

Publications

Labor and Employment Alert: Cuyahoga County, Ohio, Prohibits Sexual Orientation and Gender Identity Discrimination

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Twenty-one states and the District of Columbia currently prohibit discrimination on the basis of sexual orientation and/or gender identity and expression. At least 19 cities in Ohio currently have similar anti-discrimination laws: Akron, Athens, Bexley, Bowling Green, Cincinnati, Cleveland, Cleveland Heights, Columbus, Coshocton, Dayton, East Cleveland, Lakewood, Kent, Newark, Olmsted Falls, Oxford, Toledo, Yellow Springs, and Youngstown. Cuyahoga County, Ohio, recently adopted an ordinance creating a comprehensive civil rights law that prohibits sexual orientation discrimination.

Civil Rights Protections

Similar to current Ohio and federal law, Title 15 prohibits discrimination on the basis of race, color, religion, military status, national origin, disability, age (for those 40 and older), ancestry, or sex. These terms are similar to those defined in Ohio's Civil Rights Law and Title VII of the Civil Rights Act, and like those laws, Title 15 extends this protection to fair housing, public accommodations, and employment.

Employers that employ four or more employees within Cuyahoga County are covered by Title 15 and so are prohibited from discharging without cause, refusing to hire, or otherwise discriminating against applicants and employees based on protected characteristics. However, Title 15 makes an exception for "applicable national security regulations established by the United States." Title 15 also does not apply to a religious corporation, association, educational institution, or society with respect to the employment of an individual of a particular religion to perform work connected with the carrying on by that religious corporation, association, educational institution, or society of religious activities.

Title 15 expressly permits both affirmative action plans "to effectuate remedial or corrective action taken in response to past discriminatory practices against a historically marginalized group" and "diversity and inclusion efforts and promotional activities and practices designed primarily to encourage participation by members of any historically

marginalized protected group.” Voluntary requests for demographic information by an employer to aid in diversity and inclusion efforts are permitted.

Expanded Sexual Orientation and Gender Identity or Expression Protections

Unlike current Ohio and federal law, Title 15 expands its anti-discrimination protections to include sexual orientation and gender identity or expression. “Sexual orientation” includes homosexuality, bisexuality, and heterosexuality, while “gender identity or expression” means “an individual’s actual or perceived gender-related identity, appearance, expression, mannerisms, or other gender-related characteristics, regardless of the individual’s designated sex at birth.”

Complaint Procedures and Penalties

Title 15 creates a three-member Commission on Human Rights “to promote principles of diversity, inclusion, and harmony” through enforcing the new civil rights law. An individual alleging discrimination may file a complaint with the Commission, but what happens next depends on the nature of claim.

- The Commission must instruct the individual to file a charge with the Ohio Civil Rights Commission (OCRC) or Equal Employment Opportunity Commission (EEOC) if the complaint alleges discrimination based on race, color, religion, military status, national origin, disability, age, ancestry, or sex.
- If the complaint alleges sexual orientation or gender identity or expression discrimination in combination with another protected category (a “hybrid” charge), the Commission must inform the individual of rights and remedies available under state and federal law by filing a charge with the OCRC or EEOC. The Commission may adjudicate a hybrid charge if the OCRC or EEOC dismisses it for lack of jurisdiction.
- If the complaint alleges only sexual orientation and/or gender identity or expression discrimination, the Commission will adjudicate the complaint “unless and until state or federal law is revised” to permit such claims of discrimination.

Title 15 establishes hearing procedures similar to those before the OCRC and EEOC. The Commission’s finding may be appealed to the Cuyahoga County Court of Common Pleas.

If the Commission finds a violation of Title 15, it may issue a cease-and-desist order and impose civil penalties of up to \$1,000 for a first offense in the five-year period preceding the charge; (2) up to \$2,500 for a second offense; and (3) up to \$5,000 for subsequent offenses, along with reasonable attorneys’ fees. Title 15 permits the Commission to impose a similar penalty on individuals who knowingly file a complaint with false or fraudulent information that is submitted in bad faith with the intent to defame or to cause other reputational or material harm to an individual or organization.

Conclusion

Employers in Cuyahoga County should review their employment practices to ensure they include protections for sexual orientation, gender identity, and gender expression. Contact your Vorys lawyer if you have questions about the new Title 15 procedures or equal employment opportunity requirements in other jurisdictions.