding policy stating that employer would make efforts to prevent termination and permit time off to find new employment was not controlling where the employee signed an employment application stating that employment could be terminated by either the employer or employee at will upon two weeks notice to the other party). "Nevertheless, when an employer communicates personnel policy statements to its employees which "limit the employer's discretion to terminate an indefinite employment or set forth a required procedure for termination of such employment," such statements, if justifiably relied on by its employee, may "become contractual undertakings by the employer that are reasonable enforceable by its employee."" Fornier, at 1301, 82 Md.App. at 486 (internal citations omitted).

4. Implied Covenants of Good Faith and Fair Dealing

Maryland does not impose a duty of good faith and fair dealing in at-will employment contracts. Maryland courts have found that at-will employment by its very definition excludes any duty of good faith: an employee is permitted to quit for any reason and an employer is entitled to terminate an employee for any reason, with some exceptions. See Suburban Hosp. v. Dwiggins, 596 A.2d 1069, 1077, 324 Md. 294, 310 (1991). If an employer contracts to do something that requires discretion, however, the employer must exercise that discretion in good faith. See Elliott v. Bd. of Trs. of Montgomery Cnty. Comm. Coll., 655 A.2d 46, 53, 104 Md. App. 93, 108 (1995).

B. Public Policy Exceptions

1. General

The at-will employment rule will not apply if employment termination is against public policy. Specifically, an employee who has been discharged in a manner that contravenes public policy may maintain a cause of action for abusive or wrongful discharge against his or her former employer. Porterfield v. Mascari II, Inc., 823 A.2d 590, 602, 374 Md. 402, 422 (2003) (quoting Adler v. Am Standard Corp., 432 A.2d 464, 467, 291 Md. 31, 35-36 (1981).

To disrupt the at-will doctrine based on a violation of public policy, the plaintiff must show that the employer violated some clear mandate of public policy. See Wholey v. Sears Roebuck, 803 A.2d 482, 370 Md. 38 (2002) (holding that it is wrongful and contrary to public policy for an employer to terminate an at-will employee who gives testimony at an official proceeding or reports a suspected crime to the appropriate law enforcement or judicial officer); Adler v. Am. Standard Corp., 432 A.2d 464, 291 Md. 31 (1981) (finding that an employee who "discovered numerous inadequacies in the management and operation of the Commercial Printing Division and, also, numerous improper and possible illegal practices," reported his findings to two Vice-Presidents, and was subsequently terminated, had failed to state a cause of action because his complaint was "too general, too conclusory, too vague, and lacking in specifics"); see also Szaller v. Am. Nat'l Red Cross, 293 F.3d 148, 150 (4th Cir. 2002) (holding that a Red Cross employee who alleged he was terminated for complaining about various blood handling and staff training deficiencies failed to state a claim for wrongful discharge because the Food and Drug regulations and a 1993 consent decree between the FDA and the Red Cross regarding training and quality assurance was not a clear mandate of public policy); Braxton v. Domino's Pizza LLC, 2006 U.S. Dist. LEXIS 92902, *7 (D. Md. Dec. 21, 2006) (dismissing a wrongful discharge claim on a motion to dismiss since no clear mandate of public policy was asserted); Bharadwaja v. O'Malley, 2006 U.S. Dist. LEXIS 74096 (D. Md. Sept. 27, 2006) (finding a wrongful discharge claim failed as a matter of law since the Baltimore City Charter did not set forth a clear mandate of public policy). To succeed on a wrongful discharge claim, the aggrieved party must show "(1) he was discharged; (2) the basis for his discharge violates some clear mandate of public policy; and (3) there is a nexus between the employee's conduct and the employer's decision to fire the employee. See Wholey v. Sears Roebuck & Co., 370 Md. 38, 803 A.2d 482, 489 (Md. 2002)." Id. at 37. However, to qualify as a wrongful discharge under Maryland common law, the public policy that has been violated must apply statewide, and not solely within a county or local jurisdiction. See

Kramer v. Mayor of Baltimore, 723 A.2d 529, 538, 124 Md.App. 616, 634 (1999). "In sum, the tort of abusive discharge is limited to cases where an employee's termination contravened a clear mandate of public policy and not to allow the cause of action would leave the employee without a remedy. Newell, 407 Md. At 647, 967 A.2d at 769; see Molesworth v. Brandon, 341 Md. 621, 672 A.2d 608 (1996)." Murphy-Taylor v. Hoffman, 968 F.Supp.2d 693, 736-38 (D. Md. 2013) (internal quotations omitted).

To properly state a claim for wrongful or abusive discharge, in addition to showing that an employer violated a clear mandate of public policy, a plaintiff must also show that no other statutory remedy exists. Compare Jordan v. Alt. Res. Corp., 458 F.3d 332 (4th Cir. 2006), overruled on other grounds, Boyer-Libertado v. Fontainebleau Corp., 786 F.3d 264, 269, 2015 U.S. App. LEXIS 7557, *3, (4th Cir. May 7, 2015) (finding employee, who contended he was terminated for reporting racially offensive behavior that he believed violated anti-discrimination laws, did not state a cause of action for wrongful discharge because Maryland provides a statutory remedy for employees alleging retaliation), and Makovi v. Sherwin-Williams Co., 561 A.2d 179, 316 Md. 603 (1989) (finding pregnant employee who sued for termination based on sex discrimination could not state a claim for abusive discharge because Article 49B of the Maryland Code provided a statutory remedy for the employee), with Insignia Residential Corp. v. Ashton, 755 A.2d 1080, 359 Md. 560 (2000) (finding employee properly stated claim for abusive discharge where she had no other civil remedy for the loss of her employment, but there was a clear mandate of public policy against prostitution), and Molesworth v. Brandon, 672 A.2d 608, 341 Md. 621 (1996) (finding employee who filed claim for abusive discharge stemming from sex discrimination properly stated a claim because no other remedy existed; her employer did not have the requisite number of employees for coverage under Article 49B of the Maryland Code).

A claim for abusive discharge will survive even if a statutory remedy exists, if the action that fueled the employee's recourse, led to the retaliatory termination, and the court finds that the supporting statutes "reinforce" the policy, rather than "supersede it." Murphy-Taylor v. Hoffman, 968 F.Supp.2d 693, 738 (2013).

2. Exercising a Legal Right

Under Maryland law, the rule that at-will employment contracts can be legally terminated at any time is inapplicable when an employee is discharged for exercising constitutionally protected rights. Castiglione, 517 A.2d at 792, 69 Md. App. at 338. See De Bleecker v. Montgomery Cnty., Md., 438 A.2d 1348, 292 Md. 498 (1982) (finding that if an employee's letter was the sole reason for termination, then the termination would be against public policy because employee was exercising right to free speech); DiGrazia v. Cnty. Exec. for Montgomery Cnty., 418 A.2d 1191, 288 Md. 437 (1980) (finding summary judgment was inappropriate where employer admitted that it may not have terminated employee if employee had not made certain statements); see also Watson v. Peoples Sec. Life Ins. Co., 588 A.2d 760, 322 Md. 467 (1991) (holding that it may constitute abusive discharge for an employer to discharge an employee for seeking legal redress against a co-worker for sexual harassment culminating in assault and battery);Ewings v. Koppers Co., 537 A.2d 1173, 312 Md. 45 (1988) (finding that the tort of wrongful discharge provides a civil remedy against employers who discharge an employee for filing a workers' compensation claim because Maryland statute creating criminal penalty for

such discharge showed it was against public policy); Newell v. Runnels, 967 A.2d 729, 747, 407 Md. 578, 609 (2009) (holding that a government employer may not fire or demote an employee based on the employee's exercise of First Amendment freedoms).

3. Refusing to Violate the Law

In Maryland, an employee fired for refusing to engage in illegal activity may state a claim for wrongful or abusive discharge. See Insignia Residential Corp. v. Ashton, 755 A.2d 1080, 359 Md. 560 (2000) (finding that employee properly stated a claim for abusive discharge where employer terminated employee for refusing to engage in conduct that would constitute prostitution because statutes precluding prostitution represent clear public policy mandate); Magee v. Dansources Technical Servs., Inc., 769 A.2d 231,137 Md. App. 527 (2001) (finding employee properly stated a claim for wrongful discharge where she alleged that employer terminated her for refusing to defraud a health care benefit program in violation of federal law and Maryland Code, because such a termination would be against the public policy to prevent fraud).

4. Exposing Illegal Activity (Whistleblowers)

An employer wrongfully discharged an employee if the discharge is based on the employee exposing the employer's illegal activity. Specifically, because a Maryland statute makes it a crime to retaliate against witnesses who report crimes, such action is against public policy. Wholey v. Sears Roebuck, 803 A.2d 482, 494, 370 Md. 38, 60 (2002). In turn, the tort of wrongful discharge provides a civil remedy for employees who have been terminated because they reported crimes. Id.

Significantly, however, unlike some jurisdictions, Maryland does not recognize a cause of action predicated on internal reports of illegal activity to supervisors or co-workers. In other words, an external report is protected activity, but an internal report is not. See id. (finding no claim for wrongful discharge existed when employer terminated employee after employee reported theft to his supervisor and conducted his own investigation).

