

MARYLAND CODE
ARTICLE 49B

STATE-WIDE
PRIVATE CAUSE OF ACTION
FOR EMPLOYMENT
DISCRIMINATION

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Four Things to Remember

1. **Art. 49B differs from federal statutes** in significant aspects.
2. **Art. 49B differs from existing county ordinances** (Baltimore, Howard, Montgomery Prince George's Counties & Baltimore City) in significant aspects.
3. **Art. 49B may not be construed to limit county ordinances.** §11D (c).
4. **County ordinances differ from each other** in significant aspects.

How we got to where we are today

Montgomery County ordinance prohibiting discrimination struck down in *McCrary Corp. v. Fowler*, 319 Md. 12, 570 A.2d 834 (1990).

“The county ordinance here attempts to accomplish that which has heretofore been viewed as the sole province of state institutions, i.e., the General Assembly and Court of Appeals.

“We hold, therefore, that an ordinance attempting to combat employment discrimination by creating a new private **judicial cause of action** is not a "local law" under Article XI-A of the Maryland Constitution, and thus is not within the power of Montgomery County to enact.

Art. 49B was amended by adding §42 to authorize **Montgomery County** to enact its own ordinance barring discrimination . Later same authority extended to **Prince George's** and **Howard Counties**.

Perhaps in response to *Molesworth v. Brandon*, 341 Md. 621, 672 A.2d 608 (Md. 1995), **Art. 49B §43** was enacted imposing pre-litigation administrative requirements and providing back pay and compensatory damages, but no punitive damages, against small employers (i.e. an employer with fewer than 15 employees) in **Baltimore County**.

“Brandon alleges that since employers with less than fifteen employees are exempted under §15(b), [footnote omitted] the public policy announced in §14 does not apply to those employers. We disagree and hold that, to this extent, the §15(b) exemption merely excludes small businesses from the administrative process of the Fair Employment Practices Act under the aegis of the Human Relations Commission, but not from the public policy of §14. The plain language of §14, the legislative history of Article 49B, and prior decisions of this and other state and federal courts support this conclusion.”

Molesworth v. Brandon, 341 Md. 621, 628; 672 A.2d 608 (Md., 1995)

- **Baltimore City** enacted Ordinance No. 103 in 1964, which provides for administrative remedies through the Commission on Community Relations. There is no reference to Baltimore City's authority to do so in Art. 49B.

Question

Is the Baltimore City ordinance subject to a *McCrorry*-type challenge?

- “Abusive employment practices constitute a statewide problem which has been addressed by the General Assembly in Article 49B of the Maryland Code and by this Court in *Adler v. American Standard Corp., supra.* It is true that the field has not been preempted by the State, and that **home rule counties** have concurrent authority to **provide administrative remedies not in conflict with state law.**” *McCrory* at 20.

Questions

Do the 2007 amendments creating a state-wide private cause of action constitute state preemption?

Is Baltimore City a “home rule” jurisdiction?

Does it matter that the remedy is administrative and not judicial?

Local Ordinances

- Baltimore City Code **Art. 4 §1-1, *et seq.***
<http://cityservices.baltimorecity.gov/charterandcodes/>
- Baltimore County Code **§29-1-101, *et seq.***
http://www.amlegal.com/baltimoreco_md/
- Howard County Code **§12.200, *et seq.***
[http://www.municode.com/resources/gateway.asp?
pid=10016&sid=20](http://www.municode.com/resources/gateway.asp?pid=10016&sid=20)
- Montgomery County **§27-1, *et seq.***
http://www.amlegal.com/montgomery_county_md
- Prince George's County **Div. 12 §2-185, *et seq.***
<http://egov.co.pg.md.us/lis/>

Applicability

- Art. 49B and Baltimore City §1-1(i) * --15 or more employees
- Baltimore County Code -- less than 15 employees
- Howard County Code -- 5 or more
- Montgomery Code -- 1 or more
- Prince George's Code -- 1 or more

* Baltimore City only requires person to be employed for at least 15 days in previous year to be counted.

