

# Haas v. Lockheed Martin Corp.: Making the Case for Incorporation of the Discovery Rule into the Limitations Statute Governing Discriminatory Discharge Claims

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**HAAS v. LOCKHEED MARTIN CORP.: MAKING THE CASE FOR  
INCORPORATION OF THE DISCOVERY RULE INTO  
THE LIMITATIONS STATUTE GOVERNING  
DISCRIMINATORY DISCHARGE CLAIMS**

In *Haas v. Lockheed Martin Corp.*,<sup>1</sup> the Court of Appeals of Maryland considered whether the statute of limitations in a discriminatory discharge case commences upon an employee's notice of discharge or termination of employment.<sup>2</sup> The court held that an employer's discriminatory act occurs, and a two-year statute of limitations starts, upon actual cessation of employment.<sup>3</sup> In so holding, the court improperly adopted a bright line rule that disregards the discriminatory component of discriminatory discharges.<sup>4</sup> To correct this shortcoming in future cases, the Maryland General Assembly should amend section 42(b)(1) of article 49B of the Maryland Code to ensure that courts consider the time at which employees receive inquiry notice of their employers' wrongful motives.<sup>5</sup> If the legislature adopts the discovery doctrine in discriminatory discharge cases, it will implement a flexible, proven scheme that enhances judicial administrability, promotes consistency with recent Article 49B amendments, and protects the financial wellbeing of employees.<sup>6</sup>

I. THE CASE

In October 1998, Lockheed Martin Corporation (Lockheed) hired Suzanne Haas to work as a program administrator in Lockheed's Mission Systems division.<sup>7</sup> For approximately the first year of her employment, Haas received largely positive evaluations from her supervisor, Katie Sterrett.<sup>8</sup>

In June 1999, however, Sterrett noticed, and Haas acknowledged, that Haas struggled in her ability to pay attention to details.<sup>9</sup> Accordingly, Haas underwent a psychiatric evaluation in January 2000, which

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1. 396 Md. 469, 914 A.2d 735 (2007).

2. *Id.* at 472-73, 914 A.2d at 737.

3. *Id.* at 494, 480, 914 A.2d at 741-42, 750.

4. *See infra* Part IV.A.

5. *See infra* Part IV.B.

6. *See infra* Part IV.C.

7. *Haas*, 396 Md. at 473, 914 A.2d at 737.

8. *Id.* In particular, Haas achieved the level of performance required of new employees. *Id.*

9. *Id.* These difficulties continued for several months. *Id.*

yielded diagnoses of Attention Deficit Disorder (ADD) and learning disabilities.<sup>10</sup> Several months later, Haas disclosed her medical condition to her new supervisor, Amy Lowenstein, and assured Lowenstein that medication was alleviating her symptoms.<sup>11</sup> In a June 2000 employee review, Lowenstein classified Haas as a “contributor” to Lockheed.<sup>12</sup>

In April or May of 2000, as part of a restructuring at Lockheed, Haas began to split her work hours between her Mission Systems position and a new position in Lockheed’s Corporate Shared Services unit.<sup>13</sup> In the latter role, Haas reported to Candice Phelan, a supervisor aware of Haas’s disability.<sup>14</sup> Haas assured Phelan that her condition would not affect her job performance and Phelan expressed confidence in their future working relationship.<sup>15</sup>

Despite these initial gestures of amicability, conflict arose.<sup>16</sup> According to Haas, Phelan disparaged Haas’s work, reprimanded her for minor deficiencies in performance, and suggested that she pursue a different career.<sup>17</sup> In April 2001, Phelan informed Haas that Lockheed had arranged to transfer Haas’s employment duties to a new position in Lockheed’s Institute for Leadership Excellence (ILE).<sup>18</sup> Haas applied for the ILE position, but Lockheed’s management neither interviewed nor selected her for it.<sup>19</sup>

On June 11, 2001, Phelan issued a memorandum addressing what she viewed as Haas’s underperformance, and placed Haas on a Per-

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10. *Id.*

11. *Id.*

12. *Id.* at 473–74, 914 A.2d at 737 (internal quotation marks omitted). Lockheed’s annual personnel evaluation is referred to as a “Contribution Assessment,” which rates employees on a scale from one to five. *Id.* at 473–74 & n.2, 914 A.2d at 737 & n.2. On this scale, “contributor” represents a three and “marginal contributor” represents a two. *Id.* at 474 n.2, 914 A.2d at 737 n.2 (internal quotation marks omitted).

13. *Id.* at 474, 914 A.2d at 738.

14. *Id.* Specifically, Phelan was a supervisor in the Learning Services division of Lockheed’s Corporate Shared Services unit. *Id.*

15. *Id.*

16. *Id.*

17. *Id.* at 474–75, 914 A.2d at 738. Phelan purportedly suggested that Haas should avoid tasks involving writing, mathematical calculations, judgment, computers, or detail. *Id.* at 474, 914 A.2d at 738. Further, Phelan allegedly sent Haas a job posting from outside the company and reprimanded her for trivial errors, despite positive feedback from Haas’s clients. *Id.* at 474–75, 914 A.2d at 738.

18. *Id.* at 475, 914 A.2d at 738. The new ILE position was meant to serve the “logistical and planning functions” that Haas had performed for Learning Services. *Id.*

19. *Id.* ILE Director Dorothea Mahan stated in her deposition that “Haas lacked the requisite experience in event planning” to occupy this position properly. *Id.* Lockheed’s management did not inform Haas that her application was unsuccessful “until shortly before [Haas] received a notification of layoff.” *Id.*

formance Improvement Plan (PIP).<sup>20</sup> Haas disputed the memorandum's accuracy and alleged that Phelan ordered the PIP merely to harm Haas's standing at Lockheed and thwart her opportunity for promotion.<sup>21</sup> Although Phelan removed Haas from the PIP in September 2001 due to her improved performance, Phelan's employee evaluation of June 28, 2001 classified Haas as a "marginal contributor" to Lockheed and highlighted deficiencies in Haas's judgment, compliance, attention to detail, and planning.<sup>22</sup> Finally, Phelan sent Haas a "Notification of Layoff," dated October 9, 2001, stating that, effective October 23, 2001, Haas's employment at Lockheed would end.<sup>23</sup>

On October 22, 2003, Haas sued Lockheed in the Circuit Court for Montgomery County, alleging disability discrimination relating to her discharge.<sup>24</sup> On November 1, 2004, Lockheed moved for summary judgment, asserting that Haas's claim was time-barred by a two-year statute of limitations that allegedly commenced when Haas learned of her layoff.<sup>25</sup> In opposition, Haas argued that she timely filed her complaint, reasoning that the statute of limitations started on her last day of work.<sup>26</sup> In Maryland, a plaintiff must file a claim "in the circuit court for the county in which the alleged discrimination took place not later than 2 years after the occurrence of the alleged discriminatory act."<sup>27</sup> Applying this law, the Circuit Court for Montgomery County granted summary judgment to Lockheed, holding

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20. *Id.*, 914 A.2d at 738–39. The PIP is a formal disciplinary measure taken to guide the improvement of an employee's performance. *Id.*, 914 A.2d at 738.

21. *Id.* at 476, 914 A.2d at 739. Pursuant to Lockheed's employment policies, no employee who is then the subject of a PIP is eligible for a promotion. *Id.* at 476 n.4, 914 A.2d at 739 n.4.

22. *Id.* at 476, 914 A.2d at 739 (internal quotation marks omitted). Haas disputed this lower rating, arguing that Phelan had disregarded several positive reviews from clients with whom Haas had worked. *Id.*

23. *Id.* (internal quotation marks omitted). The notice of termination explained that the layoff was a "Reduction in Force," and provided information about the company's severance benefit plan and "outplacement services," as well as the opportunity to complete an exit interview. *Id.* (internal quotation marks omitted).

24. *Id.* at 476–77, 914 A.2d at 739. In particular, Haas alleged disability discrimination under section 27-19 of the Montgomery County Code, the constitutionality of which Lockheed challenged through a motion to dismiss. *Id.* The circuit court denied this motion. *Id.* at 477, 914 A.2d at 739.

25. *Id.* at 477, 914 A.2d at 739–40. Lockheed also argued that (1) "Haas had not proven in her complaint that she was improperly 'regarded as' being disabled by her supervisors under Montgomery County Code § 27-6"; and (2) the decision to terminate Haas's employment was a legitimate business act. *Id.*, 914 A.2d at 740.

26. *Id.*, 914 A.2d at 740.

27. MD. CODE ANN. art. 49B, § 42(a)–(b)(1) (2003).

that the limitations period expired two years after Phelan notified Haas of her discharge.<sup>28</sup>

The Court of Special Appeals affirmed the circuit court's decision.<sup>29</sup> In its reasoning, the Court of Special Appeals relied on two decisions of the Supreme Court of the United States, *Delaware State College v. Ricks*<sup>30</sup> and *Chardon v. Fernandez*,<sup>31</sup> which, the court explained, focused on when a discriminatory act occurred.<sup>32</sup> Analogizing *Ricks* and *Chardon* to the case at hand, the Court of Special Appeals held that notice of discharge, not cessation of work, triggered the limitations period.<sup>33</sup> The Court of Appeals granted certiorari to decide when the statute of limitations begins to run in an employee's discriminatory discharge claim under section 42 of article 49B of the Maryland Code.<sup>34</sup>

## II. LEGAL BACKGROUND

Persons in Montgomery County may file civil employment discrimination claims if subjected to acts that the Montgomery County Code (the County Code) prohibits, but may not do so earlier than forty-five days after filing a complaint with the local agency that handles violations of that county's discrimination laws.<sup>35</sup> Under the County Code, an employer may not discharge anyone on the basis of a "disability of a qualified individual."<sup>36</sup> A disability is "a physical or mental impairment that substantially limits one or more of an individual's major life activities . . . or being regarded as having such an impairment."<sup>37</sup> Under this state-county statutory scheme, a plaintiff must file a discrimination claim "not later than 2 years after the occurrence of the alleged discriminatory act."<sup>38</sup>

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28. *Haas*, 396 Md. at 477, 914 A.2d at 740.

29. *Haas v. Lockheed Martin Corp.*, 166 Md. App. 163, 178, 887 A.2d 673, 682 (Ct. Spec. App. 2005).