III. CONSTRUCTIVE DISCHARGE

Ordinarily, employees who resign cannot claim that they were improperly terminated. Staggs, 486 A.2d at 800, 61 Md. App. at 386. However, employees can claim improper termination if they resigned because they had been constructively discharged. Beye v. Bureau of Nat'l Affairs, 477 A.2d 1197, 1203, 59 Md. App. 642, 653 (1984). Specifically, Maryland courts will overlook the fact that a termination was formally effected by a resignation if the record shows that the resignation was indeed an involuntary one, coerced by the employer. Id. at 1201, 59 Md. App. at 649. The standard for determining if an employee has been constructively discharged is whether the employer has deliberately caused or allowed the employee's working conditions to become so intolerable that a reasonable person in the employee's place would have felt compelled to resign. Id. at 1203, 59 Md. App. at 654.

For example, in Beye, an employee resigned after he reported certain criminal activities by other employees. Id. at 1199, 59 Md. App. at 646–47. The Maryland Court of Special Appeals found he was not constructively discharged because it was his co-workers who threatened him and caused him to resign, not his employer. Id. at 1203, 59 Md. App. at 653. See also Pollard v. High's of Balt., Inc., 281 F.3d 462 (4th Cir. 2002) (finding that the plaintiff could not meet the high threshold of showing that her working conditions were "intolerable" because her employer honored her request to return to work and thereafter accommodated Pollard in line with her doctors' recommendations); Green v. Wills Grp., Inc., 161 F. Supp. 2d 618 (D. Md. 2001) (dismissing constructive discharge claim where employee complained of harassment but refused to meet with the Human Resources Department because it was impossible to contend that the employer deliberately made working conditions so harsh as to compel resignation when employee refused to work with them to remedy the atmosphere); Williams v. Md. Dept. of Human Res., 764 A.2d 351, 136 Md. App. 153 (2000) (affirming dismissal of constructive discharge claim where employee never resigned because employer could not have forced the employee to resign because conditions were so intolerable). But see Staggs, 486 A.2d 798, 61 Md. App. 381 (holding that plaintiffs' allegation that they were induced to resign under threat of discharge presented a factual issue inappropriate for resolution by summary judgment).

IV. WRITTEN AGREEMENTS

A. Standard "For Cause" Termination

In Maryland, if a written employment contract sets forth the sole and exclusive reasons for termination, then the employer would only have cause to terminate for those reasons. See Regal Sav. Bank, FSB v. Sachs, 722 A.2d 377, 352 Md. 356, 364 (1999). On the other hand, if the contract permits termination "for cause" without any specific reasons—the contract is silent on the grounds for termination—or the contract does not expressly limit the "for cause" grounds for termination (for example, by a listing of reasons, preceded by a term such as "including the following"), an employer can terminate the employee for a breach which is material, or which goes to the root of the matter or essence of the contract. Towson Univ. v. Conte, 862 A.2d 941, 384 Md. 68, 94 (2004) (internal quotes omitted).

If a company sells a portion of their business, it terminates those employees without just cause even if the employees immediately start working for the purchasing company. Gresham v. Lumberman's Mut. Cas. Co., 404 F.3d 253, 262 (4th Cir. 2005). Thus, if the employment contract only permits termination for just cause, the employee has been wrongfully terminated. In turn, the employee is entitled to a severance payment if the contract provides for such a payment when the employee is terminated without cause. Id. Whether the employee voluntarily accepts a position with the purchasing company is immaterial in this instance. Id. Accordingly, employers are well advised to include a contractual provision in employment contracts concerning potential acquisitions of their businesses.

B. Status of Arbitration Clauses

Maryland courts favor and require arbitration in the employment context where there is an

enforceable agreement to arbitrate. Cheek v. United Healthcare of the Mid-Atl., Inc., 835 A.2d 656, 660, 378 Md. 139, 146 (2003). Unless the parties specify that the Maryland Uniform Arbitration Act applies, the common law applies. Prince George's Cnty. v. Fraternal Order of Police, Prince George's Cnty., Lodge 89, 914 A.2d 199, 208, 172 Md.App. 295, 309–10 (2007). As such, whether an arbitration clause is enforceable is determined by standard contract law principles. Id. at 661, 378 Md. at 147. Compare Holloman v. Circuit City Stores, Inc., 894 A.2d 547, 391 Md. 580 (2006), (finding arbitration agreement was enforceable even though employer retained some power to alter the agreement because requiring thirty day notice and only being able to alter the agreement on a single day of the year constituted consideration), with Cheek, 835 A.2d at 660, 378 Md. at 146 (finding arbitration agreement was unenforceable where employer had authority to modify agreement at any time because no consideration existed).

If an employee fails to arbitrate and therefore does not exhaust contractual remedies under a collective bargaining agreement, the employee is barred from pursuing claims for wrongful demotion, termination, breach of contract, and a derivative claim for loss of consortium. Grazunis v. Foster, 929 A.2d 531, 543, 400 Md. 541, 561–62 (2007).

V. ORAL AGREEMENTS

A. Promissory Estoppel

An employer's post-employment right to terminate the employment relationship for any reason does not immunize the employer from liability for a tort committed during pre-employment negotiations. Griesi v. Atl.Gen. Hosp. Corp., 756 A.2d 548, 558, 360 Md. 1, 20 (2000). An employer owes a duty of care during pre-employment negotiations. Id. at 554, 360 Md. at 12–13. As such, an employer can be liable for negligent misrepresentation if the employer fails to exercise reasonable care in communicating information to an employee that is material to his business decision whether to accept an offer for employment, the employee relies on those misrepresentations, and the employee suffers an injury as a result of that reliance. Id. at, 557, 360 Md. 19. Based on Griesi, employers are advised that the promissory estoppel doctrine may be asserted under the guise of a negligent misrepresentation label in Maryland.

B. Fraud

In Maryland, employees claiming fraud carry a heavy burden. Specifically, they must plead and prove that "(1) that the defendant made a false representation to the plaintiff, (2) that its falsity was either known to the defendant or that the representation was made with reckless indifference as to its truth, (3) that the misrepresentation was made for the purpose of defrauding the plaintiff, (4) that the plaintiff relied on the misrepresentation and had the right to rely on it, and (5) that the plaintiff suffered compensable injury resulting from the misrepresentation." Gourdine v. Crews, 955 A.2d 769, 791, 405 Md. 722, 758 (2008).

The burden of proving fraud rests on the party who relies on it, and the party has the burden of proving all of the essential elements of actionable fraud. Id. Fraud must be established by clear and convincing evidence. Id. at 791, 405 Md. at 758–59. Whether a

fraudulent misrepresentation was the cause of the plaintiff's injury is generally a question for the jury, as is the question of the amount of damages which the plaintiff has sustained by reason of the fraud. Cf. Weisman v. Connors, 540 A.2d 783, 798, 312 Md. 428, 459 (1988) (negligent misrepresentation).

C. Statute of Frauds

The Statute of Frauds, which states that contracts for a year or longer must be in writing signed by the party to be charged, typically does not apply in employment contracts. This is because Maryland recognizes the related doctrine that, if there is any possibility that the contract could be completed in less than a year, the defense does not apply. Thus, because an employee may die, or the employer may go out of business within one year, Maryland courts have found that oral contracts for a year term, and even for life, are not precluded by the Statute of Frauds. See, e.g., Home News, Inc. v. Goodman, 35 A.2d 442, 446, 182 Md. 585, 595 (1944) ("In this case, if the Home News had been discontinued within a year, the contract could have been terminated within that time although the parties intended that its operation should continue for a longer time, which actually occurred."); H.J. McGrath v. Marchant, 83 A. 912, 914, 117 Md. 472, 472 (1912) ("If the business of the defendant continued for only six months of the time covered by the contract, the contract would have been fully performed in the year."); Collection & Investigation Bureau v. Linsley, 375 A.2d 47, 49, 37 Md. App. 66, 70 (1977) (noting that oral contracts for life are indefinite and, as such, do not fall within the Statute of Frauds).

VI. DEFAMATION

A. General Rule

"Words spoken of a person in his office, trade, profession, business or means of getting a livelihood, which tend to expose him to the hazard of losing his office, or which charge him with fraud, indirect dealings or incapacity and thereby tend to injure him in his trade, profession or business, are actionable." Fennell v. G.A.C. Fin. Corp. of Balt. No. 3, 218 A.2d 492, 497, 242 Md. 209, 219 (1966) (citations omitted) (emphasis omitted).

An employer may be held liable for an act of defamation committed by its employee during the course of the latter's employment, but where the employee is speaking in his or her personal capacity, the employer may not be held liable for the employee's defamatory statements. Reaves v. Westinghouse Elec. Corp., 683 F.Supp. 521, 526 (D.Md. 1988).

Defamation is made up of the twin torts of libel and slander. General Motors Corp. v. Piskor, 340 A.2d 767, 780, 27 Md. App. 95, 113 (1975) (citations omitted), aff'd in part, rev'd in part , 352 A.2d 810 (1976).

1. Libel

Libel is written defamation, such as a derogatory reference letter. Prucha v. Weiss, 197 A.2d 253, 256–57, 233 Md. 479, 485 (1964) (citation omitted); see also "General Rule" discussed

above.

2. Slander

Slander is spoken defamation, such as a statement that an employee stole from the employer. See Greene Tree Home Owners Ass'n, Inc. v. Greene Tree Assocs. 749 A.2d 806, 820, 358 Md. 453, 480 (2000) (explaining that a slander claim frequently relies on imperfect memory or informal writings) (citation omitted); see also "General Rule" discussed above.

