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Proposed Legislation Would Reform Ohio Employment Bias Laws

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S.B. 383 was introduced earlier this week in the Ohio state Senate and seeks drastic change to Ohio's state employment bias laws. Specifically, if the legislation were to be passed and enacted in its current form, a number of employer-friendly revisions would be made. Included among those proposed changes are:

1. A requirement that an employee opt to choose either to file an administrative charge with the Ohio Civil Rights Commission or to file a complaint in court (as opposed to both, which is currently allowed);
2. The implementation of a more aggressive one year limitations period after the alleged discriminatory act for the filing of a charge or suit (with such one year limitations period also applying to claims of promissory estoppel, breach of implied contract or intentional infliction of emotional distress);
3. The placement of a cap on noneconomic and punitive damages on all discrimination suits, dependant on the employer's size (e.g., a cap of $50,000 for employers employing 4-100 employees, $100,000 for those employing 101-200 employees, $200,000 for those employing 201-500 employees, and $300,000 for those employing more than 500 employees); and
4. The end of individual liability under the law for managers/supervisors alleged to have engaged in intentional discrimination and harassment, provided that such individuals are not the employer itself.

The bill further includes a provision authorizing an employer to raise an affirmative defense to liability if the employer proves both that:

1. It had exercised reasonable care to prevent or promptly correct the unlawful discriminatory or harassing behavior through the promulgation of a reasonable anti-discrimination/anti-harassment policy that includes a complaint procedure; and
2. The employee alleging the unlawful practice unreasonably failed to take advantage of the employer's preventative and corrective opportunities or otherwise avoid harm (e.g., the employee failed to abide by or accept the proposed corrective/preventative action (provide it was not futile), or failed to utilize the complaint procedure altogether). In order to take advantage of such a complaint procedure, the employer must show that it has taken specific actions to not only to publish the policy and an anti-retaliation policy, but also has informed employees of prohibited conduct and avenues for complaints, acted upon internal complaints in a reasonable and prompt manner, and

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provided a means by which an employee can complain/report discrimination/harassment through channels that are not those individuals who are alleged to have engaged in the unlawful acts.

As can be expected, this proposed legislation is stirring hot debate between plaintiff-side and defense-side employment advocates and practitioners and will likely be under close scrutiny in the days ahead.