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Changes to Ohio's Discrimination Law Means the Law Now More Closely Parallels Federal Discrimination Laws

Ohio's discrimination laws were modeled after the federal laws with respect to discrimination in employment; however, there were some significant differences that are now addressed in changes to Ohio law (H.B. 352, signed into law by Governor DeWine on January 12, 2021).

In the Supreme Court of Ohio decision in *Genaro v. Cent. Transport, Inc.*, the Court departed from the federal employment discrimination laws by finding that managers and supervisors, as well as employers, can be held liable for violating Ohio's employment discrimination laws. Under federal law (Title VII as amended), employers, but not supervisors and managers, could be held liable for violating the federal law prohibiting employment discrimination. The decision in *Genaro* was frequently criticized as expanding liability to supervisors and managers when, in the opinion of many, they were not intended to be held liable under Ohio's employment discrimination laws.

While there has been legislative attempts to remedy that decision in *Genaro*, such legislation has not been successful in the past. Now, however, under H.B. 352, the *Genaro* decision holding supervisors and managers liable under Ohio's employment discrimination laws along with employers, has been changed in that managers and supervisors will only be subject to liability for retaliating against an individual who opposes a discriminatory act or who participates in a charge of discrimination or for aiding and abetting a discriminatory practice of the employer.

A concern of employers under Ohio's discrimination in employment laws is that the employer can be charged with creating sexual harassment if a supervisor creates a sexually hostile work environment, even if it is unbeknownst to the employer. H.B. 352 now specifically provides that the employer may avail itself of an affirmative defense and defeat the claim against it if the employer can establish that it exercised reasonable care to prevent or promptly correct any sexually harassing behavior and that the complaining employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer. It is incumbent on an employer that wishes to avail itself of this affirmative defense to have a strong anti-sexual harassment policy defining sexual harassment and outlining the steps that an employee can avail himself/herself of should he/she be subjected to sexual harassment. The courts have held that a strong anti-sexual harassment policy, in order to be the most effective, should be provided separately to all employees rather than "buried" in a lengthy employee handbook.

Under current federal law, an employee complaining of employment discrimination first has to file a discrimination complaint with the Equal Employment Opportunity Commission (EEOC) within 300 days after the discriminatory act and cannot file a lawsuit against the employer until such time as the EEOC issues a "notice of right to sue." Ohio has not, until H.B. 352, had any requirement that a complaining employee first avail themselves of their administrative remedies through the Ohio Civil Rights Commission (OCRC). In other words, while a complaining employee could first file a complaint with OCRC within 180 days after the alleged discrimination, there was no requirement to do so and employees were going directly into state court to file state employment discrimination claims. Now, as a result of H.B. 352, a complaining employee must first file a charge with OCRC and give OCRC the opportunity to investigate the claim. After receiving a "notice of right to sue," the complaining employee can file a lawsuit in state court. H.B. 352 provides, however, that after the charge is filed with OCRC, the complaining employee may request that OCRC cease its investigation and issue a "notice of right to sue." H.B. 352 provides that an employment discrimination charge must be filed with OCRC within two years of the alleged discriminatory practice.

It appears that H.B. 352 is not retroactive. In other words, it does not apply to discrimination claims filed before the effective date of the law. The law becomes effective 90 days from the date that Governor DeWine's office files H.B. 352 with the Ohio Secretary of State, which means that the law is most likely to take effect sometime in April 2021.

Dennis L. Pergram

New Federal Law Impacts Phone Systems

RAY BAUM'S Act went into effect January 6, 2021 for fixed telephone line systems. A fixed line system (for lack of a better word, a "landline") is a Fixed Multi-line Telephone System (MLTS), Fixed Interconnected VoIP, fixed telephony, and Fixed Telephone Relay Services (TRS). For others using Non-fixed MLTS, Non-Fixed Interconnected VoIP and Non-Fixed Telephone Relay Systems, the compliance date is January 6, 2022. RAY BAUM'S is an acronym: **Repack Airwaves Yielding Better Access for Users of Modern Services**. The act is also named for Ray Baum, a lawyer and politician. His contributions to both state and federal regulations spanned decades. He served as the Commissioner and Chairman of the Oregon Public Utilities Commission, on the Board of Directors of the National Association of Regulatory Utility Commissioners and as Chair of NARUC's Committee on Telecommunications.

The purpose of Section 506 of RAY BAUM'S Act is simple: to ensure first responders have access to the most accurate and up-to-date information as possible. As enterprises continually adopt innovative communication platforms, it is imperative that their 911 calling capabilities keep pace. Something to keep in mind while implementing the new regulations is to include emergency location information for your employees. This could be the floor number, suite, or conference rooms. You will need to plan for workers working remotely using softphone applications on a laptop or other mobile devices as they will likely need to adjust their emergency location information. Most importantly, test your system! This can be done by simply coordinating with your local 911 center or emergency response agency. They are more than happy to assist with a "mock" 911 call to ensure that both parties have the most accurate information available.

The implications and what businesses need to do to ensure compliance are numerous. The best place to start your information gathering process is by visiting:

https://www.911.gov/project_mltstdispatchablelocation.html

or

<https://www.fcc.gov/document/implementing-karis-law-and-section-506-ray-baums-act-0>

Congratulations to Siekmann Company

Congratulations are in order to The Siekmann Company for being included in Business First's Employee Benefits Companies ranked by Central Ohio employee benefits employees. The Siekmann Company was founded in 1981 by Robert Siekmann and today the top executive is his son, Aaron.

Powell's 2021 Businesspersons of the Year

Alignable, a business referral network, has announced its 2021 Powell businesspersons of the year. This year, after sorting through more than 86,000 votes and testimonials, the network unveiled its winners. All the winners were celebrated for going above and beyond to help their peers and communities during the COVID-19 era. This year there was a tie for first place. That honor went to Larry Coolidge of Larry Coolidge, Realtors and Steve Smith of Steve Smith & Associates. The second place honor went to Chip Vance of Auto Assets, and rounding out as the third place winner was Amber Herbster of Larry Coolidge, Realtors. Congratulations to the winners and to all who were nominated.

This bulletin provides general information and is not legal advice. Please contact us if you need legal advice.

If you have friends or associates who you think would enjoy receiving a copy of this Client Bulletin, please feel free to forward it on. Thank you.

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