B. References

Negative references from former employers to prospective employers are potentially defamatory. To be actionable, "[t]he words must go so far as to impute to him some incapacity or lack of due qualification to fill the position." Foley v. Hoffman, 52 A.2d 476, 481, 188 Md. 273, 284 (1947) (internal quotations omitted). In turn, even statements that the employee cannot assume a management role or that the employee's abilities are limited may be actionable. See Lesse v. Balt. Cnty., 497 A.2d 159, 64 Md. App. 442, 474–475 (1985) disapproved of by Harford Cnty. V. Town of Bel Air, 704 A.2d 421, 348 Md. 363 (1998) (finding plaintiff sufficiently set forth a cause of action in libel *per quod* where employer told future employer that employee was limited and failed to assume a professional management role because if those statements were true, they likely would disqualify him from new employment).

C. Privileges

In Maryland, "communications arising out of the employer-employee relationship clearly enjoy a qualified privilege." McDermott v. Hughley, 561 A.2d 1038, 1046, 317 Md. 12, 28 (1989). This includes statements of employers accusing employees or former employees of theft. Kairys v. Douglas Stereo,Inc., 577 A.2d 386, 391, 83 Md. App. 667, 679 (1990), overruled on other grounds, Montgomery Ward v. Wilson, 664 A.2d 916, 339 Md. 701 (1995). To overcome the privilege, the plaintiff must show that the defendant either knew that the statement was false or that he acted with reckless disregard of whether it was true or false. In turn, mere negligence is not enough. Id. e.g., id. 577 A.2d 386, 83 Md. App. 667 (finding that the plaintiff did not overcome the privilege where general manager stated to law enforcement officials that the acting manager, the plaintiff, "was a thief" because general manager did not have knowledge that statement was false and was not reckless in making the statement); see also Darvish v. Gohari, 745 A.2d 1134, 130 Md. App. 265, aff'd 753 A.2d 1, 359 Md. 28 (2000); Bagwell v. Peninsula Reg'l Med. Ctr., 665 A.2d 297, 106 Md. App. 470 (1995); Sindorf v. Jacron Sales Co., 341 A.2d 856, 27 Md. App. 53 (1975).

D. Other Defenses

1. Truth

Truth is an absolute defense to defamation, and the employee bears the burden of proving that the alleged defamatory statement or action was false. Jacron Sales Co. v. Sindorf, 350 A.2d 688, 691, 276 Md. 580, 584 (1976); overruled in part by Le Marc's Mgmt. Corp. v. Valentin, 349

Md. 645, 656, 709 A.2d 1222, 1228 (1998); see also Hopkins v. Lapchick, 981 F.Supp. 901 (1997), aff'd, 129 F.3d 116 (4th Cir. 1997) (finding that a statement that a black victim of an assault "cringed in disbelief" when a court-appointed black attorney, who represented a white male in a prosecution for assault and battery, called the victim a racist was substantially true and thus did not defame the attorney); Kiley v. First Nat'l Bank of Md., 649 A.2d 1145, 102 Md. App. 317 (1994) (finding that a bank did not libel or slander depositors by dishonoring checks for which there were insufficient funds in the account because the communications in question were not false). As held in Le Marc's Mgmt. Corp. v. Valentin, "[i]f the trial court determines that submission of the issue to the jury is warranted, it must instruct the jury that punitive damages may be awarded to the plaintiff only if there is clear and convincing evidence that the defendant had actual knowledge that the defamatory statement it made was false." 349 Md. 645, 656.

2. No Publication

"Publication" in the law of defamation is the communication of defamatory matter to a third person or persons. Great Atl. & Pac. Tea Co. v. Paul, 261 A.2d 731, 734, 256 Md. 643, 648 (1970) (citations omitted). In Maryland, to allege defamation by an employer, the employer must publish the statement to a third party who understands the statement to be defamatory. See id. (holding that publication does not occur when a third person hears slanderous words spoken in a foreign language he does not understand). Thus, defamatory statements by the employer to the employee standing alone are not actionable. Geraghty v. Suburban Trust Co., 208 A.2d 606, 609, 238 Md. 197, 202 (1965). Similarly, statements to a third party that are not understood or that the third party does not believe to be defamatory are not actionable. Id.

3. Self-Publication

Self-publication occurs when an employee is forced to reveal an employer's statements that, before the employee revealed them, had not been published. De Leon v. Saint Joseph Hosp., 871 F.2d 1229, 1237 (4th Cir. 1989). Maryland has not recognized the theory of compelled self-publication in lieu of actual publication by the employer to a third party. See id. (applying Maryland law in holding that a doctor's claim that he would have to reveal that a hospital had revoked his admitting privileges when applying for other jobs did not qualify as publication).

4. Invited Libel

In Maryland, "[o]ne who invites the publication knowing that its contents may damage his reputation cannot complain when his fears come true." McDermott v. Hughley, 561 A.2d 1038, 1046, 317 Md. 12, 27 (1989). Thus, an employee who signs a consent form allowing his employer to release his employment records to a third person cannot sue for defamation. Bagwell v. Peninsula Reg'l Med. Ctr., 665 A.2d 297, 315, 106 Md. App. 470, 506 (1995).

5. Opinion

Although Maryland draws the distinction between derogatory opinions and defamatory statements of purported fact, the opinion is actionable if the third party to whom it was conveyed

could reasonably conclude that the opinion was based upon undisclosed defamatory facts. Adler v. Am. Standard Corp., 538 F. Supp. 572, 576 (D. Md. 1982), aff'd in part, rev'd in part, 830 F.2d 1303 (4th Cir. 1987). In other words, if the underlying facts used to form an opinion are not given along with the defamatory statement, the statement itself may be treated as being factual and therefore potentially defamatory. Samuels v. Tschechtelin, 763 A.2d 209, 242, 135 Md.App. 483, 544 (2000).

E. Job References and Blacklisting Statutes

Maryland does not have a blacklisting statute, however, where proof of damages exists, an action against employers for 'blacklisting' may survive if the employee can show: "(1) [i]ntentional and willful acts; (2) calculated to cause damage to the plaintiffs in their lawful business; (3) done with the unlawful purpose to cause such damage and loss, without right or justifiable cause on the part of the defendants (which constitutes malice); and (4) actual damage and loss resulting." Willner v. Silverman, 109 Md. 341, 355, 71 A. 962, 964 (1909) (referencing Walker v. Cronin, 107 Mass. 562 (1871).

F. Non-Disparagement Clauses

If an employer and an employee create an unambiguous non-disparagement clause in a settlement agreement, a court will enforce the remedy in the event of a specified breach, unless there is a compelling reason not to enforce the remedy. Smelkinson Sysco v. Harrell, 875 A.2d 188, 199, 162 Md.App. 437, 456 (2005). In Smelkinson, an employer was entitled to a stipulated remedy when an employee disparaged employer shortly after the employee and employer executed a settlement agreement that included a disparagement agreement and provided for a stipulated remedy. Id.

VII. EMOTIONAL DISTRESS CLAIMS

A. Intentional Infliction of Emotional Distress

In Harris v. Jones, 380 A.2d 611, 281 Md. 560 (1977), the Maryland Court of Appeals set forth the four elements of the tort of intentional infliction of emotional distress: (1) the conduct must be intentional or reckless; (2) the conduct must be extreme and outrageous; (3) there must be a causal connection between the wrongful conduct and the emotional distress; and (4) the emotional distress must be severe. In Maryland the emotional distress must be "disabling." Id. at 616, 281 Md. at 570. To be "disabling," the plaintiff must be able to show that he/she was unable to function or perform normal daily activities on account of the alleged conduct. Caldor v. Bowden, 625 A.2d 959, 330 Md. 632 (1993); see also Green v. Wills Grp., Inc., 161 F. Supp. 2d 618 (D. Md. 2001) (uttering inappropriate comments about employee was insufficient to constitute intentional infliction of emotional distress where employee was laughing at the comments and actively participating in conversation with employer); Collier v. Ram Partners, Inc., 159 F. Supp. 2d 889 (D. Md. 2001) (uttering of offensive racial epithets to coworker was insufficient to constitute intentional infliction of emotional distress). But see Figueiredo-Torres v. Nickel, 584 A.2d 69, 321 Md. 642 (1991) (holding behavior of psychologist who, while acting as plaintiff's and his wife's marriage counselor, had sexual relations with the plaintiff's wife, was sufficiently outrageous).

In Ky. Fried Chicken Nat'l Mgmt. Co. v. Weathersby, 607 A.2d 8, 326 Md. 663 (1992), the Maryland Court of Appeals stressed that the conduct at issue must truly be extreme and outrageous. The court found the plaintiff's allegations that her supervisor retaliated against her by harassing her, accusing her of theft, and demoting her were insufficient. The court stated that "[e]ven a certain amount of arbitrary nastiness may be encountered at all levels in all occupations; this is a fact of life we must accept as readily as we recognize that employers and employees on the job interact differently than do friends on a summer picnic." Id. at 16, 326 Md. at 679.

Additionally, each element of intentional infliction of emotional distress "must be pled and proved with specificity." Foor v. Juvenile Servs., 552 A.2d 947, 959, 78 Md. App. 151, 175 (1989); accord Manikhi v. Mass Transit Admin., 758 A.2d 95, 113, 360 Md. 333, 367 (2000); see also Silkworth v. Ryder Truck Rental, 520 A.2d 1124, 1128, 70 Md. App. 264, 271 (1987) ("These are stringent standards, and each must be pled and proved with particularity."). In other words, all of the "evidentiary particulars . . . must be pleaded" in the complaint. Leese v. Balt. Cnty., 497 A.2d 159, 174, 64 Md. App. 442, 472 (1985), overruled on other grounds, Harford Cnty. v. Bel Air, 704 A.2d 421, 348 Md. 363, 380-81 (1998). Thus, "[i]t is not enough for a plaintiff merely to allege that [the elements] exist; he must set forth facts that, if true, would suffice to demonstrate that they exist." Foor, 552 A.2d at 959, 78 Md. App. at 175.

