



Fact Sheet Series for the 133rd General Assembly

House Bill 352 (Representatives Cross & Lang)

Referred to Civil Justice Committee October 9, 2019 (No Hearings as of January 9, 2020)

Modify Civil Rights Laws Related to Employment

House Bill 352 seeks to make numerous complex changes to Ohio employee rights laws. Thus, this fact sheet does not fully explain all proposed changes and instead narrowly focuses on sexual harassment.

Under Current Law:

- The statute of limitations for workplace sexual harassment claims under Ohio law is six (6) years.
- Employers may be held vicariously liable without the protection of an affirmative defense.
- Unlike the requirements under federal law, a survivor of workplace sexual violence need not exhaust administrative remedies before filing a lawsuit under state law.

This Bill Would:

- Reduce the statute of limitations for workplace sexual harassment claims from six (6) to two (2) years.
- Provide employers with an affirmative defense – if the employer can prove by a preponderance of the evidence that (1) the employer exercised reasonable care to prevent or promptly correct any sexually harassing behavior; and (2) **the employee alleging the hostile work environment unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.** This affirmative defense is not available if the employer took a tangible employment action after the report (termination, demotion, etc.).
- Mandate that survivors file a grievance with the Ohio Civil Rights Provision prior to filing a lawsuit. This grievance could be filed for up to two years from the date of discrimination. However, as the grievance is required before filing a lawsuit, survivors will be forced to make a decision four years earlier than they previously would have.

Why This Bill is Important:

- The current statute allows survivors to choose between a federal system that requires administrative exhaustion (filing an EEOC charge) within 180 or 300 days of the discrimination before filing a lawsuit, or a state system that does not. Each system has other advantages and disadvantages relating to the specifics of any given case, but many survivors make decisions about filing based on whether they wish to utilize an administrative system before filing in court. This bill will take that decision away.
- Survivors may not fully have time to process and make decisions about workplace sexual harassment claims in two years. This bill will reduce civil options to a workplace sexual harassment claim with a two-year statute of limitations and a sexual battery claim with a one-year statute of limitations.
- Because of the affirmative defense provided by this legislation, employers will be incentivized to push reporting survivors into preventative or corrective “opportunities” with little guidance on what that means in practice or how to make sure it is safe and trauma informed. This will likely also lead to victim blaming trends.
- This bill will increase Ohio Civil Rights Commission case processing times.
- This bill will reduce access to justice for members of protected classes subjected to workplace discrimination.

OAESV's Legislative Fact Sheet Series is funded by a generous grant from the George Gund Foundation, a private Ohio non-profit organization that has donated \$722 million dollars since 1952 to projects that advance human welfare and society.

**THE GEORGE GUND
FOUNDATION**