

Causes of Action & Current Statutes of Limitations

Federal & Ohio (as of 1/2007)

Disclaimer: This is meant as a GUIDE ONLY.

For an accurate reading of any applicable statute of limitations you must consult a knowledgeable lawyer. Bear in mind that statutes of limitations can change almost instantaneously with new legislation or court decisions. Therefore, you or your lawyer's knowledge must be current!

You also need to be aware or apprised of pending decisions or legislation that might immediately alter the legal landscape and affect your rights. Thus, it generally pays to have a lawyer regularly engaged in successful litigation and court interaction. In addition, the more "connected" your lawyer is with other lawyer groups and professional associations in his or her specialty, the better, generally. There's always buzz and chatter about new and pending legislation and decisions, which good lawyers use to their advantage.

NOTE: If you are asked to sign an "arbitration agreement" or even told your employer has adopted one, you may be in jeopardy if you try to assert your rights in court. See below, **.

FEDERAL SYSTEM REQUIREMENTS/PROCESS

Discrimination Cases

Note: each of the statutes also allows claims based on harassment and retaliation, as long as you fall within a protected category and the harassment or retaliation was based on the protected category or protected activity.

Title VII

- Includes race, sex, national origin, religion.
- Affords full remedies, including compensatory and punitive damages generally
- EEOC charge must first be filed within 300 days of discriminatory act. (Note: this is Ohio's filing time; **some states have only 180 days to file.**) Suit in federal court must be filed within 90 days of receipt of right-to-sue letter from the EEOC

Age (ADEA)

- Over age 40
- Affords “make-whole” remedies only (economic and prospective relief but not compensatory or punitive damages), plus possible liquidated damages of 2x actual damages for “wilful” violations)
- Age-based EEOC charge must be filed within 300 days from the date of notice of the discriminatory act (e.g., when your pending layoff is known or announced -- not when it actually occurs, unlike Title VII and Section 1981 claims). (Note: this is Ohio's filing time; some states have only 180 days to file.) Suit must be filed within 90 days of receipt of right-to-sue letter

Disability/Handicap (ADA)

- Includes protections for both employment discrimination and public access
- EEOC charge must first be filed within 300 days of last discriminatory act. (Note: this is Ohio's filing time; some states have only 180 days to file.)
- Suit in federal court filed within 90 days of receipt of the right -to-sue letter

Civil Rights - Federal

Race (42 U.S.C. § 1981)

- Statute of Limitations is 2 or 4 years, depending upon the nature of the claim
- No requirement of EEOC filing; this is a so-called “direct-action statute”

Constitutional: Due Process, Equal Protection, First Amendment (42 U.S.C. § 1983)

- Statute of Limitations is 2 years from the last adverse act
- No need to file EEOC charge; this is a so-called “direct-action statute”

Fair Labor Standards Act (FLSA)

1. Overtime

- Statute of Limitations is 3 years for wilful violations of the Act; 2 years for non-wilful violations of the Act
- No need to file EEOC charge; so-called “direct-action statute”

2. Minimum wage

- Statute of Limitations is 3 years for wilful violations of the Act; 2 years for violations of the Act
- No need to file EEOC charge; so-called “direct-action statute”

3. Equal Pay Act

- Statute of Limitations is 3 years for wilful violations of the Act; 2 years for non-wilful violations of the Act
- No need to file EEOC charge; so-called “direct-action statute”

4. Other

ERISA - 15 years (This is for Ohio; other states may differ)

FMLA (Family Medical Leave Act) - See article on FMLA

OHIO SYSTEM REQUIREMENTS/PROCESS

Race, Sex, Disability Discrimination, Harassment & Retaliation (Revised Code Chapter 4112, et seq.) (All Forms of Discrimination EXCEPT AGE):

R.C. 4112.02(N) (Discrimination); R.C. 4112.02(J) (Retaliation)

- Provides full remedies, including compensatory and punitive damages in most cases
- Statute of Limitations is 6 years days

Retaliation (R.C. 4112.02(J):

- Provides full remedies, including compensatory and punitive damages in most cases

- Statute of Limitations is 6 years
- Includes retaliation for protected activity based on age-related complaints; however, age *discrimination* may have a shorter limitations period, as listed below.

Age Discrimination*:

R. C. 4112.02:

- Provides full remedies, including compensatory and punitive damages in most cases
- Statute of Limitations is 180 days

R.C. 4112.14

- "Make whole" remedies only, similar to ADEA but no liquidated damages available
- Statute of Limitations is 6 years

R.C. 4112.05 OCRC Charge

- "Make whole" remedies only
- 300-day Statute of Limitations
- Filing an OCRC age charge before filing suit in court can procedurally kill a subsequent age-based lawsuit, forfeiting any further rights (this is particularly negative in that the OCRC is back-logged, like the EEOC is)

Minimum Fair Wage Standards Act:

RC. Chapter 4111 - Overtime; minimum wage

- Statute of Limitations is generally 2 years

R.C. 4111.17 - Wage discrimination based on race, sex, disability, age

- Statute of Limitations is generally 1 year, but you can go back 5 years for wages if timely filed)

Workers Compensation Retaliation

RC. § 4123.90

- Statute of Limitations is 180 days from retaliatory act
- *Note:* To preserve this claim you must notify employer, *in writing* within 90 days of retaliatory act, of your belief you have been s/he has been retaliated against

Whistleblower

RC. § 4112.52

- Statute of Limitations is 180 days from retaliatory act
- To preserve claim, you must notify employer *first orally and then in writing* of employer conduct that you either believe to be a criminal activity or affects safety

OHIO COMMON LAW (NO STATUTE)

Wrongful Discharge in Violation of Public Policy

- Statute of Limitations is generally 4 years
- **BEWARE: THIS LAW IS CURRENTLY IN FLUX IN OHIO**
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Promissory Estoppel

- Statute of Limitations is 6 years
- requires clear promise and detrimental reliance by the employee, among other criteria

Breach of Implied Contract

- Statute of Limitations is 6 years

Breach of Written Contract

- Statute of Limitations is generally 15 years

** Perhaps the best way to distinguish age claims is to remember that age is a shifting status unlike sex, race, and most disabilities. Everyone "grows" older (we hope!). As a result, courts tend to be more lenient towards employers on age claims, but only on initial procedural matters. If you properly and timely file, you have overcome most obstacles and have the same burdens of proof as other discrimination claims.*

****** Recent case law purports to say that you can "waive" (give up) your right to file in court and rights to any of these statutes of limitations listed above – merely by signing an application, contract, acknowledgment, or some other document or instrument. You also may be giving up your right to sue or work in the same area of business in the future. Incredibly, you also may unknowingly give up these rights *just by showing up for work on a certain date*. If your employer has adopted an arbitration agreement or “dispute resolution” procedure, your only recourse is to quit when you are given notice of, or continue working and file an EEOC charge in the event discrimination or retaliation occurs. Ironically, the EEOC can pursue discrimination actions on your behalf, whereas you, yourself, cannot.