Furthermore, the failure to plead any one of the elements standing alone with the requisite degree of evidentiary particularity "will defeat the cause of action." Hrehorovich v. Harbor Hosp. Ctr., Inc., 614 A.2d 1021, 1035, 93 Md. App. 772, 799 (1992) ("we need address only one element"). Thus, the Maryland Court of Appeals in Manikhi v. Mass. Transit Admin., 758 A.2d 95, 360 Md. 333 (2000), found that the complaint there failed to satisfy the pleading requirements for the element of severe emotional distress because it did not allege the "evidentiary particulars" with respect to "the nature, intensity or duration of the alleged emotional injury." Id. at 115, 360 Md. at 370.

B. Negligent Infliction of Emotional Distress

Maryland has not recognized an independent tort of negligent infliction of emotional distress in the workplace, or in general. Hamilton v. Ford Motor Credit Co., 502 A.2d 1057, 1066, 66 Md.App. 46, 63 (1986) ("Recovery may be had in a tort action for emotional distress arising out of negligent conduct. In such case, the emotional distress is an element of damage, not an independent tort.") (citation omitted).

To the extent that an employee may suffer a physical injury due to negligence that results in emotional distress, the claim is barred by the workers' compensation exclusivity defense. See May v. Roadway Express, Inc., 221 F. Supp. 2d 623, 630 (D. Md. 2002).

VIII. PRIVACY RIGHTS

A. Generally

The common law of Maryland recognizes a variety of claims for invasion of privacy, including the tort of unreasonable intrusion upon the seclusion or private affairs of another. In Pemberton v. Bethlehem Steel Corp., 502 A.2d 1101, 66 Md. App. 133 (1986), the court held that the plaintiff must show that there was an intentional intrusion upon seclusion and that the intrusion would be highly offensive to a reasonable person. See also Marrs v. Marriott Corp., 830 F. Supp. 274, 283 (D. Md. 1992) (stating that employee must show that the employer intentionally intruded upon his solicitude, seclusion or private affairs in a manner that would be highly offensive to a reasonable person). To determine whether there is an intrusion upon seclusion, it must be determined whether there is a reasonable expectation of privacy in the zone or area in which the intrusion occurs. Furman v. Sheppard, 744 A.2d 583, 586, 130 Md. App. 67, 74 (2000).

Maryland has also adopted the Restatement (Second) of Torts elements of the so-called false light invasion of privacy claim. Bagwell v. Peninsula Reg'l Med. Ctr., 665 A.2d 297, 106 Md. App. 470 (1995) (applying Restatement (Second) of Torts § 652 E (1977)); Furman v. Sheppard, 744 A.2d 583, 130 Md. App. 67 (2000). To state a claim for false light invasion of privacy, a plaintiff must prove: (1) that the defendant gave publicity to a matter concerning another that places the other before the public in a false light; (2) that the false light in which the other person was placed would be highly offensive to a reasonable person; and (3) that the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. Campbell v. Lyon, 26 F. App'x. 183, 188 (4th Cir. 2001) (applying the Restatement (Second) of Torts, § 652E under Maryland law); see also Holt v. Camus, 128 F. Supp. 2d 812 (D. Md. 1999), aff'd, 217 F.3d 839 (4th Cir. 2000).

B. New Hire Processing

1. Eligibility Verification & Reporting Procedures

Under the Maryland Applicant Fairness Act, effective October 1, 2011, employers may not use a job applicant's or employee's credit report or credit history in determining whether to deny employment to the applicant, discharge the employee, or determine compensation or the terms, conditions, or privileges of employment. Under specified circumstances, an employer can request or use an applicant's or employee's credit report or credit history. An applicant or employee is permitted to file a written complaint with the Commissioner of Labor and Industry for violations. Md. Code Ann., Lab & Empl. § 3-711 (effective April 10, 2012).

2. Background Checks

Effective October 1, 2013, Maryland state government employers may not inquire into an applicant's criminal histories and/or criminal records for purposes of employment until after the applicant has been provided the opportunity to have an employment interview. Md. Code Ann., State Personnel & Pensions § 2-203. This law does not apply to applicants for positions for which an appointing authority has a statutory duty to conduct a criminal history records check, nor does it apply to applicants for positions in the Department of Public Safety and Correctional Services or the Office of the Sherriff for any county. Id. This law does not impose any restrictions on private employers. Id.

Baltimore City, Montgomery County, and Prince George's County each enacted their own "Ban the Box" Laws prohibiting all employers from inquiring into an applicant's criminal histories and/or criminal records until after the applicant has been provided the opportunity to have an employment interview. This requirement is broader than the Maryland state law which only prohibits Maryland state government employers from making such inquiries. This requirement does not apply to any positions – such as childcare workers, teachers, and those working with vulnerable populations – currently required by state or federal law to have completed background checks. (See Baltimore City Code, Art. 11 § 15-1 et seq., Montgomery County Code, Part II, Ch. 27, Art. XII § 27-71 et seq., and Prince George's County, Code of Ordnances, Subtitle 2, Division 12, Subdivision 10 § 2-231.2 et seq.).

C. Other Specific Issues

1. Workplace Searches

The Court of Appeals of Maryland has held that a warrantless search of a locker owned by a defendant's employer, and in which defendant denied any interest, is not unreasonable. In Faulkner v. State, 564 A.2d 785, 317 Md. 441 (1989), the employer provided a locker to each of its employees that remained the property of the employer. The employees used their own locks. Employees used the lockers both to keep personal items and to store company equipment. Under the rules of the workplace, the employer reserved the right to search lockers upon reasonable suspicion of improper use. As a result of complaints of illegal drug use by employees, management conducted an investigation, searched the plaintiff's locker, and found illegal drugs. The Faulkner court found that, under these circumstances, management retained the prerogative to engage in this search, that the employee had, at best, only a minimal expectation of privacy, and thus the search was not unreasonable. The court's reasoning in Faulkner supports the conclusion that employees do not have a reasonable expectation of privacy even with regard to the contents of their own lockers when they have been placed on notice that the employer reserves the right to open and inspect lockers for reasonable business-related purposes.

In Johnson v. United Parcel Serv., 722 F. Supp. 1282 (D. Md. 1989), the detention and questioning of an employee by the employer for several hours on the basis of the employer's suspicion of theft and drug-dealing at work was not actionable because the employee was free to decline to consent to the detention. Although the employee would have been fired immediately had he declined consent, the "plaintiff's fear of losing his job is insufficient as a matter of law to make out a claim." Id. at 1284. The same reasoning would likely apply to consent to body searches and searches of automobiles parked on company premises.

2. Electronic Monitoring

The Maryland Wiretapping and Electronic Surveillance Control Act, Md. Code Ann., Courts and Judicial Proceedings Article, §§ 10-401 et seq. ("Maryland Wiretap Act"), does not apply to monitoring of electronic communications (i.e., e-mails, internet search histories, stored internet files) when access occurs after the transmission has been completed. This is because the statute requires "interception" of an electronic communication and once the communication has reached its intended recipient and is in electronic storage, the communication can no longer be

intercepted within the meaning of the Act. However, the employer should require employees to consent to electronic monitoring (e.g., by having the employees sign off on a written policy) to avoid common law invasion of privacy claims under the reasoning of Faulkner v. State, 564 A.2d 785, 317 Md. 441 (1989).

3. Social Media

The Maryland Social Media Privacy Bill prohibits employers from requiring employees or applicants to disclose their user names or passwords or any other means of accessing personal social media accounts as a condition of employment. Md. Code. Ann., Lab. & Empl. § 3-712(c). This law does not prohibit employers from conducting an investigation, based on the receipt of information, into an employee's inappropriate use of website. Md. Code. Ann., Lab. & Empl. § 3-712(d).

4. Taping of Employees

The Maryland Wiretap Act forbids employers from taping employee phone conversations unless each party to the conversation has consented to the taping. On the other hand, the Act does not apply to video surveillance and monitoring of employees because the statute applies only to the interception of oral and wire communications. See Ricks v. State, 537 A.2d 612, 312 Md. 11 (1998), overruled on other grounds by Ragland v. State, 870 A.2d 609, 385 Md. 706 (2005). Again, however, employers should require employees to consent to such practices to avoid common law invasion of privacy claims under the reasoning of Faulkner v. State, 564 A.2d 785, 317 Md. 441 (1989).

5. Release of Personal Information on Employees

The Maryland Personal Information Protection Act, Md. Code Ann., Comm. Law § 14-3503 to 14-3504, requires businesses to protect personal information from unauthorized access, use, modification, or disclosure and to notify individuals whose personal information has been compromised in the event of a breach. This Act does not pertain specifically to employers and employees.

6. Medical Information

An employer may not require an applicant for employment to answer an oral or written question that relates to a physical, psychiatric, or psychological disability, illness, handicap, or treatment, unless the disability, illness, handicap, or treatment has a direct, material, and timely relationship to the capacity or fitness of the applicant to perform the job properly. Md. Code. Ann., Lab. & Empl. § 3-701.

