



OHIO

February 21, 2017

The Honorable Ron Young,
Chair, Ohio House Economic Development, Commerce & Labor Committee
77 South High Street, 13th Floor
Columbus, OH 43215

Dear Chairman Young:

On behalf of the nearly 25,000 governing members of the National Federation of Independent Business/Ohio (NFIB/Ohio), I am writing in support of House Bill 2, legislation that brings about much needed, common sense reform to Ohio's employment law statutes. As you know, a typical NFIB member employs 15 or fewer with less than \$2 million in annual sales. NFIB members come from all industry sectors and each of the 88 counties in Ohio. As a member-driven organization, our members help set policy and take positions on various pieces of legislation. We applaud Representative Seitz for introducing House Bill 2. We are supportive of the bill as a whole, particularly the areas listed below.

Statute of limitations

Ohio statute of limitations for filing employment discrimination claims is an exorbitantly long six years, set not by the legislature in statute but instead through an Ohio Supreme Court ruling. This lengthy timeframe requires small business owners to keep and maintain records to cover this period which can be a logistical nightmare. Further, it burdens other individuals if they are still employed with the same company, to try and recall events from years in the past. House Bill 2 will put in place a reasonable limitation of 365 days to file both claims with the Ohio Civil Rights Commission (OCRC) and other civil actions and more than doubles the current 180 days in which an individual can file with the OCRC. This rational change will still allow much longer than the 300 days permitted when filing a claim with the Equal Employment Opportunity Commission at the federal level.

Single-venue

The bill prohibits an individual from filing a lawsuit in court if they have filed with the OCRC and the outcome of the OCRC decision is pending. Individuals are not barred from the courts, instead once an individual elects to pursue a charge before the OCRC; the person must complete the process. The statute of limitations is tolled while the OCRC process is underway, and a claimant may file in court within one year of the alleged discrimination or 60 days after the OCRC process is completed; whichever is longer. This provision is incredibly important for small businesses who do not have the resources to fight a single claim on multiple fronts.

Supervisor liability

In 1999, The Ohio Supreme Court expanded employment discrimination laws allowing individual supervisors in addition to an employer to be named in a lawsuit. House Bill 2 puts all liability for employment discrimination with the employer, not an individual employee who is not the employer. In 2014, the Ohio Supreme Court eliminated individual supervisory liability for public employers. It is time for the legislature to weigh in and fix this issue for the private sector as well. Nothing in House Bill 2 erodes or eliminates current means of redress under existing tort statutes to pursue action against individuals who commit outrageous acts.

Affirmative defense

House Bill 2 merely codifies federal case law by creating an affirmative defense for employers in hostile work environment harassment claims. Employers must demonstrate that they have an existing policy in place, educate their employees about the policy and procedures, promptly act on internal complaints, and enable an employee to pursue a complaint through individuals that are not alleged to have committed discrimination. The employer then must show that an employee did not utilize the complaint procedure put in place. This provision aims to encourage robust workplace policies and address any claims of discrimination early.

Damages caps

Small employers have very limited resources. House Bill 2 recognizes the need to compensate claimants appropriately, while not financially decimating Ohio's entrepreneurs. House Bill 2 simply codifies current case law applying Ohio's existing tort statute concerning caps on non-economic and punitive damages. The damage caps in no way limit economic damages for things like back pay and benefits. The proposed caps remain a significant financial consequence and in no way encourage discrimination because the caps somehow make it financially reasonable. Small businesses value their reputations and will not condone a culture of workplace discrimination.

House Bill 2 is a long-awaited reform to Ohio's employment laws. This bill creates an appropriate balance between protecting individuals from discrimination and providing predictability for Ohio's small businesses. We recommend favorable adoption of House Bill 2. House Bill 2, in its current form will be a key small business vote and may become part of the NFIB/Ohio Voting Record for the 132nd General Assembly.

Thank you for your consideration.

Sincerely,



Christopher J. Ferruso
Legislative Director

cc: Speaker Cliff Rosenberger
Minority Leader Fred Strahorn