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HOUSE BILL NO. 1418

Offered January 8, 2020

Prefiled January 8, 2020

A BILL to amend and reenact § 2.2-3903 of the Code of Virginia, relating to the Virginia Human Rights Act; discrimination on the basis of sex; sexual harassment.

Patrons—Watts and Samirah

Referred to Committee on General Laws

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. For 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.

"Unlawful discrimination on the basis of sex" includes harassment on the basis of sex. Conduct amounts to harassment on the basis of sex when (i) submission to unwelcomed sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature is made either explicitly or implicitly a term or condition of a person's employment; (ii) submission to or rejection of such conduct by a person is used as the basis for employment decisions affecting such person; or (iii) such conduct has the purpose or effect of unreasonably interfering with a person's work performance or creating an intimidating, hostile, or offensive working environment.

B. 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 C and E D.

~~B. C.~~ No employer employing more than five but less than 15 persons shall discharge 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 than 20 persons shall discharge 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.~~

No employer employing more than five but fewer than 15 persons shall unlawfully discriminate against any such employee on the basis of sex.

~~E. D.~~ The employee may bring an action in a general district or circuit court having jurisdiction over the employer who allegedly unlawfully discriminated against or discharged the employee in violation of this section. Any such action shall be brought within 300 days from the date of the unlawful discrimination or discharge 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 unlawful discriminaton or discharge, 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~~ 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. 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. 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. The court shall not award other damages, compensatory or punitive, nor shall it order reinstatement of the employee.

For actions against an employer who allegedly unlawfully discriminated against an employee on the basis of sex, the court may award compensatory or punitive damages. In any case where the employee prevails, the court shall award attorney fees from the amount recovered, not to exceed 25 percent of the amount awarded.

~~D. E.~~ 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.

INTRODUCED

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