



OHIO ALLIANCE FOR CIVIL JUSTICE



December 9, 2020

SENATE JUDICIARY COMMITTEE

HOUSE BILL 352 – PROPONENT TESTIMONY

The Ohio Alliance of Civil of Civil Justice (OACJ) supports HB 352 because it will have a positive impact on the legal climate in Ohio by aligning Ohio’s employment discrimination statutes with federal law and the laws in most other states.

The OACJ was founded in the mid-1980s to promote a common-sense civil justice system in Ohio. The OACJ is comprised of representatives from dozens of Ohio trade and professional associations, small and large businesses, medical groups, farmers, non-profit organizations and local government associations for a combined representation of more than 100,000 individuals and businesses. Our leadership team includes representatives from the following organizations: NFIB, Ohio Chamber of Commerce, Ohio Council of Retail Merchants, Ohio Hospital Association, Ohio Manufacturers’ Association, Ohio Society of CPAs, and Ohio State Medical Association.

HB 352 impacts every employer in Ohio because RC 4112 lays the ground rules for how employers should properly hire and discipline their employees. The reforms in HB 352 will provide the same robust protections employees receive under Ohio law today, while alleviating many of the burdens on employers caused by our confusing employment discrimination statutes.

Lowering the nation’s longest statute of limitation for employment discrimination is an important aspect of the reforms undertaken by HB 352. The OACJ advocates for a common-sense civil justice system that considers the interests of each party. A six-year statute of limitation fails to consider many important interests of employers who may face an allegation of discrimination. As statutes of limitation extend beyond a reasonable period of time such as two years, developing a defense to an allegation becomes more difficult since witnesses may have forgotten key facts or may not be available at all. Also, retaining employment records for employees who are no longer employed for a six-year period is burdensome and expensive for employers.

HB 352 addresses these issues by enacting a two-year statute of limitation from the date of the incident to file a civil lawsuit. The proposed two-year statute of limitation is reasonable because federal employment discrimination lawsuit must be filed within a single year. Also, many other states have a two-year statute of limitation or less including: New Jersey (180 days), California (1-year), Pennsylvania (2-years), Texas (2-years), and Illinois (2-years).

The legislation will also modify Ohio law by requiring individuals to file an employment discrimination claim with an administrative agency prior to filing with the courts. Administrative exhaustion is an important part of a common-sense legal system because it prevents lawsuit abuse and still provides remedies to correct and deter unlawful behavior. Likewise, the modification is reasonable because federal law and the employment laws of most states require some form of administrative exhaustion.

In addition to creating a new two-year statute of limitation and requiring the exhaustion of administrative remedies for employment discrimination claims, HB 352 brings other important changes to RC 4112 including:

- Leveling the playing field for supervisors employed by private companies by removing their individual personal liability for employment discrimination unless they engaged or aided in the discriminatory behavior.
- Codifying the *Faragher-Ellerth* affirmative defense for hostile work environment claims.
- Bringing into line the procedure for filing age discrimination claims with all other protected classes.

The reforms included in HB 352 will address common problems faced by all employers in our state and will promote a legal climate that prevents lawsuit abuse. Additionally, HB 352 takes a reasonable approach to its proposed reforms by borrowing timeframes and procedures already in place under federal law and in many other states.

We urge your favorable consideration of HB 352.