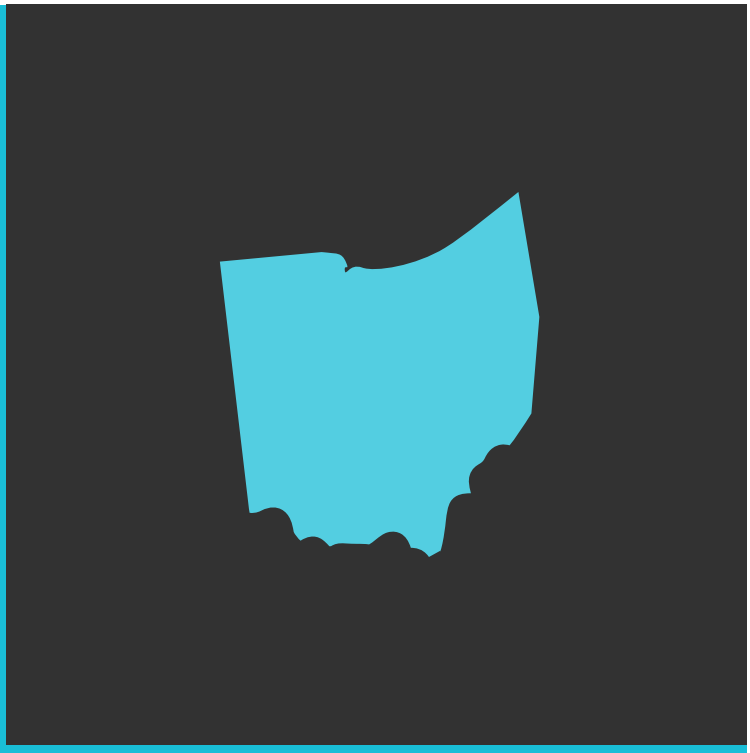
Country Guide
USA – Ohio



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A Guide to Doing Business in Ohio

Prepared by the Attorneys of Calfee, Halter & Griswold LLP

CALFEE

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INTRODUCTION TO OHIO

Known as “the Buckeye State,” Ohio was the 17th state admitted to the United States of America. The capital and largest city is Columbus, and other large cities, listed in order of population, include Cleveland, Cincinnati, Toledo, Akron, and Dayton. With a total population of 11,780,017 (2021), Ohio is the seventh largest state by population in the U.S. It is in the Eastern Time Zone (EST: UTC-05:00/EDT: UTC-04:00).

GEOGRAPHY

Ohio is a Midwestern state in the Great Lakes region of the United States. It is 220 miles long and 220 miles wide at its most distant points. The state is bordered by Pennsylvania to the east, Michigan to the northwest, Indiana to the west, Kentucky on the south, and West Virginia on the southeast. To the north, Lake Erie provides Ohio with 312 miles (502 km) of coastline, enabling numerous cargo ports. Ohio’s southern border is defined by the Ohio River. The state’s total area is 44,826 square miles, making it the 34th largest of the 50 states, the seventh most populous state, and the 11th most densely populated.

Most of western Ohio is flat to gently rolling plains, while eastern Ohio is much hillier, as the foothills of the Appalachian Mountains begin there. The Lake Erie Plains, part of the Great Lakes Plains, extend southward from the lake into Ohio. The Allegheny Plateau is located in the east. The Central or Till Plains cover the western portion of the state. The rugged southeastern quadrant of Ohio, stretching along the Ohio River from the West Virginia Panhandle to the outer areas of Cincinnati forms a distinct socio-economic unit with geography similar to parts of West Virginia and southwestern Pennsylvania with a strong coal mining legacy and significant dependence on small pockets of established manufacturing operations. One-third of Ohio’s land mass is part of the federally defined Appalachian region.

Ohio has hot, humid summers throughout the state and cool to cold winters, with monthly average temperatures ranging from a high of 84 degrees Fahrenheit (29 degrees Celsius) in July to a low of 17 degrees Fahrenheit (-8 degrees Celsius) in January. Cold, dry air from Canada and warm, humid air from the Gulf of Mexico move alternately across the area, making changeability the state’s chief characteristic. Ohio has moderate precipitation year-round, and severe weather is not uncommon with tornadoes, earthquakes, and lake-effect snowstorms in the northern areas of the state in the winter months.

ECONOMY

Ohio's geographic location is an asset for economic growth and expansion, as it links the nation's Northeast to the Midwest. Ohio has the nation's 4th largest interstate highway system and is within a one-day drive of 60% of North America's population and 70% of North America's manufacturing capacity. In 2021, Ohio was ranked fourth in the U.S. for "Best Business Climate" by *Site Selection* magazine, based on a business-activity database. As of 2019, Ohio's gross domestic product (GDP) was $695 billion, ranking the state's economy as the seventh largest in the nation's 50 states and the District of Columbia. The manufacturing sector comprises approximately 17% of the state's GDP, and Ohio has the third largest manufacturing workforce behind California and Texas. Transportation equipment and fabricated metals are Ohio's two largest manufacturing industries, and Ohio is the largest producer in the U.S. of plastics, rubber, electrical equipment, and appliances. Ohio has also emerged as a leading source for oil and natural gas, now ranked fourth of national output, and it has the largest presence of foreign trade zones in the Midwest.

By employment, Ohio's largest sector is trade/transportation/utilities employing 18% of the state's workforce, while the healthcare and education sector employs 17%, the professional and technical services sector employs 13%, and the manufacturing sector employs 12%. Ohio's manufacturing sector is the third largest of all 50 states in terms of GDP. Ohio's largest employers (2021) include Wal-Mart Stores, Inc., The Cleveland Clinic Foundation, Kroger Co., Amazon.com, Inc., The Ohio State University and Medical Center, Wright-Patterson Air Force Base, Bon Secours Mercy Health, University Hospitals Health System, Inc., Ohio Health, and JPMorgan Chase & Co. Ohio is home to more than 50 of the Fortune 1,000 largest companies in the nation, such as Ohio-based Procter & Gamble and Kroger, which places it in the top five among the 50 states (2018).

CULTURAL AND ETHNIC BACKGROUND

While Ohio's population is predominantly white (81.7% of the population per July 2021 U.S. Census data), the state has significant African American populations in all major metropolitan areas throughout the state, significant Hispanic populations in the north and northwest sections of Ohio, Puerto Rican populations in Cleveland and Columbus, and a significant and diverse Asian population in Columbus. In 2019, there were more than 555,000 foreign-born residents in Ohio (5% of the total population) with a majority coming from Asian, Mexican, and other Central American countries. As of 2021, 22.1% of the population was under 18 years of age, and 17.5% were 65 or older.

Ohio is home to seven major professional sporting teams in baseball, basketball, football, hockey and soccer. The nation's Pro Football Hall of Fame is located in Canton, Ohio. There are eight national park service sites in Ohio, and the Ohio Department of Natural Resources Division of Parks and Watercraft manages more than 70 state parks and boating programs. *Forbes* ranked Ohio #2 in the U.S. in its "Quality of Life" metric due to

the state's low cost of living, short commutes, and multitude of top-rated colleges and cultural and recreational opportunities (2018).

INVESTMENT CLIMATE

Communities across the state are realizing their potential for growth due to the investments Ohio is undertaking. The state has 320 Qualified Opportunity Zones in 73 counties, and the state's Department of Development ("Development") is working with local communities and investors to optimize state and federal incentives. In April 2019, the state launched its opportunityzones.ohio.gov marketing platform that enables communities to pitch their potential to investors and allows investors to view all of the opportunities Ohio offers. The Ohio Historic Preservation Tax Credit initiative has resulted in 541 approved projects to rehabilitate over 766 historic buildings in 77 Ohio communities, and it is projected to leverage more than $7.3 billion in private development funding and federal tax credits directly through the rehabilitation projects.

Development is working to help New Americans enter the Ohio workforce as a business imperative, since 76% of Ohio's foreign-born population are working-age adults. A total of 42% of foreign-born Ohioans have attained a four-year college degree or higher (compared to 28% of native-born Ohioans), and this workforce will fuel Ohio's growth.

Ohio businesses benefit from a network of 30 Ohio Small Business Development Centers operated through Development to offer no-cost business advisory services, including business planning and access to capital to more than 13,000 businesses and entrepreneurs annually (Ohio Department of Development; Small Business & Entrepreneurship). Minority business owners access no-cost business advisory services through a network of 12 Minority Business Assistance Centers operated by Development throughout the state, providing technical and professional assistance, access to capital, and bonding (Ohio Department of Development; Minority Business).

The Ohio Export Assistance Network has eight locations across the state and three major initiatives to help businesses enter foreign markets, including the International Market Access Grant for Exporters, the Export Internship Program, and the International Market Support Program. Ohio is the seventh largest export state, with $45.0 billion worth of goods exported in 2020 via the state's four international airports, four major regional airports and four other cargo hubs; in 2019 16,343 businesses exported goods from the state (exportassistance.development.ohio.gov and usglc.org).

Development also provides businesses with help navigating government agencies in order to secure contracts through their Procurement Technical Assistance Centers. The Department's Manufacturing Extension Partnership helps small- to medium-sized manufacturers improve productivity and efficiency, increase sales, create jobs, and generate cost savings through technological innovation, workforce training, and improved management practices.

Ohio Third Frontier provides a statewide network of resources to diverse startup technology companies to help them access business expertise, mentorship, capital, and talent. Development provided funding, which enables the Ohio Third Frontier Commission to award more than $25 million in 2021 for six regional Entrepreneurial Service providers to support and accelerate growth for Ohio tech start-ups and early-stage companies, and commissioners also voted for an additional $3.8 million in statewide funding for technology startup companies and to bolster internships in the technology field.

The Ohio Capital Fund was designed to provide investment capital for Ohio-based businesses with Development serving in an advisory role to the Ohio Venture Capital Authority. In 2019, the Ohio Venture Capital Authority issued $13.47 million in tax credits to the debt-service reserve fund (OhioCapitalFund.com). The hospitality industry in Ohio experienced 222 million visits, drawing $46 billion in visitor spending in 2018 (an increase of 5% over the previous year).

Sources include census.gov, worldpopulationreview.com, deptofnumbers.com, jobsohio.com, development.ohio.gov, and geographyrealm.com.

BUSINESS ENTITIES

The domestic business entities listed below are required to obtain charters or otherwise register with the Office of the Secretary of State in order to operate within Ohio. General Partnerships, other than LLPs, are not currently required to make any filings with the state except to the extent that they desire, or are required by another person, to provide a statement of partnership authority under Section 1776.05 of the ORC (for example in connection with recording real estate documents). Unincorporated Nonprofit Associations subject to Chapter 1745 of the ORC are also not currently required to make any filings with the Secretary of State but may optionally file an Appointment of Statutory Agent to receive service of process (and if it has done so, must also, upon dissolution, file a notice with the Secretary of State). The Office of the Secretary of State maintains a website with useful information regarding the formation requirements for each type of entity required to register with the division. All filings must be submitted on forms designated by and directly available from the Secretary of State of Ohio. Forms are available directly from the BSD or through the various corporate service companies.

