

EMPLOYMENT LAW SUMMARY

Maryland Fair Employment Laws – Overview



In addition to the workplace discrimination protections provided to employees under federal law, such as Title VII of the Civil Rights Act, the Age Discrimination in Employment Act (ADEA) and the Americans with Disabilities Act (ADA), Maryland provides broad workplace discrimination protections under its own fair employment laws. Maryland's fair employment standards are governed by the **Maryland Fair Employment Practices Act** (MFEPA).

COVERED EMPLOYERS

The MFEPA applies to Maryland employers that have at least **15 employees** for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. It also applies to employment agencies and labor organizations.

PROTECTED TRAITS

Under the MFEPA, employers may not discriminate against a person with respect to any employment matters based on any of the following, which are known as "protected traits":

- Race (including traits associated with race, such as hair texture and "protective hairstyles," including braids, twists and locks)
- Color;
- Religion;
- Sex;
- Age;
- Ancestry or national origin;
- Marital status;
- Sexual orientation;
- Gender identity;
- Disability (including pregnancy);
- Military status (including dependents of uniformed services and armed forces reserve members); and
- Genetic information, refusal to submit to a genetic test and refusal to make genetic test results available.

PROHIBITED PRACTICES

Under the MFEPA, it is unlawful for an employer to take any of the following actions based on an individual's protected trait:

- Fail or refuse to hire, or offer an internship, to any individual;
- Fire an employee or intern;
- Discriminate against an individual in compensation or in terms, conditions or privileges of employment or internship;
- Limit, segregate or classify an employee, applicant or intern in any way that would deprive or tend to deprive the individual of employment or internship opportunities or otherwise adversely affect the individual's employment status;
- Fail or refuse to make a reasonable accommodation for the known disability of an otherwise qualified individual;
- Discriminate in connection with admission to, or employment in, a program established to provide apprenticeship or other training;
- Include any discriminatory limitations or specifications in employment notices or advertisements for employment;
- Request or require genetic tests or genetic information as a condition of hiring or determining benefits; or
- Engage in harassment.

Effective Oct. 1, 2022, an amendment to the MFEPA clarifies that "harassment" includes unwelcome and offensive conduct and sexual harassment. The amendment also provides detailed definitions of each of those terms.

RETALIATION

Maryland employers are also prohibited from retaliating against individuals for exercising their rights under the MFEPA.

Employers may not discharge or discriminate against any individual because he or she files a complaint or testifies, assists or participates in a proceeding related to MFEPA rights.

Finally, it is unlawful for an employer to discharge or otherwise discriminate against any individual because he or she has opposed any discriminatory practice under the MFEPA.

AGE DISCRIMINATION

The MFEPA protects **all individuals** from age discrimination. By contrast, the federal ADEA only protects individuals who are at least 40 years old.

DISABILITY DISCRIMINATION

The MFEPA prohibits discrimination based on disability and requires employers to make reasonable accommodations for the known disabilities of qualified individuals.

The table below outlines how the law defines the term "disability."

Disability under the MFEPA	
Defined as:	Includes (but is not limited to):
<ul style="list-style-type: none"> • Any physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness, including epilepsy; • Any mental impairment or deficiency • A record of having a physical or mental impairment; or • Being regarded or treated as having a physical or mental impairment (even if there is no actual impairment). 	<ul style="list-style-type: none"> • Any degree of paralysis, amputation or lack of physical coordination; • Blindness or visual impairment; • Deafness or hearing impairment; • Muteness or speech impediment; • Physical reliance on a service animal, wheelchair, or other remedial appliance or device; • Any mental impairment or deficiency that may have necessitated remedial or special education and related services; and • Disabilities caused by or contributed to by pregnancy or childbirth.

