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## Client Alert: Ohio's New Employment Law Uniformity Act: What Employers Need to Know

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On January 12, 2021, Ohio Governor Mike DeWine signed a significant piece of legislation that modifies Ohio's existing employment discrimination laws. The passage of the Ohio Employment Law Uniformity Act (H.B. 242) (ELUA), which amends the Ohio Civil Rights Act, will have a significant beneficial impact on employers' future workplace discrimination actions. The new law will be effective on April 12, 2021—90 days after Governor DeWine's signature.

Here is what employers need to know about the new law:

- **Statute of Limitations:** For more than 20 years, Ohio employers have operated under a six-year statute of limitations for employment discrimination claims – one of the longest in the country. The ELUA now reduces the statute of limitations to **two years**. Although the statute of limitations is now shorter, it remains significantly longer than its Title VII federal counterpart, which is 300 days, and longer than the majority of states, many of which have a 180-day statute of limitations.
- **Exhaustion of Administrative Remedies:** Under the ELUA, employees must now file a charge with the Ohio Civil Rights Commission (OCRC) *before* filing a lawsuit directly against the employer. This requirement to exhaust administrative remedies mirrors the federal law requirement that an employee file an Equal Employment Opportunity Commission (EEOC) charge before bringing suit. The ELUA actually lengthens Ohio's time frame for filing charges with the OCRC from 180 days to two years.
- **Caps for Discrimination Suits:** The ELUA officially defines Section 4112 claims as "tort claims," meaning that these employment discrimination claims will now be subject to caps placed on the amount of compensatory and punitive damages via Ohio's Tort Reform Act.
- **Limited Personal Liability:** The ELUA significantly limits supervisor liability for employment discrimination claims. Under the new law, managers cannot be personally liable for workplace discrimination unless the manager is the employer; the manager has been involved in retaliatory efforts against the employee; or the manager acted outside of the scope of their employment.

- **Age Discrimination Claims:** The ELUA clarifies the process surrounding age discrimination claims specifically. Now, employees must file an age discrimination charge with the OCRC as with other forms of discrimination claims. Additionally, all age discrimination claims will have the same two-year statute of limitations as other discrimination claims.
- **Affirmative Defense for Hostile Work Environment Claims:** Where an employer exercises reasonable care to prevent and/or promptly correct harassment, and the employee failed to take advantage of those corrective opportunities, the ELUA shields employers from liability from hostile environment harassment claims. This is commonly known as the “Faragher-Ellerth defense,” which derives from two federal lawsuits, and it is now an affirmative defense codified by Ohio’s employment discrimination statute. In order to prevail on this affirmative defense, an employer must establish: (1) it had an effective harassment policy in place; (2) it properly educated employees about the policy and complaint procedures; (3) it exercised reasonable care to prevent or promptly correct the harassing behavior; and (4) the complainant failed to take advantage of any preventative or corrective opportunities.

These alterations to Ohio’s employment discrimination framework are a welcome change for employers. The ELUA significantly clarifies or eliminates many procedural peculiarities within Ohio state law and makes Ohio law more consistent with the federal employment discrimination claim process. The new requirement for employees to first file a charge with the OCRC instead of filing a direct lawsuit against the employer, will no doubt reduce the number of frivolous claims filed against the employer, and will promote mediation and other forms of alternative dispute resolution in order to resolve employment discrimination claims.

In the short term, due to the new, shorter statute of limitations, it is possible that employers may experience an influx of claims filed by employees prior to the April 12<sup>th</sup> deadline. Moreover, it is important for employers to review their existing harassment policies and procedures to take advantage of the affirmative defense as codified under the new law. For assistance with this review, or to arrange for worksite training to ensure your organization can meet the requirement to educate employees about harassment policies, please contact any member of Shumaker’s Labor and Employment department. In addition, please contact us for more information about the ELUA and its potential impact on your business.