

OHIO ENACTS SIGNIFICANT LEGAL PROTECTIONS FOR EMPLOYERS

JANUARY 2021

Ohio employers received some good news to start off the year as Governor Mike DeWine signed House Bill 352, the Employment Law Uniformity Act, on January 12, 2021. The Act provides a range of protections for employers in legal disputes with their employees under Ohio's anti-discrimination statute, Ohio Revised Code Chapter 4112. The new law goes into effect on April 12, 2021, and the protections will apply to employment discrimination claims based on Ohio law that are filed on or after that date.

- The Act shortens the statute of limitations for employees' workplace discrimination claims from six years to two years. (Ohio's current six-year period is the longest limitation period in the country.)
- The Act generally requires employees to file a charge of discrimination with the Ohio Civil Rights Commission (OCRC) before they can bring a discrimination claim in Ohio state court. Specifically, an employee must first timely file a charge with the OCRC, and then either the OCRC must issue a right-to-sue notice or more than 45 days must pass without the OCRC's issuance of a right-to-sue notice. This procedure is similar to what is required under federal law as well as the laws of many other states.
- The Act modifies the definition of "employer" under Ohio law to remove personal liability for managers and supervisors in many employment discrimination cases. The only instances in which such individuals can be liable are if, by engaging in the conduct in question, they either acted outside the scope of their employment, they retaliated against the employee, or they directly engaged in discrimination.
- The Act provides employers with an affirmative defense to harassment claims under Ohio law that is available to them under federal law. The federal version of the defense is frequently called the "*Faragher/Elzerth* defense," after the two United States Supreme Court cases that created it. Under the defense, a company would not be liable for a claim of harassment if:
 - The company maintained an anti-harassment policy and a complaint procedure for employees to complain of alleged harassment;
 - The company trained its employees on its anti-harassment policy and its complaint procedure;
 - The company exercised reasonable care in preventing or correcting harassment in its workplace; and
 - The employee failed to take advantage of the employer's complaint procedure or other preventive opportunities.

Consistent with the interpretation of the defense under federal law, the Act does include certain exceptions to the defense, such as if the employee can prove that complaining of the harassment would have been futile, or if the harassment resulted in an adverse employment action against the employee.

- The Act also clarifies the statute of limitations for age discrimination claims under Ohio law. Currently, Ohio law provides a confusing range of different limitations periods for employees to bring a claim for age discrimination, depending on the relief sought by the employee and the section of the law in which the employee sought such relief. Under the Act, the statute of limitations for any claim of age discrimination will be two years, like all other discrimination claims, and, as explained above, employees will have to first file a charge of discrimination with the OCRC.

- Finally, the Act codifies that employment discrimination claims under Ohio Revised Code Chapter 4112 are “tort actions,” and therefore they are subject to caps on monetary awards for non-economic and punitive damages.

With the enactment of the Employment Law Uniformity Act – and the streamlining of employment discrimination claims under Ohio law – Ohio employers can breathe a collective sigh of relief. Companies should still review their anti-harassment policies, complaint procedures, and employee training sessions to make sure that they satisfy the new law, and ultimately to minimize harassment and discrimination claims in the first place.

ADDITIONAL INFORMATION

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