



Testimony

Submitted on behalf of the
Pennsylvania Chamber of Business and Industry

Public Hearing on House Bill 2271

Before the:

Pennsylvania House Labor & Industry Committee

Presented by:

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Chairman Scavello, Chairman Keller and members of the committee, my name is Alex Halper and I am Director of Government Affairs for the Pennsylvania Chamber of Business and Industry. The PA Chamber is the largest, broad-based business advocacy association in Pennsylvania. We represent employers of all sizes, crossing all industry sectors throughout the Commonwealth. Thank you for the opportunity to testify today regarding House Bill 2271.

The Pennsylvania Human Relations Act of 1955 prohibits discrimination as it relates to workplace practices and policies against individuals covering numerous classes including race, religion, ancestry, age for those 40 and above, sex, national origin and non-job related disability. H.B. 2271 would amend the Pennsylvania Human Relations Act by expanding the categories of classes covered under the Act to include familial and marital status.

The PA Chamber supports the spirit and intent of the Pennsylvania Human Relations Act. Employees and job applicants should be judged based on factors such as qualifications, performance and work ethic and employers should never intentionally discriminate against an employee based on the categories listed in the Act.

Similarly, we believe H.B. 2271 makes sense conceptually and those supporting the bill have nothing but positive intentions. We are continuing to study this legislation

and assess its potential impact on Pennsylvania employers. I would like to share some initial reactions I have received from some of our members, HR professional and labor attorneys who have experience with the Pennsylvania Human Relations Act and Human Resources policy in general. After hearing some of this feedback, it is clear that this legislative proposal, and enforcement of the Pennsylvania Human Relations Act in general, is far more complicated, and its impact less predictable, than it may appear.

A recurring theme that emerged speaking with business owners and HR professionals was the distinction between discrimination cases based on disparate treatment and discrimination cases based on adverse impact. Disparate treatment cases are usually fairly straightforward and are actions or policies that are commonly associated with a more standard concept of discrimination. In these cases, just as the term suggests, an employer may have a policy or take an action that treats employees or job applicants differently based on one of the identified protected classes. There is usually no legitimate reason to maintain any such policy at a workplace and most any HR professional would tell you that such policies are bad for business and clearly expose the employer to allegations of discrimination.

Adverse impact cases however can be far less straightforward, more unpredictable for employers and more difficult to avoid. In these types of cases, an employer may have

a policy or take an action in which there no disparate or unequal treatment or mention of a particular protected class, but an individual claims that he or she somehow was adversely impacted by the policy or action and therefore a violation of the PHRA has occurred.

Adding marital and familial status to the Pennsylvania Human Relations Act will likely significantly increase frivolous discrimination claims, based on adverse impact, against employers. For example, there could be a scenario in which an employee requests to take his lunch break at 3:00PM so he can drive his child home from school every day. If the employer denies this request because the man is needed at that time when everyone else is on the job, is the employer vulnerable to be sued for discriminating against the employee because he's a father?

This scenario may seem like a stretch but it is not uncommon for such similarly farfetched cases to be brought against employers in Pennsylvania. The Pennsylvania Human Relations Act has been successful in many ways but it has no doubt contributed to Pennsylvania's sometimes perilous legal climate in which legitimately honest, scrupulous employers are unfairly accused of discrimination. The plaintiff may ultimately lose the case but not before the employer must spend considerable time and resources defending against the suit and deal with the stigma of being accused of discrimination.

Another recurring theme of the feedback I received, and usually the first reaction, was that this proposal was a solution in search of a problem. There is obviously no way to prove that or to gauge the extent to which familial or marital discrimination is truly a problem. No doubt incidences have occurred. But it is important to understand the significance and possible unintended consequences of adding new causes of action to the Pennsylvania Human Relations Act and balancing that against any potential benefit.

Another consideration is whether the inclusion of marital status as a protected category in the PHRA could impact nepotism policies. As currently drafted it may not be clear that an employer can still make decisions based on the identity of the person to whom the applicant or employee is married, as opposed to simply the individual's marital status. This potential impact is clearly not part of what H.B. 2271 is seeking to accomplish, and certainly does not appear insurmountable, but is one of potentially many unforeseen impacts that could occur if this legislation becomes law. We will continue to study this legislation, solicit input from employers and provide feedback if it is sought by the committee.

Again, thank you for the opportunity to testify. I would be happy to answer any questions.