Art.49B, §15(b) provides: “The term ‘employer’ means a person engaged in an industry or business who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person; such term does include the State of Maryland to the extent as may be provided in this article but such term does not include a bona fide private membership club (other than a labor organization) which is exempt from taxation under §501(c) of the Internal Revenue Code.”

Question

Can you sue an individual under Art. 49B? For example:

- corporate officer (particularly when corporation is insolvent)
- supervisor who makes false report about plaintiff
- co-worker alleged to have harassed plaintiff

Policies, Principles and Interpretation

"[W]hat is necessary are laws which remedy the effects of pernicious beliefs [. . .]and which thereby force justice on those who are as yet unwilling to embrace it in their hearts and minds."

Haas v. Lockheed Martin, 396 Md. 469, 914 A.2d 735, 750 (2007), quoting *State v. Sheldon*, 332 Md. 45, 63-64, 629 A.2d 753, 763 (1993) .

Art. 49B is a Remedial Statute to be Liberally Construed in Favor of Claimants

“First, we consider the remedial nature and purpose of Article 49B. Our cases consistently refer to Article 49B as being remedial in nature. [citations omitted]” *Haas* at 750

“As a remedial statute, § 42 of Article 49B should be construed liberally in favor of claimants seeking its protection.” *Haas* at 750-751

“[T]here also exists a canon of statutory construction that remedial statutes are liberally construed to suppress the evil and advance the remedy.” *Harrison v. John F. Pilli & Sons, Inc.*, 321 Md. 336, 341, 582 A.2d 1231, 1234 (1990)).” Quoted in *Haas* at 750-751.

Federal Jurisprudence is NOT Determinative

“Our courts traditionally seek guidance from federal cases in interpreting Maryland's Article 49B” *Haas* at 742

BUT

“Maryland appellate courts have interpreted state statutes, rules, and constitutional provisions differently than analogous federal provisions on numerous occasions, even where the state provision is modeled after its federal counterpart.” *Haas* at 742, footnote 10

AND

“... we are not bound by the Supreme Court's interpretation of Title VII in our interpretation of Art. 49B”
Haas at 749

Prohibited Discrimination

Federal statutes prohibit discrimination based on:

- **Race, Color, Religion, Sex, National Origin** (Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e, *et seq.*)
- **Age** (Age Discrimination in Employment Act, 29 U.S.C. Sec. 621, *et seq.*)
- **Disability** (Americans with Disabilities Act/Rehabilitation Act, 42 U.S.C. Sec. 12101, *et seq.* and 29 U.S.C. Sec. 701, *et seq.*)
- **Pregnancy** (42 U.S.C. Sec. 2000e(k) and
- **Retaliation.**

Article 49B adds:

Ancestry (**§14 only**), Marital Status, Sexual Orientation, and (**§§14 and 16**), Genetic Information. **§16(a) (1) and (3) only.**

“It shall be an unlawful employment practice for an employer: (1) to fail or refuse to hire or to discharge any individual, or to otherwise discriminate against any individual with respect to the individual’s compensation, terms, conditions, or privileges of employment because of such individual’s race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual’s refusal to submit to a genetic test, or make available the results of a genetic test.

- Howard and Prince George's Counties add Familial Status, Political Opinion and Occupation.
- Montgomery adds Familial Status and Genetic Information and Gender Identity (subject to referendum/litigation).
- Baltimore City adds physical or mental capability and gender expression.

The definition of “disability” in §15(g) appears to be all inclusive, but it must be read with and is qualified by §14:

“The term ‘disability’ means any physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness including epilepsy, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impairment, deafness or hearing impairment, muteness or speech impediment or physical reliance on a seeing eye dog, wheelchair, or other remedial appliance or device; and any mental impairment or deficiency as, but not limited to, retardation or such other which may have necessitated remedial or special education and related services.”