- For-profit Corporation
- Nonprofit Corporation
- Professional Association
- Limited liability Company (LLC)
- Limited liability Partnerships (LLP)
- Limited partnerships (LP)

OHIO'S CORPORATION COMMISSION & DEPARTMENT OF COMMERCE

BUSINESS SERVICE DIVISION (BSD) OF THE SECRETARY OF STATE

Ohio Secretary of State, Business Services Division, ~~30 East Broad Street, 14th Floor~~180 Civic Center Dr., Columbus, Ohio ~~43266-0418~~43215.

The BSD is open between 8:00 a.m. and 5:00 p.m., Monday through Friday; but until special Covid provisions cease, in-person transactions, such as requests for legalization, must be by appointment only.

AREA OF INTEREST	CONTACT INFORMATION
General Website (includes information on searching filings, name availability, new filings, obtaining forms for various business entities [domestic, foreign, nonprofit, LLCs, LPs], trusts, uniform commercial code, and mergers and consolidations.)	https://www.sos.state.oh.us/businesses/
Filing Forms and Fee Schedule	https://www.sos.state.oh.us/businesses/filing-forms--fee-schedule/
Business Central Website (For online submission of filings and retrieval of good standing certificates and certified copies of charter documents)	https://bsportal.ohiosos.gov/
All Requests	614.466.2655 or 877.767.6446
Contact Form	https://sosforms.ohiosos.gov/forms/ContactUs/Contact-Us-Agency

OHIO DIVISION OF SECURITIES (DIVISION OF THE OHIO DEPARTMENT OF COMMERCE)

Ohio Division of Securities, 77 South High Street, 22nd Floor, Columbus, Ohio 43215. The various forms promulgated by the Division of Securities may be downloaded from their website: https://com.ohio.gov.

AREA OF INTEREST	CONTACT INFORMATION
Website – Division of Securities	https://com.ohio.gov
Phone	614.644.7381

Email	securitiesgeneral.questions@com.state.oh.us

OHIO BUSINESS ENTITY RESOURCES

There are a number of additional resources available to business entities in Ohio. A comprehensive list of all agencies and website addresses can be found at https://ohio.gov/contacts.stm. In particular, the following sites may be useful.

AREA OF INTEREST	CONTACT INFORMATION
First Stop Business Connection (with access to Ohio Business Gateway)	https://ohio.gov/business
Ohio Bureau of Workers Compensation	https://info.bwc.ohio.gov
Ohio Department of Jobs and Family Services	https://jfs.ohio.gov
Ohio Department of Taxation	https://tax.ohio.gov
Ohio Revised Code	https://codes.ohio.gov/ohio-revised-code

DOCUMENT SUBMISSION FOR ALL OHIO BUSINESS ENTITIES

Available forms can be found at https://www.sos.state.oh.us/businesses/filing-forms--fee-schedule/. All documents may now be submitted for filing electronically, and good standing certificates and certified copies of charter documents may be immediately obtained, at the BSD's OhioBusinessCentral.gov website.

It is suggested that you download the pdf of any form in advance so that you are prepared with the appropriate information and can procure a physical signature, if desired, for your records. For certain filings, the electronic filing process will require you to download the appropriate form on the spot, complete, save and then upload it. You cannot substitute a previously downloaded form for this purpose. In certain cases, such as dissolutions and foreign qualification of corporations, where notarization is required, you will need to have obtained the notarization in advance and may upload a PDF copy of that page as a supplement when asked in the process.

To file on paper, please note that only single-sided, 8.5 x 11 sheets of paper are accepted as the documents are all scanned and imaged into a database after being processed. All checks and money orders should be made payable to "Ohio Secretary of State."

Send forms to the P.O. Box number listed on the form. Send overnight packages to: Secretary of State, Business Services Division, 180 ~~East Broad Street, 16th Floor~~Civic Center Dr., Columbus, OH 43215.

All filings except certifications and UCC filings can be expedited. Expedited filings require an additional fee which is stated with the instruction page for each of the forms and may be delivered to the Client Service Center at ~~22 North Fourth Street~~180 Civic Center Dr., Columbus, OH 43215 or mailed to P.O. Box 1390, Columbus, OH 43216.

FOR-PROFIT CORPORATIONS

In Ohio, a corporation is loosely defined by §1701.01(A) of the Code as a corporation for-profit formed under the laws of the state. The defining characteristics of a corporation are (1) the ability to exist and act as a legal entity apart from the individual members; (2) perpetual duration despite changes in the individuals who compose the corporation; and (3) a name by which the corporation can sue and be sued.

FORMATION

The formation of a for-profit corporation under Ohio law is governed by §1701 of the Code, known as the "Ohio General Corporation Law." Any person, singly or jointly with others, without regard to residence, domicile, or state of incorporation, may form a corporation in Ohio. A "person" includes a natural person, a corporation (whether nonprofit or for-profit), a partnership, a limited liability company, an unincorporated society or association, and two or more persons having a joint or common interest.

The formation of a corporation is achieved by signing and filing with the Secretary of State Articles of Incorporation (Articles) containing, at a minimum, the information described in §1701.04(A) and an Original Appointment of Statutory Agent.

After the Articles and Original Appointment of Agent have been filed with the BSD, the person(s) who acted as incorporator(s) will open shares for subscription. After the occurrence of either (1) the receipt of subscriptions for shares, if an initial stated capital is not set forth in the Articles, or (2) the receipt of subscriptions of shares in such amount that the stated capital of such shares is at least equal to the initial stated capital set forth in the Articles, the incorporators of the company shall give at least 10 days' notice by mail to the shareholders (unless such notice is waived by the shareholders) to call the first shareholder meeting. At this meeting, the shareholders adopt a Code of Regulations (Regulations), elect directors and transact any other business they choose.

APPLICATION PROCESS

The BSD, in compliance with §111.25 of the Code, requires the use of its prescribed corporate forms. Filings submitted on forms not designated by the Secretary of State of

Ohio will not be processed. Forms are available directly from the BSD or through the various corporate service companies

If at the time of submission of paper filing a photocopy of the document is included, the BSD will date and stamp it and return it to you. Upon ultimate processing, the BSD will issue a one-page, official certificate that will include the charter number and the date of incorporation/organization of the new entity. The state no longer attaches copies of the actual documents submitted for filing to the certificates. A subsequent request for a certified copy of the document must be made in order to retain a record of the document. The BSD will accept faxed or photocopied signatures on any filing submitted.

FORMS TO BE FILED

Articles of Incorporation must be submitted to the BSD along with the appropriate filing fee. Refer to the https://ohio.gov for a general discussion on the requirements concerning the preparation of charter documents, naming requirements, and appointing a statutory agent for each type of corporation.

Articles of Incorporation

The Articles of Incorporation constitute the charter of the corporation. Sections 1701.04(A) of the Code state the minimum information required to be included for an Ohio for-profit corporation, which is below:

- The name of the corporation, which must end with or include “Company,” “Co.,” “Corporation,” “Corp.,” “Incorporated” or “Inc.” The corporation’s name may not include any words such as “Bank,” “Banking” or “Trust,” which could imply a relationship with any governmental agency of Ohio, another state or the United States. For a nominal fee, a corporate name may be reserved with the Secretary of State for up to 180 days.
- The location in Ohio of the corporation’s principal office. It should be noted that Ohio requires the office’s city, village or township, and county.
- The authorized number, par value (if any), express terms (if any) and classes (if any) of the corporate shares. Shares are not required to have a par value except in the instances of banking, safe deposit, trust or insurance corporations.
- The corporation’s initial stated capital, if any. A corporation is not required to have a stated capital for a class of shares, but it must have a stated capital at least equal to par value for those classes of stock with a par value.

An incorporator may want to consider including certain additional provisions in the Articles, including:

- **Pre-emptive rights**: In Ohio, the pre-emptive right to additional issues of shares must be included in the Articles (§1701.15 of the Code) for it to exist.
- **Cumulative voting**: The right to cumulative voting for the election of directors is automatic unless the Articles of Incorporation eliminate the right (§1701.55 of the Code).
- **Super-majority voting**: Section 1701.52 of the Code provides that certain corporate transactions, ordinarily requiring a specified minimum vote of shareholders, shall require the affirmative vote of a greater or lesser proportion of outstanding shares *if* the Articles so provide. In no case, however, may the Articles provide for less than a simple majority vote. Examples of such transactions include amendments to the Articles, mergers, dissolutions, and sales of substantially all of the assets. Currently, unless otherwise specified, these transactions must be authorized by a vote of
two-thirds of the shareholders.
- **Non-voting shares**: If a corporation has a class of nonvoting shares, the Articles should expressly state that the holders of such shares are not entitled to notice of any shareholder meeting unless they are required by law to vote on a matter to come before such meeting. Section 1701.54 of the Code necessitates such a provision. Specifically, that section requires all shareholders entitled to notice of a meeting to execute a written action. By making it clear that holders of nonvoting shares are not entitled to notice (unless they are required by law to vote on the matter), this provision seeks to ensure that only holders of voting shares generally need to execute written actions.
- **Merger moratorium**: If a corporation desires to opt out of the provisions of the Ohio Merger Moratorium Statute, a provision to that effect must be included in the Articles. (For an explanation *see* §1704 of the Code). Such a provision may be included in the original Articles or an Amendment. Caution: §1704 imposes conditions on the ability of a corporation to amend its Articles to opt out of this statute, and in certain circumstances limits the effectiveness of such an amendment. Section 1704.05(f) should be carefully reviewed before deciding not to opt out of this statute.
- **Control share acquisitions**: If a corporation desires to opt out of the provisions of the Ohio Control Share Acquisition Statute, a provision to that effect must be included in the Articles or Code of Regulations. (For an explanation *see* §§1701.01 and 1701.831 of the Code). Such a provision may be included in the original Articles or Code of Regulations or through an Amendment to either document.
- **Redemption of shares**: Except for certain specified exceptions, including provision in the Articles or with two-thirds of shareholder vote, a corporation may not redeem shares (§1701.35).

Original Appointment of Statutory Agent

Pursuant to §1701.07(A) of the Code, every corporation must have a statutory agent. The agent may be a natural person who is a resident of Ohio, a domestic corporation or a foreign corporation licensed under Ohio laws, which is authorized by its Articles to act as such. To act as a statutory agent, a foreign corporation must have a business address in the state. To be accepted by the Secretary of State, the Original Appointment of Statutory Agent, which is incorporated into the Articles, must contain the signature of both the incorporator(s) and the person appointed to serve as Statutory Agent.

FILING FEES

Section 111.16 of the Code enumerates the fee schedule for documents filed with the Secretary of State. The filing fee for the Articles for any corporation that has authorized shares is dependent on the number of authorized shares, without regard to par value. There is a minimum fee of $99 to form any corporation that has authorized capital. For $99 the corporation is entitled to a maximum of 990 authorized shares of any class or classes. For corporations authorizing more than 990 shares, the below fees apply. There is no fee for filing an appointment of agent.