IX. WORKPLACE SAFETY

A. Negligent Hiring/Supervision

Maryland recognizes claims for negligent hiring and retention of employees who injure others when an employer knew or should have known that the employee was incompetent or dangerous. Cramer v. Hous. Opportunities, 501 A.2d 35, 304 Md. 705 (1985). In order to establish a claim for negligent hiring or supervision, a plaintiff must prove that the employer of the individual who committed the allegedly tortious act owed a duty to the plaintiff, that the employer breached that duty, that there was a causal relationship between the harm suffered and the breach of the employer's duty, and that the plaintiff suffered damages. Penhollow v. Bd. of Com'rs for Cecil Cnty., 695 A.2d 1268, 1284, 116 Md. App. 265, 295 (1997).

B. Interplay with Worker's Comp. Bar

An employer may not discharge a covered employee from employment solely because the covered employee files a claim for workers' compensation. Md. Code Ann., Lab. & Empl. § 9-1105. As the Court of Appeals of Maryland has stated, discharging an employee solely because the employee filed a claim for workers' compensation "contravenes some clear mandate of public policy" and gives employee "cause of action for abusive discharge." Ewing v. Koppers Co., 537 A.2d 1173, 1174, 312 Md. 45, 49 (1988).

C. Firearms in the Workplace

Maryland does not have a law specifically governing firearms in the workplace.

D. Use of Mobile Devices

As of October 1, 2010, Under Maryland's Cell Phone Law, only school bus drivers were prohibited from using a handheld mobile device while they were driving. Maryland law does not impose any other restrictions on the use of mobile devices in the workplace, except when the workplace is considered a vehicle being operated on the travel portion of a roadway. See Md. Code Ann. Transp. § 21-1124.2(c)(1).

Effective October 1, 2014, Maryland law prohibits the use of handheld telephones while driving except when an individual is using the phone in an emergency capacity to call a 9-1-1 system, a hospital, an ambulance service provider, a fire department, a law enforcement agency, or a first aid squad. Md. Code Ann., Trans., §21-1124.2 et seq. This section does not apply to law enforcement personnel or emergency personnel acting within the scope of official duty. Id.

An individual also may not use a text messaging device to write, send, or read a text message or an electronic message while operating a motor vehicle in the travel portion of the roadway. Md. Code Ann., Trans., §21-1124.1 (effective October 1, 2014). This section does not apply to the use of a global positioning system, or a text messaging device to contact a 9-1-1 system. Id.

X. TORT LIABILITY

A. Respondeat Superior Liability

Maryland recognizes the theory of respondeat superior liability when an employee acts within the scope of his/her employment in furtherance of the employer's business. Hopkins C.

Co. v. Read Drug & C. Co., 124 Md. 210, 92 A.478 (1914). In Maryland, "an act may be within the scope of employment, even though forbidden, or done in a forbidden manner." Fowser Fast Freight v. Simmont, 196 Md. 584, 592, 78 A.2d 178, 181 (1951).

B. Tortious Interference With Business/Contractual Relations

Maryland recognizes the tort of wrongful interference with contractual relations or prospective advantage when a third party intentionally interferes with the contractual relations (written contract) or intentionally and unlawfully interferes with the prospective advantage (at-will employment) of an employee or employer and the employee or employer is thereby damaged. Alexander & Alexander, Inc. v. B. Dixon Evander Assocs., Inc., 650 A.2d 260, 336 Md. 635 (1994) (setting forth elements of wrongful interference with prospective advantage); Fowler v. Printers II, Inc., 598 A.2d 794, 89 Md. App. 448 (1991) (setting forth elements of tortious interference with contract).

XI. RESTRICTIVE COVENANTS/NON-COMPETE AGREEMENTS

A. General Rule

The general rule in Maryland remains that covenants not to compete are enforceable if the restraint is confined within limits that are no wider as to area and duration than are reasonably necessary for the protection of the employer. Intellus Corp. v. Barton, 7 F. Supp. 2d. 635 (D. Md. 1998); Becker v. Bailey, 299 A.2d 835, 268 Md. 93 (1973). The test for enforceability of a covenant is whether the particular restraint is reasonable on the specific facts. Padco Advisors, Inc. v. Omdahl, 179 F. Supp. 2d 600, 606 (D. Md. 2002); see Hearn Insulation & Improvement Co., Inc. v. Carlos Bonilla, No. AW-09-990, 2010 WL 3069953 (D. Md. Aug. 5, 2010) (finding reasonable a 2-year restriction which prohibited a subcontractor from contacting clients he interacted with while working for a home improvement company); TEKsystems, Inc. v. Bolton, No. RDB-08-3099, 2010 WL 447782 (D. Md. Feb. 4, 2010) (holding that an 18-month non-compete restriction which prohibited a former employee from working within a 50-mile radius of his former office was reasonable).

Covenants not to compete may be applied only to "those employees who provide unique services, or to prevent the future misuse of trade secrets, routes or lists of clients, or solicitation of customers." Mansell v. Toys "R" Us, Inc., 673 F. Supp. 2d 407, 416 (D. Md. 2009). Unique or specialized skills or services are those "that would make it difficult to find a substitute employee." Ecology Servs., Inc. v. Clym Envtl. Servs., LLC, 952 A.2d 999, 1009, 181 Md. App. 1, 19 (2008) (citation omitted).

When a covenant not to compete is reasonable on its face as to both time and space, the factors for determining the enforceability of the covenant based upon the facts and circumstances of the case are: (1) whether the person sought to be enjoined is an unskilled worker whose services are not unique; (2) whether the covenant is necessary to prevent the solicitation of customers or the use of trade secrets, assigned routes, or private customer lists; (3) whether there is any exploitation of personal contacts between the employee and customer; and (4) whether

enforcement of the clause would impose an undue hardship on the employee or disregard the interests of the public. Id. at 1007, 181 Md. App. at 15.

The United States District Court for the District of Maryland has allowed a narrow customer restriction to replace the traditional geographical restriction contained in most non-compete agreements. PADCO Advisors v. Omdahl, 179 F. Supp. 2d 600 (D. Md. 2002); see also Deutsche Post Global Mail v. Conrad, 292 F. Supp. 2d 748 (D. Md. 2003) (recognizing that customer restriction may substitute for traditional geographical restriction).

B. Blue Penciling

Under Maryland Law, a court will strike overbroad or otherwise non-enforceable language in a non-compete agreement and enforce the remaining language, provided that the offending language is entirely severable from the permissible language. See Deutsche Post, at 757-58 (discussing the state of Maryland law on blue penciling). However, the law is unsettled as to whether a court may rewrite even a single sentence in an otherwise non-enforceable non-compete agreement if it is not possible simply to strike the offending language. In Deutsche Post, highly respected United States District Judge Motz stated that, until and unless the Maryland Court of Appeals rules otherwise, Maryland law does not allow a court to rewrite the contract. Id. at 758.

C. Confidentiality Agreements

In Maryland, reasonably written confidentiality agreements that protect the employer's trade secrets and/or other confidential and proprietary business information are fully enforceable. See C-E-I-R, Inc. v. Computer Dynamics Corp., 183 A.2d 374, 229 Md. 357 (1962) (protecting all information concerning former employee's work for employer). In fact, under Maryland law, former employees have a fiduciary duty not to disclose the employer's trade secrets even in the absence of a contract. Id.

D. Trade Secrets Statute

Maryland has adopted the Uniform Trade Secrets Act with insignificant changes. Md. Code Ann., Com. Law §§ 11-201 to 11-213. The most important recent development concerns the controversial "inevitable disclosure" doctrine that in effect creates an implied covenant not to compete under the Trade Secrets Act.

The Maryland Court of Appeals has joined the minority view in rejecting the "inevitable disclosure" doctrine under Maryland's version of the Uniform Trade Secrets Act. William LeJeune v. Coin Acceptors, Inc., 849 A.2d 451, 381 Md. 288 (2004). Significant to the doctrine of inevitable disclosure, the Maryland Act and every other State's Trade Secrets Act, in some form or another, provides that the threatened misappropriation of trade secrets "may be enjoined." See id. at 461, 381 Md. at 305. The inevitable disclosure doctrine is premised upon the theory that access by an employee to the former employer's trade secrets was so extensive and so related to the employee's current (or proposed) position at the (competitor) employer that it is "inevitable" that the former employee will "disclose" (misappropriate) the trade secrets in performing the duties and responsibilities of the new position of employment. Id. at 468, 381 Md. at 316. In other words, according to the doctrine, due to the very nature of the new

employment, there is a threatened misappropriation of the former employer's trade secrets that "may be enjoined" by a court of competent jurisdiction. Id. at 461, 381 Md. at 305. The Maryland Court of Appeals decided that Maryland public policy in favor of employee mobility far outweighs a reading of the Uniform Trade Secrets Act supporting the inevitable disclosure doctrine. Id. at 471, 381 Md. at 322. The court instructed employers that they could choose to have their employees enter into reasonable non-compete agreements, but that Maryland will not create for employers what, in effect, is a post-employment non-compete agreement that was never agreed to by the employee. Id.

E. Other Considerations

Maryland generally follows the majority view on restrictive covenants and non-compete agreements.

XII. DRUG TESTING LAWS

A. Public Employers

Employers may conduct job-related alcohol and controlled dangerous substances testing on current and prospective employees, including testing of hair, so long as they meet certain conditions concerning testing and confirmation procedures. Md. Code Ann., Health-Gen. § 17-214. Hair-testing may only be conducted for pre-employment purposes. Id. at § 17-214(3)(ii). Additionally, constitutional concerns may be implicated in the case of public employers.

B. Private Employers

Section 17-214 of the Maryland Health-General Code Annotated applies to both public and private employers.

XIII. STATE ANTI-DISCRIMINATION STATUTE(S)

In 2007, the Maryland General Assembly passed the Maryland Human Relations Commission Act ("MHRCA"), a private right of action that allowed employees to file suit against their employers in state circuit court for workplace discrimination. In 2009, a new title to the Annotated Code of Maryland, designated as "Title 20. Human Relations," recodified the MHRCA.

