

House Bill 2 – Bringing Balance to Ohio’s Employment Discrimination Laws

Ohio remains at competitive disadvantage under employment discrimination laws that are woefully out of line with their counterparts at the federal level and in other states. Businesses in Ohio are hampered by a cumbersome statute of limitations – the longest by far of any state – that creates costly recordkeeping expenses for businesses and prevents timely, fair, and efficient resolution of claims for both employers and employees. In addition, supervisors are forced to second-guess otherwise-sound management decisions for fear of being held personally liable in a lawsuit.

House Bill 2 seeks to maintain robust protection for Ohio employees from discrimination in the workplace while also improving predictability, stability, and administrative efficiency for Ohio employers.

Among the bill’s major provisions:

STATUTE OF LIMITATIONS

Right now, Ohio has the nation’s longest statute of limitation on civil actions for employment discrimination – six years. Most states have limitation periods of one or two years. With respect to Ohio Civil Rights Commission (OCRC) claims, current law provides a 180-day statute of limitation.

House Bill 2 would create a uniform two-year statute of limitation to both file a claim before the OCRC and bring a civil lawsuit. After a claim is filed with the OCRC, an individual would be able to elect to continue with the OCRC process or request the ability to go to civil court.

Good for employees

- Claims or lawsuits are decided more fairly and efficiently when addressed quickly because the involved parties have fresher memories, and company records are more readily accessible.
- Claimants will be able to receive resolution for their cases more swiftly.

Good for employers

- A more reasonable statute of limitation reduces costs for employers by eliminating the financial and logistical burden of maintaining six years’ worth of employee records.
- Alleged incidents of discrimination will be disclosed to employers in a timelier manner, and employers won’t be surprised with lawsuits six years after alleged incidents.

Good for Ohio

- This change helps to create a more competitive and fair legal environment in Ohio.

DUAL ACTIONS

Currently, employees can file an OCRC claim and a civil action at the same time causing employers to defend both simultaneously, which is costly and inefficient. House bill 2 prevents this wasteful use of resources by requiring claimants to first file a claim with the OCRC before pursuing civil litigation.

Good for employees

- Employees will be able to utilize the resources of the OCRC at the outset of their complaint and will still be able to go to court if they wish.
- Employees will also have the ability to go straight to civil court if emergency injunctive relief is needed.

Good for employers

- Employers are not forced to engage in a costly two-front battle simultaneously at the OCRC *and* in court.

Good for Ohio

- The OCRC will be able to track all alleged cases of employment discrimination in the state which, up till now, they have been unable to do because claimants can currently bypass the OCRC and go straight to court.

INDIVIDUAL SUPERVISOR LIABILITY

Under House Bill 2, as in federal law, individual supervisors or managers cannot be held personally liable under the employment law statutes when that individual is acting in the interest of an employer (unless that individual is the employer). This will allow supervisors and managers to exercise sound judgment without fear of being sued when making management decisions on matters such as employee discipline or termination. This change will also prevent plaintiffs' attorneys from suing individuals (even innocent ones) in addition to employers as part of a legal strategy designed to keep these cases out of federal court, or to create conflict between the parties and pressure an employer to settle.

However, individual liability for claims of retaliation and aiding and abetting discrimination will be retained under House Bill 2. Further, in the event that a supervisor would commit an egregious act of harassment, additional remedies exist under other laws, such as intentional torts, and are not impacted by House Bill 2.

AGE DISCRIMINATION

Unlike all other discrimination claims under Ohio law, age discrimination claims currently have four different avenues of redress with different remedies and limitation periods. House Bill 2 consolidates age discrimination claims to be more similar to the way other types of discrimination claims are treated while retaining one avenue where, as under current law, an individual could recover attorneys' fees.

AFFIRMATIVE DEFENSE

House Bill 2 simply codifies a provision of federal case law known as the *Faragher/Elserth* defense. This grants an employer who has robust anti-discrimination policies in place the ability to raise an affirmative defense in hostile work environment harassment cases if it can prove that it had an effective discrimination policy, properly educated employees about the policy and complaint procedures, exercised reasonable care to prevent or promptly correct an unlawful discriminatory practice, and that the complainant failed to take advantage of any preventative or corrective opportunities.

House Bill 2, as in federal case law, provides exceptions in the event an individual can show that taking preventative or corrective action would have failed. Also, the affirmative defense cannot be used when the alleged unlawful discriminatory action resulted in adverse, tangible employment action against the complainant, such as failure to hire or promote, firing, or demotion.