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Cases Under 2007 Anti-discrimination Amendment Now Hitting Maryland Courts

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Jerald J. Oppel, Chair

Harold G. Belkowitz

Neil E. Duke

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Carla N. Murphy

Steven R. Smith

Stacy Bekman Radz

Sharon A. Snyder

Carla N. Murphy

410-347-7680

cnmurphy@ober.com

By this time, most employers are aware that Maryland's anti-discrimination law was substantially amended last fall to create a private cause of action under Article 49B in state court. While the law became effective in October 2007, an aggrieved employee must wait 180 days from the filing of an administrative charge to file an action in court. These cases, therefore, are just beginning to rear their heads in Maryland state courts. Given the increased exposure for employers under Article 49B (state law prohibits discrimination on the basis of familial status, marital status, sexual orientation, and genetic information and testing, and it allows age discrimination suits by people younger than 40), and the fact that it may be more difficult to obtain a victory in state court, employers need to take appropriate steps to minimize the risks.

The revised law presents another opportunity for employers to adapt, revise, and enforce company-wide anti-discrimination and nonharassment policies. Among other things, supervisors and management personnel should receive training on an ongoing basis to detect and prevent discrimination and harassment. Employers also should require exit interviews any time employment is terminated. These exit interviews may help to defuse complaints, allow the employer an opportunity to offer to remediate any legitimate problem identified and, more importantly, hear of the basis of any possible legal claims prior to the employee's departure. An employee who participates in an exit interview and who fails to register a complaint about any alleged discrimination may find it more difficult later to pursue a discrimination claim with the administrative agency and in court.

The changes in Maryland's anti-discrimination law also make it appropriate for employers to consider requiring employees to enter into mediation agreements or arbitration agreements, or to sign a waiver of jury trial agreements. Even the best-behaved employers are aware that discrimination and harassment lawsuits can expose them to unpredictable juries and jury verdicts, particularly in state court. Obviously, one way to avoid a jury trial is to require employees to agree to binding arbitration.

However, employers that do not want to commit themselves to binding arbitration may want to consider requiring employees to sign an agreement waiving their right to a trial by jury, which might avoid the risk associated with a jury trial, while preserving for both the employer and the employee the formality of the judicial process and the right to appeal an adverse ruling.

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