



OHIO LEGISLATIVE SERVICE COMMISSION

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Fiscal Note & Local Impact Statement

Bill: H.B. 2 of the 132nd G.A.

Status: As Introduced

Sponsor: Rep. Seitz

Local Impact Statement Procedure Required: No

Subject: Employment discrimination charges

State Fiscal Highlights

- The Ohio Civil Rights Commission may see a decrease in federal contract payments resulting from a possible reduction in the number of discrimination charges administered on behalf of the U.S. Equal Employment Opportunity Commission.
- The bill may reduce, to some degree, the number of discrimination charges filed with the Ohio Civil Rights Commission which presumably results in a savings effect on the Commission's annual operating expenses.

Local Fiscal Highlights

- The reduction in the statute of limitations could decrease the number of lawsuits filed with the courts of common pleas. The potential savings effect on any given court's annual operating costs is uncertain.

Detailed Fiscal Analysis

The bill's primary fiscal effects arise from limitations the bill sets on the possible and probable number of civil actions filed with a court of common pleas or charges filed with the Ohio Civil Rights Commission (hereinafter referred to as the "Commission") alleging an unlawful discriminatory practice. The bill affects the number of cases by (1) decreasing the time in which lawsuits related to discrimination in the workplace can be brought, (2) making changes to the definition of employer, (3) barring concurrent actions in the courts and the Commission, and (4) establishing, for employers, an affirmative defense in certain cases. Additionally, the bill establishes a specific procedure for the Commission to follow when investigating cases alleging an unlawful discriminatory practice relating to employment.

Reduction in discrimination cases

Statute of limitations. The bill changes the time in which civil actions related to discrimination in the workplace can be brought to 365 days from six years generally. Under continuing law, lawsuits related to discrimination in the workplace brought under federal law must be brought within two years.

Except for cases under federal law and certain age discrimination cases,¹ the reduction in the statute of limitations could decrease the number of complaints filed with the Commission or 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 includes any person acting directly or indirectly in the interest of the employer. The bill removes this language and adds that the employer must employ four or more people within the state for each working day in each of 20 or more calendar weeks. The new definition of employer in the bill reduces 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 material economic detriment to the employee.

Effect of filings reduction. From FY 2012 to FY 2016, charges of discrimination in matters related to employment accounted for, on average, 76% of all cases terminated annually. Over that same five-year span, the Commission terminated, on average, 3,296 discrimination cases annually.

The bill has the potential to decrease the number of charges filed, heard, and ultimately closed by the Commission. General reductions in the number of cases heard by the Commission have the potential to decrease the volume of cases that the Commission undertakes on behalf of the U.S. Equal Employment Opportunity Commission (EEOC), reducing contractual payments to the Commission.

From FY 2012 to FY 2016, federal funds (including contract payments by both EEOC and the U.S. Department of Housing and Urban Development) have comprised a varying percentage of the Commission's total annual budget. That percentage has ranged from 24.3%, or \$1.8 million out of \$7.4 million, in FY 2016 to 32.7%, or \$2.3 million out of \$7.0 million, in FY 2012.

If, as expected, the bill reduces the number of discrimination charges filed with the Ohio Civil Rights Commission, an operational savings effect is created that presumably permits Commission staff to focus on other duties and responsibilities.

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.

Statistics are not readily available for discrimination allegations that are pursued through the filing of lawsuits in the courts of common pleas rather than the filing of a charge with the Ohio Civil Rights Commission. If, as expected, the bill reduces, to some degree, the filing of lawsuits, a savings effect is created that will allow the court to focus on other duties and responsibilities.

Separate procedure for employment discrimination charges

The bill establishes a specific procedure for the Commission to follow when investigating charges alleging unlawful discriminatory practices relating to employment. The process is similar to requirements under current law for hearing all discrimination charges made under the Ohio Civil Rights Law. The Commission will incur some one-time expenses to adopt rules and to train staff.

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