



# **Ohio Legislative Update**

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# H.B 176

- ◆ Introduced May 12 in Ohio House
- ◆ Approved by Ohio House on September 15
- ◆ Introduced in Senate on September 17
  - Currently in the Rules Committee

# H.B 176

- ◆ Generally adds protection against discrimination based upon sexual orientation and gender identity
- ◆ Amends
  - Ohio's wage and hour laws
  - Ohio's civil rights laws
  - Provisions of R.C. Chapters 5123 and 5126

# R.C. §4117.17

- ◆ Prohibits discrimination in the payment of wages on the basis of sexual orientation or gender identity (and other protected characteristics) by payment of wages at a rate less than the rate at which employer pays wages to another employee for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar conditions

# R.C. §4112.01

- ◆ Modifies definition of “employer”:
  - For purposes of discrimination based upon sexual orientation or gender identity, “employer” includes the state, any political subdivision of the state, any person employing fifteen or more persons within the state, and any person acting directly or indirectly in the interest of an employer
    - ◆ General definition: 4 or more employees

# R.C. §4112.01

- ◆ "Sexual orientation" means actual or perceived, heterosexuality, homosexuality, or bisexuality
- ◆ "Gender identity" means the gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, with or without regard to the individual's designated sex at birth

# R.C. §4112.02

- ◆ Unlawful discriminatory practice to discharge, refuse to hire, or otherwise discriminate in terms and conditions of employment based upon sexual orientation or gender identity
  - Includes discrimination in admission to, or employment in, any program established to provide apprentice training
  - Includes other activities prohibited unless a bona fide occupational qualification is approved by OCRC

# Practical effects?

- ◆ Not an unlawful employment practice based on actual or perceived gender identity due to the denial of access to shared shower or dressing facilities in which being seen unclothed is unavoidable, provided employer provides reasonable access to adequate facilities that are not inconsistent with an employee's gender identity
  - as established with the employer at the time of initial employment or
  - upon notification to the employer that the employee has undergone or is undergoing gender transition, **whichever is later.**

# Practical effects?

## ◆ Dress and grooming code

- To extent not otherwise prohibited by law, employer can require an employee, during the employee's hours at work, to adhere to the employer's dress code or grooming standards, provided the employer permits any employee who has undergone gender transition
  - ◆ before being initially employed,
  - ◆ and any employee who has notified the employer that the employee has undergone or is undergoing gender transition after being initially employed,
    - to adhere to the same dress code or grooming standards of the gender to which the employee has transitioned or is transitioning.

# Additional concern

- ◆ It will be an unlawful discriminatory practice for any employer to limit, segregate, or classify its employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment or otherwise adversely affect the status of the individual as an employee because of the individual's actual or perceived sexual orientation or gender identity.

# Limitation of actions

- ◆ Individuals will only be able to bring disparate treatment claims, and not disparate impact claims, on the basis of sexual orientation or gender identity.
  - “Disparate treatment” is intentional discrimination
  - “Disparate impact” means a facially neutral policy or practice that has a negative impact on a protected group

# Expansion of law

- ◆ Federal Employment Non-Discrimination Act is still in committee
- ◆ 20 states and the District of Columbia prohibit discrimination based upon sexual orientation
  - 12 states and the District protect gender identity
- ◆ City of Akron and County of Summit both passed ordinances on November 30, prohibiting discrimination based upon sexual orientation and gender identity

# County Board Implications

## ◆ R.C. §5123.351:

- Director shall withhold state funds from an agency, corporation, or association denying or rendering service on the basis of race, color, sex, religion, ancestry, national origin, disability, sexual orientation, or gender identity, as those terms are defined in section 4112.01 of the Revised Code, or inability to pay
- County Board would meet definition of agency

# County Board Implications

## ◆ R.C. §5126.07:

- No county board of developmental disabilities or any agency, corporation, or association under contract with a county board “shall discriminate in the provision of services under its authority or contract on the basis of sexual orientation or gender identity as those terms are defined in section 4112.01 of the Revised Code, race, color, sex, creed, disability, national origin, or the inability to pay.”

# County Board Implications

## ◆ R.C. §5126.07:

- Each county board of developmental disabilities shall provide a plan of affirmative action describing its goals and methods for the provision of equal employment opportunities for all persons under its authority and shall ensure nondiscrimination in employment under its authority or contract on the basis of sexual orientation or gender identity as those terms are defined in section 4112.01 of the Revised Code, race, color, sex, creed, disability, or national origin



# QUESTIONS?