



HOUSE BILL 352 – EMPLOYMENT LAW REFORMS

PROPONENT TESTIMONY

OHIO HOUSE CIVIL JUSTICE COMMITTEE

NOVEMBER 19, 2019

Chairman Hambley, Vice-Chair Patton, Ranking-Member Brown and members of the Ohio House Civil Justice Committee, my name is Chris Ferruso and I serve as Legislative Director for NFIB in Ohio. I appreciate the opportunity to appear before you on behalf of our nearly 22,000 governing members in support of House Bill 352, legislation that brings about much needed, common sense reform to Ohio's employment law statutes. We applaud Representatives Cross and Lang for introducing House Bill 352.

By way of background, a typical NFIB member employs 15 or fewer with less than \$2 million in annual sales. NFIB members come from all industry sectors and each of the 88 counties in Ohio. We like to say if there is a type of business in operation, we count at least one as a member. We are a broad-based business organization comprised exclusively of for-profit, independently held businesses.

Statute of limitations

Ohio statute of limitations for filing employment discrimination claims is an excessively long six years, set not by the legislature in statute but instead through an Ohio Supreme Court ruling. This lengthy timeframe requires small-business owners to keep and maintain records covering this period which can be a logistical challenge. In fact, our members identified state and local paperwork as their number 7 overall greatest business concern.¹ Further, it burdens other individuals/witnesses who may have long moved on from employment with a company, to try and recall events from years in the past.

House Bill 352 codifies a much more reasonable limitation of two years in which to file claims. This new timeframe is more than four times the current window of 180 days for an individual to file with the Ohio Civil Rights Commission (OCRC). Further, this change will still allow more than double the 300 days permitted when filing a claim with the Equal Employment Opportunity Commission (EEOC) at the federal level. We believe this provision reduces an unnecessarily long tail of liability for our members while providing a generous window in which a claimant may pursue action.

¹ <https://www.nfib.com/assets/NFIB-Problems-and-Priorities-2016.pdf>

Single-venue

House Bill 352 establishes a procedure at the OCRC for the filing of employment discrimination claims and requires the OCRC process to be exhausted prior to pursuing further action. This process is like that required when filing a federal discrimination claim with the EEOC. This provision is incredibly important for small businesses that do not have the resources to fight a single claim on multiple fronts. Absent this portion of the bill, small businesses may find themselves contesting a claim at the OCRC and in a court of law. Please remember, our members do not have in-house counsel or sophisticated human resource departments. This welcome change protects the right of individuals to seek redress while balancing the constraints facing small businesses.

Supervisor liability

In 1999, The Ohio Supreme Court expanded employment discrimination laws allowing individual supervisors, in addition to an employer, to be named in a lawsuit. House Bill 352 puts all liability for employment discrimination with the employer, not an individual employee who is not the employer. In 2014, the Ohio Supreme Court eliminated individual supervisory liability for public employers. It is time for the legislature to weigh in and fix this issue for the private sector as well. Nothing in House Bill 352 erodes or eliminates the current means of redress under existing tort statutes to pursue action against individuals who commit outrageous acts.

Affirmative defense

House Bill 352 merely codifies federal case law by creating an affirmative defense for employers in hostile work environment harassment claims. Employers must demonstrate they have an existing policy in place, educate their employees about the policy and procedures, promptly act on internal complaints, and enable an employee to pursue a complaint through individuals not alleged to have committed discrimination. The employer then must show an employee did not utilize the complaint procedure put in place.

We believe this provision will encourage more robust workplace policies and handbooks. NFIB strongly encourages our members to establish employee handbooks and workplace policies. We do so to ensure employees and employers have a mutual understanding of work expectations, the procedures for handling workplace issues like disciplinary structure, and to address any claims of discrimination early.

Damages caps

Small employers have very limited resources. House Bill 352 recognizes the need to compensate claimants appropriately, while not financially decimating Ohio's entrepreneurs. House Bill 352 simply codifies current case law applying Ohio's existing tort statute concerning caps on non-economic and punitive damages. The damage caps in no way limit economic damages for things such as back pay and benefits. The proposed caps remain a significant financial consequence and in no way encourage discrimination because the caps somehow make it financially reasonable. Small businesses value their reputations and will not condone a culture of workplace discrimination.

House Bill 352 is a long-awaited reform to Ohio's employment laws. This bill creates an appropriate balance between protecting individuals from discrimination and providing predictability and stability with respect to the civil justice climate for Ohio's small businesses. We recommend the favorable adoption of House Bill 352.