

## Publications

### Ohio Enacts Important Changes to the Civil Rights Law

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On January 12, 2021, Ohio enacted House Bill 352, the Employment Law Uniformity Act (ELUA) to improve Ohio's employment discrimination laws. The ELUA makes significant changes to the Ohio Civil Rights Law concerning the statute of limitations, administrative exhaustion of discrimination charges, personal liability for managers, codification of an affirmative defense to hostile work environment claims, and clarification of remedies for age discrimination. The ELUA becomes effective in 90 days. Contact your Vorys lawyer if you have questions about the ELUA or other workplace harassment or discrimination issues.

#### Statute of Limitations

The current statute of limitations on civil actions in Ohio for employment discrimination is six years. This limitation was created by the Ohio Supreme Court in 1994 in *Cosgrove v. Williamsburg of Cincinnati Management Company*. The ELUA reduces the current six-year statute of limitations for employment discrimination claims to two years. In addition to amending the statute of limitation for civil actions, the ELUA extends the statute of limitation to file a charge of discrimination with the Ohio Civil Rights Commission (OCRC) from 180 days to two years.

#### Administrative Exhaustion

Currently, an individual may file an employment discrimination charge with the OCRC and a civil lawsuit premised on that discrimination simultaneously. The ELUA mirrors federal law in that it now requires an individual to administratively exhaust a claim before the OCRC before filing an employment discrimination lawsuit. Under the ELUA, an individual cannot file a civil action unless a timely charge with the OCRC has been filed and either the OCRC has issued a right to sue notice or more than 45 days have passed and has not issued a right to sue notice. The statute of limitations to file the civil claim is tolled while the OCRC investigates the charge.

## Elimination of Individual Supervisor Liability

In 1999, in *Genaro v. Central Transport*, the Ohio Supreme Court imposed liability upon individual managers and supervisors for employment discrimination by including them within the definition of “employer” in the Ohio Civil Rights Law. The ELUA again mirrors federal law by limiting a manager’s or supervisor’s personal liability and expressly states that the General Assembly intends to supersede the *Genaro* decision. Thus, under the ELUA, no person has a cause of action or claim under the Ohio Civil Rights Law based on unlawful discriminatory practices relating to employment against a supervisor, manager, or other employee unless (1) that person is the employer or (2) the claim involves retaliation for opposing a discriminatory practice, aiding a discriminatory practice, or obstructing a person from complying with the Ohio Civil Rights Law.

## Affirmative Defense

The United States Supreme Court first created an affirmative defense to hostile work sexual harassment environment claims in the *Faragher/Ellerth* cases. The defense provides employers with an affirmative defense to such claims when it can show that it had anti-harassment policies and complaint procedures in place and that the employee failed to take advantage of them. The ELUA codifies that defense into Ohio law.

Consequently, an employer may raise an affirmative defense to vicarious liability to an employee resulting from a hostile work environment sexual harassment claim in which the hostile work environment was created by a supervisor, if the employer proves both of the following by a preponderance of the evidence: (1) the employer exercised reasonable care to prevent or promptly correct any sexually harassing behavior; and (2) the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise. The affirmative defense is not available if the supervisor’s harassment resulted in a tangible employment action against the employee. A “tangible employment action” is an action that results in significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.

The ELUA provides that the General Assembly intends that “employers will be encouraged to implement meaningful antidiscrimination policies and foster a work environment that is fair and tolerant. The General Assembly further declares its intent that human resource professionals should have the first opportunity to resolve personnel complaints and rectify detrimental workplace behavior before such issues result in costly litigation.” Given this, Ohio employers should review their policies, procedures, and training to ensure they meet the requirements of the affirmative defense.

## Age Discrimination

Unlike other protected classes, Ohio currently has multiple statutes providing remedies to individuals filing age discrimination claims. The ELUA clears up this confusing patchwork and, instead, provides a single cause of action. At the same time, the ELUA preserves an individual’s right to pursue civil and administrative remedies. The new cause of action is subject to the two-year statute of limitation and administrative exhaustion requirements discussed above.