30. 449 U.S. 250 (1980).

31. 454 U.S. 6 (1981) (per curiam).

32. *Haas*, 166 Md. App. at 176, 887 A.2d at 681 (citing *Chardon*, 454 U.S. at 7-8 (per curiam); *Ricks*, 449 U.S. at 258).

33. *Id.* at 176-78, 887 A.2d at 681-82.

34. *Haas v. Lockheed Martin Corp.*, 396 Md. 469, 472-73, 914 A.2d 735, 737 (2007). The court specified that in resolving this issue, it had to address whether an act of discrimination occurs at the time the employee is notified of his or her upcoming discharge, or when the employee actually stops working. *Id.* at 473, 914 A.2d at 737.

35. MD. CODE ANN. art. 49B, § 42(a), (b)(2) (2003).

36. MONTGOMERY COUNTY, MD., CODE § 27-19(a)(1)(A) (2005).

37. *Id.* § 27-6 (2007). The term also specifically encompasses certain learning disabilities. *Id.* § 27-6(3).

38. Art. 49B, § 42(a)-(b)(1).

Because article 49B of the Maryland Code was patterned after title VII of the Federal Civil Rights Act, Maryland courts generally look to federal judicial interpretations of Title VII to interpret the meaning of Article 49B.<sup>39</sup> Specifically, the Supreme Court of the United States has decided three Title VII cases that could influence how Maryland courts construe the limitations period in section 42 of Article 49B.<sup>40</sup> Although most states have adopted the Supreme Court's notice of discharge approach to identify the start of the limitations period for discriminatory discharge claims, this approach is not binding on Maryland courts.<sup>41</sup> In fact, Maryland courts generally apply the discovery rule to determine when a limitations period starts on private civil claims in other contexts.<sup>42</sup> Moreover, the Court of Appeals has recently applied the discovery rule in a wrongful discharge case and Maryland's legislature has recently enacted pro-plaintiff amendments to Article 49B.<sup>43</sup>

A. *Maryland Courts May Consult Federal Case Law when Interpreting Article 49B Because Article 49B Was Modeled on Title VII of the Federal Civil Rights Act*

Title VII of the Federal Civil Rights Act provides that employers may not "discharge any individual" on the basis of race, color, religion, sex, or national origin.<sup>44</sup> Because article 49B of the Maryland Code was patterned after Title VII,<sup>45</sup> Maryland courts have sought guidance from federal case law to resolve Article 49B claims<sup>46</sup> and from federal legislative history to determine the legislative intent behind

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39. See *infra* Part II.A.

40. See *infra* Part II.B.

41. See *infra* Part II.C.

42. See *infra* Part II.D.

43. See *infra* Part II.E.

44. 42 U.S.C. § 2000e-2(a)(1) (2000).

45. *Montrose Christian Sch. Corp. v. Walsh*, 363 Md. 565, 580, 770 A.2d 111, 119–20 (2001) (citing *Molesworth v. Brandon*, 341 Md. 621, 632, 672 A.2d 608, 614 (1996)); see also *Makovi v. Sherwin-Williams Co.*, 316 Md. 603, 607, 561 A.2d 179, 181 (1989) (noting that (1) the Maryland General Assembly passed the session law that would become Article 49B in response to the enactment of Title VII; and (2) the General Assembly acted so rapidly in doing so that Article 49B took effect one day before Title VII); *State Comm'n on Human Relations v. Mayor of Balt.*, 280 Md. 35, 40–42, 371 A.2d 645, 647–48 (1977) (explaining that the Maryland General Assembly amended Article 49B to conform the statute to Title VII's amendments).

46. See, e.g., *Pope-Payton v. Realty Mgmt. Servs., Inc.*, 149 Md. App. 393, 402 n.6, 815 A.2d 919, 924 n.6 (Ct. Spec. App. 2003) (stating that Maryland courts "look to federal case law interpreting Title VII" to analyze Article 49B claims (quoting *Kohli v. LOOC, Inc.*, 103 Md. App. 694, 714 n.7, 654 A.2d 922, 932 n.7 (Ct. Spec. App. 1995))).

Article 49B.<sup>47</sup> For instance, in *Molesworth v. Brandon*,<sup>48</sup> a female veterinarian sued for wrongful discharge in state court because her former employer allegedly admitted to firing her due to her gender.<sup>49</sup> To understand whether Article 49B's public policy supported the plaintiff's claim, the Court of Appeals sought to define the meaning of "employer" within Article 49B.<sup>50</sup> The court announced that "'the cardinal rule'" in construing a statutory word is to determine and effectuate "'the real legislative intention'" giving rise to the word.<sup>51</sup> In furtherance of this task, the *Molesworth* court turned to Title VII's legislative history "to discern the legislative intent behind" Article 49B.<sup>52</sup> Similarly, in *Makovi v. Sherwin-Williams Co.*,<sup>53</sup> the Court of Appeals compared Article 49B to Title VII where a chemist at a paint factory sued for abusive discharge based on sex discrimination after her employer fired her due to her pregnancy.<sup>54</sup> Thus, when the words of Maryland and federal rules are sufficiently similar, Maryland courts often look to federal judicial interpretations to construe the state counterparts and consider such interpretations persuasive.<sup>55</sup> These interpretations, however, are not binding on the Court of Appeals when it is analyzing a Maryland rule.<sup>56</sup>

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47. See, e.g., *Molesworth*, 341 Md. at 632–33, 672 A.2d at 614 (stating that because Article 49B was patterned after federal law, Maryland courts may look to the legislative history of Title VII to ascertain the legislative intent behind Article 49B (citing *Chappell v. S. Md. Hosp., Inc.*, 320 Md. 483, 494, 578 A.2d 766, 772 (1990))).

48. 341 Md. 621, 672 A.2d 608 (1996).

49. *Id.* at 624–26, 672 A.2d at 610–11.

50. *Id.* at 630, 672 A.2d at 613 (internal quotation marks omitted).

51. *Id.* (quoting *Tucker v. Fireman's Fund Ins. Co.*, 308 Md. 69, 73, 517 A.2d 730, 731 (1986)). To determine legislative intent, the *Molesworth* court explained that it looks first at the plain language of the statute. *Id.* at 631, 672 A.2d at 613. If the statutory language is ambiguous or controversial, the court continued, it looks at "'the entire statutory scheme.'" *Id.* (quoting *Outmezguine v. State*, 335 Md. 20, 41, 641 A.2d 870, 880–81 (1994)). In that case, the court also stated that it examines any "'other material that fairly bears on the fundamental issue of legislative purpose or goal.'" *Id.* (quoting *Kaczorowski v. Mayor of Balt.*, 309 Md. 505, 515, 525 A.2d 628, 632 (1987)).

52. *Id.* at 633, 672 A.2d at 614.

53. 316 Md. 603, 561 A.2d 179 (1989).

54. *Id.* at 605, 623, 561 A.2d at 179–80, 189. In particular, the employer told the pregnant employee that "she could not work at her job as long as she was pregnant and that her pay and her medical benefits would stop until she became disabled because of her pregnancy." *Id.* at 605, 561 A.2d at 180 (internal quotation marks omitted).

55. See, e.g., *Ragland v. State*, 385 Md. 706, 720, 870 A.2d 609, 617 (2005) (explaining that judicial interpretation of a federal evidentiary rule provided guidance for judicial interpretation of a Maryland evidentiary rule, given that the language of the two rules was essentially the same).

56. *Pinkney v. State*, 350 Md. 201, 235, 711 A.2d 205, 222 (1998).

B. *Three Supreme Court Cases May Inform Maryland's Interpretation of the Statute of Limitations in Section 42 of Article 49B of the Maryland Code*

In *Delaware State College v. Ricks*<sup>57</sup> and *Chardon v. Fernandez*,<sup>58</sup> the Supreme Court of the United States addressed federal claims related to individuals' employment and considered whether the applicable statutes of limitations began to run upon notice of the employment decisions at issue or upon actual cessation of employment.<sup>59</sup> In *Ricks*, a Liberian professor at Delaware State College (the College) claimed that the College discriminated against him based on his national origin by denying him tenure.<sup>60</sup> Reversing the decision of the United States Court of Appeals for the Third Circuit, the Supreme Court ruled that the limitations period started when the College notified Ricks that he would not receive tenure, reasoning that the operative discriminatory moment was when the College chose to deny him tenure, not when Ricks stopped working.<sup>61</sup>

In *Chardon*, several non-tenured administrators in the Puerto Rico Department of Education (the Department) sued after receiving notices of termination from their employment.<sup>62</sup> Reversing the decision of the United States Court of Appeals for the First Circuit and applying the *Ricks* holding, the *Chardon* Court emphasized that the Department had notified the administrators of their impending terminations and that receipt of such notice could not delay the tolling of the limitations period.<sup>63</sup> Together, the *Ricks* and *Chardon* decisions

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57. 449 U.S. 250 (1980).

58. 454 U.S. 6 (1981) (per curiam).

59. See *id.* at 7–8 (granting certiorari to determine the onset of the statute of limitations); *Ricks*, 449 U.S. at 254–56 (same).

60. *Ricks*, 449 U.S. at 252, 254. Ricks had worked for several years on the College's faculty, after which the College offered him only a terminal, one-year contract. *Id.* at 252–53. The Equal Employment Opportunity Commission issued Ricks a "right to sue letter," authorizing his discrimination claim. *Id.* at 254 (internal quotation marks omitted).

61. *Id.* at 258, 262. In other words, the *Ricks* Court explained that the important date was that of the discriminatory act, not the date when the consequences of that discriminatory act became "painful." *Id.* at 258 (quoting *Abramson v. Univ. of Haw.*, 594 F.2d 202, 209 (9th Cir. 1979)). Moreover, the Court analyzed "precisely the 'unlawful employment practice' of which [Ricks] complain[ed]" and determined that Ricks had not alleged any acts of discrimination between the time of his tenure denial and the time of his actual discharge. *Id.* at 257.

62. *Chardon*, 454 U.S. at 6–7 (per curiam).