Patch Sections 14 and 15 together and . . .

“The term ‘disability’ means any physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness and any mental impairment or deficiency unrelated in nature and extent so as to reasonably preclude the performance of the employment.”

In Maryland “disability” is defined differently than it is in the ADA or Rehabilitation Acts

§ 14. Statement of policy

It is hereby declared to be the policy of the State of Maryland . . . to assure all persons equal opportunity in receiving employment . . . regardless of . . . disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, and to that end to prohibit discrimination in employment

MHRC Definition of Disability COMAR 14.03.02.02

B(6) “Disability means, with respect to an individual: (a) Epilepsy, infection with the human immunodeficiency virus, paralysis, amputation, lack of physical coordination, blindness or visual impairment, muteness or speech impediment, physical reliance on a seeing eye dog, wheel chair or other remedial appliance or device, or mental retardation or other mental impairment or deficiency which necessitates remedial or special education and related services; (b) A physical or mental impairment other than those enumerated in §B(6)(a) of this regulation, that is caused by bodily injury, birth defect, or illness, which substantially limits one or more of an individual’s major life activities; (c) a record of a physical or mental impairment as set forth in §B(6) (a) or (b) . . . ; (c) being regarded as having a physical or mental impairment as set forth in §B(6) (a) or (b)

COMPARE AND CONTRAST

49B:

[A]ny physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness and any mental impairment or deficiency unrelated in nature and extent so as to reasonably preclude the performance of the employment.”

COMAR:

A physical or mental impairment other than those enumerated that is caused by bodily injury, birth defect, or illness, which substantially limits one or more of an individual’s major life activities;

Questions

- Is the MCHR regulation valid when it incorporates the ADA requirement that one demonstrate that he or she is significantly impaired in a major life activity?
- Hint: “Regulations promulgated by an administrative agency must, of course, be ‘consistent with the letter and spirit of the law under which the agency acts.’ *Department of Transportation v. Armacost*, 311 Md. 64, 74, 532 A.2d 1056, 1061 (1987). See, e.g., *Maryland State Police v. Warwick*, 330 Md. 474, 481, 624 A.2d 1238, 1241 (1993); *Insurance Comm'r v. Bankers*, 326 Md. 617, 623, 606 A.2d 1072, 1075 (1992).” *Christ by Christ v. Maryland Dept. of Natural Resources*, 644 A.2d 34, 335 Md. 427, 437 (1992)

Compare ADA §12102(2) and Art. 49B

The term ‘disability’ means, with respect to an individual (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such impairment; or

(C) being regarded as having such an impairment”

The term ‘disability’ means any physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness and any mental impairment or deficiency unrelated in nature and extent so as to reasonably preclude the performance of the employment.”

Questions

- Does Art. 49B allow a “regarded as” disability claim? A “record of” claim? There are no analogous statutory provisions to 42 U.S.C. §12102(2) (B) and (C), only COMAR 14.03.02.02.
- Is an employer required by Art. 49B to afford reasonable accommodations to an employee with a disability? There is no analogous provision in Art. 49B to 42 U.S.C. §12112(b)(5)(A) only COMAR 14.03.02.05

Yes, as of October 1, 2009

- H.B. 393 (enacted 134-2) S.B. 670 (enacted 44-0) amends Maryland law to expressly prohibit discrimination based on a perceived disability or a record of a disability (State Government Article §20-601) and requires employers to reasonably accommodate an otherwise qualified individual (§20-606).

ADA Restoration Act H.R. 3195

The original bill was sponsored by Congressman Steny Hoyer and 245 co-sponsors and would have provided:

“The term ‘disability’ means, with respect to an individual--

(i) a physical or mental impairment [that substantially limits one or more of the major life activities of such individual];

(ii) a record of a physical or mental impairment; or

(iii) being regarded as having a physical or mental impairment.

