



Rhode Island Society for Human Resource Management State Chapter

Via Email Only to James DeCastro, Clerk: jdecastro@rilegislature.gov

February 27, 2019

Representative Anastasia Williams, Chair
House Committee on Labor
Rhode Island State House
82 Smith Street
Providence, RI 02903

RE: Letter of Opposition to House Bill No. 5361

Dear Representative Williams:

On behalf of the Rhode Island Society for Human Resource Management State Chapter (“RI SHRM”), I am writing in opposition to House Bill No. 5361. This bill would overturn the Rhode Island Supreme Court’s recent decision in Mancini v. City of Providence holding that our state’s Fair Employment Practices Act (“FEPA”) does not allow for individual liability for unlawful employment practices.

During the 2018 session of the General Assembly, two bills were introduced before the House Committee on Labor (H7888 and H8022) and one bill was introduced before the Senate Committee on Labor (S2479) to overturn Mancini through legislation. RI SHRM opposed these bills when our Chapter Director and Co-Directors of Legislative Affairs testified before the House Special Legislative Commission to Study Unlawful Harassment in the Workplace. We now return to oppose H5361.

If signed into law, H5361 would create an environment where supervisors, managers, and HR professionals work under the constant specter of litigation. Each and every personnel decision that they make as agents of their employer—many of them of tremendous legal significance—would carry with it the possibility of individual liability under FEPA for an unlawful employment practice and the corresponding possibility of financial ruin.

RI SHRM fears that promising young leaders will be reluctant to take on supervisory or managerial responsibility in the field of human resources for fear of being held personally liable for business decisions that they make as agents of their employer. To be clear, no one enters the HR profession expecting to be

sued personally for doing their job. No one currently working in the HR profession should have to fear the indignity of losing one's home or being unable to provide for one's family for exercising business judgment that is subsequently challenged in a legal proceeding brought under the FEPA.

In addition to the potential chilling effect on business decision-making, supervisors, managers, and HR professionals cannot be held personally liable for their actions under federal counterparts to FEPA. In fact, every single federal appellate court that has addressed this issue under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act ("ADA"), and the Age Discrimination in Employment Act ("ADEA") has ruled that individual supervisors cannot be held personally liable for unlawful employment practices. All that the Rhode Island Supreme Court did in Mancini was to reconcile Rhode Island's FEPA with the vast body of federal anti-discrimination law.

Finally, employers are already legally responsible for unlawful harassment by their managers and supervisory employees. An employer is always responsible (i.e. strictly liable) for harassment by a manager or supervisor that culminates in a tangible employment action such as a demotion, an undesirable reassignment, or a termination, as these employees act with the authority of the employer. If the manager or supervisor's harassment does not lead to a tangible employment action, the employer is still liable unless it can prove two things: (1) it exercised reasonable care to prevent and promptly correct harassment; and (2) the employee failed to complain or otherwise avoid harm.

H5361 would do real harm under the pretense of protecting workers from unlawful employment practices. As stated previously, H5361 would paralyze business decision-making, it would place Rhode Island outside the legal mainstream of anti-discrimination law, and it would provide a solution to a problem (i.e. lack of accountability for unlawful employment actions) that simply does not exist. For this reason, RI SHRM opposes this misguided piece of legislation.

Very truly yours,

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