63. *Id.* at 7–8. The *Chardon* Court reasoned that "[t]he fact of termination [was] not itself an illegal act," but rather a consequence of the illegal act. *Id.* at 8. Additionally, the Court explained that the administrators had not alleged the occurrence of any illegal acts between the time when their employer decided to terminate their employment and the time of their actual discharges. *Id.*

are known as the “*Ricks/Chardon* [R]ule,” which stands for the proposition that a statute of limitations begins to run when the employer gives the employee “final and unequivocal notice of an employment decision having delayed consequences.”<sup>64</sup>

Recently, the Supreme Court decided *Ledbetter v. Goodyear Tire & Rubber Co.*<sup>65</sup> in a five-four opinion.<sup>66</sup> In *Ledbetter*, the Court considered the timeliness of a Title VII discrimination claim where, although the employee received disparate pay within the limitations period, the employer’s discriminatory decisions as to the pay occurred outside the limitations period.<sup>67</sup> Invoking *Ricks*, the *Ledbetter* Court concluded that the employee did not timely file her claim because the limitations period commenced when the employer decided to pay the employee lower wages and notified her of this decision.<sup>68</sup> Notably, the *Ledbetter* majority declined to consider the applicability of the discovery rule,<sup>69</sup> which, under Maryland’s construction, provides that a limitations period starts when a plaintiff knows, or should know, that a wrong occurred.<sup>70</sup> Some federal courts, however, have applied the discovery rule to determine when the limitations period begins in Title VII employment discrimination suits.<sup>71</sup>

*C. Although Most States Have Adopted the Ricks/Chardon Rule, It Is Not Controlling in State Courts*

Although jurisdictions are split as to the propriety of the *Ricks/Chardon* Rule, most states have adopted it in employment discrimina-

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64. *E.g.*, *English v. Whitfield*, 858 F.2d 957, 961 (4th Cir. 1988).

65. 127 S. Ct. 2162 (2007).

66. *See id.* at 2178 (Ginsburg, J., dissenting) (listing Justices Stevens, Souter, and Breyer as joining Justice Ginsburg’s dissenting opinion).

67. *Id.* at 2166 (majority opinion). The Court sought to discover “the specific employment practice” in dispute to determine when the limitations period commenced. *Id.* at 2167. To pinpoint this moment, the Court explained the necessity of determining “when [the] discrete unlawful practice” occurred. *Id.* at 2169. Specifically, the Court made clear that no new limitations period would start because of “subsequent nondiscriminatory acts that entail adverse effects resulting from the past discrimination” because they would not give rise to new Title VII violations. *Id.*

68. *Id.* at 2169.

69. *Id.* at 2177 n.10.

70. *See Poffenberger v. Risser*, 290 Md. 631, 634–35, 431 A.2d 677, 679 (1981) (describing the discovery rule in the context of professional malpractice).

71. *See, e.g.*, *Ohemeng v. Del. State Coll.*, 643 F. Supp. 1575, 1580 (D. Del. 1986) (stating that, under federal law, the limitations period for Title VII claims commences “‘when the plaintiff knows or reasonably should know that the discriminatory act has occurred’” (quoting *McWilliams v. Escambia County Sch. Bd.*, 658 F.2d 326, 330 (5th Cir. Unit B 1981))).

tion cases.<sup>72</sup> Several states, however, have rejected it in favor of an approach under which discharge occurs and the limitations period starts upon actual cessation of employment.<sup>73</sup> Of these minority jurisdictions, the high courts of Hawaii, California, and New Jersey have written substantial opinions describing the arguments opposing the *Ricks/Chardon* Rule.<sup>74</sup>

First, in *Ross v. Stouffer Hotel Co. (Hawai'i)*,<sup>75</sup> a hotel masseur sued his employer, alleging discrimination based on marital status after the hotel fired him for working with his wife in violation of a hotel policy forbidding immediate relatives from working in the same department.<sup>76</sup> The Supreme Court of Hawaii held that the limitations period began when the employee stopped work, reasoning that “discharge” meant actual termination of employment.<sup>77</sup> Second, in *Romano v. Rockwell International, Inc.*,<sup>78</sup> an employee sued a company for age discrimination under the California Fair Employment and Housing Act after the company terminated his employment.<sup>79</sup> The Supreme Court of California ruled that the limitations period started

72. See, e.g., *Quicker v. Colo. Civil Rights Comm'n*, 747 P.2d 682, 683 (Colo. Ct. App. 1987) (employing the *Ricks/Chardon* Rule); *St. Petersburg Motor Club v. Cook*, 567 So. 2d 488, 489 (Fla. Dist. Ct. App. 1990) (same); *Humphreys v. Riverside Mfg. Co.*, 311 S.E.2d 223, 225 (Ga. Ct. App. 1983) (same); *Allen v. Lieberman*, 836 N.E.2d 64, 70 (Ill. App. Ct. 2005) (same); *Keene v. Marion County Superior Court*, 823 N.E.2d 1216, 1218 (Ind. Ct. App. 2005) (same), *vacated on other grounds*, 849 N.E.2d 1141, 1142 (Ind. 2006); *Wagher v. Guy's Foods, Inc.*, 885 P.2d 1197, 1204–05 (Kan. 1994) (same); *Eastin v. Entergy Corp.*, 865 So. 2d 49, 53–54 (La. 2004) (same); *Turner v. IDS Fin. Servs., Inc.*, 471 N.W.2d 105, 107 (Minn. 1991) (same); *Queensborough Cmty. Coll. of City Univ. of N.Y. v. State Human Rights Appeal Bd.*, 363 N.E.2d 349, 350 (N.Y. 1977) (mem.) (same); *Weber v. Moses*, 938 S.W.2d 387, 393 (Tenn. 1996) (same); *Specialty Retailers, Inc. v. DeMoranville*, 933 S.W.2d 490, 492–93 (Tex. 1996) (per curiam) (same); *Hinman v. Yakima Sch. Dist.*, 850 P.2d 536, 539 (Wash. Ct. App. 1993) (same); *Naylor v. W. Va. Human Rights Comm'n*, 378 S.E.2d 843, 845–46 (W. Va. 1989) (same); *Hilmes v. Dep't of Indus., Labor & Human Relations*, 433 N.W.2d 251, 253–54 (Wis. Ct. App. 1988) (same).

73. See, e.g., *Romano v. Rockwell Int'l, Inc.*, 926 P.2d 1114, 1122 (Cal. 1996) (rejecting the *Ricks/Chardon* Rule); *Ross v. Stouffer Hotel Co. (Haw.)*, 879 P.2d 1037, 1043–44 (Haw. 1994) (same); *Collins v. Comerica Bank*, 664 N.W.2d 713, 716 (Mich. 2003) (same); *Allison v. Jumping Horse Ranch, Inc.*, 843 P.2d 753, 756 (Mont. 1992) (same); *In re Pritchard*, 627 A.2d 102, 103 (N.H. 1993) (same); *Alderiso v. Med. Ctr. of Ocean County, Inc.*, 770 A.2d 275, 277 (N.J. 2001) (same); *Renegar v. R.J. Reynolds Tobacco Co.*, 549 S.E.2d 227, 229 (N.C. Ct. App. 2001) (same); *Oker v. Ameritech Corp.*, 729 N.E.2d 1177, 1179–80 (Ohio 2000) (same); *Stupek v. Wyle Labs. Corp.*, 963 P.2d 678, 682 (Or. 1998) (same).

74. See *infra* notes 75–84 and accompanying text.

75. 879 P.2d 1037 (Haw. 1994).

76. *Id.* at 1039.

77. *Id.* at 1044 (internal quotation marks omitted). In other words, the *Ross* court examined the plain meaning of the statute and explained that such a bright line rule “fairly accommodate[d] the interests of both employees and employers.” *Id.* at 1044–45.

78. 926 P.2d 1114 (Cal. 1996).

79. *Id.* at 1116–17.

on his last day of work, citing the remedial purpose<sup>80</sup> and plain language of the statute, as well as the bright line rule's simplicity and limited burden on employers.<sup>81</sup> Third, in *Alderiso v. Medical Center of Ocean County, Inc.*,<sup>82</sup> a nurse sued a medical center for retaliatory discharge under New Jersey's Conscientious Employee Protection Act.<sup>83</sup> The Supreme Court of New Jersey held that the statute of limitations started "the day after" the last day of work because "discharge" meant the last day of paid wages.<sup>84</sup> Thus, as these opinions demonstrate, the *Ricks/Chardon* Rule does not bind state courts' interpretations of state employment discrimination statutes.

*D. Maryland Courts Generally Adhere to the Discovery Rule when Determining the Moment at Which a Statute of Limitations Begins to Run on a Private Civil Claim*

Maryland's general statute of limitations affords plaintiffs three years to file claims.<sup>85</sup> The limitations period commences when the cause of action accrues.<sup>86</sup> Historically, a cause of action accrued when the wrongful act occurred and a claim was time-barred three years later, even if the plaintiff had no reasonable occasion to know of the act or its wrongfulness until long after it happened.<sup>87</sup> According to this rule, a victim who had "slumbered on his rights[ ]" was equivalent to a victim who was "blamelessly ignorant."<sup>88</sup> Because this approach was unduly harsh on claimants, the Court of Appeals

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80. *Id.* at 1122–23; *see also* *Equitable Life Assur. Soc'y of U.S. v. State Comm'n on Human Relations*, 290 Md. 333, 344, 430 A.2d 60, 66 (1981) (noting that the remedial purpose of Article 49B was "to eradicate the vestiges of discrimination in the categories designated").

81. *Romano*, 926 P.2d at 1122–23. The *Romano* court further reasoned that the *Ricks/Chardon* approach "would promote premature and potentially destructive claims" because it would require employees to file complaints while still employed, "thus seeking a remedy for a harm that had not yet occurred." *Id.* at 1123.

82. 770 A.2d 275 (N.J. 2001).

83. *Id.* at 277–78. The plaintiff's retaliatory discharge claim arose from her heated disagreements with the medical center's management over the treatment of five patients. *Id.* at 278.

84. *Id.* at 277. The *Alderiso* court ruled that its definition of discharge was the "ordinary and logical meaning" of the word, and distinguished the *Ricks* and *Chardon* cases. *Id.* at 280–81.

85. MD. CODE ANN., CTS. & JUD. PROC. § 5-101 (LexisNexis 2006).

86. *See id.* ("A civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced.")

87. *Doe v. Maskell*, 342 Md. 684, 689, 679 A.2d 1087, 1089 (1996).

