

OHIO MANAGEMENT LAWYERS ASSOCIATION  
*BEFORE THE SENATE CIVIL JUSTICE COMMITTEE*  
*PROPONENT TESTIMONY ON SB 268*  
*Wednesday, May 18<sup>th</sup>, 2016*

Chairman Bacon, Vice Chairman Oelslager, Ranking Member Skindell, and members of the Senate Civil Justice Committee, thank you for the opportunity to provide proponent testimony on Senate Bill 268 (SB 268), the Employment Law Uniformity Act. My name is Scott McIntyre. I am a partner at Baker Hostetler LLP. I am board certified as a specialist in employment and labor law by the Ohio State Bar Association. I am the leader of Baker Hostetler's Employment and Labor Practice in Cincinnati. I represent employers and managers throughout Ohio and throughout the country across our 14 offices. Baker Hostetler is proud to be based here in Ohio where we have been headquartered for the past 100 years since our founding in 1916. Our employment and labor practice has existed since that time, where we represent employers of all kinds ranging from the largest employers in the nation, to start-ups and family owned businesses.

I am here today at the request of the Ohio Management Lawyers Association ("OMLA"). The OMLA is an Ohio non-profit corporation made up of senior labor and employment attorneys whose practices are dedicated exclusively to representing management. The purpose of the OMLA is to promote the administration of justice with respect to employment, labor, and other areas of law affecting employers.

There is no question that unlawful discrimination is repugnant and the OMLA opposes such discrimination in the strongest terms. Indeed, merely being accused of unlawful discrimination can damage reputations and ruin lives. Part of my practice involves representing men and women who are falsely accused of discrimination, wrongly sued in Ohio courts along with their employers and thus victimized themselves. While I am often able to convince a Judge or a Jury to correctly throw out the case, such a result takes time and the impact on my clients who have to endure the false allegations is real. These ordinary Ohioans have had to deal with the impact of defending themselves in court against untrue allegations and the concern that the allegations alone could damage their career, their ability to earn a living, not to mention the worry about how they might satisfy a judgment if a jury were to wrongly find them individually liable. The reality of Ohio's current law means that men and women who are not guilty of discrimination sometimes have to search for employment while at the same time deal with the false allegations, stress, and stigma of a pending lawsuit and concurrent administrative proceeding that unfairly accuses them of discrimination. Even when the court rules that the lawsuit has no merit or the Plaintiff dismisses the suit and/or OCRC Charge after months or years of litigation, it is hard if not impossible for the person falsely accused of discrimination to pick up the pieces and go back to the path they were on in life before the false allegations.

The Employment Law Uniformity Act seeks to make Ohio law consistent with Federal Title VII law and Sixth Circuit Court of Appeals law—in that it holds employers fully accountable to the victims of unlawful discrimination, but protects Ohio men and women from being named individually in lawsuits. The Act also provides additional incentives for employers to stamp out discrimination in their workplaces by training, education, and the exercise of reasonable care that is designed to limit the number of Ohioans who are victims of discrimination in the first place.

This is a common sense reform that addresses the problem of ordinary Ohioans who are not discriminators having to defend themselves as defendants for years to prove their innocence and attempt to unring the bell.

No less an authority than former Ohio Chief Justice Moyer stated that the General Assembly never intended to impose liability on managers and supervisors in R.C. Chapter 4112. His dissent in the 1999 *Genaro* opinion highlights that the statute simply does not contain language imposing liability on employees. Then Justice Cook, now a United States Sixth Circuit Court of Appeals Judge, also dissented in the *Genaro* case and highlighted that the language in the current law is anything but clear. She cautioned in her dissent that the statutory language, based on the majority's reasoning, could subject even non-managers to being sued individually. Indeed, it may be argued that the language in the current statute defining employer, *i.e.*, "any person acting directly or indirectly in the interest of an employer" could be stretched to include independent contractors, consultants, project workers, outsourced workers, vendors, or any number of other persons acting indirectly in an employer's interest. The time is right for the General Assembly to clarify that Ohio law, consistent with federal Title VII law, precludes individual liability and instead holds employers themselves accountable for unlawful discrimination.

Part of my practice also involves representing companies who are looking to relocate to Ohio or expand in Ohio and add jobs in this state. Companies evaluate all legal and workforce impacts on their businesses, including employment laws. In some ways, Ohio employment law is an outlier compared with federal law and with laws in other states. I have discussed the concerns with individual liability. Another concern is the 6-year statute of limitations which imposes unnecessary costs and uncertainty. Employment law often concerns proving intent. It is difficult, to say the least, to prove intent 6 years later. In our mobile society, employees leave jobs more frequently, move across the country and the possibility of a lawsuit filed 6 years later places Ohio in the distinct minority of states. The 6 year statute of limitations makes it more likely that unnecessary discovery skirmishes will ensue over faded memories and lost or misplaced documents that could be avoided with a shorter time period more consistent with federal law and that of other states.

Likewise, our age discrimination law, with four different statutes, separate remedy provisions and multiple limitation periods, is unnecessarily complex. This law is difficult for Ohio employers, employees, and the lawyers for both sides to understand. Crafting legislation that is simple to understand and apply in the context of age discrimination promotes the interests of all.

We urge you to support SB 268. Thank you for the opportunity to provide this testimony and we would be happy to answer any questions you may have at this time.