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Labor and Employment Alert: Legislation Introduced to Reform Ohio's Employment Discrimination Laws

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On February 1, 2016, Senator Bill Seitz (R-Cincinnati) introduced Senate Bill 268 in the Ohio General Assembly to significantly overhaul Ohio's civil rights law. Among other things, the bill would:

- Eliminate individual liability for managers and supervisors. In 1999, in *Genaro v. Central Transport*, the Ohio Supreme Court first held that managers and supervisors of private employers may be individually liable for their actions that violate the Ohio Civil Rights Act. No such liability exists for managers and supervisors under Title VII of the federal Civil Rights Act.
- Reduce the statute of limitations from 6 years to 1 year for all discrimination and harassment claims. The bill would also require that claims against an employer for promissory estoppel, breach of implied contract, or intentional infliction of emotional distress be brought within 1 year after the cause of action accrued.
- Cap non-economic and punitive damages. Similar to the caps in federal civil rights actions, non-economic and punitive damages would be limited to \$50,000 for employers with 4 to 100 employees; \$100,000 for those with 101 to 200 hundred employees; \$200,000 for those with 201 to 500 employees; and \$300,000 for those with more than 500 employees.
- Replaces the three separate causes of action for age discrimination under Ohio law with one action that is the same as those for claims based on the other statutorily protected classes (race, color, religion, sex, military status, national origin, disability, and ancestry).
- Establish an affirmative defense to liability for discrimination for employers who exercise reasonable to prevent discrimination and harassment by establishing a policy and complaint and reporting procedures. The defense would apply only when the employee has not been subject to an adverse, tangible employment action (like a termination, demotion, or discipline) and the employee has failed to take advantage of the preventive or corrective opportunities in the employer's policy. This is similar to the affirmative defense to claims of sexual harassment that employers may assert under federal law.

- Make the Ohio Civil Rights Act the exclusive remedy for unlawful discriminatory practices. This would eliminate causes of action such as wrongful termination in violation of public policy that are predicated on violations of the Act.
- Require a person to elect to proceed with a discrimination charge before the Ohio Civil Rights Commission or file a civil action in court. Currently, a person can pursue a charge and a civil action in both forums simultaneously.

We will keep you apprised of important developments as Senate Bill 268 winds its way through the legislative process, which we expect to be hotly contested. In the interim, contact your Vorys lawyer with questions about the legislation, on how to become involved in the legislative process, or about the Ohio Civil Rights Law.