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HOUSE BILL NO. 454

Offered January 13, 2010

Prefiled January 12, 2010

A *BILL to amend and reenact § 2.2-2639 of the Code of Virginia, relating to the Virginia Human Rights Council; causes of action in employment discrimination.*

Patron—Herring

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That § 2.2-2639 of the Code of Virginia is amended and reenacted as follows:**

§ 2.2-2639. Causes of action not created.

A. Nothing in this article 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 than 15 persons shall *fail or refuse to hire, discharge any such employee, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment* on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, including lactation, or of age if the employee is 40 years old 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 the employee in violation of this section~~ *violated subsection B.* Any such action shall be brought within 300 days from the date of the ~~discharge~~ *alleged violation* or, if the employee has filed a complaint with the Council or a local human rights or human relations agency or commission within 300 days of the ~~discharge~~ *alleged violation*, such action shall be brought within 90 days from the date that the Council or a local human rights or human relations agency or commission has rendered a final disposition on the complaint. ~~The~~ *In the case of an employee discharged in violation of this section, the court may award up to 12 months' back pay with interest at the judgment rate as provided in § 6.1-330.54. 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 attorneys' 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.

In cases involving violations other than improperly discharged employees, if the court finds that the respondent has intentionally engaged in, or is intentionally engaging in, an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, hiring of employees, with or without back pay, or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than one year prior to the filing of a charge with the Council or a local human rights or human relations agency or commission. Interim earnings or amounts earnable with reasonable diligence by the person discriminated against shall operate to reduce the back pay otherwise allowable.

D. Causes of action based upon the public policies reflected in this article 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 Council or of any local human rights or human relations commissions established pursuant to § 15.2-853 or 15.2-965 or subject to the provisions of § 2.2-2638.

INTRODUCED

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