PRE-EMPLOYMENT INQUIRIES AND EXAMINATIONS

The MFEPA allows employers to make pre-employment inquiries regarding an individual's ability to perform job-related functions. Employers may not, however, conduct pre-employment inquiries to determine the existence or severity of a disability. The MFEPA also prohibits employers from requiring pre-employment medical examinations or genetic tests for this purpose. Under the MFEPA, pre-employment medical examinations are permitted only if:

- All entering employees in the same job category are subjected to the same examination regardless of disability; and
- The results of the exam are kept confidential and only used for:
 - Informing supervisors of any work restrictions and accommodations;
 - Informing safety personnel that the condition may require emergency treatment (if appropriate); and
 - Determining the employer's compliance with MFEPA.

REASONABLE ACCOMMODATIONS

Employers must provide reasonable accommodations for qualified employees with disabilities.

A **qualified employee with a disability (QEWD)** is a person who:

- Can perform, either with or without a reasonable accommodation, the essential functions of the job in question; or
- Is otherwise qualified for the benefit, term, condition, or privilege of employment at issue.

Employers may not refuse to hire a QEWD based on the need to provide a reasonable accommodation. Examples of accommodations that may be reasonable under the MFEPA include:

- Making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities;
- Providing or modifying equipment or devices;
- Job restructuring;
- Part-time or modified work schedules;
- Reassigning or transferring an employee to a vacant position, light-duty job, different work location or other alternative employment opportunity which is available under the employer's existing policies or practices;
- Teleworking;
- Permitting an employee to use paid or unpaid sick leave, disability leave, medical leave, or other leave which is available under the employer's existing policies or practices;
- Adjusting or modifying examinations, training materials, or policies;
- Waiving a no pet requirement to allow use of a service animal;
- Providing applicants or employees with a disability with an opportunity to demonstrate their pertinent knowledge, skills, and abilities by testing methods adapted to their special circumstances if employment tests are used;
- Making reasonable modifications in the employer's rules, policies, and practices if the modification may enable an applicant or employee with a disability to perform the essential functions of the job; and
- Reanalyzing, with full consideration to the needs of the applicant or employee with a disability, job specifications, qualifications, or criteria to determine if they may be waived or modified.

Effective Oct. 1, 2022, the MFEPA also requires employers to provide reasonable accommodations for the known disability of any job applicant, even if an applicant is not otherwise qualified for the position sought.

PREGNANCY

The MFEPA includes specific accommodation requirements for disabilities related to pregnancy. If a pregnant employee requests a reasonable accommodation, the employer must explore all possible means of providing it.

Reasonable accommodations for pregnancy include (but are not limited to):

- Changing the employee's job duties;
- Changing the employee's work hours;
- Relocating the employee's work area;
- Providing mechanical or electrical aids;
- Transferring the employee to less strenuous or less hazardous position; and
- Providing leave.

When a pregnant employee requests a transfer to a less strenuous or hazardous position as a reasonable accommodation, the employer must make the transfer for the duration of the pregnancy if either of the following apply:

- The employer has a policy, practice or collective bargaining agreement requiring or authorizing transfers for employees with any other temporary disability; or
- The employee's health care provider advises the transfer, and the employer can provide the transfer without:
 - Creating additional employment that the employer would not otherwise have created;
 - Discharging any other employee; or
 - Transferring any employee with more seniority than the pregnant employee;or
- Promoting any employee who is not qualified to perform the job.

UNDUE HARDSHIP EXCEPTIONS

Employers do not have to accommodate any person’s disability if the accommodation would cause an undue hardship on the conduct of the employer’s business. The employer has the burden of proving it has an inability to accommodate a disability. The MFEPA also specifies that an undue hardship may excuse an employer from reasonably accommodating an employee’s **religion**.

The table below provides an overview of the factors that are considered in determining whether an accommodation would impose an undue hardship on a business.

Undue Hardship Factors
<ul style="list-style-type: none"> • The nature and cost of the accommodation needed; • The financial resources of the employer and any parent corporation, if applicable; • The size of the business with respect to the number and type of facilities; • The type of business or program, including the composition and structure of the work force; • The ability of the employer to conduct business or operate programs with the accommodation; • The effect of the accommodation on other employees’ performance; and • Legitimate safety concerns.

