

**Association of Corporate Counsel
Baltimore Chapter**

Ober|Kaler
**Employment and Labor Group
Presentation**

Wednesday, April 16, 2008

Jerald Oppel, Esquire
Sharon Snyder, Esquire

Neil E. Duke, Esquire
Carla Murphy, Esquire

Article 49B

- What is Article 49B?
- Recent Changes to Article 49B and Impact on Maryland Employers
- Suggested Strategies to Cope

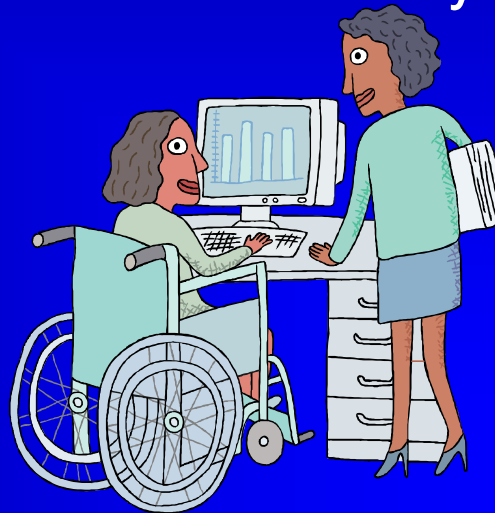


What is Article 49B

- Article 49B is Maryland's anti discrimination law
- State counterpart to Title VII
- Article 49B prohibits discrimination in employment, housing, public accommodations and other fields
- Enforcement agency is the Maryland Commission on Human Relations (accepts complaints and conducts investigations)

Who is Protected Under Article 49B

- ***Protected categories:*** race, sex, familial status, color, national origin, age, religion, marital status, sexual orientation, genetic testing, physical and/or mental disability
- Broader than Title VII



The Old Article 49B Process

- Complaint filed
- Assignment of staff investigator
- Favorable finding versus adverse probable cause finding
 - Conciliation efforts
 - Public hearing
 - Mediation efforts



The Old Article 49B Process

- Relief available
 - job restoration
 - lost wages
 - promotion
- Right to file civil complaint (no independent cause of action under Art. 49B)



Changes to Article 49B

- Initially introduced as the Maryland Civil Rights Preservation Act of 2006;
- Introduced as Senate Bill 678 – House Bill 314;
- Passed by House of Delegates and State Senate;
- Signed by Governor O'Malley on April 24, 2007



Changes to Article 49B

- Effective October 1, 2007, the MCHR is empowered through an administrative judge who will be authorized to award reinstatement, back pay, compensatory damages and/or other appropriate relief to aggrieved employees;
- Non-economic compensatory damages will be capped depending on the size of the employer;
- For instance, the maximum compensatory damages award that can be levied against an employer with 15 to 100 employees will be \$50,000.00;

Changes to Article 49B

- An employer with 101 to 200 employees has a maximum exposure of \$100,000.00;
- An employer with 201 to 500 employees would face a monetary risk of \$200,000.00;
- An employer with more than 500 employees will have maximum exposure of \$300,000.00



Changes to Article 49B

- Other forms of relief under the new Art. 49B are attorneys' fees, punitive damages, expert witness fees and costs;
- Most importantly, employees can now file a civil complaint, alleging a violation of Article 49B as an independent cause of action. This shifts the tide from federal to state court filings

Other Considerations

- Right to Sue Letter?
- Readiness of Maryland's 24 Circuit Courts?
- Importance of policies, practices and employment agreements
 - employee handbooks
 - employment agreement arbitration provisions
 - jury trial waivers



