



December 5, 2016

Ohio Chamber Testifies on Employment Law Uniformity Act Substitute Bill

Earlier this year, the Ohio Chamber [testified](#) in support of Senate Bill 268 which improves Ohio's legal climate by allowing for the timely, fair, and efficient resolution of employment discrimination claims for both employers and employees. Last week, a substitute version of the bill that addresses some concerns voiced by opponents, was introduced and accepted by the Senate Civil Justice Committee. Not surprisingly, these opponents are primarily plaintiffs' attorneys who make their living off of suing businesses. The Ohio Chamber [again testified](#) in support of SB 268, in favor of the changes that were made, and to rebut opponents' exaggerated claims.

Ohio is currently an outlier state on many employment law-related issues, including having the longest statute of limitations in the country, allowing individual supervisors to be sued in addition to the employer, and permitting claims to be pursued simultaneously before the Ohio Civil Rights Commission (OCRC) and civil court. SB 268 would remedy many of the most onerous and inexplicable provisions of Ohio's employment law by rolling back harmful Ohio Supreme Court decisions from the 1990's and retaking legislative control of the issue. The bill would allow one year to file a lawsuit, down from the current six year limit. It also prevents employers from being required to defend against a claim in the OCRC and civil court at the same time. Further, it prevents managers from being sued individually simply for performing their job. These changes will result in greater predictability and efficiency for employers and employees.

Many of the changes adopted last week in the substitute bill were technical and didn't affect the overarching goals of the bill. However, there are two changes of note. First, the original version of the bill included an affirmative defense that could be raised to defend against discrimination claims. Employers could raise the defense if they had policies in place to address discrimination, trained their employees on these policies, and the employee unreasonably failed to take advantage of preventative opportunities provided by the employer. This is slightly different than federal case law, because it applied to all types of discrimination claims whereas federal case law only applied to work environment harassment. In the substitute bill, this affirmative defense was limited to be in line with that federal case law.

Second, the substitute bill removes the non-economic and punitive damage caps that were included in the as-introduced version. Though these caps mimicked federal law under Title VII, concerns were raised over the fact that federal law also provides attorneys' fees to the prevailing party whereas, under Ohio law, attorneys' fees can only be awarded if an individual receives punitive damages. Rather than try to address all of the differences between Ohio and federal law in this regard, the bill now simply maintains the status quo in this area.

The Ohio Chamber continues to support this important legislation and will be working to ensure the legislature enacts this important legislation by the end of the year.

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