88. *Id.* at 689–90, 679 A.2d at 1089 (quoting *Hecht v. Resolution Trust Corp.*, 333 Md. 324, 334, 635 A.2d 394, 399 (1994)).

adopted the discovery rule.<sup>89</sup> Under the discovery rule, the limitations period starts when the plaintiff knows, or through due diligence should know, of his or her potential claim.<sup>90</sup> A plaintiff who invokes this rule must prove, by a preponderance of the evidence, the date on which he or she received this knowledge.<sup>91</sup> The discovery rule is meant to provide sufficient time for attentive plaintiffs to identify a cause of action while ensuring fairness to defendants and promoting judicial economy.<sup>92</sup>

Maryland courts have progressively broadened the applicability of the discovery rule. The Court of Appeals first applied the rule in *Hahn v. Claybrook*,<sup>93</sup> where a woman whose skin became discolored from a prescribed medication sued her physician after the three-year limitations period had expired.<sup>94</sup> The *Hahn* court determined that the limitations period started when Hahn discovered the discoloration of her skin, which revealed the injury of which she could complain.<sup>95</sup>

More than six decades later, in *Harig v. Johns-Manville Products Corp.*,<sup>96</sup> the Court of Appeals extended the discovery rule to cases involving dormant illness.<sup>97</sup> In *Harig*, a woman sued an asbestos manufacturer, claiming that her fifteen-year exposure to asbestos-containing products while working at an installation firm caused her to develop cancer.<sup>98</sup> Although the plaintiff did not discover her cancer until at least twenty years after her exposure to the asbestos, the Court of Appeals applied the discovery rule, reasoning that “a person

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89. *Poffenberger v. Risser*, 290 Md. 631, 634, 431 A.2d 677, 679 (1981).

90. *Dual Inc. v. Lockheed Martin Corp.*, 383 Md. 151, 167–68, 857 A.2d 1095, 1104 (2004). Under the discovery rule, knowledge means actual cognition or awareness implied from “knowledge of circumstances which ought to have put a person of ordinary prudence on inquiry . . . notice of all facts which such an investigation would in all probability have disclosed if it had been properly pursued.” *Poffenberger*, 290 Md. at 637, 431 A.2d at 681 (quoting *Fertitta v. Bay Shore Dev. Corp.*, 252 Md. 393, 402, 250 A.2d 69, 75 (1969)).

91. *Bacon & Assocs., Inc. v. Rolly Tasker Sails (Thail.) Co.*, 154 Md. App. 617, 633–34, 841 A.2d 53, 63 (Ct. Spec. App. 2004).

92. *See Pennwalt Corp. v. Nasios*, 314 Md. 433, 453–56, 550 A.2d 1155, 1165–67 (1988) (analyzing the effect of the discovery rule on three policy considerations underlying a statute of limitations, including “(1) the interest of diligent plaintiffs to bring suit; (2) the interest of defendants to enjoy repose after an unreasonable delay by plaintiffs; and (3) the interest of society in promoting judicial economy”); *Feldman v. Granger*, 255 Md. 288, 297, 257 A.2d 421, 426 (1969) (explaining that the discovery rule gives a diligent plaintiff “the full benefit of the statutory period in which to file suit, while at the same time protecting the defendant from ‘stale claims[ ]’”).

93. 130 Md. 179, 100 A. 83 (1917).

94. *Id.* at 184–85, 100 A. at 84–85.

95. *Id.* at 187, 100 A. at 86.

96. 284 Md. 70, 394 A.2d 299 (1978).

97. *Id.* at 83, 394 A.2d at 306.

98. *Id.* at 72, 394 A.2d at 300–01.

incurring disease years after exposure cannot have known of the existence of the tort until some injury manifests itself.”<sup>99</sup>

In *Poffenberger v. Risser*,<sup>100</sup> the Court of Appeals declared that the discovery rule is “applicable generally in *all actions*.”<sup>101</sup> In *Poffenberger*, a man who had been living in his new house for over three years sued his homebuilder for negligence and breach of contract upon learning that the house did not comply with certain building restrictions.<sup>102</sup> The Court of Appeals ruled that the limitations period commenced only when the homeowner knew, or reasonably should have known, that the house was noncompliant.<sup>103</sup> In deciding that the discovery rule is generally applicable in civil cases, *Poffenberger* made the discovery rule the usual rule in Maryland, rather than the exception.<sup>104</sup>

More recently, the Court of Appeals adjudicated *Dual Inc. v. Lockheed Martin Corp.*,<sup>105</sup> where a subcontractor in the aircraft simulator business sued Lockheed based on alleged torts relating to two contracts.<sup>106</sup> Although the *Dual* court ultimately found the plaintiff’s claims to be time-barred, the court recognized that a limitations period does not start until a plaintiff is at least “on ‘inquiry notice[ ]’” of a potential claim.<sup>107</sup> Inquiry notice occurs when (1) the plaintiff has adequate facts to cause a reasonable person to inquire further; and (2) a diligent investigation would indicate that the plaintiff is a victim.<sup>108</sup>

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99. *Id.* at 72–73, 80, 394 A.2d at 300–01, 305.

100. 290 Md. 631, 431 A.2d 677 (1981).

101. *Id.* at 636, 431 A.2d at 680 (emphasis added).

102. *Id.* at 632–33, 431 A.2d at 678. In particular, the house was eight feet from an adjacent lot, despite a restriction providing that “no portion of any building . . . shall be located within 15 feet of any other side lot line.” *Id.* at 633, 431 A.2d at 678 (internal quotation marks omitted).

103. *Id.* at 636, 638, 431 A.2d at 680–81.

104. *See supra* note 101 and accompanying text.

105. 383 Md. 151, 857 A.2d 1095 (2004).

106. *Id.* at 157–58, 857 A.2d at 1098–99. The plaintiff alleged that Lockheed colluded to drive the plaintiff out of business in an effort to appropriate the plaintiff’s employees, clients, and contracts. *Id.* at 158–59, 857 A.2d at 1099.

107. *Id.* at 167–68, 857 A.2d at 1104 (quoting *Am. Gen. Assur. Co. v. Pappano*, 374 Md. 339, 351, 822 A.2d 1212, 1219 (2003)). The court further explained that, absent fraud, the limitations period began when the plaintiff became aware that the contracts had been terminated. *Id.* at 167–69, 857 A.2d at 1104–05. The Maryland Code, however, provides that a fraudulently concealed cause of action accrues only when the victimized party “discovered, or by the exercise of ordinary diligence should have discovered the fraud.” MD. CODE ANN., CTS. & JUD. PROC. § 5-203 (LexisNexis 2006).

108. *Dual Inc.*, 383 Md. at 168, 857 A.2d at 1104 (quoting *Pennwalt Corp. v. Nasios*, 314 Md. 433, 449, 550 A.2d 1155, 1163–64 (1988)).

However, the discovery rule does not apply in every case. In *Doe v. Maskell*,<sup>109</sup> for example, two women sued a parochial high school alleging that the school's chaplain repeatedly abused them when they were students there approximately twenty-five years earlier.<sup>110</sup> The women claimed that "repression" of their memories made them unable to recall the abuse until decades after their high school graduations.<sup>111</sup> In ruling that the claims were time-barred and that the discovery rule did not apply to cases of repressed memory, the *Maskell* court stated that the discovery rule "must operate differently in different contexts."<sup>112</sup>

*E. The Court of Appeals Has Adopted the Discovery Rule in a Wrongful Discharge Case and the Maryland Legislature Has Recently Enacted Pro-Plaintiff Amendments to Article 49B*

Because the discovery rule is generally applicable to prevent injustice in all actions,<sup>113</sup> the Court of Appeals recently applied the rule in a wrongful discharge case. In *Arroyo v. Board of Education of Howard County*,<sup>114</sup> the Court of Appeals considered when the limitations period on a school guidance counselor's wrongful discharge claim against the Howard County Board of Education began.<sup>115</sup> The *Arroyo* court concluded that it began when the plaintiff "knew or reasonably should have known of the *claimed wrong done to him*."<sup>116</sup>

Title VII cases may also provide guidance as to the application of the discovery rule in the context of employment discrimination. In

109. 342 Md. 684, 679 A.2d 1087 (1996).

110. *Id.* at 686–88, 679 A.2d at 1088–89. The chaplain allegedly threatened the girls with "extreme punishments" if they told anyone about the abuse. *Id.* at 687, 679 A.2d at 1088.

111. *Id.* at 687–88, 679 A.2d at 1088–89 (internal quotation marks omitted).

112. *Id.* at 691, 695, 679 A.2d at 1090, 1092; *see also* O'Hara v. Kovens, 305 Md. 280, 298, 503 A.2d 1313, 1322 (1986) (stating that the manner in which "the discovery rule operates in different types of cases is for the court to determine"). Specifically, the *Maskell* court refused to apply the discovery rule because it equated repression of memory with forgetfulness, which does not delay the limitations period. *Maskell*, 342 Md. at 692, 695, 679 A.2d at 1090, 1092.

113. *Poffenberger v. Risser*, 290 Md. 631, 636, 431 A.2d 677, 680 (1981).

114. 381 Md. 646, 851 A.2d 576 (2004).

115. *Id.* at 649–50, 851 A.2d at 578–79. In particular, *Arroyo* addressed the issue of when the guidance counselor had exhausted his administrative remedies such that the statute of limitations on his wrongful termination claim began to run. *Id.* at 650, 851 A.2d at 579.

116. *Id.* at 669, 851 A.2d at 590 (emphasis added). Specifically, the "dispositive issue" for the court was the time at which "the plaintiff was put on notice that he may have been injured." *Id.* The *Arroyo* court decided that this moment occurred when the state board of education affirmed the county board's termination of the guidance counselor's employment, given that this affirmation constituted the agency's final decision and exhausted the counselor's administrative remedies. *Id.* at 671, 851 A.2d at 591.