NUMBER OF SHARES	PRICE PER SHARE
0 to 1,000	$.10
1,001 to 10,000	$.05
10,001 to 50,000	$.02
50,001 to 100,000	$.01
100,001 to 500,000	$.005
More than 500,000	$.0025

MANAGING CORPORATIONS

Management

The day-to-day operations of an Ohio corporation are managed by the board of directors. Ohio requires that each corporation have at least one director. Once elected, the directors

elect officers and undertake various organizational activities, including ratification of actions taken on behalf of the corporation by its incorporator(s) in opening and accepting subscriptions. Unless the Articles or Regulations provide for a different term, each director shall hold office until the next annual meeting. No director may serve a term exceeding three years. The Articles or Regulations may provide for the classification of directors into two or three classes consisting of not less than three directors each, for classes elected by more than two shareholders, and for terms of office among the several classes that are not uniform (§1701.57 of the Code). Commencing July 6, 2016, the Directors may elect a chairperson of the board who, unless the Articles, Regulations or director resolution otherwise provide, shall not be an officer of the corporation.

Unless the corporation's Articles or Regulations provide otherwise, actions can be taken by the unanimous written consent of shareholders and of directors in lieu of meetings, pursuant to the authority of §1701.54 of the Code. Officers are elected by the directors and perform duties determined by the directors.

Unless the Articles or Regulations otherwise provide, all officers are elected annually. At a minimum, the officers shall consist of a president, secretary and treasurer. If desired, the directors may elect one or more vice presidents, and any other such officers and assistant officers deemed necessary. None of the officers need be a director unless the articles or the regulations otherwise provide or, commencing July 6, 2016, the directors determine that there is to be a chairperson of the board who is to be an officer. In Ohio, any one person may hold any number of offices. However, a corporation needs a second officer because, per §1701.64(A), "no officer shall execute, acknowledge, or verify any instrument in more than one capacity if such instrument is required by law or by the articles, the regulations, or the bylaws to be executed, acknowledged, or verified by two or more officers."

A corporation may, but is not obligated to, indemnify any director, officer, employee, or agent of the corporation who was, is, or is threatened to be, a party to any threatened, pending or completed action of any kind, other than an action by or in the right of the corporation. The indemnified party may be reimbursed for expenses, including attorneys' fees, judgments, fines, and amounts paid in settlement, actually and reasonably incurred by such party in connection with the action, if the indemnified party acted in good faith and in a manner reasonably believed to be not opposed to the best interests of the corporation. No indemnification shall be made regarding any matter with respect to which such person is adjudged to be liable for negligence or misconduct in the performance of his or her duty to the corporation. The determination to indemnify such person may be made (1) by a majority vote of a quorum consisting of disinterested directors; (2) if such a quorum is unattainable, by a written opinion of independent legal counsel who has not been retained by nor performed services for the corporation or any person to be indemnified within the past five years; (3) by the shareholders; or (4) by the Court of Common Pleas or the court in which the action, suit or proceeding referred to was brought.

Shareholders

An annual meeting of shareholders for the election of directors and the consideration of financial statements shall be held on a date provided for in the Articles or the Regulations. The financial statements, which may be consolidated, must include the corporation's balance sheet and its statement of profit and loss, as well as an opinion signed by the president, vice president, treasurer, assistant treasurer or a public accountant certifying that the financial statements fairly present the financial position of the corporation and the results of its operations, in conformity with Generally Accepted Accounting Principles. A corporation has significant flexibility to determine the relative rights and obligations of its shares. As a statutory default, each share is entitled to one vote, preemptive rights and cumulative voting. Decisions properly put before the shareholders will be decided by majority vote, except in the cases of amendments to Articles, sale of substantially all of the corporation's assets, and merger and dissolution, each of which must be approved by at least two-thirds of the shares entitled to vote (a statutory default that may not be reduced below a majority standard). Voting of shares may be accomplished by proxy, voting trust or shareholders' agreement.

Except as provided by law, the Articles or the Regulations of the corporation, the directors may determine when, under what terms, and for what consideration the corporation will issue, dispose of, or receive subscriptions for its stock. Shares may be issued in exchange for money, property or services actually rendered to the corporation, but promissory notes, drafts or other obligations of a subscriber do not constitute payment for the shares.

Unless the corporation's Articles or Regulations provide otherwise, actions can be taken by the unanimous written consent of shareholders and of directors in lieu of meetings, pursuant to the authority of §1701.54 of the Code. Officers are elected by the directors and perform duties determined by the directors.

CORPORATE MERGER, CONVERSION, SALE OF ASSETS & DISSOLUTION

Upon the approval of the directors and two-thirds of the shareholders (a statutory default that may be altered in the Articles, but not below a majority standard), an Ohio corporation may (1) sell substantially all of its assets; (2) consolidate with another corporation; (3) merge with or into one or more domestic and/or one or more foreign corporations, provided that the laws of the foreign jurisdiction authorize the merger or (4) convert into another form of entity, domestic or foreign. In some instances, a merger need not be approved by the shareholders of both corporations. Ohio allows a corporation to dissolve upon the assent of two-thirds of the outstanding voting shares of the corporation (a statutory default that may be altered in the Articles, but not below a majority standard).

A pre-requisite to the filing of a certificate to effect a dissolution, merger, consolidation~~, or conversion~~ for any for-profit corporation, where there is to be no resulting corporation, foreign or domestic, registered in the State of Ohio, is ~~a tax clearance letter from the~~

~~Department of Taxation (DOT). The request must be made by submitting a Form D5 https://tax.ohio.gov/static/forms/tax release/tr-d5-fi.pdf. It is suggested that this form be submitted as early in the process as possible as the DOT takes at least 30 days to process a request.~~the submission of a completed Form D5 (Notification of Dissolution or Surrender) https://dam.assets.ohio.gov/image/upload/v1740413685/tax.ohio.gov/forms/tax-release/tr-d5-fi.pdf. to the Ohio Department of Taxation (DOT). Ohio eliminated the requirement of the submission of a tax clearance letter from the DOT as part of the filing of a certificate to dissolve, merge or consolidate and instead for-profit corporations should choose the Affidavit Method on the form D5 which fulfills the notification requirement to the DOT. For conversions, for-profit corporation must submit a completed Form TR-RQC (Application for Reinstatement/Qualification/Conversion) https://dam.assets.ohio.gov/image/upload/v1740413726/tax.ohio.gov/forms/tax-release/tr-rqc-fi.pdf prior to the filing of the certificate of conversion and should choose the Affidavit Method on the form which fulfills the notification requirement to the DOT as part of the conversion. The Form D5 and TR-RQC may be emailed to the DOT at Taxreleasegroup@tax.ohio.gov All corporations registered in Ohio must submit the Form D5 or Form TR-RQC in connection with any filing which terminates their Ohio existence, but neither nonprofit corporations nor foreign corporations need to submit the tax clearance letter with their filing.

Shareholders in the context of a merger, consolidation, combination or majority share acquisition have the right to dissent from such a transaction. To do so, a dissenting shareholder must have been a record holder of shares of the corporation on the date fixed for determining which shareholders were entitled to notice of the meeting regarding the proposal. Such shares shall not have been voted in favor of the proposal. The dissenting shareholder is required to deliver to the corporation a written demand for payment of the fair cash value of his or her shares no later than 10 days after the day on which the vote on the proposal was taken. Shareholders of a domestic subsidiary corporation being merged into the domestic or foreign parent corporation have 20 days to send such notice to the corporation. Upon receipt of the notice, the corporation may require the shareholder to send his or her stock certificates to be endorsed with a legend to the effect that the demand for fair cash value has been made. A dissenting shareholder's failure to deliver his or her certificates terminates all rights as a dissenting shareholder, at the option of the corporation. If the corporation and dissenting shareholder are unable to reach an agreement regarding fair cash value of the shares, the dissenting shareholder or the corporation may file a complaint in the Court of Common Pleas of the county in which the principal office of the corporation is located within three months after the service of the demand by the dissenting shareholder. At a proceeding before the Court of Common Pleas, the court shall determine from the complaint and other evidence submitted whether the dissenting shareholder is entitled to be paid fair cash value of the shares and may appoint one or more persons as appraisers to determine the value. After the determination of the fair cash value of the shares, the dissenting shareholder shall be paid within 30 days after the later of the final determination of such value, the effective date of the amendment to the Articles or the consummation of the other action involved.

CLOSE CORPORATIONS

According to §1701.591 of the Code, shareholders can enter into an agreement among themselves to construct and operate a corporation much like a partnership. In order to qualify as a close corporation agreement, the agreement must:

- Have been assented to in writing by every person who was a shareholder of the corporation at the time of the agreement
- Be set forth in the Articles, Regulations or other written instrument
- Include a statement that it is governed by §1701.591

In a close corporation agreement, the shareholders may agree to any of the following:

- Eliminating the board of directors
- Conferring upon one or more shareholders the right to dissolve the corporation
- Designating officers and directors of the corporation
- Prohibiting or limiting the issuance or sale by the corporation of any of its shares without the affirmative vote or approval of the holders of all or a proportion of the outstanding shares

Among the sections of the Ohio General Corporation Law that a close corporation agreement may not alter are the forms of consideration acceptable for shares, the statements required on each certificate for shares, the requirements regarding stated capital and the permitted purposes of a corporation.

PROFESSIONAL CORPORATIONS

Professional corporations are subject to the provisions of §1701 of the Code. The process for establishing a professional corporation is similar to that used in establishing a for-profit entity. However, professional corporations must comply with the regulations in §1785 of the Code, which pertains to professional associations in general, as well as any other regulations placed on the specific profession. The incorporator, as well as all shareholders of a professional corporation, must be persons licensed or otherwise legally authorized to render the professional service offered by that corporation. Professional corporations are required to file a report with the BSD certifying that its shareholders meet these qualifications within 30 days of June 30th in each even-numbered year.

FOREIGN CORPORATIONS

Foreign corporations can qualify to do business in Ohio according to §1703.03 of the Code on a temporary (six month) or permanent basis. To obtain a license to transact business in

Ohio, a foreign corporation is required to file with the Secretary of State a certificate of good standing or substance from its state of incorporation, dated not more than 90 days prior to the receipt of the application by the secretary. In addition, the foreign corporation is required to file an application stating the following items:

- Name of the corporation
- Name of the state under which it is incorporated
- Location and address of its principal office
- Name of the county and municipal corporation in Ohio where the principal office (if any) is to be located
- Appointment and consent of a statutory agent
- Summary of the corporate purposes to be exercised within Ohio

Foreign corporations holding temporary licenses are not required to file any other reports or pay any other fees required by §1703.01 but are subject to all other provisions of such sections. No foreign corporation may be granted more than two temporary licenses within any period of three years. The filing fee is $99.

