



Sponsor Testimony on House Bill 352
State Representatives George Lang and Jon Cross
House Civil Justice Committee

HB 352

Rep. Cross:

Chairman Hambley, Vice-Chair Patton, Ranking Member Brown, and Members of the Ohio House Civil Justice Committee. Representative Lang and I are here to provide sponsor testimony today for House Bill 352, the Employment Law Uniformity Act.

The Employment Law Uniformity Act aims to improve Ohio's workplace discrimination laws by allowing for timely, fair, and efficient resolution of claims for both employers and employees. The bill would amend and enact provisions that will give employees more time to file administrative claims with the Ohio Civil Rights Commission, reduce the nation's longest workplace discrimination statute of limitation, prevent the simultaneous filing of administrative and judicial actions, amend the definition of a private employer, create an affirmative defense, and reduce confusion related to Ohio's age discrimination statutes.

Statutes of Limitation

Under the Employment Law Uniformity Act, Ohio's current 6-year statute of limitation on civil actions for employment discrimination claims would be lowered to 2-years. This 2-year timeframe better aligns Ohio with other states and provides individual's with twice as much time to file a lawsuit as the 1-year statute of limitation for federal workplace discrimination claims.

In addition to amending the statute of limitation for civil actions, HB 352 would extend the statute of limitation to file a charge with the Ohio Civil Rights Commission from 180 days to 2-years. Again, HB 352 proposes a more generous statute of limitation than federal law, which requires claims to be filed with the Equal Employment Opportunity Commission (EEOC) within 300 days from the incident.

Dual Actions

HB 352 would require workplace discrimination claims to be filed with the Ohio Civil Rights Commission prior to commencing a lawsuit. This administrative exhaustion requirement

mirrors federal law which prohibits the filing of a federal lawsuit for workplace discrimination before filing the claim with EEOC.

Prohibiting dual actions provides numerous benefits to employees, employers, and the state.

For employees, filing a claim with the Ohio Civil Rights Commission does not require an attorney so it is more cost effective. Additionally, the Commission process is not as adversarial as litigation, so the employee can address their workplace concerns while maintaining a better relationship with their employer.

For employers, the administrative exhaustion requirement will reduce legal costs because they will no longer be faced with the potential of defending the same claims in multiple venues at the same time.

Lastly, the state would benefit from the requirement of administrative exhaustion because it would empower the Ohio Civil Rights Commission to comprehensively track and research workplace discrimination for the first time. Under current law, it is impossible to study the type and frequency of workplace discrimination because workplace discrimination actions can be filed in any of the 88 Courts of Common Pleas or with the Ohio Civil Rights Commission.

Amending the law so that these claims are filed with the Commission, puts them in the position to compile data and research the discrimination that occurs in Ohio.

Individual Supervisor Liability

During a period of judicial activism in the 1990's, the Ohio Supreme Court created a new liability for individual supervisors and managers by including them in the statutory definition of an employer. That holding in *Genaro v. Central Transport* still applies to Ohio's supervisors and managers employed by private companies today.

In removing personal liability for supervisors, HB 352 does not ignore the interests of employees who faced unlawful discrimination at the hands of their supervisors because personal liability remains if it is determined the supervisor acted outside the scope of their employment, retaliated against the claimant, or directly engaged in discrimination. Also, the individual can still seek redress from the company.

By removing personal liability for supervisors, HB 352 seeks to bring legislative control back to the definition of employer and seeks to help attract and retain talented managers for Ohio companies.

Affirmative Defense

In an effort to incentivize employers to have robust protections and policies for handling hostile work environment claims, HB 352 codifies an affirmative defense against these claims created by two US Supreme Court cases known as the *Faragher-Elterth* affirmative defense.

The defense provides employers with protection against hostile work environment claims when the employer can show that it had enacted anti-harassment policies, complaint procedures were in place, and the employee failed to take advantage of these policies and procedures.

Again, HB 352 also seeks to protect the interests of the employee by creating exceptions to this defense when it can be shown that taking preventive or corrective action would have failed or when an adverse employment action taken.

Age Discrimination

Ohio has multiple statutes providing remedies to individuals filing age discrimination claims which creates unnecessary complications and confusion because each statute has different available remedies and procedural requirements.

HB 352 clears up the confusion surrounding age discrimination claims by providing a single cause of action, while preserving an individual's right to pursue civil and administrative remedies. The new cause of action is also subject to the 2-year statute of limitation and administrative exhaustion requirements.

Taken together, this legislation represents reform to Ohio's workforce discrimination statutes that will make Ohio a more business friendly state while also preserving important protections for employees to pursue justice when they have been subjected to discrimination. I will now pass it along to my joint sponsor, Representative Lang, to explain how the bill will help our legal climate.

Rep. Lang:

Chairman Hambley, Vice Chair Patton, Ranking Member Brown, and the members of the House Civil Justice Committee, thank you for the opportunity to present sponsor testimony on HB 352. This bill is a significant piece of pro-business legislation that simplifies the legal system and makes several common sense changes to promote Ohio towards a more business friendly climate.

Moving Ohio to a position that is more in line with Federal Law gives businesses more certainty about their own potential liability. This legislation will also help lower operating and legal costs for employers. No longer will they have to defend the same claim in different venues simultaneously, and no longer will they be required to retain records for years. A significant, tangible cost savings will result for business by removing the necessity to retain six years of documents. More and more, document retention is becoming a cost driver for business. HB 352 limiting the need to only two years, will remove a key burden on businesses and will help lessen the complexity of operating in the state of Ohio.

A recent US Chamber of Commerce survey found that 89 percent of respondents reported that a state's legal climate likely impacts where a company locates or operates. When that same survey finds that Ohio had 15th worst legal climate in United States, it becomes apparent changes are needed. Passage of this bill is a key tool to unleashing investment and commerce in our state.

This bill will help Ohio to flourish and will be one more tool in the toolbox of making Ohio a state to grow current businesses, and to attract new ones.

Mr. Chairman, let us continue working towards making Ohio the most business friendly state in the nation. We urge you to pass HB 352. We are happy to take any questions from the committee.