ADA Amendments Act (ADAA) of 2008

House and Senate versions were reconciled and enrolled as S. 3406

President Bush signed that S. 3406

Amendments are effective January 1, 2009

In these slides language in the House version which was changed by the House-Senate Conference Committee is in []

SEC. 3. DEFINITION OF DISABILITY

The ADA Amendments Act, which has passed the House provides:

(1) **DISABILITY.** The term “disability” means with respect to an individual

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

[(2) **SUBSTANTIALLY LIMITS.** The term “substantially limits” means materially restricts.]

Compare and Contrast

ADA Amendments Act 2008
(House version as amended)

A physical or mental impairment that materially restricts one or more major life activities of such individual.

ADA of 1990

A physical or mental impairment that substantially limits one or more major life activities of such individual.

(5) RULES OF CONSTRUCTION REGARDING THE DEFINITION OF DISABILITY

The definition of “disability” in paragraph (1) shall be construed in accordance with the following:

[(A) To achieve the remedial purposes of this Act, the definition of “disability” in paragraph (1) shall be construed broadly.]

(A) The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act.

(B) The term ‘substantially limits’ shall be interpreted consistently with the findings and purposes of the of the ADA Amendments Act of 2008.

(E)(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as,

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eye glasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall not be considered in determining whether an impairment substantially limits a major life activity.

(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

SECTION 2. FINDINGS AND PURPOSE

(a) FINDINGS --Congress finds--

(4) the holdings of the Supreme Court in *Sutton v. United Airlines, Inc.*, 527 U.S. 471 (1999) and its companion cases, have narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect; and

(5) the holding of the Supreme Court in the case of *Toyota Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S.184 (2002) further narrowed the broad scope of protection intended to be afforded by the ADA:

FINDINGS (CONTINUED)

(6) as a result of these Supreme Court cases, lower courts have incorrectly found in individual cases that people with a range of substantially limiting impairments are not people with disabilities.

(7) in particular, the Supreme Court, in the case of *Toyota Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S.184 (2002), interpreted the term ‘substantially limits’ to require a greater degree of limitation than was intended by Congress; and

(8) Congress finds that the current Equal Employment Opportunity Commission ADA regulations defining the term “substantially limits” as ‘significantly restricted’ are inconsistent with Congressional intent, by expressing too high a standard.

Final Questions

So which definition -- Art. 49B or ADA -- most favors

- Plaintiffs?
- Defendants?

Definition of Age

ADEA 29 U.S.C. 631(a)

“The prohibitions in this chapter shall be limited to individuals who are at least 40 years of age.”

49B does not specify an age

Baltimore City 1-1(c)(2)(ii) “the prohibitions relating to age discrimination are limited to individuals who are least 18 years of age but less than 65 years of age.”

Where to File 49B Administrative Complaint

Can be filed with EEOC or Maryland Human Relations Commission or any county agency (**§9A**) BUT where you file can have a significant impact on further proceedings.

While MCHR is obligated to pursue a claim before the OAH or the courts, if it has issued a probable cause finding of discrimination, unless MCHR's General Counsel remands for further investigation or closure.

However, if the administrative complaint is not filed with MCHR even though right to bring private action is preserved (**§11B**) MCHR will not pursue litigation.

Administrative Statute of Limitation

Title VII 300 days in Maryland and other deferral states
49B, Baltimore and Howard Counties 6 months

Prince George's 180 days

Montgomery County 1 year

Note: 6 months and 180 days are not the same – 6 months from January 1 is July 1 while 180 days from January 1 is June 29, June 28 if a leap year. A six-month period can range from 181 to 184 days. For example, 6 months beginning January 1 and ending July 1 is 181 days, but 6 months from March 1 to September 1 is 184 days.

When does statute start to run?
Maryland and Federal Courts differ.