In addition to the categories protected under federal law: race, color, religion, sex, age, national origin, and disability—Maryland law also prohibits discrimination based on marital status, sexual orientation, gender identity, genetic information, pregnancy, disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, and discrimination against an employee who opposes an unlawful practice or participates in an investigation under the Act. Md. Code Ann., State Gov't § 20-602 et seq.

This section briefly discusses the emerging issues in this area of the law.

A. Employers/Employees Covered

Both public and private employers with 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year are covered under the MHRCA. Id. at § 20-601(d)(i).

B. Types of Conduct Prohibited

Employers are prohibited from engaging in illegal discrimination in hiring or discharge, or otherwise discriminating against employees with respect to compensation and other terms, conditions, and privileges of employment. Id. at § 20-606(a)(1).

C. Administrative Requirements

Before the 2007 amendments to and the 2009 recodification of the MHRCA, alleged victims of discrimination had limited remedies and were required to follow a defined administrative process. Aggrieved employees filed complaints with the Maryland Human Relations Commission within six months from the date of the alleged discriminatory practice. If the Commission found probable cause to believe a discriminatory act was committed, and the Commission was unable to settle the matter, the matter was set down for a hearing before an Administrative Law Judge. Id. at §§ 20-1004 to 20-1005.

Employees still have the option to have their claims decided by an Administrative Law Judge. Under Md. Code Ann., State Gov't § 20-1005, once the Commission has found probable cause to believe a discriminatory act has been committed, the employee or the Commission may elect to have the claim heard in state court. Md. Code Ann., State Gov't §§ 20-1012 to 20-1013. In this venue, the plaintiff has the discretion to try the case to a jury. Id.
Regardless of the outcome of the complaint, the complainant must wait until 180 days have elapsed since the filing of the administrative charge or complaint before bringing a civil action. Id. at § 20-1013. That filing, however, must occur within two years of the alleged act of discrimination. Id.

Special rules apply to employers and employees in Montgomery, Prince George's, Howard, and Baltimore Counties. Id. at §§ 20-1202 to 20-1203. Protecting a broader group of individuals, these special rules prohibit discrimination based on familial status, family, responsibilities, occupation, political opinion, and personal appearance.

In these counties, employees subject to discrimination under their respective county code may bring a civil action within two (2) years of the alleged discrimination, provided that the employees first filed a complaint with the respective county anti-discrimination agency at least 45 days prior to filing the suit in Montgomery, Prince George's, and Howard Counties, and at least 60 days prior to filing the suit in Baltimore County. Id. Finally, unlike the federal statutes, the Court of Special Appeals has expressly noted that individual supervisor liability is an open question. Cohen v. Montgomery Cnty. Dep't of Health and Human Servs., 817 A.2d 915, 149 Md. App. 578 (2003). But see Shabazz v. Bob Evans Farms, Inc., 881 A.2d 1212, 163 Md. App. 602 (2005) (finding supervisor could not be held personally liable to employee for back pay).

D. Remedies Available

Administrative remedies pursuant to the MHRCA include back pay, compensatory damages, reinstatement, with or without back pay, or other equitable relief the administrative court considers appropriate. Md. Code Ann., State Gov't § 20-1009(b)(1)–(2). The statutory caps for compensatory and punitive damages vary based on the size of the employer:

- 15 to 100 employees, the cap is $50,000
- 101 to 199 employees, the cap is $100,000
- 200 to 500 employees, the cap is $200,000
- 501+ employees, the cap is $300,000.

Id. at § 20-1009(b)(3). These amounts are in addition to awards for back pay for the wages and benefits the employee would have earned during the period between the date of a discriminatory termination and the resolution of the lawsuit. Punitive damages are only awarded in the event the respondent is not a government entity or political subdivision and has acted with actual malice. Id. at § 20-1013(e).

Because Maryland's antidiscrimination law protects broader classes than federal law, more employment discrimination claims will be brought in state court. Employees who wish to pursue a claim for which federal law does not provide a remedy (i.e., one alleging discrimination based on sexual orientation, marital status, or genetic characteristics) will now be able to file suit in state court. Additionally, plaintiffs may file in federal court and assert both state and federal claims, or assert only the state law claim and proceed in state circuit court. Plaintiffs who traditionally would have filed their claims in federal court as an alternative to their former limited state administrative remedies now can choose which remedies to pursue.

Employers should be aware of these changes as the cases will typically be more difficult to win and more expensive to settle. There are a number of reasons for this. First, state court judges are less familiar with employment discrimination cases, as they have not had the occasion to decide many until now. This will discourage resolution based on pretrial motions, such as a motion for summary judgment or a motion to dismiss. Second, the body of federal case law from the Fourth Circuit regarding employment discrimination is not binding on Maryland state courts. There is an opportunity for Maryland courts to interpret Title 20 in a more favorable manner to plaintiffs, in contrast to the more conservative manner in which the Fourth Circuit has decided these issues.

Taking into account these issues, plaintiff's attorneys will likely become less amenable to settling claims and more of these cases will go to trial. This will significantly drive up the cost of litigating claims under the Maryland Human Relations Commission Act.

XIV. STATE LEAVE LAWS

The Maryland Legislature passed the Flexible Leave Act in April 2008. The purpose of the law is to allow an employee to use leave with pay to care for an immediate family member

who is ill under the same conditions and policy rules that would apply if the employee took leave for the employee's own illness. Md. Code Ann., Lab. & Empl. §§ 3-801 to 3-802.

The act applies to Maryland employers with 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. An employee covered by the act will be able to use any leave with pay, including sick leave, vacation time and compensatory time, as long as that time has been earned. In the event an employee has earned more than one type of leave with pay, the employee may elect the type and amount of paid leave to be used. See id.

A. Jury/Witness Duty

An employer may not deprive an individual of employment or threaten to discharge an individual because the employee loses employment time to serve on a jury. Md. Code Ann., Cts. & Jud. Proc. § 8-501. An employer may not require an employee to use the employee's annual, sick, or vacation leave to respond to a summons under this title for jury service. Id. at § 8-502. Similarly, an employer may not discharge an employee for responding to a subpoena to testify at a criminal or civil trial or deposition, or for attending the criminal trial of a defendant or juvenile delinquency adjudicatory hearing of a child respondent. Id. at § 9-205.

B. Voting

An employee who does not have two (2) hours continuous off-duty during the time the polls are open must be allowed up to two (2) hours paid absence from work to vote. Md. Code Ann., Elec. Law § 10-315(A)–(B). Employees are required to furnish proof to the employer that they have voted or attempted to vote. Id. at § 10-315(c).

C. Family/Medical Leave

Maryland does not have a state counterpart to the federal Family and Medical Leave Act of 1993 ("FMLA"). However, a recent Maryland District Court case demonstrates that an employee will not be covered by the FMLA simply because he or she leaves work claiming to be sick. See Rodriguez v. Smithfield Packing Co., 545 F. Supp. 2d 508 (D. Md. 2008). In order for FMLA protection to be applicable, the employee must provide the employer with sufficient information to establish, or at least suggest, that the employee has a serious health condition. Unsubstantiated references that the employee is sick are not enough to trigger FMLA coverage, or put an employer on reasonable notice that further inquiry is warranted.

In Rodriguez, the court found that the petitioner's oral notice that she was "sick" provided as she was leaving for a previously scheduled doctor's appointment without a description of the nature of her illness, followed by eight missed work shifts, was insufficient notice to trigger FMLA coverage or put her employer on notice that further inquiry was warranted. Id. The petitioner asserted that she left a voice mail on her first day absent and then continued to relay messages of her illness through co-workers for the remainder of the first week. Id.

D. Pregnancy/Maternity/Paternity Leave (Parental Leave Act)

An eligible employee is entitled to six workweeks of unpaid parental leave during any 12-month period for the birth of a child of the employee, or the placement of a child with the employee through adoption or foster care. Md. Code Ann., Lab. & Empl. § 3-1202(a). An eligible employee is one that has been employed by the employer for 12 months, and has worked at least 1,250 hours in the previous 12 months. Md. Code Ann., Lab. & Empl. § 3-1201(b)(1). An employer may deny parental leave to an employee if the denial is necessary to prevent grievous economic injury to the employer, provided that the employer notify the employee of this denial before the employee begins to take leave. Md. Code Ann., Lab. & Empl. § 3-1202(b). An employer may require the employee to substitute paid vacation leave for all or part of the parental leave period. Md. Code Ann., Lab. & Empl. § 3-1202(c).

E. Day of Rest Statute

Retail and wholesale employees who do not hold managerial, professional, or part-time positions are entitled to a day of rest of their choice, upon written notice of their choice to the employer, except in Wicomico County, where part-time employees are protected under the statute. Md. Code Ann., Lab. & Empl. §3-704.

F. Military Leave

An employer may not terminate an employee for participating in an activity involving civil air patrols, civil defense, volunteer fire department, or volunteer rescue squad if the activity is in response to an emergency declared by the Governor at the request of a County or Municipal Corporation, and proof of required participation is provided to the employer. Id. at § 3-703.

