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HOUSE BILL NO. 2496

Offered January 9, 2019

Prefiled January 9, 2019

A BILL to amend and reenact § 2.2-3903 of the Code of Virginia, relating to the Virginia Human Rights Act; creation of cause of action for discrimination based on race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, or age.

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Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 2.2-3903 of the Code of Virginia is amended and reenacted as follows:****§ 2.2-3903. Causes of action not created.**

A. Nothing in this chapter or in Article 4 (§ 2.2-520 et seq.) of Chapter 5 creates, nor shall it be construed to create, an independent or private cause of action to enforce its provisions, except as specifically provided in subsections B and C.

B. No employer employing more than five but ~~less~~ fewer than 15 persons shall ~~discharge~~ engage in an unlawful discriminatory practice against any such employee on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, including lactation. No employer employing more than five but ~~less~~ fewer than 20 persons shall ~~discharge~~ engage in an unlawful discriminatory practice against any such employee on the basis of age if the employee is 40 years of age or older. For the purposes of this section, "lactation" means a condition that may result in the feeding of a child directly from the breast or the expressing of milk from the breast.

C. The employee may bring an action in a general district or circuit court having jurisdiction over the employer who allegedly ~~discharged~~ engaged in an unlawful discriminatory practice against the employee in violation of this section. Any such action shall be brought within 300 days from the date of the ~~discharge~~ alleged unlawful discriminatory practice or, if the employee has filed a complaint with the Division of Human Rights of the Department of Law or a local human rights or human relations agency or commission within 300 days of the ~~discharge~~ alleged unlawful discriminatory practice, such action shall be brought within 90 days from the date that the Division or a local human rights or human relations agency or commission has rendered a final disposition on the complaint.

The court may award compensatory or punitive damages in an amount of up to \$25,000. For actions against an employer who allegedly discharged an employee in violation of this section, the court may award up to 12 months' back pay with interest at the judgment rate as provided in § 6.2-302 or up to \$25,000, whichever amount is greater. However, if the court finds that either party engaged in tactics to delay resolution of the complaint, it may (i) diminish the award or (ii) award back pay to the date of judgment without regard to the 12-month limitation. The court shall not order reinstatement of the employee.

In any case where the employee prevails, the court shall award attorney fees from the amount recovered, not to exceed 25 percent of the ~~back pay awarded~~ amount awarded.

The court shall not award other damages, compensatory or punitive, nor shall it order reinstatement of the employee.

D. Causes of action based upon the public policies reflected in this chapter shall be exclusively limited to those actions, procedures, and remedies, if any, afforded by applicable federal or state civil rights statutes or local ordinances. Nothing in this section or § 2.2-3900 shall be deemed to alter, supersede, or otherwise modify the authority of the Division or of any local human rights or human relations commissions established pursuant to § 15.2-853 or 15.2-965.

2. That the provisions of this act creating a cause of action against an employer who engages in unlawful discriminatory practices against an employee shall apply only to unlawful discriminatory practices that occur or are alleged to occur on or after July 1, 2019.

INTRODUCED

HB2496