*Merrill v. Southern Methodist University*,<sup>117</sup> for instance, the United States Court of Appeals for the Fifth Circuit considered the limitations period on a Title VII sex discrimination claim, citing *Ricks* for the proposition that a limitations period starts when the discriminatory act occurs, and then explaining that the Fifth Circuit also looks at the date when the claimant knew, or should have known, that a discriminatory act had occurred.<sup>118</sup> In light of these principles, the court refused to delay the limitations period simply because a claimant has no knowledge of the employer's discriminatory motive at the time of the act or upon learning of it.<sup>119</sup>

Finally, recent amendments to Article 49B provide a current legislative context in which to assess whether the discovery doctrine should apply to Article 49B discriminatory discharge cases. In particular, on April 24, 2007, Maryland's governor signed a bill that amends Article 49B and affords several significant benefits to complainants, including (1) authorization to allege discrimination in a private right of action, and (2) increased damage awards.<sup>120</sup> The former provision allows employees to bring their claims in county circuit courts if they "initially filed an administrative charge or a complaint under federal, State, or local law alleging a discriminatory act by the respondent" and at least 180 days have passed since that time.<sup>121</sup> The latter provision allows complainants to recover, among other awards, compensatory damages, punitive damages, attorneys' fees, and expert witness fees.<sup>122</sup>

### III. THE COURT'S REASONING

In *Haas v. Lockheed Martin Corp.*, the Court of Appeals reversed the judgment of the Court of Special Appeals in holding that an employment discharge occurs, and a two-year statute of limitations starts, upon an employee's actual termination.<sup>123</sup> Writing for a five-two majority, Judge Harrell began by describing the statutory provisions underlying Haas's claim.<sup>124</sup> First, the court noted that individuals in Montgomery County may file discrimination claims under the Mary-

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117. 806 F.2d 600 (5th Cir. 1986).

118. *Id.* at 602, 605. In *Merrill*, a female professor filed Title VII claims against Southern Methodist University, alleging discrimination on the basis of sex and religion. *Id.* at 602, 119. *Id.* at 605.

120. Act of Apr. 24, 2007, ch. 177, sec. 1, § 11B(a), (c)–(e), 2007 Md. Laws 788, 792–93 (codified at Md. CODE ANN. art. 49B, § 11B (Supp. 2007)). The law took effect on October 1, 2007. Art. 49B, § 11B editor's note.

121. Art. 49B, § 11B(a)–(b).

122. *Id.* §§ 11B(c)–(e), 11D.

123. 396 Md. 469, 480, 494, 500, 914 A.2d 735, 741–42, 750, 754 (2007).

124. *Id.* at 479–80, 914 A.2d at 741–42.

land Code.<sup>125</sup> Second, the court stated that the County Code forbids an employer from discharging any employee based upon a qualified individual's disability.<sup>126</sup> Finally, the *Haas* court explained that an employee who seeks to sue under this system must do so within two years of when the act of alleged discrimination occurred.<sup>127</sup>

Next, Judge Harrell stressed that the *Ricks/Chardon* Rule did not bind the *Haas* court.<sup>128</sup> Primarily, Judge Harrell emphasized that although "Title VII is the federal analog to Art[icle] 49B" and although Maryland courts traditionally consult federal case law when interpreting Article 49B, Maryland courts are free to construe state statutes differently from similar federal provisions.<sup>129</sup> The *Haas* court acknowledged that in both *Ricks* and *Chardon*, the Supreme Court decided that the applicable limitations periods began when the employees had notice of the discriminatory acts, not at the time of actual discharge.<sup>130</sup> However, the *Haas* court also pointed out that the *Ricks* holding was meant to apply only on a case-by-case basis and that states had split views as to its propriety.<sup>131</sup> Judge Harrell then explained that the court would principally look to state appellate decisions to determine whether Maryland should adopt the *Ricks/Chardon* Rule.<sup>132</sup>

In so doing, Judge Harrell concluded that the *Haas* court should reject the *Ricks/Chardon* Rule in favor of the minority approach that the high courts of Hawaii, California, and New Jersey had developed.<sup>133</sup> First, the *Haas* court cited *Ross v. Stouffer Hotel Co. (Hawaii)*<sup>134</sup> to highlight the following four assertions in opposition to the *Ricks/Chardon* Rule: (1) the plain meaning of "discharge" is "termi-

125. *Id.*, 914 A.2d at 741.

126. *Id.* at 480 & n.6, 914 A.2d at 741 & n.6.

127. *Id.* at 480, 914 A.2d at 741-42.

128. *Id.* at 481, 914 A.2d at 742.

129. *Id.* at 481 & nn.8 & 10, 914 A.2d at 742 & nn.8 & 10.

130. *See id.* at 484-85, 914 A.2d at 744-45 (acknowledging the federal courts' position that "[m]ere continuity of employment, without more, is insufficient to prolong the life of a cause of action for employment discrimination" (quoting *Del. State Coll. v. Ricks*, 449 U.S. 250, 257 (1980))). Further, the *Haas* court pointed out that the claimants in *Ricks* and *Chardon* had failed to allege that any discrimination occurred between the times of the discriminatory decisions and the times of the actual discharges. *Id.*, 914 A.2d at 744.

131. *Id.*, 914 A.2d at 744-45. The *Haas* court stated that although most states have adopted the *Ricks/Chardon* Rule, many have done so without a comprehensive explanation, or merely to preserve a "convenien[t]" statutory similarity between state law and Title VII. *Id.* at 485-88, 914 A.2d at 745-46.

132. *Id.* at 486 n.12, 914 A.2d at 745 n.12.

133. *See id.* at 488, 491, 494, 914 A.2d at 746, 748, 750 (stating that the decisions of these three courts were persuasive and "epitomize[d] best the arguments gainsaying adoption of the *Ricks/Chardon* [R]ule").

134. 879 P.2d 1037 (Haw. 1994).

nation of employment”;<sup>135</sup> (2) most employees do not learn of their legal remedies until after they stop working; (3) courts should adjudicate these claims on their merits because of the statute’s remedial purpose; and (4) a last day of employment “bright line rule brings certainty and simplicity” to the litigation process.<sup>136</sup> Second, the *Haas* court cited *Romano v. Rockwell International, Inc.*<sup>137</sup> for the argument that the *Ricks/Chardon* Rule encourages premature claims by improperly requiring employees to sue while still working.<sup>138</sup> Third, the *Haas* court cited *Alderiso v. Medical Center of Ocean County, Inc.*’s<sup>139</sup> definition of “discharge” as “the last day of paid salary.”<sup>140</sup> Thus, the *Haas* court found that “the collective rationales” of the Hawaii, California, and New Jersey decisions were “persuasive” in construing Maryland’s statutory scheme.<sup>141</sup>

Finally, the *Haas* court assessed several additional points to bolster its holding that a discharge occurs, and a limitations period begins, on the date of actual termination.<sup>142</sup> First, the *Haas* court declared that if the legislatively intended meaning of Article 49B was ambiguous, an interpretation grounded in “sound jurisprudential policy” would trump a “consensus interpretation.”<sup>143</sup> Second, the *Haas* court noted that the *Ricks/Chardon* Rule harms public policy that favors employer-employee conciliation by encouraging employees to sue before they stop working.<sup>144</sup> Third, the *Haas* court suggested that

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135. *Haas*, 396 Md. at 489, 914 A.2d at 747 (internal quotation marks omitted). In Maryland, Judge Harrell stated, plain meaning involves “the ‘ordinary, popular understanding of the English language.’” *Id.* at 492, 914 A.2d at 749 (quoting *Adventist Health Care, Inc. v. Md. Health Care Comm’n*, 392 Md. 103, 124 n.13, 896 A.2d 320, 333 n.13 (2006)). Specifically, Judge Harrell cited four dictionaries in ruling that the plain meaning of “discharge” was unambiguous. *Id.* at 492–93 & n.17, 914 A.2d at 749 & n.17 (internal quotation marks omitted). Judge Harrell further concluded that the definition of the word “dismiss” clearly “rests on the sending away of an employee rather than a notification of such an impending action.” *Id.* at 492 n.17, 914 A.2d at 749 n.17 (internal quotation marks omitted).

136. *Id.* at 489, 914 A.2d at 747.

137. 926 P.2d 1114 (Cal. 1996).

138. *Haas*, 396 Md. at 489, 914 A.2d at 747 (noting the *Romano* court’s criticism that, under the *Ricks/Chardon* Rule, employees would “seek[ ] a remedy for a harm that had not yet occurred” (quoting *Romano*, 926 P.2d at 1123)).

139. 770 A.2d 275 (N.J. 2001).

140. *Haas*, 396 Md. at 490, 914 A.2d at 748 (internal quotation marks omitted) (citing *Alderiso*, 770 A.2d at 280).

141. *Id.* at 491, 914 A.2d at 748.

142. See *infra* notes 143–146 and accompanying text.

143. *Haas*, 396 Md. at 493, 914 A.2d at 749–50. Moreover, the *Haas* court asserted that because section 42 of Article 49B is remedial in nature, courts should construe it “liberally in favor of claimants seeking its protection.” *Id.* at 495, 914 A.2d at 750–51.

144. *Id.* at 496–97, 914 A.2d at 751–52 (noting that the *Ricks/Chardon* Rule may also have “a chilling effect on the employee filing in the most timely manner”).

the *Ricks/Chardon* Rule is not easily administrable because it requires a “sometime[s] tortured analysis” using the discovery rule.<sup>145</sup> In contrast, Judge Harrell asserted, the last day of employment approach would (1) be “clear and logical” because employees do not typically expect to have a cause of action while still working; and (2) ensure that courts do not time-bar otherwise valid claims “for purely technical reasons.”<sup>146</sup> Thus, the *Haas* court rejected the *Ricks/Chardon* Rule in favor of the minority approach that triggers the limitations period when the employee stops working.<sup>147</sup>

Judge Battaglia wrote a lengthy dissenting opinion, joined in part by Judge Raker,<sup>148</sup> asserting that Maryland should adopt the *Ricks/Chardon* Rule for five reasons. First, Judge Battaglia argued that because Article 49B was deliberately patterned after Title VII, the *Haas* court should have deferred to the Supreme Court’s precedent in this area.<sup>149</sup> Second, according to Judge Battaglia, the discriminatory act was the employer’s “decision” to discharge.<sup>150</sup> Judge Battaglia explained that Maryland’s statutory scheme emphasizes “‘the discriminatory act,’” not the painful “‘consequences’” of that act.<sup>151</sup> Third, Judge Battaglia pointed out that different statutes and different facts motivated the Hawaii, California, and New Jersey decisions on which the *Haas* majority relied to reject the *Ricks/Chardon* Rule.<sup>152</sup> Fourth, according to Judge Battaglia, the last day of employment rule improperly discourages employers from offering post-termination benefits because it links the start of the limitations period to the cessation of

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145. *Id.* at 497, 914 A.2d at 752. In other words, the *Haas* court noted that “[a] significant consideration supporting [its] conclusion . . . [was] the relative simplicity in application of a bright line rule in this context.” *Id.*

146. *Id.* at 497–98, 914 A.2d at 752.