NONPROFIT CORPORATIONS

Nonprofit corporations are governed by Chapter 1702 of the Code. A nonprofit corporation is defined in § 1702.01 of the Code as a domestic or foreign corporation organized otherwise than for pecuniary gain. In Ohio, nonprofit corporations are organized and operate in ways similar to for-profit corporations. The basic difference is that the nonprofit corporation has no shareholders. Instead, the nonprofit corporation has one or more members, who are generally not entitled to receive any of the profits of the corporation. If the nonprofit corporation does not specify its members, the nonprofit corporation's board of directors also function as its members.

FORMATION

As with for-profit corporations, any person, singly or jointly with others, and without regard to residence, domicile or state of incorporation, may form a nonprofit corporation in Ohio. The formation is achieved by signing and filing Articles of Incorporation with the Secretary of State. The fee for filing is $99. Pursuant to § 1702.04(A) of the Code, the Articles must state the information listed below:

- **Name of the corporation**: There is no required corporate ending such as "company" or "Inc." for the name of a nonprofit corporation.

- **Location of the principal office**: Nonprofit corporations must note the county in which the office sits.
- **Purpose(s) for which the corporation is formed**: A general-purposes clause is not acceptable for a nonprofit corporation – specific objectives must be identified.

The Articles may also include any of the optional provisions described in § 1702.04(B) of the Code.

Section 1702.06 of the Code mandates that, simultaneous with the filing of the Articles, the nonprofit corporation must appoint a statutory agent. The agent must consent to the appointment. There is no fee for appointing the agent. Once the Articles have been filed with the BSD, the nonprofit corporation's members or directors may adopt a Code of Regulations and undertake any other required or desired organizational activity.

Nonprofit corporations are required to make subsequent filings of continued existence every five years, which must contain the corporation's name, location of its principal office, date of incorporation, a certification of the fact that it is still actively engaged in exercising its powers and the name and address of its statutory agent. The filing fee is $25.

NONPROFIT LIMITED LIABILITY COMPANIES

Ohio also recognizes nonprofit limited liability companies. A nonprofit limited liability company is formed by filing Articles or Organization with the BSD in the same manner as a limited liability company organized for profit. The only difference is that the organizer must specify that the Articles are for a nonprofit limited liability company. The fee for filing the Articles of Organization is $99. The Articles must be accompanied by an appointment of statutory agent, including the agent's consent to the appointment.

A nonprofit limited liability company is organized under and generally governed by Chapter 1706 of the Code and is not subject to the requirements of Chapter 1702 of the Code. A nonprofit limited liability company may, but is not required to, adopt a charitable purpose clause similar to that of a nonprofit corporation.

FOREIGN NONPROFIT CORPORATIONS/LIMITED LIABILITY COMPANIES

Foreign nonprofit corporations must file the same certificate of good standing and application required of foreign for-profit corporations under § 1703.27 of the Code. Foreign nonprofit limited liability companies must file the same registration required of foreign for-profit limited liability companies under § 1706.511 of the Code. The filing fee for either form is $99.

UNINCORPORATED NONPROFIT ASSOCIATIONS

Unincorporated nonprofit associations are subject to Chapter 1745 of the Code. They are not necessarily obligated to make any filings with the Secretary of State but may file an appointment of a statutory agent to receive service of process and, if they have done so, then upon dissolution, must file a copy of a written notice of dissolution.

OHIO ATTORNEY GENERAL FILINGS

All nonprofit entities that qualify as a charitable trust under §109.23 of the Code (a broadly defined term which includes, among others, all 501(c)(3) tax-exempt organizations) are required to register with the Ohio Attorney General's office within six months after formation, in addition to any required federal filings, unless they are otherwise exempt under §109.26. If the charitable trust is required to register, it is also required to submit an annual report to the Ohio Attorney General's office thereafter. The annual report must be filed by the 15th day of the fifth month following the close of the fiscal year, or at the same time the federal return is required and must include a copy of the organization's federal tax returns accompanied by a filing fee of between $0 and $200, depending on the total value of the organization's assets.

Chapter 1716 of the Code also requires nonprofit entities that solicit charitable contributions in Ohio and not otherwise exempt under §1716.03, to register with the Ohio Attorney General's office before making any solicitations, and thereafter, register annually by the 15th day of the fifth month following the close of the fiscal year. The filing fee for the charitable solicitation registration is between $0 and $200, depending on the amount of contributions the organization receives.

Registration, to the extent possible, must now be accomplished online. The link to online registration, as well as helpful user guides, is found here. You will need to be prepared to upload each of the following: Articles of incorporation/association; Code of Regulations and the Federal Tax Exemption Determination Letter. Pursuant to §109:1-104 of the Ohio Administrative Code, all required documents related to registration and annual reports for charitable trusts that cannot be accepted through the on-line filing system and all correspondence may also be directed to the "Ohio Attorney General, Charitable Law Section, ~~150 East Gay Street, 23rd~~30 E. Broad St., 25th Floor, Columbus, Ohio ~~43215-3130~~43215."

More information regarding the Charitable Law section of the Attorney General's office, including frequently asked questions, is found here.

Additionally, you may contact the Office of the Attorney General by phone, live chat or email inquiry here.

PARTNERSHIPS

A partnership is an association of two or more persons to carry on as co-owners of a for-profit business. An advantage of partnerships over corporations lies in the tax treatment. Partnerships are taxed as pass-through entities by the State of Ohio. A partnership pays no federal or state income taxes – instead, profits and losses are allocated to individual partners in accordance with the partnership agreement. Each partner includes allocated income with his or her other income and pays taxes on it at his or her respective rate. However, any partnership that has at least one investor who is either (a) an individual and not a resident of Ohio or (b) a non-individual that does not have a constitutional nexus to Ohio and does not submit a written statement to the partnership stating that it has a constitutional nexus, is subject to a withholding tax as determined by §5733.42 of the Code.

The three types of partnerships permitted under Ohio law are below with their distinguishing feature.

- General: Only general partners
- Limited: At least one general partner and at least one limited partner
- Registered limited liability (LLPs): General partners whose liability is limited

GENERAL PARTNERSHIPS

Ohio adopted the Uniform Partnership Law as §1775 of the Code. In regulating the organization and operation of general partnerships, it provides considerable freedom for partners to agree among themselves on the terms which will govern their partnership.

Organization

Unlike corporations or limited partnerships, no certificate or other document need be filed with the Secretary of State or any other governmental entity in order to establish a general partnership. This partnership may even be based on an oral agreement between partners, although a written agreement is prudent. The partnership may optionally file a Statement of Partnership Authority with the BSD which will expire after five years unless sooner renewed. The partnership may, from time to time, be required to provide a certified copy of such a statement as evidence of the partnership's authority to engage in a transaction. The statutory requirement to file a fictitious name certificate with the County Recorder where the principal office is located for a partnership whose name does not reflect the names of each of the partners has been repealed as to all partnerships, but a general partnership may optionally choose to make a trade name filing under the provisions of §1329 of the Code as a way to protect its name.

Existence and Dissolution

One disadvantage of general partnerships is that unlike corporations, their existence does not continue indefinitely. Ohio Rev. Code §1775.30 provides a number of events that will cause the "dissolution" of a general partnership, including the resignation, death or bankruptcy of a partner. The dissolution of a general partnership generally requires the partners to liquidate the business of the general partnership. However, when the dissolution is triggered inadvertently, such as upon the death or retirement of one partner, the remaining partners may agree to forego dissolution and continue the business of the general partnership. If the remaining partners cannot reach an agreement with the withdrawn partner as to the continuation of the business, that partner or the partner's estate may obtain an accounting of that partner's interest. Any general partnership which has filed a Statement of Partnership Authority with the BSD, may, upon dissolution, file a Statement of Dissolution.

Liability of Partners

A notable feature of general partnerships is that partners are jointly liable to third parties for partnership obligations. Therefore, the partnership does not afford partners limited liability in the manner that corporations shield shareholders, officers, and directors from liability for corporate obligations.

LIMITED PARTNERSHIPS

Chapter 1782.01(H) of the Code defines a limited partnership as a partnership formed by two or more people under the laws of the state, having as members one or more general partners and one or more limited partners. Ohio has substantially adopted the Revised Uniform Limited Partnership Act (RULPA). However, the state has affected a number of changes to the act to restrict transferability and withdrawal rights of limited partners.

Organization

A limited partnership must consist of at least one general partner and one limited partner. To form a limited partnership, all the general partners must execute and file a Certificate of Limited Partnership with the Secretary of State, along with a check in the amount of $99. The certificate must contain the name and principal address of the partnership, name and address of the statutory agent, name and address of each general partner, and any optional provisions desired. The name of a limited partnership must contain either "Limited Partnership," "Limited," "L.P." or "Ltd." and must be distinguishable from the name of any existing corporation or limited partnership organized or registered in Ohio.

Existence and Dissolution

After the formation of a limited partnership, general partners may generally be admitted with the consent of all limited and general partners. Limited partners may not withdraw from the partnership unless authorized by the partnership agreement. Unlike a general

partnership, the death, withdrawal, or expulsion of a general partner does not result automatically in the dissolution of the partnership unless the last remaining general partner dies or withdraws. In this case, the remaining limited partners must elect to continue the partnership and appoint a new general partner within 90 days of the last remaining general partner's death or withdrawal.

Liability of Partners

The primary advantage of limited partnerships is that they are afforded limited liability in much the same manner as shareholders of a corporation. A limited partner is not liable for the obligations of the partnership beyond the amount of his or her capital contribution, so long as the limited partner does not participate in the control of the partnership business. Therefore, limited partners are usually passive investors, while the general partners manage and control the business of the partnership. Nonetheless, Ohio law details various powers that a limited partner may exercise without constituting participation in the control of the business of the partnership, and therefore without subjecting the partner to liability for partnership debts. These powers include serving as an agent or employee of the limited partnership, consulting with or advising the general partner on the business of the partnership and voting on matters such as the sale or mortgage of substantially all of the partnership's assets.

Out-of-State Limited Partnerships

A limited partnership that is organized in a state other than Ohio may register to transact business in Ohio. To register, a general partner must file a certificate with the Secretary of the State of Ohio stating basic information about the partnership such as its name, address of its principal office, and name and business address of each general partner of the partnership. An out-of-state limited partnership may register to transact business in Ohio under the name under which it is registered in the state of organization, or under any other name, so long as the name is distinguishable from the name of any existing corporation or limited partnership organized or registered in Ohio, and so long as it contains either the words "Limited Partnership," "Limited," "L.P." or "Ltd." Note that under Ohio common law an attorney is deemed to represent each of the partners in addition to the entity.

REGISTERED LIMITED LIABILITY PARTNERSHIPS (LLPS)

Organization

In order to become a registered partnership with limited liability in Ohio, it is necessary to file an Application for Registration with the BSD. The filing fee is $99. To satisfy the requirements of §1775.61 of the Code, the application must contain the following items:

- Name of the partnership

- Address of the partnership's principal office, or if the partnership's principal office is not located in this state, the address of the partnership office filing for registration and the name and address of a statutory agent upon whom any process, notice or demand may be served
- Brief statement of the business in which the partnership engages
- Statement indicating that the partnership is applying for status as a limited liability partnership
- Effective date of the registration, which may be on or after the date of the filing of the registration application

The name of the partnership must contain as the last word in the name either "Registered Partnership Having Limited Liability," "Limited Liability Partnership," "P.L.L.," "PLL," "L.L.P." or "LLP." The partnership must file a biennial report in July of odd-numbered years verifying or updating the information contained in the registration application. This report must be made on a form prescribed and furnished by the Ohio Secretary of State (Form PLA), and it must be signed by a majority interest of the partners or by one or more partners authorized by the partnership to execute the application.

