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VIA EMAIL

Jennifer Martin
President, Montgomery County Education Association
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Re: Legal Recourse for Sexual Harassment in Montgomery County Schools

We are attorneys at McGillivary Steele Elkin, LLP, a law firm that specializes in representing public sector employees in labor and employment issues, including harassment in the workplace. We saw the article in the Washington Post about the egregious misconduct and harassment at Montgomery County Schools.¹ The article implied that the victims were without remedy or recourse. While that appears to be true within the internal Montgomery County system, we want the teachers to know that they have legal recourse and can recover significant damages for harassment and retaliation.

To summarize what is set forth below, under federal law and Maryland state law, they can each individually recover up to \$300,000 against the County, and punitive damages against the harasser. The Montgomery County Code also provides damages for sexual harassment and retaliation, and one can recover up to \$500,000, but only against the perpetrator and not against the County.

Each of these laws provide for the recovery of attorneys' fees, and if any of the victims are interested, they should be able to locate an attorney who will handle the case on a contingency basis.. In addition to Molly Elkin and Sara Faulman at our law firm who are excellent at handling these cases, there are many excellent firms in the D.C. area who handle these types of cases including Lisa Banks and Debra Katz at Katz Banks and Kuzman, and Ellen Eardley at Mehri & Skalet.

Federal Law

Sexual harassment is an unlawful employment practice under Title VII of the Civil Rights Act, 42 U.S.C. § 2000e. Retaliation for opposing an unlawful practice or filing a complaint is also unlawful under Title VII. A person seeking to bring a case under federal law must first file a charge with the United States Equal Opportunity Commission (EEOC). A charge with the EEOC must be filed within 300 days of the alleged harassment. The EEOC then conducts an investigation and will attempt to seek a resolution between the parties. If there is no resolution, then the EEOC will issue a Right to Sue letter, and the employee may file a lawsuit in federal court within 90 days.

¹ <https://www.washingtonpost.com/education/2023/08/11/joel-beidleman-montgomery-county-principal/>

If an employee brings a federal lawsuit alleging sexual harassment, there is a cap on damages. For employers with between 15 and 100 employees, the cap is \$50,000. For employers with between 101 and 200 employees, it is \$100,000. For employers with between 201 and 500 employees, it is \$200,000. And for employers with over 501 employees, the cap is \$300,000. *See* 42 U.S.C. § 1981a(b). Punitive damages are also available against an individual, but not against the County. To get punitive damages, the employee must show that the individual acted with malice. *Id.*

Maryland State Law

Another path for legal recourse is under Maryland state law. Under Maryland law, it is an unlawful employment practice for an employer to “engage in harassment of an employee.” Md. Code, State Gov’t, § 20-606(a)(5). Harassment includes unwelcome and offensive conduct, that, when based on race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, gender identity, or disability, creates an abusive or hostile working environment. *Id.* at § 20-601. This includes sexual harassment. *Id.* The harassment does not need to be severe or pervasive to be unlawful. Additionally, under Maryland law, an employer is also liable for harassment if its negligence leads to the harassment or the continuation of the harassment. *Id.* at § 20-611. It is also unlawful for an employer to retaliate against an employee for opposing any unlawful practice or making a charge or participating in any investigation of an unlawful practice. *Id.* at § 20-606(f).

To bring a claim under this section of Maryland law, an employee must first file a complaint with the Maryland Commission on Human Rights. A complaint alleging harassment has to be filed within 2 years of the date of the alleged harassment. *Id.* at § 20-1004(b)(3). The Maryland Commission on Human Rights then conducts an investigation, and an administrative law judge conducts a hearing. *Id.* at § 20-1008.

A person who files a complaint with the Maryland Commission on Human Rights also has the option to file a civil action in state court. *Id.* at § 20-1013. A person can file a lawsuit against the County and the individual harasser 180 days after the filing of the complaint with the Commission. *Id.* The civil action must be filed within 3 years of the harassment. *Id.*

Under both the administrative process through the Commission on Human Rights, and the state court system, several remedies are available. A court or administrative law judge may:

- Stop the respondent from engaging in the unlawful act
- Order the reinstatement or hiring of employees, with or without back pay
- Award compensatory damages

The amount of compensatory damages is capped depending on the number of employees the employer has. For employers with over 501 employees, the cap is \$300,000. *Id.* at § 20-1009(b).

Further, if the employee elects to take a case to court, punitive damages are also available, but only against the individual, not the County. *See id.* at § 20-1013(e). Punitive damages are available if the court finds that the individual engaged in the unlawful practice with “actual malice.” *Id.* The amount of punitive damages is included in the cap of compensatory damages. In a court case, the winning party can also recover attorney’s fees and costs. *Id.* at § 20-1015.

Montgomery County Code

In addition to having a path to legal recourse under federal law and Maryland state law, employees also have an option of bringing a case under the Montgomery County Code. Montgomery County similarly has a Commission on Human Rights, and laws prohibiting harassment and sexual harassment. *See* Montg. County Code § 27-19. Retaliation for opposing a discriminatory practice, or for filing a complaint, is also prohibited in Montgomery County. *Id.*

Similar to state law, an employee must first file a complaint with the Montgomery County Commission on Human Rights. *Id.* at § 27-7. A complaint with the County Commission must be filed within 1 year of the alleged harassment. *Id.* If an investigation shows that an unlawful act happened, then the Commission can provide the following remedies:

- Attorney’s fees
- Compensation for personal injury
- Damages not exceeding \$500,000 for humiliation and embarrassment.

Id. at § 27-8.

A person who files a complaint with the County Commission also is able to file a lawsuit in state court. *Id.* at § 27-9. Maryland state law explicitly states that in Howard, Montgomery, and Prince George’s counties, a person who is subjected to discriminatory acts prohibited by the county code have a right to bring a civil action against the person who committed the act. Md. Code, State Gov’t, § 20-1202. A lawsuit must be filed within 2 years of the alleged discriminatory act. *Id.* Further, a lawsuit cannot be filed until at least 45 days after the complaint is filed with the County Commission. *Id.*

Importantly, if an employee wants to file a lawsuit in Maryland state court under Montgomery County Code, it can only be filed against an individual person, and not the County itself.

Conclusion

There are many excellent firms that handle harassment cases in the DMV area, including ours. Our firm and others handle these cases at no cost to the employee – we handle the cases on a contingency fee basis and seek to recover hourly fees from the employer. If any member of the Montgomery County Education Association has experienced workplace harassment and is interested in speaking to an attorney, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to be 'G. McGillivary', enclosed within a hand-drawn oval.

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