G. Sick Leave

Maryland's leave laws are codified under Md. Code Ann., Lab. & Employ. § 2-106 (b), 3-103 (k), 3-1301-1311 (Healthy Working Families Act). Employees accrue one hour of leave for every 30 hours worked. If an employer has 15+ employees, the leave is paid. If the employer has 1-14 employees, then the leave is unpaid. When calculating the total employees, all employees are counted including those not eligible for leave under the Act. Employers can cap leave at 40 hours per year, usage of 64 hours per year, total accrual of 64 hours at any time. Employers can use an accrual method of 40 hours per year or can give employees 40 hours at the beginning of year and institute a "use it or lose it" policy. Leave may be used for the care or treatment of a mental or physical illness, injury, or condition of, or preventive medical care for, an employee or employee's family member, defined as child (including biological, adopted, foster, stepchild, legal or physical custodian or guardian, in loco parentis, (regardless of age), parent (including biological, adoptive, foster or stepparent of, employee or employee's spouse), employee's guardian, person in loco parentis to employee or employee's spouse as a minor, spouse, grandparent or grandchild (biological, foster, step, or adopted), or sibling (same relationships).

H. Domestic Violence Leave

Under the Healthy Working Families Act, leave as described under the "Sick Leave" section may be used for specified reasons due to domestic violence, sexual assault, or stalking committed against the employee or employee's family member, including the time when employee has temporarily relocated because of these events.

I. Other Leave Laws

Under the Healthy Working Families Act, employers can prohibit accrual during a two week pay period when the employee worked fewer than 24 hours total, one week pay period if the employee worked fewer than 24 hours in the current and previous pay period, and during a pay period when the employee is paid twice a month; and worked fewer than 26 hours in the pay period. Employers may prohibit leave usage during the first 106 calendar days of employment. This Act applies to all employees except employees in the construction industry (as defined) and covered by a collective bargaining agreement that clearly waives rights under the Act. Additional individuals who are exempt from this act are individuals who are called to work on an as-needed basis in a health or human services industry; can reject or accept the shift offered; are not guaranteed to be called on to work for the employer; and are not employed by a temporary staffing agency.

J. Montgomery County - Earned Sick and Safe Leave Act

Effective October, 1 2016, In Montgomery County, an employer must provide each employee earned sick and safe leave for work performed in the County paid at the same rate and with the same benefits as the employee normally earns. A tipped employee must be paid at least the County minimum wage required under Section 27.68 for each hour the employee uses earned sick and safe leave. An employer with fewer than 5 employees must provide each employee with both paid and unpaid sick and safe leave for work performed in the County as required in subsection (c). Montgomery Co. Code, Part II, Ch. 27 Hum. Rts. & Civ. Lib., Art. XIII §§ 27.76 to 27.82 (internal quotations omitted). Employers with 5 or more employees must provide 1 hour of paid leave for every 30 hours worked, but need only allow the employee to earn up to 56 hours of earned leave, or use no more than 80 hours earned leave per calendar year. An employer with less than 5 employees must also provide up to 56 hours of total earned leave at the same rate, except that only 32 hours must be paid, with the remaining 24 hours unpaid. Id. Paid leave must accrue before unpaid leave. Id. at § 27.77(a). Up to 56 hours of accrued leave may be carried over to the next calendar year, but employers must only allow this if the estimated earned time is awarded at the beginning of the calendar year. Id. at § 27.78(c).

With some exceptions, employees' earned leave may be reinstated if rehired within 9 months of leaving, but an employer is not required to compensate an employee for unused sick and safe leave if they terminate employment with the employer. Id. at § 27.78. Employees may use their earned sick and safe leave for a variety of reasons related to personal health, childcare, and family care, with notice given to the employer at the earliest and most reasonable time practical. Montgomery Co. Code, at 27.79. An employee may also use earned sick and safe leave time if the place of employment or a child's school / care center is closed "by order of a public official due to a public health emergency." Id. at 27.79. (See statute for other basic requirements and

provisions.). Id. at §§ 27.76 to 27.82.

XV. STATE WAGE AND HOUR LAW

A. Current Minimum Wage in State

1. State

During the 2019 legislative sessions, the Maryland legislature passed House Bill 166/Senate Bill 280 (not yet codified) to phase in a state minimum wage increase of $15.00 per hour by January 1, 2025. The bill provides a timeline for such a phase-in, allowing additional time for employers with 14 or fewer employees. This bill will go into effect on June 1, 2019.

The bill specifies that, unless the federal minimum wage is set at a higher rate, the phase-in will proceed as follows:

- $11.00 per hour as of January 1, 2020;
- $11.75 per hour as of January 1, 2021;
- $12.50 per hour as of January 1, 2022;
- $13.25 per hour as of January 1, 2023;
- $14.00 per hour as of January 1, 2024; and
- $15.00 per hour as of January 1, 2025.

The State minimum wage for an employer that employs 14 or fewer employees is as follows:

- $11.00 per hour as of January 1, 2020;
- $11.60 per hour as of January 1, 2021;
- $12.20 per hour as of January 1, 2022;
- $12.80 per hour as of January 1, 2023;
- $13.40 per hour as of January 1, 2024;
- $14.00 per hour as of January 1, 2025;
- $14.60 per hour as of January 1, 2026; and
- $15.00 per hour as of July 1, 2026.

This bill allows the Board of Public Works (BPW) to suspend a scheduled rate increase for one-year if it determines that the year-over-year seasonally adjusted total employment is negative. In that instance, BPW may consider the performance of the state revenues in the previous six months to determine whether the minimum wage increase should be suspended for one year. Such a suspension may only be exercised once during the phase-in period. The suspension will delay the phase-in process by one year.

The legislation requires the Commissioner of Labor and Industry to adopt regulations to require restaurant employers that use a tip credit to provide tipped employees with a wage statement for each pay period. The wage statement must show the effective hourly tip rate as

derived from employer-paid cash wages plus all reported tips for tip credit hours worked each workweek of the pay period. Additionally, an employer is no longer permitted to pay a training wage as authorized under the federal Fair Labor Standards Amendments of 1989 or pay 85% of the state minimum wage rate to employees younger than age 20 for the first six months of employment or to employees who work for specified amusement, recreational, or swimming pool establishments. Instead, an employer may pay 85% of the state minimum wage rate to employees younger than age 18.

The current Maryland Minimum Wage and Overtime Law went into effect on October 1, 2014. Md. Code Ann., Lab. & Empl. §3-413. When this law went into effect, the minimum wage rate was set at $7.25 per hour. Id. The law implemented a series of projected hourly wage increases that will be implemented through the year 2018. Id. As of January 1, 2015 the minimum wage was $8.00 per hour. That rate increased to $8.25 per hour on July 1, 2015 and $8.75 per hour on July 1, 2016. The minimum wage will increase to $9.25 per hour on July 1, 2017, and finally to $10.10 per hour on July 1, 2018. Id.

Amusement and Recreational Establishments (who meet certain requirements) must pay employees at least 85% of the State Minimum Wage Rate or $7.25, whichever is higher. Employees under 20 years of age must earn at least 85% of the State Minimum Wage Rate for the first 6 months of employment. Md. Code Ann., Lab. & Empl. § 3-413(d). Tipped Employees (earning more than $30 per month in tips) must earn the State Minimum Wage Rate per hour. Employers must pay at least $3.63 per hour. This amount plus tips must equal at least the State Minimum Wage Rate. Md. Code Ann., Lab. & Empl. § 3-419.

Maryland's Living Wage Law went into effect on October 1, 2007 and requires qualified state contractors or subcontractors to pay minimum wage rates to employees working under certain state services contracts. The law only applies to contracts awarded after October 1, 2007 and requires a minimum wage rate of either $11.30 per hour, if performed in a Tier 1 area, or $8.50 per hour, if performed in any other Tier 2 county. Md. Code Ann., State Fin. & Proc. §§ 18-101(e) to 18-101(f). The wage rates reflect changes in the Consumer Price Index for all urban consumers for the Washington-Baltimore metropolitan area. See Md. Code Ann., State Fin. & Proc. §§ 18-101 to 18-109.

The law applies to a contract for "services" defined as a contract for "the rendering of time, effort, or work rather than the furnishing of a specific physical product other than reports incidental to the required performances." See COMAR 14.13.01.04(B)(8). A "services contract" provides maintenance services and information technology services but doesn't include construction, construction-related services, architectural and engineering services, energy performance contracts, supplies (including commodities and printing), real property, or the purchase of goods. See Md. Code Ann., Com. Law §§ 14-401(k) to 14-401(l), see also Md. Dept. of Labor, Licensing, and Regulation website: http://www.dllr.state.md.us/labor/prev/livingoverview.shtml#law (current as of April 13, 2017).

State service contracts exempt from the Living Wage Law are:

* contracts less than $100,000 in value;

* contracts less than $500,000 in value if the contractor has 10 or fewer employees;
* contracts for services needed immediately to prevent or respond to imminent threat to public health or safety;
* contracts less than 13 weeks in duration;
* contracts with a public service company;
* contracts with a non-profit organization;
* contracts between units; or
* contracts between a unit and a county or Baltimore City.

Md. Code Ann., State Fin. & Proc. §§ 18-101 to 18-102.

This title does not apply to an employee of an employer if the employee is 17 years old or younger for the duration of the contract, or works full time for less than 13 consecutive weeks, for the duration of a contract. Id. at § 18-102(2) (quotations omitted).

B. Deductions from Pay

An employer may not make a deduction from the wage of an employee unless the deduction is (1) ordered by a court of competent jurisdiction, (2) authorized expressly in writing by the employee, (3) allowed by the Commissioner of Labor and Industry because the employee has received full consideration for the deduction, or (4) otherwise made in accordance with a law or regulation issued by a governmental unit. Md. Code Ann., Lab. & Empl. §3-503.