- “We hold that, for the purpose of claims filed pursuant to 42 of the Maryland Code, Article 49B, a ‘discharge’ occurs upon the actual termination of an employee, rather than upon notification that such a termination is to take effect at some future date. In doing so, we find more persuasive the reasoning employed by those states that have rejected the Ricks/Chardon [*Delaware State College v. Ricks*, 449 U.S. 250 (1980); *Chardon v. Fernandez*, 454 U.S. 6 (1981)]rule in favor of the one we adopt today.” *Haas v. Lockheed Martin*, 396 Md. 469, 914 A.2d 735, 750 (2007).

- Note: “We shall leave for another day whether the Ricks/Chardon rule would be adopted in Maryland regarding an allegation of discriminatory denial of academic tenure (or a tenure-like situation).” Haas at 748, footnote 16
- Note: Haas was decided 5-2

Administrative Exhaustion

Federal and 49B 180 days

Baltimore County 60 days

Howard, Montgomery, Prince George's 45
days (Art.49B§44)

Judicial Statute of Limitations

A private cause of action must be filed within 2 years of the date on which the act of discrimination complained of occurred. §42(b)(1)

If you don't file an administrative complaint sufficiently in advance of 2-year SOL, you cannot meet deadline.

There are, however, options

- As noted before, MCHR General Counsel can remand case to MCHR rather than prosecute. **§ 11 (a)(2)(I) and (II) and § 11A(C (3)).**
- Or the General Counsel may elect to go to court in lieu of OAH. **§11A(B)**

The Administrative Process

- If MCHR finds probable cause, full evidentiary hearing may be held before an administrative judge at the Maryland Office of Administrative Hearings (OAH) (§11).
- If MCHR finds no probable cause appeal is review per Maryland Administrative Procedures Act. State Government Article §10-222 “provided that the [EEOC] does not have jurisdiction over the subject matter of the complaint.”
- However, employee can pursue civil action whether or not cause is found.

Question

Does the following language provide for a full evidentiary hearing?

(a) (5) The case in support of the complaint shall be presented at the hearing by the general counsel of the Commission.

(b) (1) The respondent may file a written answer to the complaint and appear at the hearing in person, or otherwise, with or without counsel.

(2) The respondent may submit testimony and shall be fully heard.

(3) The respondent may examine and cross-examine witnesses.

Question

- Is MCHR finding (whether cause found or not) admissible in circuit court proceeding?

MHRC REQUIRES 3 THINGS BEFORE FILING PRIVATE CAUSE OF ACTION

1. Claimant must provide written notice of intent to file a private right of action to the Commission and all parties to the action.
2. The Executive Director shall issue written notice of dismissal of proceedings
3. Upon receipt of the written notice of dismissal of proceedings, the complainant may file a private right of action.

COMAR 14.03.01.14

- C. Notice of Intent to File a Private Right of Action. In a complaint that is filed with the Commission, the complainant shall provide written notice of intent to file a private right of action to the Commission and all parties to the action.
- D. Dismissal of Proceedings Pursuant to Private Right of Action.
- (1) Upon receipt of the complainant's written notice of intent to file a private right of action, the Commission shall cease further processing of the complaint provided that the prerequisites of §B of this regulation have been met.
 - (2) The Executive Director shall issue written notice of dismissal of proceedings pursuant to Regulation .03J of this chapter.
 - (3) Upon receipt of the written notice of dismissal of proceedings, the complainant may file a private right of action.

Questions

Is noncompliance with MHRC regulations grounds to dismiss suit?

Can MHRC impose procedural conditions on bringing suit?

If administrative complaint is filed with EEOC or other agency other than MHRC are there similar preconditions?

Note: Statute of limitations continues to run while Complainant waits for director's letter.