Any safety requirements considered in the undue hardship analysis must be based on actual information or data, rather than speculation, conjecture, stereotypes or generalizations about individuals with disabilities.

Similarly, if an employer discriminates against a person with a disability based on the potential for **a future hazard to health or safety**, the employer must be able to show that the individual’s disability, even with reasonable accommodation, would render the individual unable to perform the duties of the position in question without endangering the health or safety of the individual or others.

BONA FIDE OCCUPATIONAL QUALIFICATION EXCEPTIONS

The MFEPA’s **bona fide occupational qualification (BFOQ)** exceptions allow employers to use an individual’s protected status as a basis for certain employment decisions. Specifically, employers may hire or employ an individual on the basis of a protected status if that protected status is a **BFOQ that is reasonably necessary to the normal operation of the business or enterprise**. However, this exception does not apply to all protected traits under the MFEPA. The table below lists the protected traits for which a BFOQ exception may apply for hiring and employment decisions.

BFOQ Exception for Hiring and Employment	
Allows hiring based on:	Does NOT allow hiring based on:
<ul style="list-style-type: none"> • Religion; • Sex; • Age; • National origin; or • Disability 	<ul style="list-style-type: none"> • Race; • Color; • Sexual orientation; • Gender identity; • Genetic testing; or • Marital status.

The MFEPA also permits employers to indicate preferences, limitations, specifications or discrimination in job advertisements or notices if a protected status is a BFOQ. This exception applies to the same protected statuses as the BFOQ exception for hiring, except that it also includes marital status. The table below lists the protected traits for which a BFOQ exception may apply for job advertisements.

BFOQ Exception for Job Advertisements	
Allows discrimination based on:	Does NOT allow discrimination based on:

BFOQ Exception for Job Advertisements

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|--|--|
| <ul style="list-style-type: none">• Religion;• Sex;• Age;• National origin;• Disability; and• Marital status. | <ul style="list-style-type: none">• Race;• Color;• Sexual orientation;• Gender identity; or• Genetic testing |
|--|--|

Finally, the MFEPA allows employers to refuse to hire a QIWD if the discrimination meets BFOQ requirements. In determining whether the BFOQ requirements have been met when an employer discriminates against a QIWD, the employer must show that the particular standard or qualification is reasonably necessary to the normal operation of that business and that:

- All or substantially all individuals with the particular disability would be unable, even with reasonable accommodation, to perform the duties of the job in question; or
- It is impossible or highly impractical to determine, on an individual basis, whether an individual with the particular disability would be able to perform the duties of the job in question.

NOTICE REQUIREMENTS

The MFEPA requires Maryland employers to post a notice of the law's requirements regarding pregnancy discrimination in a conspicuous place on their premises. Employers must also include information about the MFEPA's pregnancy rights in any employee handbook.

The [Maryland Commission on Civil Rights](#) (MCCR) has a [notice](#) regarding pregnancy rights that employers may print out for this posting requirement.

ENFORCEMENT

Any fair employment violation or complaint will be handled by the MCCR. The MCCR may conduct investigations and hold hearings in order to determine whether an employer complies with the MFEPA.

Effective Oct. 1, 2021, there is a **300-day** time limit for filing most types of discrimination complaints with the MCCR. The 300-day period begins on the day of the alleged discrimination or the day any ongoing discrimination ceased.

For claims alleging **workplace harassment**, the time limit for filing a complaint is **two years** after the date on which the alleged harassment occurred. Individuals may also sue employers in court for harassment. This type of lawsuit must be filed within **three years** after the alleged harassment occurred. **Effective Oct. 1, 2022**, these time periods do not run while an administrative action for the same conduct is pending.

MORE INFORMATION

For more information on Maryland's fair employment laws, contact Heffernan Insurance Brokers or visit the [MCCR website](#).

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational purposes only. Readers should contact legal counsel for legal advice.

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