147. *Id.* at 494, 500, 914 A.2d at 750, 754.

148. *Id.* at 500, 914 A.2d at 754 (Battaglia, J., dissenting).

149. *See id.* at 503–04, 914 A.2d at 755–56 (reasoning that “[c]onsidering the mimicry of state and local laws to Title VII, it is appropriate to consider federal precedents when interpreting state and local laws”).

150. *Id.* at 504, 914 A.2d at 756 (emphasis omitted).

151. *Id.* at 504–05, 914 A.2d at 756 (quoting *Chardon v. Fernandez*, 454 U.S. 6, 8 (1981) (per curiam)).

152. *Id.* at 505, 914 A.2d at 756–57. For example, whereas the *Ross* plaintiff was subject to a ninety-day statute of limitations, *Haas* was subject to a two-year statute of limitations. *Id.*, 914 A.2d at 757. Whereas the *Romano* plaintiff had one and a half years notice of his termination, *Haas* had two weeks notice of her termination, which would not have required her, or others like her, to sue while working. *Id.* at 505–06, 914 A.2d at 757. Whereas the *Alderiso* plaintiff was subject to a one-year statute of limitations and given oral notice of his discharge, *Haas* was subject to a two-year statute of limitations and afforded written notice of her discharge. *Id.* at 506, 914 A.2d at 757.

economic benefits.<sup>153</sup> Last, Judge Battaglia stated that the majority's holding improperly disregarded Maryland's longstanding discovery rule.<sup>154</sup> Thus, Judge Battaglia would have adopted the *Ricks/Chardon* Rule to affirm the judgment that Haas did not timely file her claim.<sup>155</sup>

#### IV. ANALYSIS

In *Haas v. Lockheed Martin Corp.*, the Court of Appeals held that a statute of limitations in an Article 49B discriminatory discharge claim begins to run when the employee's actual employment ends.<sup>156</sup> Improperly focusing only on certain aspects of the meaning of a discriminatory discharge, Judges Harrell and Battaglia incompletely defined the statutory cause of action.<sup>157</sup> The Maryland General Assembly could remedy this shortcoming by amending section 42(b)(1) of Article 49B to require courts to consider when an employee knew, or should have known, of the alleged discrimination.<sup>158</sup> If the legislature adopts the discovery rule in this context, it would, among other benefits, improve judicial economy, promote consistency with recent Article 49B amendments, and protect the financial wellbeing of employees.<sup>159</sup>

##### A. *Haas's Majority and Dissenting Opinions Incompletely Interpreted Article 49B's Cause of Action by Simply Focusing on Parts of the Definition of a Discriminatory Discharge*

Although the Maryland Code requires "an act of discrimination"<sup>160</sup> and the County Code prohibits discharge based on a "disability,"<sup>161</sup> the *Haas* opinions did not fully assess the meaning of a discriminatory discharge, each, instead, examining only one aspect of this term.<sup>162</sup> Judge Harrell consulted four dictionaries to conclude

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153. *See id.* at 506–07, 914 A.2d at 757–58 ("The last-day-of-employment approach . . . discourages employers from extending employment and other benefits beyond the date of notification, which provides employees a much needed grace period to locate alternative employment . . .").

154. *Id.* at 507–08, 914 A.2d at 758.

155. *Id.* at 510, 914 A.2d at 760.

156. *Id.* at 472–73, 494, 914 A.2d at 737, 750 (majority opinion).

157. *See infra* Part IV.A.

158. *See infra* Part IV.B.

159. *See infra* Part IV.C.

160. MD. CODE ANN. art. 49B, § 42(a) (2003).

161. MONTGOMERY COUNTY, MD., CODE § 27-19(a)(1)(A) (2005).

162. *See Haas v. Lockheed Martin Corp.*, 396 Md. 469, 491–94, 914 A.2d 735, 748–50 (2007) (focusing only on the plain meaning of a "discharge"); *id.* at 504, 914 A.2d at 756 (Battaglia, J., dissenting) (emphasizing the employer's decision to discharge an employee

that “discharge” means actual termination of employment.<sup>163</sup> Judge Battaglia decided that notice of termination substantiates an Article 49B claim because it is the employer’s decision to discharge an employee on the basis of discrimination that constitutes the statutorily prohibited act of discrimination.<sup>164</sup> However, both inquiries are deficient because they give meaning to only part of what the statutory scheme requires—an act of discrimination that the County Code forbids.<sup>165</sup> In Haas’s case, the discriminatory act giving rise to her claim was not discharge alone, but discharge “*on the basis of [a] disability,*” namely ADD and learning disabilities.<sup>166</sup> By defining discharge in a vacuum, the majority opinion inadequately considered the discriminatory component of Haas’s cause of action, and in adopting the notice of termination rule, the dissent insufficiently addressed the fact that Haas’s discharge, not just notice of it, constituted the unlawful act.

*B. The Legislative Scheme Does Not Adequately Account for the Time at Which an Employee Receives Inquiry Notice of the Claimed Wrong*

The General Assembly could ensure that future courts fully consider the meaning of a discriminatory discharge, and achieve a more just result, by amending section 42(b)(1) of Article 49B to incorporate the discovery rule. Presently, section 42(b)(1) of Article 49B requires that a claim be filed no later than two years after an “alleged discriminatory act,” which includes an act, plus a discriminatory motive, plus knowledge giving rise to an allegation of wrongfulness.<sup>167</sup> Unambiguously, in requiring a plaintiff to allege discrimination, the statutory scheme makes it necessary for the claimant to possess knowledge of an employer’s discriminatory motive.<sup>168</sup> However, the current language of the statute does not accommodate a claimant who cannot obtain this knowledge of discriminatory motive until after the limita-

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for a discriminatory reason, but ignoring the fact that the County Code prohibits an *actual* discharge on the basis of a disability).

163. *Id.* at 492 & n.17, 914 A.2d at 749 & n.17 (majority opinion) (internal quotation marks omitted).

164. *Id.* at 504, 914 A.2d at 756 (Battaglia, J., dissenting).

165. *See* art. 49B, § 42(a) (“[A] person who is subjected to an act of discrimination prohibited by the county code may bring and maintain a civil action against the person who committed the alleged discriminatory act . . . .”); MONTGOMERY COUNTY, MD., CODE § 27-19(a)(1)(A) (making it a discriminatory employment practice for an employer to discharge an employee on the basis of the “disability of a qualified individual”).

166. *Haas*, 396 Md. at 473, 476, 479–80, 914 A.2d at 737, 739, 741 (emphasis added) (internal quotation marks omitted).

167. Art. 49B, § 42(b)(1).

168. *Id.* § 42(a).

tions period has expired, as might *Arroyo's* inquiry notice standard, which properly focuses on the moment the claimant had reason to discover “the claimed wrong.”<sup>169</sup> Under the discovery rule, Haas’s cause of action would have accrued when Haas had reason to know that Lockheed fired her based on her disability—the claimed wrong.<sup>170</sup> Thus, in stating that the limitations period runs for two years after the discriminatory act, rather than two years after the employee receives inquiry notice of the discrimination, the statutory scheme improperly triggers the limitations clock even if the employee had no chance to learn she was a victim of discrimination.<sup>171</sup>

Further, contrary to Judge Battaglia’s assertion, the *Ricks/Chardon* Rule’s notice of discharge approach does not “fit[ ] tongue and groove with th[e] [c]ourt’s long adherence to the discovery rule.”<sup>172</sup> Suggesting that notice of layoff satisfies the discovery rule improperly assumes that notice of termination is the equivalent of notice of a claimed wrong, here, a discharge on the basis of discrimination.<sup>173</sup> In fact, the *Ricks/Chardon* Rule is inconsistent with the discovery rule because although *Ricks* and *Chardon* require notice of the unlawful deci-

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169. See *Arroyo v. Bd. of Educ. of Howard County*, 381 Md. 646, 669, 851 A.2d 576, 590 (2004). Under *Arroyo*, the limitations period on a civil claim for wrongful discharge began only when the plaintiff “knew or reasonably should have known of the claimed wrong done to him.” *Id.* In Maryland, this requires at least inquiry notice, which occurs when (1) the plaintiff knows of enough facts to lead a reasonable person to investigate further; and (2) a diligent investigation would show that the plaintiff is a victim. *Dual Inc. v. Lockheed Martin Corp.*, 383 Md. 151, 167–68, 857 A.2d 1095, 1104 (2004) (quoting *Pennwalt Corp. v. Nasios*, 314 Md. 433, 449, 550 A.2d 1155, 1163–64 (1988)).

170. See *Arroyo*, 381 Md. at 668–69, 851 A.2d at 589–90 (stating that the plaintiff must be on inquiry notice of “the wrong[ ]” or “the claimed wrong done,” but describing the wrong as the employee’s dismissal (quoting *Hecht v. Resolution Trust Corp.*, 333 Md. 324, 334, 635 A.2d 394, 399 (1994))); *Pennwalt Corp.*, 314 Md. at 455–56, 550 A.2d at 1167 (“[G]enerally, a cause of action for a plaintiff in a medical products liability action would accrue when he knew or should have known (1) he suffered injury; (2) the injury was caused by the defendant; and (3) there was manufacturer wrongdoing or a product defect.”).

171. Compare art. 49B, § 42(b)(1), with *Pennwalt Corp.*, 314 Md. at 455–56, 550 A.2d at 1167 (requiring a plaintiff to know of his or her injury, the source of the injury, and the occurrence of wrongdoing before the cause of action would accrue).

172. Compare *Haas v. Lockheed Martin Corp.*, 396 Md. 469, 507–08, 914 A.2d 735, 758 (2007) (Battaglia, J., dissenting), with *Ledbetter v. Goodyear Tire & Rubber Co.*, 127 S. Ct. 2162, 2177 n.10 (2007) (stating that the Supreme Court has “declined to address whether Title VII suits are amenable to a discovery rule”).