Liability of Partners

Partners in LLPs are not liable for partnership obligations that occur as a result of the negligence, wrongful acts, omissions or misconduct of another partner or an employee not under the supervision of the partner. However, Ohio has a partial shield statute. It is widely recognized by commentators that partners operating under partial shield statutes remain liable not only for any negligence or malpractice committed by the partner or by someone that the partner directly supervises, but also for the partnership's contract obligations, including general debts, loans, and lease obligations.

OHIO LIMITED LIABILITY COMPANIES

An Ohio limited liability company is a legal entity separate from its members. Ohio statutes governing limited liability companies are found in Chapter 1706 of the Code and may be cited as the "Ohio Revised Limited Liability Company Act." Enacted in April 2021 and based on the Protype LLC Act drafted by a committee of the American Bar Association, this chapter (herein the "LLC Act") replaces in its entirety repealed §1705 and provides a flexible mechanism for organizing a company with the limited liability of a corporation and the organizational flexibility of a partnership. A limited liability company may be formed by one or more persons, without regard to residence, domicile, or state of organization.

This type of company is formed after the signing and filing of its Articles of Organization with the Secretary of State. The Articles must include the following items:

- **Name of company**: The name of a limited liability company must include the words "Limited Liability Company," "LLC," "L.L.C.," "Limited," or "Ltd."
- **Series LLC**: If applicable, a statement that the limited liability company may have one or more series of assets which are subject to the limits on enforceability provided by Section 1706.761(A) of the LLC Act.
- **Duration of the company**: If the Articles or Operating Agreement do not set forth the period of duration of the company, its duration shall be perpetual.
- **Any other provisions** that are not inconsistent with applicable law that the organizers or members elect to set out in the Articles, for the regulation of the affairs of the Company.

The fee for filing the Articles of Organization is $99, and the form incorporates an appointment of statutory agent, which must be either an individual who is a resident of Ohio, or a domestic corporation, or a foreign corporation licensed under the laws of Ohio. Additionally, the agent's acceptance of the appointment must be included.

Upon filing, the organization is governed in accordance with the terms of the Operating Agreement (as such term is defined in Section 1706.01(R) of the LLC Act). This agreement describes the basic ground rules for company operation and is not statutorily required; however, it is strongly recommended. Company management, by default, rests with the Members, as per Section 1706.30 of the LLC Act, but the agreement or the Members may designate any person, whether they be designated as a manager, a director, an officer or otherwise, to manage all or part of the activities of the company.

The Operating Agreement may provide the following information:

- Restrictions on the transfer of ownership interests in the company. Profits and losses may be divided among the members in any agreed manner. If no division is stated, profits and losses should be apportioned in proportion to the contributions made by the members.
- Situations under which the company's existence will terminate.
- Grant to all or a specified group of its members the right to vote on a per capita or other basis upon any matter.

An Ohio LLC is permitted to indemnify its members or other persons, but the LLC Act, unlike the predecessor statute, does not provide any specificity to fall back upon, so consideration should be given to the inclusion of specific provisions in the operating agreement.

OTHER ASSOCIATE FORMS

COOPERATIVES

The Ohio Cooperative Law (§1729 of the Ohio Revised Code (Code)) was revised extensively in August 1998 and now states that a cooperative can be formed for any lawful purpose permitted to corporations by the laws of Ohio. Cooperatives are considered nonprofit organizations because they are not organized to make profits for themselves, but rather for their members as patrons. A cooperative must have at least two members, except that a single-member cooperative may be formed if that member is itself an association that has two or more members.

A cooperative is formed upon the signing and filing of its Articles of Incorporation with the Secretary of State accompanied by an appointment of a statutory agent, which agent must be a natural person or a corporation with an address in Ohio. The Articles must include the following:

- **The name of the cooperative**: The name must include the word or abbreviation "Cooperative," "Coop," "Co-operative," "Co-op," "Association," "Assn.," "Company," "Co.," "Incorporated," "Inc.," "Corporation," or "Corp."
- **The purposes of the association**: It is sufficient to state that the association may engage in any activity within the purposes for which the association may be organized under §1729.
- **The county and municipal corporation or township of the principal place of business**
- **The names and addresses of the incorporators**
- **The number, names, and addresses of the initial directors**: An association's board of directors is vested with all authority in the association. The board must consist of at least five directors, except in the case of a cooperative with fewer than five members, in which case the board shall have a number of directors at least equal to the number of members.
- **Whether the cooperative is organized with or without capital stock**

JOINT VENTURES

A joint venture involves an association of people with the intent to carry out a single business venture for profit. A contract, either expressed or implied, is essential to create a joint venture. The duration of a joint venture may either be fixed by a contract between the participants, or if no date is fixed by the contract, the agreement remains in force until its purpose is accomplished. Joint ventures are not considered separate entities in Ohio.

Therefore, provided that the joint venture is not itself incorporated or otherwise organized statutorily, the endeavor will be treated and taxed as a general partnership.

DISTRIBUTORS AND SALES REPRESENTATIVES

The use of distributors and sales representatives is a function of contract law rather than a statutorily recognized organization. Typically, both distributors and sales representatives promote the sale of the products of another. The difference between the two is that distributors hold the third party's products in stock and make the sale directly, while sales representatives act as facilitators to broker an agreement between producer and customer.

SOLE PROPRIETORSHIP

A sole proprietorship is the simplest business entity: One person engaging in business for himself. Sole proprietorships are treated much like general partnerships, with unlimited personal liability and taxation at the individual level. If the sole proprietor is planning on transacting business under a name other than his or her own, he must file a fictitious name registration with the county recorder of the county in which the sole proprietor has its principal office, and each county in which the business owns real property.

INTELLECTUAL PROPERTY

TRADE SECRET LAW

In 1994, Ohio adopted its version of the Uniform Trade Secrets Act (UTSA). It preempts other Ohio laws providing civil remedies for misappropriation of a trade secret, except for remedies arising under contract.

The Ohio Uniform Trade Secret Act, Ohio Revised Code §1333.61 *et seq.* (OUTSA), closely resembles the Uniform Trade Secrets Act. Under OUTSA, any information which derives independent economic value from not being generally known and not being readily ascertainable by proper means can qualify as a trade secret, so long as reasonable efforts are made to keep it secret. Misappropriation of a trade secret under OUTSA includes the improper acquisition of the trade secret, as well as its unauthorized disclosure or use. Monetary damages for misappropriation include the actual loss caused by the misappropriation, as well as any unjust enrichment received by the misappropriator that is not taken into account in calculating actual loss. In lieu of these damages, monetary damages may also be measured by a reasonable royalty that is equitable under the circumstances considering the loss to the complainant, the benefit to the misappropriator, or both. Injunctive relief may also be obtained under OUTSA to prevent any actual or threatened misappropriation. Any such injunction will terminate when the trade secret expires, unless the termination will likely provide the misappropriator with commercial advantage.

OUTSA differs from the UTSA in that the statute of limitations under OUTSA is four years rather than three, and treble rather than double damages can be obtained for willful and malicious misappropriation. In addition, where an injunction issues to prevent actual or threatened misappropriation of a trade secret, OUTSA provides for a mandatory rather than discretionary continuation of the injunction until any likely commercial advantage derived by the misappropriator is eliminated, even if the trade secret expires.

TRADEMARKS AND SERVICE MARKS

In Ohio, rights in trademarks and service marks are obtained by adoption and use and, once obtained, are protected under Ohio common law and by statute (Ohio Revised Code §1329.54 *et seq*.). Rights in a mark are maintained as long as the mark remains in use or is not abandoned. Use and abandonment are defined by Ohio statute in a manner

conforming with the Lanham Act. Both trademarks and service marks can be registered, but registration is not required to protect the mark.

A mark can be registered in Ohio by filing a verified application with the Ohio Secretary of State, submitting a specimen of use and paying the required fee. Limitations on the registration parallel those in Section 2 of the Lanham Act. The application is examined, although this examination is not as extensive as for federal registration. If the application meets all statutory requirements, a certificate of registration is issued. Unlike a federal registration, an Ohio registration is merely proof of registration, not of any fact recited in the registration.

Registration is effective for 10 years and, if the mark is still in use, can be renewed in perpetuity for additional 10-year periods. Renewal is effected by filing the required renewal form during the last six months of the current term, submitting a current specimen of use with a description of the mark as it appears on the specimen, and paying the required fee.

A registered mark can be assigned along with the goodwill of the business in which the mark is used. Assignment is effected by a duly executed legal instrument of transfer, which may be recorded with the secretary of state on payment of the applicable fee.

For determining infringement under Ohio law, the courts apply the same likelihood of confusion analysis applied by the sixth circuit under the Lanham Act. An action for infringement, whether under common law or statute, may seek both injunctive and monetary relief.

Ohio law also provides a claim for relief to persons injured by any false or fraudulent representation or declaration made in connection with an application to register or registration of a mark.

TRADE NAMES AND FICTITIOUS NAMES

Rights in trade names are obtained under Ohio common law by adoption and use, and, once obtained, are protected. However, unlike trademarks or service marks, some form of government filing is required before an action for enforcement can be undertaken.

Under Ohio law, a trade name is a name used to designate the business or trade of the user (Ohio Revised Code §1329.01 *et seq*.). A fictitious name is a name used in business that (1) is not the correct legal name of the entity, (2) has not been registered as a trade name, or (3) is not entitled to be registered as a trade name. Names that are not entitled to be registered are those that falsely suggest a connection to a government agency or an incorporation status. Names which are indistinguishable from an already-registered name or mark of another entity also cannot be registered, unless written consent from the other entity is obtained.

The user of a trade name in Ohio must either (a) apply to register the name with the Ohio Secretary of State or, (b) if the name is fictitious, report use of the name to the Ohio Secretary of State. If not, the user may not commence or maintain a civil action in Ohio courts to enforce any contract or transaction made in the trade or fictitious name (Ohio Revised Code §1329.10). Also, the user of a fictitious name is subject to injunctive action if the fictitious name is not reported to the attorney general within 30 days of first use in Ohio.

Trade name registrations and fictitious name reports are effective for an initial term of five years and, as long as the name remains in use, can be renewed in perpetuity for additional five-year terms. Renewal is effected by filing the appropriate renewal form in the last six months of the current term and paying the required fee.

Trade and fictitious names can be assigned by executing the prescribed form and may be recorded with the secretary of state on payment of the applicable fee.

