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Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. McNally

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SUMMARY

- Applies the employment protections of the Ohio Civil Rights Law to unpaid interns.

DETAILED ANALYSIS

Unpaid interns under the Ohio Civil Rights Law

The bill applies the employment portions of the Ohio Civil Rights Law¹ to unpaid interns. An “unpaid intern” is described as any individual who performs unpaid work for an employer for the primary purpose of acquiring knowledge or experience relevant to the individual’s career aspirations.²

The employment portions of the Ohio Civil Rights Law prohibit all of the following entities from engaging in various unlawful discriminatory practices on the basis of race, color, religion, sex, military status, national origin, disability, age, or ancestry (commonly referred to as “protected classes”):³

- Employers;
- Employment agencies;
- Personnel placement services;
- Labor organizations (essentially, unions);
- Joint labor-management committees.

¹ R.C. Chapter 4112.

² R.C. 4112.01, with conforming changes in R.C. 3701.249.

³ R.C. 4112.02(A) through (E), not in the bill.

Thus, the bill prohibits the entities listed above from discriminating against an unpaid intern based on the intern's membership in a protected class. Current law prohibits the listed entities from discriminating against an applicant to, or a participant in, an apprenticeship training program.⁴

Under continuing law, any individual may file a charge with Ohio's Civil Rights Commission (which enforces the Ohio Civil Rights Law) alleging that another individual or entity has engaged or is engaging in an unlawful discriminatory practice. In the case of an unlawful discriminatory practice relating to employment, the individual must file the charge within two years after the alleged discriminatory practice was committed. The Commission may investigate the charge and may initiate further action under procedures specified in law. Although the Commission must first attempt to induce compliance with the Law through informal methods, if, after a hearing, the Commission ultimately determines that an unlawful discriminatory practice has occurred, it must issue a cease and desist order to remedy the situation and order any further action necessary to effectuate the purpose of the Law.⁵

Additionally, continuing law allows an individual subject to an unlawful discriminatory practice to sue for damages, injunctive relief, or any other appropriate relief. If the discriminatory practice relates to employment, an individual can only sue for damages if the individual first files a complaint with the Commission and receives a notice of right to sue. An individual may only bring a lawsuit within two years after the alleged discriminatory employment practice occurred. Filing a complaint with the Commission extends the statute of limitations for an employment-related discrimination suit.⁶

Background – federal antidiscrimination law and unpaid interns

The Ohio Civil Rights Commission does not currently appear to have an official position with respect to when the Law's employment provisions apply to an unpaid intern, and it does not appear that Ohio courts have ruled on the issue. The Ohio Supreme Court has held that the Ohio Civil Rights Law follows Title VII of the Civil Rights Act of 1964⁷ (Title VII).⁸ Title VII is the primary federal law prohibiting employment discrimination on the basis of race, color, religion, sex, or national origin.⁹

With respect to unpaid interns, coverage under Title VII depends on whether the intern receives "significant remuneration" in some form. Significant remuneration may include a pension, group life insurance, workers' compensation coverage, or access to professional certifications. These benefits need not be provided by the employer. Benefits received from a

⁴ R.C. 4112.02(D), not in the bill.

⁵ R.C. 4112.051, not in the bill.

⁶ R.C. 4112.052, not in the bill.

⁷ 42 United States Code (U.S.C.) 2000e *et seq.*

⁸ *Ohio Civil Rights Comm'n v. David Richard Ingram, D.C.*, 69 Ohio St.3d 89 (1994).

⁹ 42 U.S.C. 2000e-2.

third party as a consequence of the intern’s service may qualify.¹⁰ For example, if a university provides significant benefits to an unpaid intern because the intern volunteers with an outside employer, the intern may qualify as an employee of the employer.

An unpaid intern is not covered by Title VII when the intern receives only small benefits that are “inconsequential incidents of an otherwise gratuitous relationship.”¹¹ Benefits courts have found to be insufficient include academic credit, practical experience, and scholarly research.¹²

Even when there is no significant remuneration, an unpaid intern may be considered an employee if the unpaid work is required for regular employment, or regularly leads to paid employment with the same employer.¹³

HISTORY

Action	Date
Introduced	02-21-24

ANHB0422IN-135/ks

¹⁰ See [Compliance Manual, Section 2: Threshold Issues](#), part 2-III.A.1.c., which may be accessed by conducting a keyword “threshold issues” search on the Equal Employment Opportunity Commission’s website: eeoc.gov.

¹¹ *Haavistola v. Community Fire Co. of Rising Sun, Inc.*, 6 F.3d 211, 222 (4th Cir. 1993). See also *Bryson v. Middlefield Volunteer Fire Dept., Inc.*, 656 F.3d 348 (6th Cir. 2011).

¹² See *Jacob-Mua v. Veneman*, 289 F.3d 517, 521 (8th Cir. 2002) (scholarly research) (abrogated on other grounds by *Torgerson v. City of Rochester*, 643 F.3d 1031 (2011)) and *Piotrowski v. Barat College*, No. 93 C 6041, 1994 WL 594726, at 1 (N.D.Ill. 1994) (practical experience, academic credit, and tuition waiver).

¹³ See *Charlton v. Paramus Bd. of Educ.*, 25 F.3d 194, 198 n.4 (3rd Cir. 1994).