173. See *Hecht*, 333 Md. at 334, 635 A.2d at 399 (explaining that prior to adoption of the discovery rule, courts looked to when the wrong was committed and that such a rule “wrought harsh consequences in cases where plaintiffs’ claims were barred, not only before they were able to perceive any harm, but before it was possible for them to learn that the negligence had taken place” (emphasis added)).

sion, they do not require notice of the underlying discrimination,<sup>174</sup> which is precisely what the claimant must allege to sue under Article 49B.<sup>175</sup>

As the *Haas* majority and dissenting opinions construed it, section 42(b)(1) of Article 49B fails to contemplate that victims of discrimination may have no reasonable chance to discover their causes of action when they stop working or receive notice of discharge. The statute contains an inherent tension because, on the one hand, it is a remedial statute designed to protect employees<sup>176</sup> and, on the other hand, it is a statute of limitations, which courts construe “strict[ly],” in part, to protect employers against stale claims.<sup>177</sup> To manage this “delicate situation,” the *Haas* majority adopted the actual discharge approach (1) to give employees adequate time to file claims; and (2) to allow employers’ decisions regarding the discharge process to “control,” thereby ensuring their notice of potential claims.<sup>178</sup> In contrast, the *Haas* dissent sought to manage the tension by (1) authorizing em-

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174. Compare *Chardon v. Fernandez*, 454 U.S. 6, 8 (1981) (per curiam) (emphasizing that the alleged unlawful act was the employer’s decision to terminate the claimant’s employment “solely for political reasons, violative of [his] First Amendment rights” and that the important time, for statute of limitations purposes, was when the claimant received notice of the employer’s final decision to terminate), *Del. State Coll. v. Ricks*, 449 U.S. 250, 258 (1980) (“[T]he only alleged discrimination occurred—and the filing limitations periods therefore commenced—at the time the tenure decision was made and communicated to Ricks.”), *English v. Whitfield*, 858 F.2d 957, 961 (4th Cir. 1988) (stating that, under the *Ricks/Chardon* Rule, the limitations period “begins running on the date that the employee is given definite notice of the challenged employment decision”), and *Merrill v. S. Methodist Univ.*, 806 F.2d 600, 605 (5th Cir. 1986) (approving of *Ricks* and then declaring that a statute of limitations may bar claims even if the claimant needs “years” to discover that a “discriminatory animus” caused her harm), with *Harig v. Johns-Manville Prods. Corp.*, 284 Md. 70, 83, 394 A.2d 299, 306 (1978) (applying the discovery rule and stating that “in situations involving the latent development of disease, a plaintiff’s cause of action accrues when he ascertains, or through the exercise of reasonable care and diligence should have ascertained, the nature and cause of his injury”), and *Watson v. Dorsey*, 265 Md. 509, 512, 290 A.2d 530, 533 (1972) (explaining that, under the discovery rule, the limitations period commences not on “the date of the wrong,” but rather, on the date the victim “discovers or reasonably should have discovered that he has been wronged”).

175. See art. 49B, § 42(a) (authorizing an individual in Montgomery County to sue if “subjected to an act of discrimination”).

176. See *Equitable Life Assur. Soc’y of U.S. v. State Comm’n on Human Relations*, 290 Md. 333, 344, 430 A.2d 60, 66 (1981) (“The legislature in enacting and amending Article 49B leaves no room to doubt its intent and purpose, *i.e.*, to eradicate the vestiges of discrimination in the categories designated.”).

177. *Hecht*, 333 Md. at 332–33, 635 A.2d at 399 (stating that Maryland uses “a rule of strict construction concerning the tolling of the statute of limitations”); see also *Romano v. Rockwell Int’l, Inc.*, 926 P.2d 1114, 1119 (Cal. 1996) (noting that statutes of limitations are meant to “protect defendants from the necessity of defending stale claims and [to] require plaintiffs to pursue their claims diligently”).

178. *Haas v. Lockheed Martin Corp.*, 396 Md. 469, 494, 498–99, 914 A.2d 735, 750, 752–53 (2007).

ployees to file claims before actual discharge; and (2) triggering the limitations period on notice of discharge, which, the dissent explained, offers enough time to diligent employees while also limiting stale claims for employers.<sup>179</sup> However, the discovery rule specifically offsets the pitfalls of bright line tests in this circumstance—where there is an inherent tension between the interests of plaintiffs and defendants.<sup>180</sup>

Read together, these two approaches demonstrate that the statute of limitations, as written, does not adequately accommodate employees who cannot reasonably discover that they are victims of discrimination until after they stop working. Imagine, for example, a law firm in Montgomery County that receives a staff attorney's recent employee health records, including genetic test results indicating a genetic defect that is likely to cause pre-middle-age dementia.<sup>181</sup> Immediately, the firm's managing partner decides to discharge the attorney due to this diagnosis by phasing out the employee's job duties over the next year.<sup>182</sup> Although the managing partner does not conceal his discriminatory motives, the employee has no reasonable chance to learn of them until three years after her last day of work, when a secretary finds the following e-mail from the managing partner in the firm's computer archive: "I am glad we got rid of that staff attorney before she lost her mind."<sup>183</sup> In this case, both *Haas's* last day of employment approach and *Ricks/Chardon's* notice of discharge approach would

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179. *Id.* at 507–08, 914 A.2d at 758 (Battaglia, J., dissenting).

180. See *Feldman v. Granger*, 255 Md. 288, 297, 257 A.2d 421, 426 (1969) (noting that the discovery rule gives diligent plaintiffs "the full benefit of the statutory period in which to file suit, while at the same time protecting the defendant from 'stale claims[ ]'").

181. See generally Michael Kinsley, *We Must Gather Courage to Discriminate Genetically*, in GENETICS: ETHICS, LAW AND POLICY 840, 840–41 (Lori B. Andrews et al. eds., 2d ed. 2006) (discussing a hypothetical involving somewhat similar facts); Paul Steven Miller, *Is There a Pink Slip in My Genes? Genetic Discrimination in the Workplace*, 3 J. HEALTH CARE L. & POL'Y 225, 236 (2000) (describing a 1999 survey of 1,054 employers, which indicated that "approximately twenty percent of the employers surveyed obtained family medical history information of applicants, and twelve percent obtained family medical history information of employees," and further noting that a family medical history often reveals genetic information).

182. See Miller, *supra* note 181, at 232 (explaining "the growing public concern over the use of genetic information for discriminatory purposes and . . . that some employers may use information obtained from genetic testing to try to lower their insurance and sick leave costs by screening out individuals who have traits linked to inherited medical conditions").

183. The County Code provides that an employer may not discharge any individual on the basis of genetic status. MONTGOMERY COUNTY, MD., CODE § 27-19(a)(1)(A) (2005). Additionally, the Montgomery County Council has found that employers may improperly use genetic status "as a proxy for otherwise illegal grounds for discrimination, . . . providing a loophole in employment protections previously guaranteed by County law." *Id.* § 27-1 editor's note (2006) (quoting 2000 L.M.C., ch. 36, § 2(a)).

time-bar the attorney's discriminatory discharge claim under the County Code before she had the chance to learn of the firm's discriminatory motive.<sup>184</sup> Absent fraud, the legislative scheme would also leave this staff attorney without remedy simply because she had no reasonable way to timely discover that she was the victim of wrongdoing.<sup>185</sup> In contrast, the discovery rule would provide a remedy to the hypothetical attorney and accommodate these concerns by delaying the start of the limitations period until the employee received inquiry notice of the wrongfulness of the employer's conduct.<sup>186</sup> Although a statute of limitations is meant, in part, to afford defendants adequate notice of claims so that they can gather and save evidence necessary for their defense,<sup>187</sup> incorporating the discovery rule into section 42(b)(1) of Article 49B would not undermine this purpose. The discovery rule would still trigger the limitations period when the claimant had reason to identify his or her cause of action,<sup>188</sup> which would presumably occur when evidence of the discrimination still existed, as in the above hypothetical.<sup>189</sup> Thus, because the statute of limitations does not consider the date on which an individual knew, or should have known, about an employer's discriminatory motive, and because

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184. Compare *Haas*, 396 Md. at 494, 914 A.2d at 750 (announcing the court's actual termination holding, under which the hypothetical attorney's claim would be time-barred one year before she learned of the discriminatory e-mail), *with id.* at 502, 914 A.2d at 755 (Battaglia, J., dissenting) (discussing the notice of discharge approach, under which the hypothetical attorney's claim would be time-barred at least one year before she learned of the discriminatory e-mail).

185. See MD. CODE ANN., CTS. & JUD. PROC. § 5-203 (LexisNexis 2006) (delaying the accrual of the hypothetical attorney's claim if the managing partner fraudulently concealed or lied about facts material to the former's discovery of her cause of action).

186. See *Pennwalt Corp. v. Nasios*, 314 Md. 433, 456, 550 A.2d 1155, 1167 (1988) (explaining, under the discovery rule, that a limitations period began when the plaintiff knew, or should have known, of a manufacturer's wrongdoing or the defective nature of a product, in a products liability case). The reasoning of case law concerning tort victims afflicted with latent disease is also instructive in cases where an employee has no reason to know of the employer's discrimination until several years after the discriminatory act occurred. See *Harig v. Johns-Manville Prods. Corp.*, 284 Md. 70, 80, 394 A.2d 299, 305 (1978) ("In neither case can the tort victim be charged with slumbering on his rights, for there was no notice of the existence of a cause of action.").

187. *Philip Morris USA, Inc. v. Christensen*, 394 Md. 227, 256, 905 A.2d 340, 357-58 (2006).

188. E.g., *Pennwalt Corp.*, 314 Md. at 456, 550 A.2d at 1167.

189. Moreover, if an employee knew, or had reason to know, of the employer's discriminatory motive on the last day of work, the discovery rule simply functions like *Haas's* last day of employment rule, which does not unduly burden the employer. *Haas*, 396 Md. at 498, 914 A.2d at 752 ("For employers, our holding makes clear how their record-keeping and termination proceedings must be approached in order to defend properly against a wrongful discharge action. Employers are far less inconvenienced, if at all, by our holding today than employees would be if we followed the *Ricks/Chardon* [R]ule.").