DILUTION

There are no Ohio statutes that provide protection against the dilution of a trademark, service mark or trade name in Ohio. Ohio cases recognize a claim for dilution. One federal case applying Ohio law held that a dilution claim would withstand a summary judgment motion where the mark was not nationally famous but was "strong in a particular geographical or product area" (*Ameritech, Inc. v. American Info. Technologies Corp*., 811 F.2d 960 (6th Cir. 1987)). Another federal court applying Ohio law declined to dismiss a dilution claim where the mark was alleged merely to be "strong" (*Universal Tube & Rollform Equipment Corporation v. Youtube, Inc.*, 504 F. Supp.2d 260 (N.D. Ohio 2007)).

UNFAIR COMPETITION

Ohio common law recognizes a claim for unfair competition on which injunctive and monetary relief may be awarded. A wide variety of conduct has been held to be unfair competition under Ohio common law, including palming off, commercial disparagement, and infringement of unregistered marks, names or trade dress.

Ohio codified much of its common law of unfair competition when it enacted the Ohio Deceptive Trade Practices Act, Ohio Revised Code §4165.01 et seq. (ODTPA). The ODTPA defines a wide range of questionable business conduct (e.g., palming off or causing a likelihood of confusion) as unfair. In addition, the Act also defines certain specific types of conduct (e.g., bait and switch advertising) as unfair.

Persons likely to be damaged by unfair conduct may seek injunctive relief. Persons actually harmed may also seek monetary relief, including reasonable attorneys' fees where the offending conduct is willful. Attorney's fees are also available for defendants who demonstrate that a suit was groundless.

NONCOMPETITION CLAUSES

Under Ohio law, a covenant not to compete will be deemed enforceable where the business interests of the party seeking to enforce the covenant are determined to be sufficient (*Raimonde v. Van Vlerah,* (1975) 42 Ohio St. 2d 21). In ***Lake Land Empl. Group of Akron, LLC v. Columber*** (2004) 101 Ohio St. 3d 242, the Ohio Supreme Court ruled that continued at-will employment constitutes sufficient consideration to support a noncompetition agreement entered into after the employee's at-will employment began.

If it is determined that the aggrieved employer has an interest that requires protection, Ohio courts will evaluate whether the restrictions imposed by the covenant are reasonable. A covenant not to compete will be deemed reasonable if:

- It is not greater than is required for the protection of the employer
- It does not impose undue hardship on the employee
- It is not injurious to the public

Ohio courts consider the following factors when assessing the reasonableness of a covenant not to compete:

- Absence or presence of limitations as to time and space
- Whether the employee represents the sole contact with the customer
- Whether the employee is possessed with confidential information or trade secrets
- Whether the covenant seeks to eliminate competition which would be unfair to the employer or merely seeks to eliminate ordinary competition
- Whether the covenant seeks to stifle the inherent skill and experience of the employee
- Whether the benefit to the employer is disproportional to the detriment to the employee
- Whether the covenant operates as a bar to the employee's sole means of support
- Whether the employee's talent which the employer seeks to suppress was actually developed during the period of employment
- Whether the forbidden employment is merely incidental to the main employment

In Ohio, the court has the authority to "reform" the covenant if the court deems the covenant to be unreasonable, such that it protects the employer's legitimate business

interests and the original intent of the parties as modified by the extent of the law. The court will then enforce the modified version of the covenant.

RIGHT OF PUBLICITY

As of 1999, commercial rights in an individual's "persona" (*i.e.*, name, voice, likeness, etc.) are protected by statute in Ohio (*See* Ohio Revised Code §2741.01 *et seq*). Such rights are restricted to Ohio residents and last for the individual's lifetime plus 60 years thereafter; they are transferable and descendible (*i.e.*, by contract, gift, will, etc.).

A civil action may be brought to enforce such rights within four years of a violation, and an injured party may be awarded actual or statutory damages ($2,500 to $10,000), as well as injunctive relief and impoundment and destruction of goods made in violation of such rights. In certain instances, exemplary, punitive or treble damages (against a defendant who knowingly violated another's Right of Publicity) are also available.

There are "fair use" exceptions to these rights for, *e.g.*, literary, dramatic, or historical works, political or newsworthy materials, works of art, and other uses protected by the First Amendment.

PATENT LAW

Rooted in Article I, Section 8, Clause 8 of the U.S. Constitution, patent law has been deemed the domain of the federal government. Any state-specific laws relating to patents are generally prohibited under the preemption doctrine. The United States Patent and Trademark Office (USPTO) is the federal agency within the Department of Commerce that handles patent matters. Attorneys (or agent practitioners) within Ohio, who are registered with the USPTO, are able to file applications for utility, design and plant patents on behalf of companies located or doing business in Ohio. Likewise, these attorneys/agents are authorized to handle patent-related formalities and substantive matters, such as interviewing patent examiners and appealing negative decisions to the Patent Trial and Appeal Board (PTAB), on behalf of clients in Ohio.

GOVERNMENT RELATIONS

OHIO GOVERNMENT RELATIONS OVERVIEW

EXECUTIVE BRANCH

The executive branch of Ohio's state government includes six elected officials: the Governor and Lieutenant Governor (elected as a team), the Attorney General, the Secretary of State, the Auditor of State and the Treasurer of State. All are elected in even-numbered, nonpresidential election years to serve four-year terms.

- **Governor and Lt. Governor**: The Governor is the chief executive officer of the state, responsible for overseeing the state departments, agencies, boards and commissions responsible for administering state laws and implementing state policy. Ohio's Lt. Governor, in addition to duties as Lt. Governor, also frequently serves as the director of one of the cabinet departments or as the head of special offices within the Office of the Governor focused on specific issues like workforce development or technology innovation.

- **Secretary of State**: The Secretary of State serves two primary roles as Ohio's chief election officer and as the office responsible granting authority to do business in Ohio. As Ohio's chief elections officer, the Secretary of State oversees the elections process and appoints the members of boards of elections in each of Ohio's 88 counties. The Secretary of State's election duties also include the administration of the state's campaign finance laws. The Business Services Division receives and approves articles of incorporation for Ohio business entities and grants licenses to out-of-state corporations seeking to do business in Ohio. Limited partnerships and limited liability companies also file with the Secretary of State's Office. The Secretary of State's Office also provides documentation certification services, licenses ministers, and maintains records of all registered notaries in Ohio.

- **Attorney General**: The Attorney General serves as the state's chief law officer. The office consists of nearly 30 distinct sections, which, among other duties, advocate for consumers and victims of crime, support the criminal justice community, provide legal counsel for state offices and agencies, and enforce certain laws. The Attorney General's Office also serves the registrar and regulator for charities raising funds in the state.

- **Auditor of State**: The Auditor is the state's chief compliance officer and is responsible for auditing all public offices in Ohio — more than 5,900 entities — including cities, counties, villages, townships, schools, state universities and public libraries as well as all state agencies, boards and commissions. The Auditor's office also offers performance auditing for state and local public offices, identifies and investigates fraud in public agencies, provides financial services to local governments and promotes transparency in government.

- **Treasurer of State**: The Treasurer of Ohio is responsible for collecting and safeguarding taxes and fees and managing state investments. As of Fiscal Year ~~2020~~2023, the office was custodian for more than $~~232~~249 billion in financial assets and managed an investment portfolio that exceeds $~~29.8~~30 billion. The Treasurer's Office also houses the Ohio Checkbook which provides real-time state financial and transactional data.

LEGISLATIVE BRANCH

The legislative power of Ohio is vested in the General Assembly, comprised of the House of Representatives and the Senate. The General Assembly has three fundamental powers:

- Political Power: to provide for the establishment, organization, and operation of government;
- Police Power: to promote the public peace, health, safety, and welfare; and
- Taxing Power: to raise revenue to pay for government facilities and operations.

The Ohio General Assembly convenes a new legislative session every two years on the first Monday in January of the odd-numbered years. There is no limit on the days the General Assembly may convene and thus remains in session until December 31 of the following even-numbered year. While in session, the General Assembly generally meets Tuesday through Thursday.

The state is divided into 99 House districts and 33 Senate districts. Representatives may serve up to four consecutive two-year terms, while Senators may serve two consecutive, four-year terms. All 99 House members are up for election every two years, whereas Senators' terms are staggered with at least half of the members up for the election in any one election year.

The House is led by the Speaker of the House, with the assistance of the Speaker Pro Tempore, Majority Floor Leader, Majority Whip and Assistant Majority Whip. The minority caucus in the House is led by the Minority Leader along with the Assistant Minority Leader, Minority Whip and Assistant Minority Whip. In the current ~~134th~~136th General Assembly, the Republican party serves in the majority with ~~64~~65 members with the Democrats in the minority with ~~35~~34 members.

The Senate is led by the Senate President, along with the President Pro Tempore, Majority Floor Leader and Majority Whip. The Senate Minority Caucus is led by the Minority Leader, Assistant Minority Leader, Minority Whip and Assistant Minority Whip. In the current ~~134th~~136th General Assembly, the Republican party serves in the majority with ~~25~~24 members with the Democrats in the minority with ~~eight~~nine members.

JUDICIAL BRANCH

The Ohio Supreme Court is the court of last resort in Ohio. In addition to its duties to rule on matters of law, the Supreme Court is the administrative head of the state's judicial branch. The Supreme Court also makes the rules governing practice and procedure in the state's courts, such as the Rules of Evidence and Rules of Civil Procedure. The Supreme Court also has exclusive authority to regulate admission to the practice of law, the discipline of attorneys admitted to practice, and all other matters relating to the practice of law.

The Chief Justice and six Justices are elected to six-year terms on a nonpartisan ballot. Two Justices are chosen at the general election in even-numbered years. In the year when the Chief Justice is on the ballot, voters elect three members of the Court. Appointments are made by the governor for vacancies that occur between elections.

The Courts of Appeal are the intermediate level appellate courts and hear appeals from the various trial courts. Each case at a court of appeals is heard and decided by a three-judge panel. The state is divided into 12 appellate districts, each served by an appellate court. The number of judges in each district depends on factors such as the district's population and the court's caseload. Each district has a minimum of four appellate judges elected in nonpartisan elections to six-year terms in even-numbered years.

There are three types of trial courts in Ohio: the Courts of Common Pleas, the Municipal and County Courts, and the Court of Claims.

Each of the 88 counties is served by a Court of Common Pleas, which hears criminal felony cases and cases where the amount in controversy is more than $500. Specific Courts of Common Pleas may be divided into separate divisions by the General Assembly to hear specific matters, including general, domestic relations, juvenile and probate divisions. The creation of divisions in a county typically depends on the caseload of the court. Judges on the Court of Common Pleas are elected to six-year terms in a nonpartisan election.

Municipal and county courts have authority to conduct preliminary hearings in criminal felony cases, have original jurisdiction over traffic and non-traffic misdemeanors and may hear civil cases in which the amount in dispute does not exceed $15,000. The geographic extent of these courts varies by locality. A municipal court judge may have jurisdiction in one or more municipalities, across county borders, in adjacent townships, or throughout an entire county. County courts are needed if an area of a county is not served by a municipal

court. Municipal court and county court judges are elected to six-year terms on a nonpartisan judicial ballot.

