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**FOR**  
**EQUAL OPPORTUNITY**

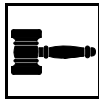
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## INTRODUCTION

All employers, regardless of size, should be aware of state and federal laws regarding equal opportunity. Different laws and regulations apply, depending on the size and type of business.

## OHIO LEGAL OBLIGATIONS



Ohio Civil Rights Act (also called the Ohio Fair Employment Practices Law)—applies to all public employers and private employers with four or more employees. The Act prohibits employment discrimination based on race, color, disability, religion, sex (including sexual harassment and same-sex harassment), military status, national origin, ancestry and age. The Act also prohibits retaliation for filing a charge of discrimination, opposing a discriminatory employment practice or participating in an investigation. The Ohio Civil Rights Act is enforced by the Ohio Civil Rights Commission (OCRC).



Ohio Equal Pay Law—applies to all employers. The law prohibits discrimination in wage payment based on race, color, religion, sex, age, national origin or ancestry.

### ARE THERE ANY EXCEPTIONS TO THE OHIO CIVIL RIGHTS ACT?

Yes. An employer may attempt to elicit information or keep records concerning race, color, religion, sex, military status, national origin, disability, age or ancestry or perform similar employment actions specified in the law, where such action is based on a Bona Fide Occupational Qualification (BFOQ). All BFOQs must be certified by the Ohio Civil Rights Commission (OCRC) before an employer can use such a qualification to make an employment distinction.

In addition, variations in pay are allowed if they are based on a non-discriminatory factor such as seniority or merit. Also, it is allowable to pay different wages for jobs requiring different skills, responsibilities, effort and different working conditions.

## **DOES OHIO PERMIT MANDATORY RETIREMENT?**

Generally, mandatory retirement at any age is prohibited. However, mandatory retirement for executives over 65 years of age is allowed if the individual:

- has been an executive or a high-level policymaker for (at least) the two years preceding retirement; and
- is entitled to an immediate, non-forfeitable annual retirement income of at least \$44,000 from the employer.

## **DISCRIMINATION CHARGES**

For an employer, a discrimination charge should be viewed as a serious action.

- If a discrimination charge is found to be in favor of the employee, substantial financial penalties and court-mandated constraints may be imposed on the employer. This can significantly disrupt an employer's business.
- During an investigation of a discrimination charge, an employer's records and workforce can be subpoenaed, which may lead to additional charges.

## **HOW IS A DISCRIMINATION CHARGE FILED BY AN EMPLOYEE, APPLICANT OR FORMER EMPLOYEE?**

The "charging party," (an employee's representative, an employee, an applicant or former employee) can file a discrimination charge, in writing and under oath, with the Ohio Civil Rights Commission (OCRC) or the Equal Employment Opportunity Commission (EEOC) within 180 days of the alleged act of discrimination.

## **HOW LONG DOES THE CHARGING PARTY HAVE TO FILE A DISCRIMINATION CHARGE?**

The charging party has 180 days from the alleged act of discrimination to file with either the Ohio Civil Rights Commission (OCRC) or the Equal Employment Opportunity Commission (EEOC).

**WHAT SHOULD AN EMPLOYER  
DO AFTER RECEIVING A CHARGE  
FROM THE OCRC OR THE EEOC?**

First, an employer should determine if a response to a discrimination charge can be completed in the time frame the agency has requested. If a response cannot be completed, another date should be negotiated.

NOTE: Keep documentation of all telephone calls with the agency, such as the name of the person talked to, date, time and summary of communications.

Second, an employer should collect all relevant data and conduct an independent investigation of the charge. A neutral party should perform the investigation, such as a personnel department employee (if available) or a high-level manager who is not involved in any manner.

If it is determined in an investigation that the request for information from the agency is not available, or is inappropriate to provide, the employer should contact the agency and negotiate what information can be supplied to answer the agency's questions. REMEMBER, the agency can subpoena records.

After the employer's investigation is completed, she can take one of the following three general positions.

1. Deny the alleged charge(s). For this option, the employer should respond to the charge with the requested information and any other information that would demonstrate that no discrimination took place.
2. Agree that the alleged charge is valid, in total or in part, and make restitution. The agency will help and generally will seek reasonable ways of satisfying the charging party without undue constraints on the employer.
3. Negotiate a settlement. THIS DOES NOT IMPLY GUILT. It may be the most economical way of dealing with the charge.

Before discussing any settlement conditions, it is very important that the employer assess all the merits of the case. This is done by investigation of the charge.

**HOW DOES THE OHIO CIVIL RIGHTS  
COMMISSION (OCRC) INVESTIGATE A  
DISCRIMINATION CHARGE?**

Prior to a formal investigation, the Ohio Civil Rights Commission (OCRC) may initiate a fact-finding conference with the charging party and the

employer. As a result of the fact-finding conference, the OCRC may attempt to reach a settlement. In addition, if a settlement is not reached, and enough facts were produced to make a determination, the OCRC may make such a determination as to whether a discriminatory practice occurred. If the matter has not been settled, an investigation may begin.

**WHAT CRITERIA SHOULD BE USED  
IN ASSESSING AN EMPLOYER'S  
POSITIONS REGARDING A  
DISCRIMINATION CHARGE?**

The following questions can help assess the employer's case regarding a discrimination charge.

1. Does the statistical data on the makeup of the workforce or the results of employment actions imply discrimination?

(For example, the number of minorities hired is 10%, but the local area workforce has 30% minorities—this may imply discrimination.)

YES \_\_\_\_\_ NO \_\_\_\_\_

2. If an investigator interviews the employer's employees/managers regarding a charge, how strongly would they support the employer's position?

VERY SUPPORTIVE \_\_\_\_\_  
NEUTRAL \_\_\_\_\_  
NOT SUPPORTIVE \_\_\_\_\_

3. Have there been similar situations as described in the charge that have occurred in the past, regardless of whether a charge was filed?

YES \_\_\_\_\_ NO \_\_\_\_\_

4. To what degree has the employer shown obvious and visible concern and actions to manage fairly, especially as it relates to the situation described in the charge?

A GREAT DEAL OF EFFORT \_\_\_\_\_  
SOME EFFORT \_\_\_\_\_  
NO EFFORT \_\_\_\_\_

5. What is the opinion of the investigator of the charging party's case?

CHARGING PARTY'S COMPLAINT  
HAS MERIT \_\_\_\_\_  
CHARGING PARTY'S COMPLAINT  
HAS SOME MERIT \_\_\_\_\_  
CHARGING PARTY'S COMPLAINT  
HAS NO MERIT \_\_\_\_\_

6. Are there written employment policies?

YES \_\_\_\_\_ NO \_\_\_\_\_

7. Are the written policies free from discriminatory factors such as age, sex and race?

YES \_\_\_\_\_ NO \_\_\_\_\_

8. Are employment actions taken to enforce compliance with the company's policies? Are the actions documented?

YES \_\_\_\_\_ NO \_\_\_\_\_