Maryland courts reject non-legislative equitable or implied exceptions to statutes of limitations,<sup>190</sup> the General Assembly should revise section 42(b)(1) of Article 49B to incorporate the discovery rule.

C. *The Discovery Rule Improves Judicial Administrability, Promotes Consistency with Recent Article 49B Amendments, and Protects the Financial Wellbeing of Employees*

The *Haas* court applauded “the relative simplicity” of “a bright line rule in this context” and dismissed the discovery rule’s “tortured analysis,”<sup>191</sup> even though the discovery rule promotes judicial economy and accuracy better than a bright line rule in several important ways. First, *Haas*’s optimistic view of its bright line test is largely unfounded because, de facto, the last day of employment rule is not a bright line rule at all.<sup>192</sup> The *Haas* court expressly acknowledged that its last day approach might be inappropriate in certain cases: “we might entertain a renewed argument that *Ricks* and *Chardon* should be followed in [some] circumstances.”<sup>193</sup> By leaving the door wide open for a *Ricks/Chardon* exception, the *Haas* court left parties uncertain as to precisely when and on what grounds courts might depart from the last day of employment approach.<sup>194</sup> In contrast, the discovery rule is the approach that is simple to apply because (1) litigants and state court judges are already familiar with it; (2) its broad applicability allows it to accommodate varying factual scenarios;<sup>195</sup> and (3) it eases

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190. *Hecht v. Resolution Trust Corp.*, 333 Md. 324, 333, 635 A.2d 394, 399 (1994) (quoting *Booth Glass Co. v. Huntingfield Corp.*, 304 Md. 615, 623, 500 A.2d 641, 645 (1985)).

191. *Haas*, 396 Md. at 497, 914 A.2d at 752. The *Haas* court noted with approval the sentiment that “a bright line rule brings certainty and simplicity to an otherwise confounding decision of when an employee might be, or should have been, aware of his or her cause of action.” *Id.* at 489, 491, 914 A.2d at 747–48.

192. *See id.* at 491 n.16, 914 A.2d at 748 n.16 (“Although we choose the [last day of employment approach] in the present case, that may not necessarily be the case were we confronted with a context similar to that found in *Ricks* and *Chardon*.”).

193. *Id.*

194. *Cf.* Brief Amicus Curiae of the Chamber of Commerce of the United States of America in Support of Respondent at 13, *Haas v. Lockheed Martin Corp.*, 396 Md. 469, 914 A.2d 735 (2007) (No. 05) (arguing that a last day of employment approach “will create great uncertainty regarding the future enforcement of Maryland’s discrimination laws, to the detriment of the business community, the workforce, and the courts” due to the divergence with federal law).

195. *See, e.g.*, *Poffenberger v. Risser*, 290 Md. 631, 636, 431 A.2d 677, 680 (1981) (holding, more than twenty-five years ago, that the discovery rule is generally applicable in any civil case); *see also* MD. CODE ANN., CTS. & JUD. PROC. § 5-203 (LexisNexis 2006) (codifying the discovery rule when the bad actor fraudulently conceals the cause of action from the victim); *Pennwalt Corp. v. Nasios*, 314 Md. 433, 456, 550 A.2d 1155, 1167 (1988) (affirming the use of the discovery rule in the interests of fairness and judicial economy, and characterizing the rule as starting a limitations period when the plaintiff discovered, or should

the administrative burden on courts by strictly requiring claimants to demonstrate the date on which they discovered their claims.<sup>196</sup> With regard to flexibility, a limitations scheme like the discovery rule is especially appropriate because as genetic technologies expand, at least one practitioner predicts that new legal issues, theories, and rules are likely to emerge, potentially leading to wider-ranging times at which discriminatory discharge victims discover their causes of action.<sup>197</sup> As for administrability, even if the discovery rule is less administrable than *Haas's* purported bright line, the Court of Appeals has expressly stated that “[a]voiding possible injustice . . . outweighs the desire for repose and administrative expediency, which are the primary underpinnings of the limitations statute.”<sup>198</sup>

Moreover, if the legislature embraces the discovery rule in discriminatory discharge cases, doing so would preserve consistency with recent pro-claimant amendments to Article 49B. Practitioners predict that the recent Article 49B amendments will cause more plaintiffs to file claims because (1) Article 49B now provides increased damages; and (2) Article 49B's procedure now permits individuals to bring claims in state court on their own.<sup>199</sup> Although the private-right-of-action amendment does not directly affect section 42 of Article 49B,<sup>200</sup> both aspects of the amendment signal the legislature's preference for pro-claimant legislation in this area. The discovery rule ad-

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have discovered, his or her cause of action). *But see Doe v. Maskell*, 342 Md. 684, 691, 679 A.2d 1087, 1090 (1996) (explaining that the discovery rule “must operate differently in different contexts”); *O'Hara v. Kovens*, 305 Md. 280, 298, 503 A.2d 1313, 1322 (1986) (noting that the manner in which “the discovery rule operates in different types of cases is for the court to determine”).

196. *See, e.g., Bacon & Assocs., Inc. v. Rolly Tasker Sails (Thail.) Co.*, 154 Md. App. 617, 633–34, 841 A.2d 53, 63 (Ct. Spec. App. 2004) (explaining that Maryland's discovery rule requires claimants to prove the dates on which they discovered their causes of action by a preponderance of the evidence).

197. *See Susan L. Crokin, Reproductive Genetics: Conceiving New Wrongs?*, 3 SEXUALITY, REPROD. & MENOPAUSE 37, 37–38 (2005), available at <http://www.dnapolicy.org/resources/ReproGenConceivingWrongs.pdf> (noting also that “the legal time limit for bringing claims after genetic abnormalities are discovered is likely to expand”).

198. *Harig v. Johns-Manville Prods. Corp.*, 284 Md. 70, 80, 394 A.2d 299, 305 (1978).

199. Gil A. Abramson & Dean A. Romhilt, Presentation, *Article 49B's New Regime: The Amendments to Maryland's Anti-Discrimination Statute and What They Mean for Employers* (Sept. 19, 2007), available at [http://www.hhlaw.com/files/Event/a51fd1b2-d130-4cbb-ba2a-4f8d7d483613/Presentation/EventAttachment/5df52070-04c3-43e5-8a83-92367b3ae838/Article49BsNewRegime\\_Sept07.pdf](http://www.hhlaw.com/files/Event/a51fd1b2-d130-4cbb-ba2a-4f8d7d483613/Presentation/EventAttachment/5df52070-04c3-43e5-8a83-92367b3ae838/Article49BsNewRegime_Sept07.pdf).

200. *See MD. CODE ANN. art. 49B, § 42(a)* (2003) (providing a private right of action for discriminatory acts, as prohibited by the County Code, separate from the private right of action that the new amendment authorizes elsewhere in Article 49B).

vances this legislative interest through its flexibility in affording plaintiffs a sufficient opportunity to learn of a cause of action.<sup>201</sup>

Finally, the discovery rule protects the financial wellbeing of employees better than *Haas's* majority or dissenting approaches by giving employees sufficient time to realize their injuries and by preserving the conciliatory process. The discovery rule rejects the notion that the doors of the judicial system should be closed to individuals who, through no fault of their own, cannot timely discover their causes of action.<sup>202</sup> Additionally, both *Haas* approaches thwart the conciliatory process between the employee and employer. On the one hand, the last day rule discourages employers from granting employees a grace period to find new jobs or to collect post-employment benefits because such accommodations could delay the start of the limitations period.<sup>203</sup> On the other hand, the notice of discharge approach “frustrates” the conciliation process by “motiv[at]ing” plaintiffs to sue before their last day of work, “dooming any chance at conciliation.”<sup>204</sup> In contrast, the discovery rule protects employees by providing as much time as necessary for a victim to discover her cause of action.<sup>205</sup> Further, the discovery rule aids the conciliation process by encouraging employers who have not provided notice of their discriminatory motives to reconsider their termination decisions. Thus, for all of the reasons explained above, the General Assembly should amend section 42(b)(1) of Article 49B to require courts to take into consideration, when performing limitations analyses, whether an employee has notice of an employer’s discriminatory motive.

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201. See, e.g., *Hecht v. Resolution Trust Corp.*, 333 Md. 324, 334–35, 635 A.2d 394, 399–400 (1994) (describing Maryland cases that have utilized the flexible and plaintiff-friendly features of the discovery rule).

202. See, e.g., *Arroyo v. Bd. of Educ. of Howard County*, 381 Md. 646, 668, 851 A.2d 576, 589 (2004) (explaining the pitfalls of an approach merely focused on when the actual wrong took place).

203. See, e.g., *Naton v. Bank of Cal.*, 649 F.2d 691, 695 (9th Cir. 1981) (“[A] rule focusing on the date of termination of economic benefits [i.e., the last day of work approach] might dissuade an employer from extending benefits to a discharged employee after the employee had ceased working.”).

204. *Haas v. Lockheed Martin Corp.*, 396 Md. 469, 496–97, 914 A.2d 735, 751–52 (2007).

205. See, e.g., *Harig v. Johns-Manville Prods. Corp.*, 284 Md. 70, 80, 394 A.2d 299, 305 (1978) (“In cases where the initial injury is inherently unknowable, however, the statute of limitations should not begin to run until the plaintiff should reasonably learn of the cause of action.”).

## V. CONCLUSION

In *Haas v. Lockheed Martin*, the Court of Appeals held that a two-year statute of limitations in a discriminatory discharge claim begins to run when employment ends.<sup>206</sup> In doing so, the court insufficiently considered the discriminatory element of a discriminatory discharge.<sup>207</sup> To correct this problem, the General Assembly should amend section 42(b)(1) of Article 49B to acknowledge the practical reality that victims of discriminatory discharges do not realize that they have claims until they discover that their discharges were based on discrimination.<sup>208</sup> If the legislature incorporates the discovery rule in this context, it would, among other benefits, improve judicial economy, promote consistency with recent Article 49B amendments, and protect the financial wellbeing and legal expectations of litigants.<sup>209</sup>

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206. *Haas*, 396 Md. at 472–73, 480, 494, 914 A.2d at 737, 741–42, 750.

207. *See supra* Part IV.A.

208. *See supra* Part IV.B.

209. *See supra* Part IV.C.