The Court of Claims is a special court that has original jurisdiction to hear and determine all civil actions filed against the State of Ohio and its agencies. The Chief Justice of the Supreme Court assigns judges to hear such cases. In almost every instance, a single judge will hear a case, but the Chief Justice may assign a panel of three judges to a civil action that presents novel or complex issues of law and fact.

Ohio also has Mayor's courts which are not part of the judicial branch of Ohio. The mayor of a municipality populated by more than 200 people where there is no municipal court may hear cases involving violations of local ordinances and state traffic laws.

LOCAL GOVERNMENT

There are several levels of local government in Ohio: counties, municipalities (cities and villages), townships, special districts and school districts.

Ohio is divided into 88 counties. The Ohio Revised Code defines the structure for county government, although they may also adopt charters for home rule. With the exception of Summit and Cuyahoga counties, which are governed by an executive-county council model, the counties are governed by an elected three-member board of county commissioners. Other county elected officials include Sheriff, Coroner, Auditor, Treasurer, Clerk of the Court of Common Pleas, Prosecutor, Engineer and Recorder.

There are more than 900 municipalities in Ohio. Municipalities in Ohio have full home rule powers, and may adopt a charter, ordinances and resolutions for self-government. While each municipality may choose its own form of government, most have elected mayors and city councils or city commissions.

Ohio's 1,308 townships are governed by an elected three-member board of township trustees, as well as an elected fiscal officer. Townships may have limited home rule powers. Ohio townships most commonly provide residents with services such as road maintenance, cemetery management, police and fire protection, emergency medical services, solid waste disposal, and zoning.

Ohio has a large number of special districts dedicated to providing specialized services to the public. These districts, which typically have taxing authority, are diverse and examples include: library districts, parks and recreation districts, joint economic development districts, soil and water conservation districts, hospital districts and others.

There are more than 600 city, local, and exempted village school districts providing K-12 education in Ohio, as well as about four dozen joint vocation school districts which are separate from the K-12 districts. Each city school district, local school district, or exempted village school district is governed by an elected board of education.

HOME RULE AUTHORITY

The Ohio Constitution grants municipal corporations, and to lesser extent townships, home rule powers – meaning that laws passed by the General Assembly that interfere with the home rule authority may be invalid as applied to municipal corporations. The home rule powers include the power of local self-government, the exercise of certain police powers and the ownership and operation of public utilities.

It is important to note that although many court cases have interpreted Ohio's home rule powers and have established some basic principles, they have not traditionally been consistently applied. Home rule questions are open to interpretation and are typically decided on a case-by-case basis.

OHIO'S FEDERAL DELEGATION

Members of the House of Representatives are elected for two-year terms, with no term limits. Elections take place in even-numbered years, with terms beginning the following January. Ohio is currently served by ~~16~~15 representatives, ~~but that number will be reduced to 15 in 2023 due to redistricting following the results of the 2020 census. The~~with the current delegation ~~contains 12~~containing 10 Republican members and ~~four~~five Democratic members.

Senators are elected on a statewide basis to six-year terms, with no term limits. Senator ~~Sherrod Brown (D~~Bernie Moreno (R) is in the Senate's Class I. Senators in Class I were elected to office in the November ~~2018~~2024 general election and will serve through January 3, ~~2025~~2031. Senator ~~Rob Portman~~Jon Husted (R) is in Class III~~,~~. While Class III members ~~of which~~ were elected to office in the November ~~2016~~2022 general election and will serve through January ~~2, 2023. Senator Portman is not running for re-election.~~3, 2029, Senator Husted was sworn in on January 18, 2025, after being appointed by Governor Mike DeWine to fall the vacant seat created by the resignation of J.D. Vance, who became vice president. Senator Husted, who previously served as the state' lieutenant governor, will serve until a special election in November 2026, the winner of which will serve the remainder of Vance's term.

LOBBYING

Under state law, lobbying is an attempt to promote, oppose or influence legislation, executive agency decisions or retirement system decisions on behalf of an employer through direct communication with reportable government officials and employees.

A lobbyist is a person compensated by an employer to conduct lobbying on the employer's behalf. Lobbyists can be internal, direct employees of the employer or external, independent contractors of the employer – in either case, the lobbyist is obligated to

register and report their lobbying activities and expenditures upon engagement by an employer.

Legislative lobbying means any activity by a lobbyist to promote, advocate, oppose or otherwise influence legislation through direct communication with a reportable person. Advocating to a member of the General Assembly about legislation is clearly legislative lobbying, but so would speaking to certain members of the Executive Branch, like the Governor or the Director of a state agency. The topic of the communication is what determines the type of lobbying, not the person a lobbyist is speaking to.

Executive agency lobbying means any activity to promote, oppose or otherwise influence a decision by an Executive agency regarding: (1) the expenditure of state funds or an award of a contract, grant, lease or other financial arrangement under which state funds are distributed or allocated; or (2) a regulatory decision of an Executive agency that has broad and universal application to all persons subject to the agency's jurisdiction.

Retirement system lobbying means any activity to promote, oppose, reward or otherwise influence the outcome of a decision by one of Ohio's five pension funds regarding the investment of funds or the award of an investment contract to an agent or investment manager.

It is important to note that not all activities designed to influence government action qualify as lobbying that requires registration. The following activities are NOT lobbying under the law:

- Grassroots efforts, which are lobbying efforts by individuals that are not compensated and who petition public officials or employees for redress of a grievance
- Contacts made for the sole purpose of gathering information contained in a public record
- Appearances at a public hearing of the General Assembly, the Controlling Board, an Executive Agency or a Retirement System to give testimony
- News, editorial and advertising statements published in bona fide newspapers, journals, magazines, or broadcasts and the gathering and furnishing of information for such news, editorial and advertising statements
- Publications primarily designed for and distributed to members of bona fide associations, or charitable or fraternal nonprofit corporations

Not every individual that is paid to conduct a lobbying activity is required to register – the law is only intended to apply to individuals and employers that devote significant time to lobbying. Three factors trigger a lobbyist's obligation to register:

- Compensation: The lobbyist must be compensated to perform lobbying activities
- Direct Communication: With a reportable person, not every government employee is reportable
- Amount of Compensated Time
    - Legislative lobbying – 5% or more of the lobbyist's time compensated by the employer
    - Executive agency and Retirement system lobbying – 25% or more of the lobbyist's time compensated by the employer

Note: State law prohibits lobbyists from accepting contingent fee – or "success fee" – engagements.

All lobbyists must register with the Joint Legislative Ethics Committee (JLEC), which is housed in the Office of the Legislative Inspector General. Registration is required annually for Executive agency and Retirement system lobbyists and bi-annually for Legislative lobbyists. Lobbyists pay a $25 registration fee per employer. Both lobbyists and employers are required to report their lobbying activities and expenditures to JLEC three times a year.

Note: The above discussion only applies to state government lobbying. Some local jurisdictions around the state may have their own separate lobbying registration and reporting laws.

ETHICS LAWS

Public officials and employees, and frequently members of the public who interact with those individuals, are subject to Ohio's Ethics Laws. These laws, found in Chapter 102 of the Ohio Revised Code as well as ~~Section~~Sections 2921.42 and .43, create ethical standards for public officials and employees by: requiring personal financial disclosure and imposing restrictions upon unethical conduct with criminal sanctions. Oversight is provided by three separate ethics commissions for each branch of government: the Ohio Ethics Commission for the Executive branch of state and local governments; the Joint Legislative Ethics Committee for the Legislative branch; and the Board of Professional Conduct of the Supreme Court of Ohio for the Judicial branch. As noted, these laws primarily ensure the ethical conduct of the government official or employee, but there are several provisions that the private citizen interacting with government should be aware of.

Conflict of Interest – Use of Authority - R.C. 102.03(D)

A public official or employee is prohibited from using or authorizing the use of his or her public position to get a benefit for the official or employee or for anyone else with whom he or she is closely connected. The law also prohibits the official or employee from using his

or her public position to avoid a detriment for the official or closely connected person. This means that a public official or employee cannot act on a matter before his or her public agency if the matter definitely and directly affects:

- The official or employee
- One of the official's or employee's close family members
- One of the official's or employee's business associates.

For example, if a village council member is employed by a private company that is cited by the village for violations carrying a fine, the council member would be prohibited from acting in any way to help his or her company avoid the fine.

Conflict of Interest – Gift Rules - R.C. 102.03(E) and (F)

Public officials and employees are prohibited from soliciting or accepting anything of value that could have a "substantial and improper influence" on the public official or employee. And no person can promise or give anything of value that could have a "substantial and improper influence" on the public official or employee.

In other words, public officials and employees cannot accept gifts, travel expenses, expensive meals, offers of employment or other things of significant value if it could improperly influence them in the performance of their duties. The two key questions are: (1) is the gift from an improper source; and (2) is the gift of substantial value.

An improper source is anyone that is:

- Doing or seeking to do business with the public agency
- Regulated by the public agency
- Interested in matters before the public agency

Example: A public official cannot accept travel expenses from a potential government vendor to visit a current customer of the vendor to see a demonstration of a product the government is considering purchasing.

Substantial value is not defined by a specific dollar amount, instead guidance is provided by reference to examples. Examples of substantial gifts include outside consulting jobs or private employment, payment of debts, loans, travel to exotic locations, lavish meals, entertainment activities, such as golf outings or season tickets for a professional sports team, or significant discounts on major consumer items. Items that are considered nominal

- and therefore not prohibited - could include a cup of coffee, a box of popcorn, an inexpensive picture frame or a plate of cookies.

Public Contracts – R.C. 2921.42

The laws prohibit a public official or employee from:

- Authorizing a public contract in which the official, a family member, or a business associate has an interest. This is also the section that prohibits nepotism, or authorizing an employment contract for a family member
- Authorizing an investment of public funds in which a family member or business associate has an interest or from which a family member or business associate receives a fee
- Profiting from a public contract authorized by the official or by a board on which he or she sits unless the contract was competitively bid and awarded to the lowest and best bidder
- Having an interest in a public contract of any public agency with which he or she is connected

A public contract is any purchase or acquisition of goods or services by any public agency. Public contract also includes employment with any public agency.

Note: The ethics laws and the laws regulating lobbyists and their employers are two separate sets of laws that govern similar, but different, aspects of financial transactions with elected officials and government employees. Individuals and entities should always be mindful of both sets of laws, if and when applicable.

CAMPAIGN FINANCE

Candidates for the six executive branch offices and the General Assembly are subject to the state's campaign finance laws, found in Ohio Revised Code Chapter 3517.

All contributions to candidates, political action committees and political parties must be attributable to an individual. Corporations and labor unions are not allowed to make political contributions in Ohio. Partnership business entities, including LLCs and LLPs, can use business funds to make contributions, but they must be accompanied by documentation attributing the contribution to an individual.