Differences in Administrative v. Judicial Proceedings

- Discovery is limited to document production. No interrogatories, no depositions. COMAR 28.02.01.10
- No jury trial.
- Appeal to Appeal Review Board may be brought by MCHR or any party. §3(d) “The Commissioners, in addition to their other duties, shall serve as an appeal board for the review of decisions of the hearing examiner. The appellate panel of commissioners, as determined by the rules of procedure of the Commission, may allow any party affected by the examiner's decision to introduce additional relevant testimony or evidence at the time of an appeal from the hearing examiner.
- Any further appeal is to Circuit Court, Court of Special Appeals and Court of Appeals. [cite]

Judicial Statute of Limitations

- Title VII 90 days from right to sue letter.
- Article 49B (as amended by HB399/SB 528, 2008) and all county ordinances (per Art. 49B, §42) 2 years from date of discrimination.

Note: Pending administrative claim does **not** toll Art. 49B's limitations period.

Venue

Suit is filed in the circuit court where the discrimination occurred. Art. 49B, §11B(B)

See also: *Pope-Peyton v. Realty Management*, 149 Md.App. 393, 815 A.2d 919 (2003) which held that where plaintiff worked (Prince George's County) not where decision was made (employer's office in Montgomery County) is where discrimination occurred.

But look at COMAR14.03.01.14.14.A.

Right to Private Right of Action. Pursuant to Article 49B, §11B, Annotated Code of Maryland, a complainant may file a private right of action against the respondent in the circuit court of Baltimore City or the county where the alleged discriminatory act occurred.

Damages

- Title VII and 49B (1) Back pay and other make whole remedies; (2) injunctive relief; (3) Compensatory damages not to exceed \$50,000 to \$300,000 depending on number of employees; (4) punitive damages in some cases.

Maryland Common Law of Punitive Damages

“In a non-intentional tort action, the trier of facts may not award punitive damages unless the plaintiff has established that the defendant's conduct was characterized by evil motive, intent to injure, ill will, or fraud, i.e., ‘actual malice’.” [fn. 20] We recognize that the term "actual malice" has meant different things in the law, that its popular connotation may not always be the same as its legal meaning, and that its use has been criticized. [citations omitted] Nevertheless, we simply use the term in this opinion as a shorthand method of referring to conduct characterized by evil motive, intent to injure, ill will, or fraud. In instructing juries with respect to punitive damages, however, it would be preferable for trial judges not to use the term ‘actual malice’.” *Owens-Illinois, Inc. v. Zenobia*, 325 Md. 420,460; 601 A.2d 633 (1991)

Art. 49B's standard for punitive damages

Defendant (1) cannot be “a government entity or political subdivision” and (2) must be found to have “engaged in or is engaging in an unlawful employment practice with actual malice” §**Art. 49B 11B. (C) (1) and (2)**

Note: §11B applies to actions brought by an individual. There is no reference to punitive damages in §§11 or 11A, pertaining to suits initiated by MHRC.

- Baltimore County ordinance expressly prohibits punitive damages.
- There are no expressed limits on damage awards for actions filed in the Circuit Courts of Howard, Montgomery and Prince George's Counties. Article 49B §45 provides that plaintiff's are entitled to "damages, injunctive relief, or other civil relief".

What statute(s) should be pleaded or, if you prefer, pled?

Consider whether where the case is likely to be tried.

Pleading a federal statute invites removal to U.S. District Court of Maryland (and the 4th Circuit Court of Appeals.

Consider the difference in administrative requirements.

Pleading Article 49B in Montgomery County risks dismissal for failure to file administrative complaint with shorter time (6months v. 1 year) or failure to allow administrative complaint to lie for longer time (180 days v. 45 days.)

Consider the impact, if any, of caps on compensatory and punitive damages.

As low as \$50,000 for the smallest employers under 49B, no cap in Howard, Montgomery or Prince George's Counties.

Consider the type of discrimination being alleged.

For example: (a) there is no federal prohibition against discrimination based on sexual orientation, but Art. 49B makes it unlawful; (b) political affiliation discrimination is prohibited by the Prince George's County Code, but not by Art. 49B.

Consider the size of the employer.

