

Maryland State Ethics Commission
Implementation of Anti-Harassment and Anti-Discrimination Provision
(Maryland Public Ethics Law §5-508)

I. The Law

Effective May 8, 2018, the Maryland State Ethics Commission assumed responsibility for implementing and enforcing §5-508 of the Public Ethics Law. This section of the Law, which was added as a result of legislation enacted during the 2018 Legislative Session, provides as follows:

5-508.

- (a) This section does not apply to a State official of the Legislative Branch or a State official of the Judicial Branch.
- (b) A State official may not, based on any characteristic protected by law, unlawfully harass or discriminate against:
 - (1) an official or employee;
 - (2) an intern, a page, or a fellow in any branch of State Government;
 - (3) an individual regulated lobbyist; or
 - (4) a credentialed member of the press.

As used in this section, the term State official includes a constitutional officer or officer-elect in an executive unit (i.e. Governor, Lieutenant Governor, Comptroller, Treasurer, Attorney General), a State's Attorney, a clerk of the circuit court, a register of wills, or a sheriff.

In receiving complaints from individuals under this provision, the Commission will strongly encourage the complainant to contact the Maryland Commission on Civil Rights (MCCR) and/or the Equal Employment Opportunity Commission (EEOC) to ascertain whether those bodies have authority to address the complaint, thereby permitting the complainant to choose the option or options offering the best and most comprehensive relief. **Be aware** there are strict time limits for filing with the MCCR or EEOC.

II. Prohibited Acts Under §5-508

In implementing §5-508, the Commission looks to the unlawful employment practices stated in §20-606(a) of the State Government Article, which provides in part as follows:

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 unreasonably 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.

NOTE: Retaliation against an individual because the individual made a complaint, testified, assisted or participated in an investigation is itself a discriminatory practice prohibited by §5-508.

In addition to taking action on complaints of discrimination based on the above-listed characteristics, the Commission addresses complaints of sexual harassment under this section. Sexual harassment is a form of sex discrimination and is defined for purposes of §5-508 as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal or physical contact of a sexual nature when, for example:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,
- submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual, or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment, which is perceived by the victim to be abusive or hostile.

III. The Enforcement Process

In handling complaints alleging violations of §5-508, the Commission follows the enforcement process described in Subtitle 4 of the Ethics Law and as further described in the Commission's regulations, COMAR 19A, Subtitle 01, Chapter 3. The Law and regulations, which are applicable to all alleged violations of the Ethics Law, describe the enforcement process in detail, including confidentiality, subpoena power, referral of possible criminal matters to the appropriate prosecuting authority, representation (of the respondent) by counsel, consideration of the complaint by the Commission¹, and sanctions.

The enforcement process is the same for all complaints alleging violations of the Ethics Law. The Staff Counsel will gather statements, documents and other evidence the complainant elects to submit, to include the impact of the alleged conduct on the complainant. Note that the term "party" is defined in the Law as including only the respondent and the Staff Counsel or other counsel designated by the Commission (COMAR 19A.01.03.02.A(2)).

The confidentiality provisions in the Law and regulations limit the information that can be shared with a complainant during and subsequent to the enforcement process. It is important that a complainant understand the strict confidentiality provisions in the Law and regulations apply not only to the Commission, its staff, and the respondent, but to the complainant as well. Consistent with the confidentiality requirements and limited exceptions, the Commission shall provide the following information to the complainant:

- information the respondent agrees to release
- notification at least 15 days before the Staff Counsel refers evidence related to the complaint to the Commission for preliminary disposition

¹Note that, before the Staff Counsel submits evidence of a complaint to the Commission, the complainant and respondent shall be notified of the respondent's opportunity to "cure" the matter (§5-403(b) of the Public Ethics Law). If the respondent, within 15 days of receiving such notice takes action to cure each alleged violation and the Commission finds that dismissal is not contrary to the purposes of the Ethics Law, the Commission shall dismiss the complaint. If the complaint is dismissed in this manner, the Commission shall promptly send a copy of the order of dismissal to the complainant and respondent.

- a copy of a signed order of the Commission dismissing the complaint: 1) after preliminary consideration of the evidence, if the Commission determines that the complaint does not merit further proceedings and dismissal is not contrary to the purposes of the Ethics Law; or 2) after consideration of the evidence at a hearing, if the Commission determines the respondent has not violated any of the provisions of the Ethics Law.

Note: While the Commission will provide information to a complainant as described above and in footnote #1, the confidentiality restrictions in the Law still apply with the exception of information the respondent agrees to release.

