

# HOUSE BILL 42

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HB 1350/14 – HGO

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By: **Delegates Rosenberg, Carter, Oaks, Pena–Melnyk, and Tarlau**  
Introduced and read first time: January 16, 2015  
Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Fair Employment Preservation Act of 2015**

3 FOR the purpose of providing that an employer is liable under certain circumstances in an  
4 action concerning a violation of certain provisions of law based on the creation or  
5 continuation of a hostile work environment; providing for the application of this Act;  
6 and generally relating to discrimination and retaliation in employment.

7 BY adding to

8 Article – State Government

9 Section 20–610

10 Annotated Code of Maryland

11 (2009 Replacement Volume and 2014 Supplement)

12 Preamble

13 WHEREAS, The State of Maryland seeks to provide increased protections to  
14 employees who are the victims of discrimination in the workplace; and

15 WHEREAS, The laws of Maryland governing employment discrimination have been  
16 based, in large part, on federal statutory provisions, and decisions of the U.S. Supreme  
17 Court interpreting those federal laws may have implications for the interpretation of  
18 Maryland’s fair employment laws; and

19 WHEREAS, The Supreme Court’s decision in *Ledbetter v. Goodyear Tire & Rubber*  
20 *Co.*, 550 U.S. 618 (2007), significantly impaired federal statutory protections against  
21 discrimination in employment by allowing employees who are the victims of discrimination  
22 only a limited opportunity under the Civil Rights Act to seek relief for their unequal pay;  
23 and

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 WHEREAS, The General Assembly of Maryland responded by passing the Lilly  
2 Ledbetter Civil Rights Restoration Act of 2009 (Chapters 56 and 57 of the Acts of the  
3 General Assembly of 2009); and

4 WHEREAS, The Lilly Ledbetter Civil Rights Restoration Act of 2009 allowed  
5 employees who are the victims of discrimination greater relief by ensuring that each  
6 discriminating paycheck constitutes a separate act of discrimination; and

7 WHEREAS, Federal protection against discriminatory actions were again impaired  
8 by the Supreme Court in *Vance v. Ball State University*, 133 S.Ct. 2434 (2013); and

9 WHEREAS, The Supreme Court ruled in *Vance* that under Title VII of the Civil  
10 Rights Act of 1964 an employer is vicariously liable for hostile work environment  
11 harassment by a supervisor only if the supervisor has the power to effect a significant  
12 change in employment status, including hiring, firing, failing to promote, reassignment to  
13 a position with significantly different responsibilities, or a significant change in benefits;  
14 and

15 WHEREAS, The Supreme Court's decision in *Vance* weakens protections from  
16 supervisor harassment that the Supreme Court established in *Faragher v. Boca Raton*, 524  
17 U.S. 775 (1998) and *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998), which held  
18 that an employer may be vicariously liable under the Civil Rights Act of 1964 for hostile  
19 work environment harassment of an employee by an individual that has supervisory  
20 authority over that employee; and

21 WHEREAS, In *Faragher* and *Ellerth*, the Supreme Court held that a strict liability  
22 standard applies to harassment that results in a tangible employment action, but that  
23 when supervisors perpetrate harassment that creates a hostile work environment, but does  
24 not result in a tangible employment action, an employer is vicariously liable unless the  
25 employer exercised reasonable care to prevent and correct any harassing behavior, and the  
26 plaintiff unreasonably failed to take advantage of the preventive or corrective opportunities  
27 that the employer provided; and

28 WHEREAS, The Supreme Court holding in *Vance* limiting the definition of  
29 "supervisor" to those employees with the authority to take tangible employment actions  
30 against their victims ignores the fact that very often supervisors who direct daily work  
31 activities, but who do not have the authority to take tangible employment actions, wield  
32 significant power over their subordinates; and

33 WHEREAS, Justice Ginsburg dissented in *Vance*, asserting that an employer is  
34 liable for hostile work environment harassment by a supervisor if the supervisor has the  
35 power to direct the work of other employees; and

36 WHEREAS, The General Assembly believes that the legal standards and burdens  
37 developed and applied by the courts with respect to claims brought under Title VII of the  
38 Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., 42 U.S.C. 1983, Title 20,

1 Subtitle 6 of the State Government Article, and Article 46 of the Maryland Declaration of  
2 Rights prior to the Vance decision should be preserved; and

3 WHEREAS, It is the intent of the General Assembly that the standards set forth in  
4 this Act shall be interpreted and applied for these claims in a manner consistent with legal  
5 precedent developed by the Maryland and federal courts before the issuance of the Vance  
6 decision; now, therefore,

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
8 That the Laws of Maryland read as follows:

9 **Article – State Government**

10 **20–610.**

11 **IN AN ACTION CONCERNING A VIOLATION OF THIS SUBTITLE BASED ON QUID**  
12 **PRO QUO HARASSMENT OR THE CREATION OR CONTINUATION OF HARASSMENT IN A**  
13 **HOSTILE WORK ENVIRONMENT, AN EMPLOYER IS LIABLE:**

14 **(1) FOR THE ACTS OR OMISSIONS TOWARD AN EMPLOYEE OR**  
15 **APPLICANT FOR EMPLOYMENT OF AN INDIVIDUAL WHO:**

16 **(I) UNDERTAKES OR RECOMMENDS TANGIBLE EMPLOYMENT**  
17 **ACTIONS AFFECTING THE EMPLOYEE OR AN APPLICANT FOR EMPLOYMENT,**  
18 **INCLUDING HIRING, FIRING, PROMOTING, DEMOTING, AND REASSIGNING THE**  
19 **EMPLOYEE OR AN APPLICANT FOR EMPLOYMENT; OR**

20 **(II) DIRECTS, SUPERVISES, OR EVALUATES THE WORK**  
21 **ACTIVITIES OF THE EMPLOYEE; OR**

22 **(2) IF THE NEGLIGENCE OF THE EMPLOYER LED TO THE CREATION OR**  
23 **CONTINUATION OF QUID PRO QUO HARASSMENT OR HARASSMENT IN A HOSTILE**  
24 **WORK ENVIRONMENT.**

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to  
26 apply only prospectively and may not be applied or interpreted to have any effect on or  
27 application to any cause of action arising before the effective date of this Act.

28 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
29 October 1, 2015.