For example: Art. 49B applies to employers with 15 or more employees, Montgomery County applies to employers with one or more. Accordingly, an employer in Montgomery County with 10 employees can be sued under the County Code, but not Art. 49B for race discrimination.

When to file private cause of action

1. When your client authorizes you to do so.
2. After administrative claim has been pending for 45, 60 or 180 days.
3. Before 2-year SOL is about to run.
4. When MHRC finds no probable cause (and you have good faith belief in merits).
5. When MHRC decides to proceed at OHA and the limitations on discovery, etc. dictate judicial forum is preferable.

Baltimore City Code Section 3-1

Except where a particular occupation or position reasonably requires, as an essential qualification, the employment of a person or persons of a particular race, color, religion, national origin, ancestry, sex, age, marital status, physical or mental capability, sexual orientation, or gender identity or expression and that qualification is not adopted as a means of circumventing the purpose of this article, it is an unlawful employment practice: (1) for any employer to discriminate against an individual with respect to hire, tenure, promotion, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment; [§2-7 omitted]

- ART. 4, §3-2 BALTIMORE CITY CODE 12/31/03 -12-(7) *City Code, 1966, art. 4, §10; 1976/83, art. 4, §10.) (Ord. 64-103; Ord. 71-1160; Ord. 75-908; Ord. 88-079; Ord. 90-423; Ord. 01-453.)*

- Enforcement is by Baltimore Community Relations Commission.
- “The Commission may take such affirmative action including (but not limited to) hiring, reinstatement, or upgrading of employees with or without back pay . . . awarding of compensatory damages to the person aggrieved by such practice, as, in the judgment of the Commission, will effectuate the purposes of this article. [And for] [c]ompensatory damages [which] may include compensation for humiliation, embarrassment, and emotional distress . . . [and] for other expenses incurred by an aggrieved person as a direct result of any unlawful discriminatory practice.” §4-3(e)(2) and (3)

- “In a contested case, a respondent may seek judicial review of a final decision of the Commission by petition to the Circuit Court for Baltimore City in accordance with the Maryland Rules of Procedure.” §4-4(a)

HYPOTHETICALS

Jones was a maintenance mechanic working at ABC's truck terminal in Montgomery County. ABC's corporate offices are in the District of Columbia. It also has sales offices in Cumberland and Salisbury. He claims he was discharged because of his sexual orientation and race.

- List any and all laws pursuant to which he can make a claim.
- List all courts with jurisdiction and specify venue.

- Smith works for Pete's Pizza. Pete hired someone knew to manage the store when his wife, who had been the manager retired. Smith tells you Pete had promised to make him the manager. The store employs Pete, Smith, the new manager and a part-time server.
- Can Smith bring an action under Art. 49B? The Montgomery County Code? The Howard County Code?

- Green filed a discrimination complaint with EEOC five months ago alleging he was fired because he and his supervisor argued about who would make a better president -- Obama, McCain, Nader or Barr. Green said he would never again vote for a Democrat or Republican, and that is why he is a libertarian. Green is a social worker for the Prince George's County government.
- Can she file suit? Where? What must she plead to state a cause of action?

- Johnson filed an age complaint with the Maryland Commission on Human Rights. He just received a letter saying there was no probable cause to believe disability discrimination had occurred. There was no explanation. During discussions with the MCHR investigator he was asked what his disability was and if he was substantially impaired in any major life activities. He responded that he was recently diagnosed with multiple sclerosis, but that except for feeling tired all the time and some muscle weakness he was “pretty much the same as always”.
- What information will ask for and what advice will you give to Johnson?

- A's speech and gait are noticeable because of cerebral palsy.
- B suffers from chronic fatigue as a result of multiple sclerosis.
- C takes medication for pulmonary hypertension.
- Applying the standards in 49B and the MCHR regs and Prince George's County Code who is considered disabled?

Art. 49B

MCHR Regs

Pr. George's

C.P.

M.S.

P.H.