

THE OHIO COUNCIL OF

*Retail Merchants*  
*The voice of retail since 1922*

50 W. Broad St., Suite 1111  
Columbus, Ohio 43215  
614.221.7833 • 614.221.7020 fax  
www.ocrm.net • info@ohioretailmerchants.com

June 18, 2019

The Honorable Stephen Hambley  
Chairman  
House Civil Justice Committee  
77 S. High St.  
Columbus, OH 43215

Dear Chairman Hambley:

On behalf of the Ohio Council of Retail Merchants and its more than 7,000 members, we write regarding House Bill 221 pending before this Committee. Our members recognize and value the contributions that all workers – women and men – make to their businesses and strive to ensure their workplaces are free from unlawful discrimination. However, our members have several concerns about House Bill 221 that we wish to bring to the Committee's attention.

First, we believe the legislation is unnecessary. Employees already have several means to complain of and seek redress for pay disparities rooted in discrimination. Both federal and Ohio law prohibit discriminating against employees in the payment of wages on the basis of sex. The federal Equal Employment Opportunity Commission administers the Equal Pay Act and Title VII of the Civil Rights Act, and employees may file a charge of discrimination with the agency regarding pay discrimination.

In Ohio, the Ohio Department of Commerce and the Ohio Civil Rights Commission are responsible for enforcing Ohio's laws against pay discrimination. The Director of Commerce may take an assignment of an employee's claim in trust for that employee and sue on the employee's behalf. The Civil Rights Commission receives and investigates charges of discrimination and may also conduct an independent preliminary investigation relating to wage discrimination without a charge being filed. Ohio law prohibits the employer from discriminating or retaliating against an employee who files a complaint.

In addition, the federal National Labor Relations Act prohibits employers from restricting their employees from discussing the terms and conditions of their employment, including their wages. This protection extends to both unionized and non-unionized workplaces.

Second, House Bill 221 contains numerous unanswered questions about how this reporting system will actually work:

- House Bill 221 would allow individuals to "report" pay discrimination to the Commission. Currently, charges of discrimination must be made "under oath." RC §4115.05(B)(1). Will individuals similarly be required to affirm or verify that their complaint is true and made under penalty of perjury? See RC §4115.05(B)(1)(a) ("An oath under this chapter may be made in any form of affirmation the person deems binding on the person's conscience. Acceptable forms include, but are not limited, declarations made under penalty of perjury.").

- What does it mean that the Commission will “review” the “complaints” and what guidelines will the Commission use for reviewing them? For example, for a discrimination charge to be valid under current law, it must be filed within one year after the alleged unlawful discriminatory practice was committed. RC §4115.05(B)(1). Will complaints of pay discrimination that are more than a year old be screened out? What if the anonymous caller doesn’t leave a time period? The Commission will have to expend its resources on “reviewing” complaints that ultimately may be found to be untimely.
- What actions will the Commission take in response to its “review” of a complaint? Will it initiate an investigation or enforcement proceeding, which it may do under Revised Code §4112.05(B)?
- What is a “timely manner” for the Commission’s review process?
- Will employers be informed of complaints made against it, including both complaints the Commission deems meritorious and those it found meritless?
- Anonymous complaints may be made by a truly aggrieved employee, a disgruntled current or former employee, a rejected job applicant, or a competitor intending to sabotage the competition. What will the Commission do to screen out meritless complaints from potentially meritorious ones?
- Will the employer be required to participate or respond to Commission inquiry during the Commission’s review? How can the employer respond or defend itself if asked by the Commission to respond to the allegations in an anonymous report?
- Will the complaints, including the anonymous complaints, be a public record? Will the Commission’s findings be a public record?

In closing, these are practical considerations for both the Civil Rights Commission that will administer this reporting system and businesses who will be affected by it. Thank you for the opportunity to present these issues to the Committee.

Sincerely,



Alex T. Boehnke  
 Manager of Public Affairs  
 The Ohio Council of Retail Merchants