



OHIO LEGISLATIVE SERVICE COMMISSION

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Fiscal Note & Local Impact Statement

Bill: H.B. 2 of the 132nd G.A.
(L_132_0195-9)

Status: In House Economic Development, Commerce and Labor

Sponsor: Rep. Seitz

Local Impact Statement Procedure Required: No

Subject: Employment discrimination charges

State Fiscal Highlights

- The bill generally prohibits a person from filing an employment discrimination lawsuit unless the person has filed a charge with the Ohio Civil Rights Commission and has received a notice of the right to sue. The result will be an increase in administrative work for the Commission, the annual cost of which is uncertain.

Local Fiscal Highlights

- The courts of commons pleas may experience a savings effect on their annual operating costs stemming from a possible reduction in employment discrimination lawsuits due to the bill's provisions that generally require a person first file a charge with the Ohio Civil Rights Commission and the tolling of the statute of limitations to file a lawsuit.

Detailed Fiscal Analysis

The bill primarily affects two entities – the Ohio Civil Rights Commission (hereinafter referred to as the "Commission") and courts of common pleas – and the disposition of unlawful discriminatory practices relating to employment. Additional discrimination charges will be filed with the Commission and it is possible that fewer lawsuits will be filed with the courts. These effects result from provisions in the bill that: (1) decrease the time in which lawsuits related to discrimination in the workplace can be brought, (2) make changes to the definition of employer, (3) bar concurrent actions in the courts and the Commission, (4) establish, for employers, an affirmative defense in certain cases, and (5) impose an exhaustion requirement that largely prohibits filing an employment discrimination lawsuit without a notice of right to sue issued by the Commission.

Statute of limitations

The bill changes the time in which civil actions related to discrimination in the workplace can be brought to two years from six years generally to mirror the statute of limitations that lawsuits related to discrimination in the workplace can be brought under federal law. Except for cases under federal law and certain age discrimination cases,¹ the reduction in the statute of limitations could decrease the number of lawsuits filed with the courts of common pleas or the Court of Claims, if the lawsuit is filed against the state as an employer.

Definition of employer

Under current law, the definition of employer means the state, any political subdivision of the state, or a person employing four or more persons within the state and any person acting directly or indirectly in the interest of an employer. The bill removes any person acting directly or indirectly in the interest of the employer and adds an agent of the state, political subdivision, or person. The bill's definition could reduce the number of businesses and individuals against whom a claim of employment-related discrimination may be filed with the Commission and/or the courts compared to current law.

Concurrent actions

The bill prohibits claimants from concurrently pursuing both lawsuits in a court of common pleas and charges with the Commission relating to unlawful discriminatory practices relating to employment.

Affirmative defense

The bill prescribes an affirmative defense for employers for vicarious liability resulting from alleged sexual harassment of an employee by the employee's supervisor when the alleged practice did not result in a significant change in employment status of the employee.

Notice of right to sue

The bill generally prohibits a person from filing an employment discrimination lawsuit unless the person has exhausted Commission procedures, including issuance of a notice of right to sue. A person who files a charge with the Commission may make a written request for the right to sue which cannot be granted until at least 60 days after the filing. A right to sue notice will be issued without such a request if the Commission determines from a preliminary investigation that it is not probable that an unlawful discriminatory practice related to employment has occurred. A person is prohibited

¹ Under current law, a lawsuit based on the general prohibition against unlawful discriminatory practices based on age must be filed within 180 days after the alleged unlawful discriminatory practice occurred. There are two additional avenues under which to file a lawsuit, both of which are subject to a six-year statute of limitations. Under the bill, all age discrimination claims are subject to the 365-day statute of limitations.

from refiling the charge after a dismissal. The Commission will experience an increase in administrative costs to implement a notification procedure including responding to requests and issuing notices. The additional administrative work and related annual operating expenses that these exhaustion and notice of right to sue requirements will create for the Commission is uncertain.

Synopsis of Fiscal Effect Changes

From a fiscal perspective, there are three substantive differences (summarized below) between the previously adopted substitute bill (L_132_0195-2) and the latest substitute version (L_132_0195-9).

- The previously adopted substitute bill had the potential to reduce the number of discrimination charges filed annually with the Commission. A reduction could decrease the volume of cases that the Commission undertakes on behalf of the U.S. Equal Employment Opportunity Commission, reducing federal contractual payments to the Commission. Under the latest substitute version of the bill, a filings reduction with the Commission is unlikely as a result of provisions that generally require a complainant to file a charge with the Commission and receive a notice to sue before bringing a civil action.
- The latest substitute version allows a person who files a charge with the Commission to make a written request for the Commission to cease its investigation of the charge and issue a notice of the right to sue, which means the Commission will have to expend additional time and effort to establish and maintain the required administrative procedures.
- The previous version's statute of limitations for employment discrimination claims is up to 365 days after the alleged employment discrimination occurred or within 60 days after a charge filed with the Commission is no longer pending, whichever is longer. The latest substitute bill changes the statute of limitations to two years after exhaustion of Commission procedures. The increase in the statute of limitations from the previous version is unlikely to increase the number of civil cases adjudicated by the courts of common pleas because of the additional requirement to exhaust Commission procedures.