IV. Addressing Violations of the Law

The Ethics Commission is authorized to impose certain sanctions on a respondent who has been found to have violated Subtitle 5 (conflicts of interest) of the Public Ethics Law, either by the respondent's own acknowledgment (i.e. admission) or as a result of a hearing conducted pursuant to §5-404 of the Public Ethics Law and the Commission's regulations (COMAR 19A, Subtitle 01, Chapter 3). These sanctions, which apply to all matters where a respondent has been found to have violated a section within Subtitle 5 (including §5-508), are as follows: 1) the issuance of an order of compliance directing the respondent to cease and desist from the violation; and 2) the issuance of a reprimand to the respondent. The Commission may also file suit in Circuit Court to enforce the foregoing sanctions and obtain additional, special relief from the respondent. Other than the foregoing, the Commission has no additional authority to address violations involving §5-508 of the Public Ethics Law or to provide any further relief.

To report violations of the anti-harassment and anti-discrimination provision of the Maryland Public Ethics Law (§5-508), complete the attached form and submit it to:

Maryland State Ethics Commission
45 Calvert Street, 3rd Floor
Annapolis, Maryland 21401

You may also contact:

Katherine Thompson
 Staff Counsel, Maryland State Ethics Commission
 (410) 260-7770 katherine.thompson@maryland.gov

Maryland Commission on Civil Rights
 (410) 767-8600 <http://mccr.maryland.gov/>

Equal Employment Opportunity Commission
 (410) 209-2237 <https://www.eeoc.gov/>



Maryland State Ethics Commission

UNLAWFUL HARRASSMENT OR DISCRIMINATION COMPLAINT FORM (§ 5-508)

This form is used strictly for filing a complaint for alleged violations of § 5-508 of the Public Ethics Law. You do not have to use this form to file a complaint. You may send the Commission a letter instead of this form, but the letter must include the information in items one through six of this form and must be made under oath, signed, and notarized. Please type or print all information and use additional pages if more space is needed.

1. Information regarding person filing complaint:

Last Name: _____ First Name: _____ Middle Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Home Telephone: _____ Work Telephone: _____

E-mail Address: _____

2. I am filing this complaint alleging unlawful harrassment or discrimination against:

an official;

an employee;

an intern, page, or fellow in any branch of State Government;

an individual regulated lobbyist; or

a credentialed member of the press.

3. This complaint is against:

the Governor _____;
(name)

the Lieutenant Governor _____;
(name)

the Comptroller _____;
(name)

the Treasurer _____;
(name)

the Attorney General _____;
(name)

the Register of Wills for _____ County/City _____;
(name)

the Clerk of the Circuit Court for _____ County/City _____;
(name)

the State's Attorney for _____ County/City _____; or
(name)

the Sheriff for _____ County/City _____.
(name)

4. The Public Ethics Law prohibits discrimination on the basis of **race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, gender identity, disability genetic information, and harassment/retaliation**. Please indicate the basis of your complaint:

Discrimination **based on race** (specify)

Discrimination **based on color** (specify)

Discrimination **based on religion** (specify)

Discrimination **based on ancestry or national origin** (specify)

Discrimination **based on sex** (specify)

Discrimination **based on age** (specify)

Discrimination **based on marital status (specify)**

Discrimination **based on sexual orientation (specify)**

Discrimination **based on gender identity (specify)**

Discrimination **based on disability (specify)**

Discrimination **based on genetic information (specify)**

Discrimination **based on harassment or retaliation (specify)**

5. Vj g"Ego o kulkqp"utqpi n{ "gpeqwtci gu" {qw"vq"eqpcev"vj g"O ct {rcpf "Ego o kulkqp"qp"Ekkri' Tki j w"*O EET+"cpf lqt"vj g"Gswcn'Go r n{ o gpv'Qr r qtwpk{ "Ego o kulkqp"*GGQE+"vq"cegtvclp" y j gj gt"they"j cxg"cwj qtk{ "vq"cf ftguu" {qwt"eqo r nclp0""Vj ku'y kn'cmjy " {qw"vq"ej qqug"vj g" qr vqp"qt"qr vqpu"qlhtkpi "vj g"dguv'cpf "o quv'eqo r tgj gpukxg"tgrgh0' **Be aware**"vj gtg"ctg"utlev' vko g'tko ku'hqt'hkpi "y kj "vj g'O EET"qt"GGQE0

Have you attempted to resolve these allegations:

through an internal grievance procedure, appeal, or due process hearing;

filing a complaint with the Maryland Commission on Civil Rights; or

filing a complaint with the Equal Employment Opportunity Commission?

If you answered affirmatively to any of the above, please describe the allegations, the date you filed your complaint, and tell us the status. If possible, please provide us with a copy of your complaint, and, if completed, the decision in the matter.

The Commission cannot accept your complaint if it is not made under oath, signed, and notarized.

6. **I do solemnly declare or affirm under the penalties of perjury that the contents of the complaint, including any attachments, are true and correct to the best of my knowledge, information, and belief.**

Date

Signature of Complainant

State of Maryland, County of _____, to wit:

Before me, the undersigned, a Notary Public in and for the State and County aforesaid, personally appeared _____ who made oath on this ____ day of _____, 20__, in due form of law, that the matters and facts hereinabove set forth are true to the best of their knowledge, information and belief.

Notary Public

My Commission Expires: