



Ohio Employers Need To Prepare For Welcomed New Discrimination Law Process

Insights

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Ohio Governor Mike DeWine recently signed the Employment Law Uniformity Act into law, which will soon eliminate many administrative burdens and uncertainties for employers and human resources professionals while still providing Ohio employees with the same robust protections they currently enjoy. The legislation, signed by the governor on January 12 and taking effect on April 15, 2021, aims to resolve discrimination claims in a more timely, fair, and efficient manner for both Ohio employers and employees. At the same time, it will provide for more predictability in these kinds of actions, which will in turn allow for reasonable resolutions and a more economical use of resources. What do Ohio employers need to know about this impending new law – and what are the three steps you should take in preparation for it taking effect?

Long Time Coming – And A Necessary Step

The Employment Law Uniformity Act has been in the works for several decades. It has been sought by the Ohio Chamber of Commerce for the last 20 years, as it makes important changes to Ohio's employment discrimination laws to bring them more into alignment with federal laws. In sum, by aligning Ohio employment discrimination laws with those at the federal level, the new law creates a uniform two-year statute of limitations for workplace discrimination claims, requires that workers exhaust administrative remedies prior to pursuing a court action, and makes it more difficult for employees to bring a personal liability action against the employee's supervisor, manager, and other employees.

Specifically, the Employment Law Uniformity Act amends Ohio's discrimination laws in five key ways.

1. **Requiring Exhaustion Of Administrative Remedies**

For most cases, the new law will require an employee to exhaust their administrative remedies by filing an employment discrimination claim with the Ohio Civil Rights Commission prior to filing a civil lawsuit. Preventing simultaneous claims in both the Civil Rights Commission and civil court will save money and resources for employers and the state. Not only does it prevent an employer from having to defend the same action in two different venues at the same time, but it allows time for the Civil Rights Commission to fully investigate the claim and for most claims to be mediated or otherwise resolved.

2. **Making The Statute Of Limitations Uniform**

The new law makes uniform the statute of limitations for filing an employment discrimination action to two years. Prior to this legislative amendment, an employee had up to six years to pursue a civil claim of alleged discrimination and 180 days to pursue such a claim before the state's Civil Rights Commission. The two-year statute of limitations now applies to all charges filed with the Civil Rights Commission and to civil lawsuits — although the time to file a civil lawsuit will be tolled pending the charge's disposition before the Civil Rights Commission.

Lowering the statute of limitations for filing a civil lawsuit from six years to two years helps eliminate an unfair burden on Ohio businesses to maintain six years' worth of records and incur unnecessary costs in doing so. The two-year statute of limitations is also beneficial to both employers and employees because valuable witnesses are more likely to still be working for the employer or are easily reachable and their memories of the alleged event are sharper.

The law further accommodates employees by extending the time to file a claim with the Civil Rights Commission and by tolling the statute of limitations to file a civil lawsuit until the Civil Rights Commission process is completed.

3. **Limiting Individual Supervisor, Manager, And Other Employee Liability**

The new law limits individual supervisor, manager, and other employee liability for employment discrimination claims. This portion of the law was included to address a 1999 decision from the Supreme Court of Ohio that has been interpreted to unfairly extend liability under the state's employment discrimination laws to individual supervisors, managers, and other employees.

Critics have noted that the inclusion of these individuals in lawsuits provided a tactic whereby a plaintiff could avoid removal of lawsuits to federal court, where they otherwise should have been litigated. Many proponents of the amendment had argued that this barrier to removal led to inconsistent results, commenting that federal courts are a better forum to adjudicate these employment disputes.

While the amendment limits individual liability for supervisors, managers, and other employees, the law does not protect against personal liability when the individual is the employer and acted outside the scope of employment, or for: (1) retaliating against the plaintiff for opposing a discriminatory practice; (2) aiding a discriminatory practice, or (3) obstructing the investigation of discrimination.

This act also does not prevent an employee from pursuing a discrimination action against a supervisor, manager, or other employee, or claims existing under other Ohio laws. Further, employees are still able to hold employers vicariously liable for the actions of supervisors, managers, or other employees.

4. **Confirming A Key Affirmative Defense**

The law codifies the federal affirmative defense commonly known as the *Faragher-Ellerth* defense, which limits an employer's vicarious liability for hostile work environment sexual harassment claims created by a supervisor. Under this law, employers will be able to defend against the hostile work environment created by a supervisor if the employer proves by a preponderance of the evidence that: (1) the employer exercised reasonable care to prevent or promptly correct any sexually harassing behavior; and (2) the employee alleging the hostile work environment unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

By codifying the federal affirmative defense, this act incentivizes employers to create and follow extensive policies regarding the prevention and handling of discrimination claims. At the same time, it encourages employees to take advantage of those policies.

5. **Creates Uniformity Of Age Discrimination Claims**

Finally, the new law creates uniform procedural requirements for an age discrimination cause of action. Under the prior law, age discrimination claims in Ohio could be pursued under multiple statutory remedies. This created unneeded complications and confusion as to the interpretation and application of the state's age discrimination laws, including providing for different remedies and procedures.

This act addresses this concern by providing, among other things, that the filing of age discrimination claims is subject to the same two-year statute of limitations as other discrimination claims. The new law also provides the same uniform procedural requirements as the other discrimination laws by mandating the exhaustion of administrative remedies with the state's civil rights office prior to pursuing a civil lawsuit.

Key Takeaways For Ohio Employers

As noted by many commentators, this act will help provide a more uniform playing field for employers working to comply with Ohio's discrimination laws and employees seeking redress from employment discrimination. It should also reduce the confusion surrounding Ohio's various discrimination laws, simplify the process, and limit unnecessary litigation costs.

There are three steps you can take to prepare for the enactment of the new legislation, which, again, takes effect on April 15, 2021. First, you should review your policies to ensure they are written in a way that will allow you to take advantage of the federal affirmative defense codified in the new legislation. Second, you can discuss the limit of individual liability with your supervisors, managers, and other employees and encourage them to exercise their sound judgment when making management decisions without undue fear of being sued.

Third, when the law takes effect, you should keep in mind that an employee must exhaust administrative remedies before bringing a civil lawsuit against you. In most cases, this means that employees must file employment discrimination claims with the state's Civil Rights Commission prior to filing their civil lawsuit. Thus, if and when a claim arises, you should be ready to scrutinize the process up to that point to ensure that all administrative remedies have been exhausted before any civil lawsuit against you can move forward. You should coordinate with your Fisher Phillips attorney to best prepare in these instances.

In the end, this new law continues the Ohio General Assembly's steady trend of enacting employer-friendly legislation. State Representative Jon Cross, one of the bill's primary sponsors, said this act "will improve Ohio's business and legal climates to further attract investment into our state." The passage of this act puts Ohio businesses at a competitive advantage that is, as Representative Cross said, "a big win for Ohio employers and their employees."

We'll continue to monitor developments in this area, so make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. If you have any questions about how this decision may impact your business, please contact your Fisher Phillips attorney or any attorney in [our Ohio offices](#).

This Legal Alert provides an overview of a specific state law. It is not intended to be, and should not be construed as, legal advice for any particular situation. A version of this article originally appeared in Law360.

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