C. Overtime Rules

Each employer must pay an overtime wage of 1.5 times the usual hourly wage. Md. Code Ann., Lab. & Empl. §3-415. This requirement does not apply to employees of bowling establishments, and institutions providing on-premise care (other than hospitals) to the sick, the aged, or individuals with disabilities for all work over 48 hours per week. This requirement only applies to agricultural workers for all work over 60 hours per week. Md. Code Ann., Lab. & Empl. §3-420.

D. Time for payment upon termination

An employer must pay an employee or the authorized representative of an employee all wages due for work that the employee performed before the termination of employment. This payment is due on or before the day on which the employee would have been paid the wages if the employment had not been terminated. Md. Code Ann., Lab. & Empl. § 3-505. An employer is not required to pay accrued leave to an employee if: the employer has a written policy that limits the compensation of accrued leave to employees; the employer notified the employee of the employer's leave benefits in accordance with § 3-504(a)(1) of this subtitle; and the employee is not entitled to payment for accrued leave at termination under the terms of the employer's written policy. *Id.*

E. Breaks and Meal Periods

If employers choose to provide meal periods, the time is compensable if employees must perform any duties during the break. Md. Cod. Regs. 09.12.41.10. Under Md. Code Ann., Lab. & Empl. § 3-710, an employer may not require an employee to work four to six consecutive hours without providing a nonworking shift break of at least 15 minutes. An employee is not entitled to a 15 minute shift break under this paragraph if the employee is entitled to a 30 minute shift break. Id. An employee at a retail establishment may not work for more than six consecutive hours without being provided a nonworking shift break of at least 30 minutes. Id. If an employee works eight consecutive hours in a single shift, the employer shall provide an additional nonworking shift break of at least 15 minutes for every additional 4 consecutive hours the employer employs the employee in the shift. Id. For employees that work for less than six hours, breaks may be waived by written agreement between the employer and employee. Id. A shift break may be considered a working shift break if the type of work prevents an employee from being relieved of work during the nonworking shift break; or the employee is allowed to consume a meal while working and the working shift break is counted towards the employee's work hours; and the employer and employee mutually agree in writing to the working shift break. Id.

XVI. MISCELLANEOUS STATE STATUTES GOVERNING EMPLOYMENT PRACTICES

A. Smoking in Workplace

Effective February 1, 2008, a person may not smoke in an indoor place of employment. Md. Code Ann., Health-Gen. § 24-504.

B. Health Benefit Mandates for Employers

Maryland does not have a statute mandating that employers provide health benefits to employees.

C. Immigration Laws

Maryland does not have a law requiring employers to confirm the legal employment status of new hires.

D. Right to Work Laws

Maryland does not have a right to work law.

E. Lawful Off-duty Conduct (including lawful marijuana use)

Any person who lawfully uses or possesses marijuana may not be subject to arrest, prosecution, or any civil or administrative penalty, including a civil penalty or disciplinary action by a professional licensing board, or be denied any right or privilege, for the medical use of or

possession of medical cannabis. Md. Code Ann., Health-Gen. § 13-3313. However, marijuana use that causes negligence or professional malpractice may result in civil, criminal, and other penalties. Md. Code. Ann., Health-Gen. §13-3314. Although the issue of whether an employer can regulate off-duty conduct, including the use of marijuana, has not been clearly decided in the legislature, the National Labor Relations Board's (NLRB) issued a decision in *The Boeing Company* to address this issue. 365 NLRB No. 154 (Dec. 14, 2017). The Board overturned its old standard, under which an employer rule violated the National Labor Relations Act (NLRA) if a worker *could* "reasonably construe" it to interfere with the right to engage in protected concerted activity. Under the new standard adopted by the Board, an employer rule will only violate the NLRA if it *would* be reasonably interpreted to interfere with workers' NLRA rights considering the balance between the nature and extent of the rule's potential impact on protected rights; and the employer's legitimate justifications for the rule. The Board's guidance denotes three categories of employer rules with respect to the NLRA: Category 1 rules, which the Board has indicated to be presumptively lawful; Category 2 rules, which warrant individualized scrutiny; and Category 3 rules, which are presumptively unlawful.

F. **Gender/Transgender Identity**

An employer may not discharge, fail or refuse to hire, or otherwise discriminate against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment; or limit, segregate, or classify its employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee because of sex, sexual orientation, or gender identity. Md. Code Ann., State Gov't § 20-606. The statute defines "employer" as a person that is "engaged in an industry or business and "has has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year." Md. Code Ann., State Gov't § 20-601. The definition of "employer" includes the state government. Id. Except for a labor organization, "employer" does not include private membership clubs that are exempt from taxation under § 501(c) of the Internal Revenue Code. Id. Some counties in Maryland have adopted code provisions applicable to public and/or private employers within the respective counties that provide protections to employees on the basis of gender/transgender expression.

1. State Law

Effective October 1, 2014, the Fairness for All Marylanders Act of 2014 (the "Act") bans anti-transgender discrimination in housing, employment, and public accommodation. Md. Code Ann., State Gov. §§ 20-101, -1103, -301 to -304, -401 to -402, -501, -602 to -608, -702 to -707. The prohibition provides similar protections to transgender people as those protections provided to lesbian, gay and bisexual Marylanders under the statewide Anti-Discrimination Act of 2001.

2. Baltimore City, Montgomery County, Howard County, and Baltimore County

Since 2002, Baltimore City has prohibited employment discrimination based on gender identity or expression. See Baltimore City Code, Art. 4 §§ 3.1 to 3.5. The prohibition provides similar protections to transgender people in Baltimore City as those protections provided to lesbian, gay and bisexual Marylanders under the statewide Anti-Discrimination Act of 2001.

Since 2007, Montgomery County has also prohibited employment discrimination based on gender identity. See Montgomery County Code, Part II § 27.11. The prohibition requires employers to permit employees to appear, groom, and dress consistently with their gender identity. Id. Similarly, Baltimore County and Howard County adopted their own prohibitions against discriminating based on gender-identity. See Baltimore County Code § 29.1.101(2) (2016), Howard County Code § 12.208 (2015).

G. Other Key Statutes

1. Wrongful Discharge for Abortion, Sterilization, or Artificial Insemination

No employee may be discharged for refusing to participate in an abortion, sterilization or artificial insemination. Md. Code. Ann., Health-Gen. § 20-214.

2. Lie Detector Tests

An employer may not require as a condition of employment or continued employment an employee or applicant (with limited exceptions such as law enforcement and correctional officers) to take a lie detector or similar test. The law also requires that each application for employment must include notice of the prohibition in specified language set forth in **bold-faced**, UPPER CASE type. Given this unique requirement, it has often been overlooked by out-of-state corporations who have offices in Maryland. Md. Code Ann., Lab. & Empl. § 3-702.

3. The Health Care Worker Whistleblower Protection Act

Since 2002, the Health Care Worker Whistleblower Protection Act (the "Act") has protected employees from employer retaliation. Specifically, the Act prohibits an employer from taking or refusing to take certain personnel actions against certain licensed or certified employees who disclose unlawful behavior or refuse to participate in unlawful behavior. The Act also protects employers against frivolous whistleblower actions asserted by disgruntled former employees who had never: (1) afforded the employer a reasonable opportunity to correct the alleged substantial and specific danger to the public health or safety; or (2) followed the employer's corporate compliance plan specifying who to notify of an alleged violation of a rule, law, or regulation. The protection provided by the Act does not extend to former employees who made no internal reports at any point in time before their employment was terminated. Md. Code Ann., Health Occ. §§ 1-501 to 1-506.

4. Maryland False Health Care Claims Act

In April 2010, the Governor of Maryland signed the Maryland False Health Care Claims Act of 2010 ("MD FCA"). The MD FCA prohibits a person from knowingly presenting or causing to be presented a false or fraudulent claim for payment or approval to a State health plan or program. Violators may be liable for treble damages and fined $10,000 per violation. An individual (the "relator") may file a civil action under seal against the alleged violator on behalf of the State. The State may then intervene in the action. If the action is successful, the relator

may be awarded between 15 and 25 percent of the amount recouped. See Md. Code. Ann., Health-Gen. §§ 2-601 to 2-611.

5. The Healthy Retail Employee Act

Signed into law by the Governor on May 20, 2010, the Healthy Retail Employee Act (the "Act"), Md. Code Ann., Lab & Empl. § 3-710(c), mandates that a retailer provide the following breaks to nonexempt employees, depending on the length of the shift:

- 4 to 6 consecutive hours requires a nonworking shift break of at least 15 minutes;

- 6 or more consecutive hours requires a nonworking shift break of at least 30 minutes;

- 8 or more consecutive hours in a single shift requires an additional nonworking shift break of at least 15 minutes for every 4 consecutive hours.

6. Maryland National Guard Members Private Right of Action for Damages Act

Effective October 1, 2016, a member of the National Guard or Maryland Defense force whose employment and reemployment rights under this section have been violated may bring a civil action for economic damages, including last wages and benefits. Md. Code Ann., Pub. Sfty. § 13-704 (2016) (quotations omitted).

7. Veterans Hiring and Promotion Preferences Act

Effective October 1, 2016, an employer may give preference in hiring or promotion to an eligible veteran, the spouse of an eligible veteran that has a service-connected disability, or the spouse of a deceased eligible veteran. Md. Code Ann., Lab. & Empl. § 3-714 (2016). An "eligible veteran" is a veteran who was either honorably discharged, or received a certificate of satisfactory completion of military service from any branch of the United States armed forces, including the National Guard and the Military Reserves. Id.