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Good News for Ohio Employers: **The Employment Law Uniformity Act Passes**

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Ohio employers have long been at a disadvantage when it came to the potential for a discrimination claim from a former employee. At six years, Ohio had one of the longest statute of limitations for discrimination claims in the United States. Moreover, individual supervisors could be sued for discrimination because the term “employer” was defined as “any person acting directly or indirectly in the interest of an employer.” On January 12, 2021, Governor Mike DeWine signed into law House Bill 352, known as the Employment Law Uniformity Act (“the Act”). The Act addresses the expansion of Ohio’s anti-discrimination statute through multiple Ohio Supreme Court decisions that interpreted the statute. The Act:

- Lowers the statute of limitations for workplace discrimination civil actions from six years to two years;
- Requires the exhaustion of administrative remedies at the Ohio Civil Rights Commission (“OCRC”) before commencing a lawsuit;
- Removes personal liability for supervisors;
- Codifies an affirmative defense to harassment claims to employers who take appropriate steps to prevent and promptly correct harassing behavior in the workplace; and
- Modifies the process of filing and bringing an age discrimination action.

Statute of Limitations

Prior to the Act, Ohio employees had six years to file a claim of discrimination under Ohio’s anti-discrimination statute. The long statute of limitations resulted in difficulty in defending such claims because witnesses were no longer employed with the company or documents were no longer available. Claims filed with the OCRC had to be filed within 180 days or, if the claim was made under federal law, 300 days. The Act amends that statute of limitations for filing a civil action and a charge with the OCRC to two years, extending the deadline for filing an administrative charge with the OCRC but creating uniformity in both civil and administrative actions under Ohio law.

Exhaustion of Administrative Remedies

Before the Act, workplace discrimination claims could be filed with the OCRC or in state court, with no prohibition on filing an administrative charge and a civil action simultaneously. Under the Act, an individual cannot file a civil action unless he or she has first filed an OCRC claim and received a right-to-sue letter or more than 45 days have passed and no letter has been issued.

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Individual Supervisor Liability

The Supreme Court of Ohio first recognized individual supervisor liability in *Genaro v. Cent. Transport, Inc.*, 84 Ohio St.3d 293 (1999), where the Court allowed plaintiffs to sue individual supervisors and the employer for discrimination. Under the Act, individual supervisors cannot be held personally liable under employment law statutes when the supervisor is acting in the interest of the employer. This change creates uniformity with Ohio law and federal law. However, the Act does not protect supervisors from personal liability if it is found that the supervisor acted outside the scope of employment, retaliated against the plaintiff, or engaged in discriminatory practices, however.

Affirmative Defense

The Act also codifies the affirmative defense, known as the “*Faragher/Ellerth* affirmative defense,” available to employers for sexual harassment claims under Title VII if the employer can prove all of the following:

- It had an effective anti-harassment policy;
- It properly educated employees about the policy and complaint procedures;
- It exercised reasonable care to prevent or promptly correct the harassing behavior; and
- The complainant failed to take advantage of any preventative or corrective opportunities.

Therefore, it is more important now than ever for employers to have a policy prohibiting discrimination and procedure to report complaints under the policy, an acknowledgement from each employee of receipt of the policy, regular training on the policy, and prompt and effective investigations into complaints.

Age Discrimination

Prior to the Act, age discrimination claims could be pursued under multiple statutory remedies, unlike other discrimination claims, making the procedural process unnecessarily complicated. The Act aligns the procedural requirements for filing age discrimination claims with other protected classes, so the same two-year statute of limitation and administrative exhaustion requirement applies.

In all, the Act is beneficial for Ohio employers, shortening the statute of limitation period for discrimination claims, simplifying administrative remedy requirements and procedural processes, eliminating supervisor liability in many instances, and codifying an important affirmative defense.

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Wednesday, February 24, 2021

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As we say farewell to 2020, employers still face many challenges in 2021 and should expect changes in the law and enforcement initiatives as we transition to a Biden Administration. Understanding the latest legal trends is key to successfully tackling these challenges, preparing for changes in the law and maintaining a safe and productive workforce. Join us for a complimentary webinar with advanced discussions of the following topics:

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