Ohio law limits contributions to candidates, political action committees and political parties by law. The limits are established in R.C. 3517.102 and updated by the Secretary of State in late February of odd-numbered years to reflect an inflationary growth measure. The current set of limits are effective for February 25, ~~2021~~2025 – February 24, ~~2023~~2027.

Outlined below are some of the current limits; please visit https://www.sos.state.oh.us/campaign-finance/contribution-limits/ for a complete table of limits:

FROM ← / TO ↓	INDIVIDUAL (Must be 7 years of age or older)	POLITICAL ACTION COMMITTEE
Statewide	$~~13,704.41~~16,615.67	$~~13,704.41~~16,615.67
General Assembly	$~~13,704.41~~16,615.67	$~~13,704.41~~16,615.67
Political Action Committee	$~~13,704.41~~16,615.67*	$~~13,704.41~~16,615.67*

Note: Contribution limits apply on a per election basis, except as indicated with an * above which apply on a calendar year basis.

The primary election period begins on January 1 of the year following the most recent election for the office and ends on the day of the primary election. For instance, the gubernatorial election is being held in ~~2022~~2026, so the next primary election period ~~will begin~~began on January 1, ~~2023~~2025. The general election period begins the day after the primary election and concludes on December 31 of the election year.

Candidates, political action committees and political parties report all contributions received and expenditures made to the Secretary of State's office at least twice a year, more frequently in an election year. The report must include the name, address and employer of every individual that contributes. Campaign finance reports are made public on the Secretary of State's website.

Note – Local candidates are not covered by state campaign finance law but the jurisdiction in which they are running might have its own campaign finance laws and contribution limits.

Note - Judicial campaign contribution limits are set by rule of the Supreme Court. Please see the Board of Professional Conduct's website for more information.

PUBLIC RECORDS

The Ohio Public Records Act, see Ohio Revised Code Chapter 149, requires a public office to make copies of requested public records available at cost or available for in-person inspection within a reasonable period of time to any requester. The Act is construed liberally in favor of broad access, with any doubt resolved in favor of disclosure.

A “record” is “any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.” In other words, virtually all documents in the hands of a public office or official that is in any way related to public business is a public record that must be produced upon request. That also includes electronic records – meaning emails, voicemails, texts and other forms of electronic communications are also potential public records. Importantly, under Ohio law, the physical location of the record is not determinative – records in the homes or on the personal electronic devices of public officials can still be public records subject to disclosure.

Note that the definition of record includes all items created *or received by or coming under the jurisdiction* of a public office. Documents created by third parties – like a company’s business plan or financial documents submitted as part of an economic development application – become public records once they are received by the public office. Additionally, in certain circumstances, documents in the hands of third parties can be considered public records as well – including, but not limited to, where the third party is in quasi-agency with the public office or is acting as the functional equivalent of a public office.

While there are a number of exemptions under the Act, they are construed narrowly in favor of disclosure and redaction is required to allow production of the non-exempt portions of a public record. The exemptions are carefully crafted to apply to narrow types of records. However, some of the key exemptions include intellectual property records, the personal information of individuals and records the release of which are prohibited by state or federal law, which would include a business’s claimed trade secrets contained in a public record.

FINANCING INVESTMENTS

TAX-EXEMPT OPPORTUNITIES IN OHIO

Ohio law permits the issuance of most of the forms of obligations that are entitled to tax-exempt treatment under the federal income tax laws. Industrial revenue bonds for manufacturing facilities are typically issued in Ohio pursuant to either Chapter 165 of the Code, which authorizes the state and its municipalities and counties to issue revenue bonds for "industry, commerce, distribution or research" projects, or by port authorities, as described below. The statute may also be used to issue "solid waste" and other federally tax-exempt categories of obligations.

Other enabling provisions for the issuance of federally tax-exempt bonds in Ohio include:

- Port authority bonds (Chapter 4582) for "transportation, economic development, housing, recreation, education, governmental operations, culture or research" projects, as well as for industry, commerce and distribution pursuant to the Ohio Constitution
- Health care financings (Chapter 140)
- Higher education facilities, including certain medical and health care facilities (Chapter 3377)
- Certain water and solid-waste projects (Chapters 6121 and 6123, respectively)
- Certain air quality projects (Chapter 3706)
- State economic development financings (Chapters 122 and 166)

Projects financed under Chapters 122, 165, 166, 3377, 3706 and 4582 are not subject to prevailing wage requirements, which mandate requiring the payment of wages at the levels paid to unionized workers in the area. However, (a) at least one port authority has adopted a policy requiring the payment of prevailing wages in certain financings, and (b) projects financed under Chapters 6121 and 6123 are still subject to prevailing wage provisions and also must comply with reporting and recordkeeping requirements documenting such compliance.

Ohio's federal "volume cap" allocation for private activity bonds of approximately $1.286 billion for the year 2022 is allocated by the Director of the Ohio Department of Development. Under current rules, $100 million of the available volume cap allocation is reserved for "small issue" (manufacturing) bonds, $120 million for multi-family housing projects, $300 million for single-family housing bonds, $100 million for "exempt facility" bonds and approximately $120 million for qualified student loan bonds, with the remaining allocation for the Director's "discretionary" allocation. Any remaining volume cap unused at the end of the calendar year can be given to an issuer for use sometime in the next three years (known as a "carryforward" allocation). If volume cap is not carried forward or used during the calendar year, it expires. Bonds for which cap has been awarded must be issued within 120 days of the award (subject to one 60-day extension, if needed).

Both the interest on and any gain from the sale of bonds issued by governmental entities in Ohio are exempt from the Ohio personal income tax, the Ohio corporation franchise tax (to the extent computed on the net income basis), and from municipal and school district income taxes. Interest on bonds issued by governmental entities in Ohio are not subject to the Ohio commercial activity tax.

BENEFITS OFFERED TO ATTRACT NEW BUSINESS AND/OR FOREIGN INVESTORS

FINANCING AND GRANTS

Historically, the State of Ohio has offered a variety of grant and low-interest loan programs for businesses administered by the Ohio Department of Development. In 2011, House Bill 1 was enacted to create "JobsOhio," a not-for-profit corporation to oversee the state's economic development efforts. JobsOhio focuses on attracting and retaining businesses operating in several target areas, including Advanced Manufacturing, Aerospace and Aviation, Automotive, Engineering and Chemicals, Financial Services, Healthcare, Food and Agribusiness, Logistics and Distribution and Technology (collectively, the "JobsOhio Targeted Industries").

JobsOhio Economic Development Grant

The JobsOhio Economic Development Grant is available to companies that are engaged in the JobsOhio Targeted Industries. Eligible costs under the program include fixed-asset and infrastructure investments by eligible companies, including but not limited to land, buildings, leasehold improvements, and machinery and equipment. The JobsOhio Economic Development Grant is reimbursement-based.

JobsOhio Growth Fund

The JobsOhio Growth Fund (the "Growth Fund") is a loan program available to companies in the JobsOhio Targeted Industries. Growth Fund loans are based upon the useful life of

the financed asset with a maximum term for real estate investments of 15 years and a maximum term for machinery and equipment of 10 years. The program includes a minimum 10% borrower contribution toward the total project costs. Loan amounts typically range from $500,000 to $5,000,000 for eligible projects.

Research and Development Center Grant

The JobsOhio Research & Development Center Grant (the "R&D Grant") was created to facilitate strategic investment in corporate research and development centers in Ohio. Grants under this program may provide for a portion of the costs related to a new center over five years. To qualify for an R&D Grant, an applicant must expect to create at least five new jobs, foster new technology-enabled projects or services and attract new technology companies to Ohio. Eligible applicants must have a minimum of five years' operating history and annual revenue in excess of $10 million.

JobsOhio Revitalization Program

The JobsOhio Revitalization Program (the "Revitalization Program") is comprised of a loan component and a grant component with the two components frequently being paired to maximize the impact of a project. Eligible participants for the Revitalization Program include businesses with projects that will create or retain at least 20 jobs. Priority is given to businesses operating in the targeted industries. Eligible uses for loans and grants made under the Revitalization Program include site preparation, demolition, environmental remediation and infrastructure. Loan amounts range from $500,000 to $5 million and grant amounts are up to $1 million.

Direct 166 Loan

The 166 Direct Loan Program is an economic development incentive program administered by the Ohio Department of Development. Qualifying projects under the 166 Direct Loan Program include land and/or building purchases as well as the purchase of machinery and equipment. As with other state level incentive programs, there are certain minimum requirements that a participant must satisfy in order to qualify for the program. These minimum requirements include the creation of one job for every $35,000 to $75,000 of loan proceeds made available to the applicant.

Ohio Enterprise Bond Fund Loan

Through the Ohio Enterprise Bond Fund Loan program (OEBF), the State of Ohio offers financing for projects that typically range in size from $2.5 million to $10 million that will include a job creation component. Because the OEBF is intended to account for a portion of a company's total financing sources, this program can be combined with other sources such as the above-described port authority bonds and/or a Direct 166 Loan.

Data Center Sales Tax Exemption

Ohio's data center tax exemption program provides a sales and use tax exemption on the purchase of eligible data center equipment. To be eligible for the exemption, projects must invest at least $100 million in the aggregate at the project site over three consecutive year and create annual payroll of at least $1.5 million. The Ohio Tax Credit Authority may grant an exemption of up to 100% of the sales and use taxes that would have otherwise been owed with respect to the sale, storage, use or other consumption of computer center equipment.

TAX INCENTIVES

Enterprise Zones

A certain percentage of real property taxes can be abated for up to a 10-year period (or, with school district approval, 15 years). It is a local and state tax incentive for businesses that expand or locate in designated areas of Ohio. To participate in the program, businesses must first finalize an enterprise zone agreement with the applicable local municipal or county government before the commencement of any portion of the project. Each enterprise zone agreement must commit the business to retaining or creating employments, and to establishing, renovating or occupying a facility within the enterprise zone. With respect to "megaprojects" or real property owned and occupied by a "megaproject supplier" (as each are defined in Section 122.17 of the Ohio Revised Code), the abatement of real property taxes may be for a number of years not to exceed 30 and may be exempted in an amount of up to 100% of the increase in assessed value of the real property with school district approval.

Community Urban Redevelopment Corporations Program

Program provides limited real property tax abatement for new improvements owned by community urban redevelopment corporations.

Community Reinvestment Area Program

Provides for up to a 100% exemption for the value of improvements to real property for up to 15 years in a designated area for industrial, commercial or residential projects. Designated areas are created and administered by the municipality or the county in which the area is located. In addition, the exemption period for improvements to commercial or industrial structures may be extended for up to an additional 15 years if the structure is situated on the site of a "megaproject" or if the structure is owned and occupied by a "megaproject supplier," each as defined in Section 122.17 of the Ohio Revised Code.

Ohio Advanced Manufacturing Program Grant

Provides a state grant for manufacturers, Ohio nonprofit organizations, research institutions, and universities teamed with Ohio manufacturers to encourage small and mid-sized Ohio manufacturers to incorporate new technologies into their products and processes. The grant is for new purchases of machinery and equipment in excess of a three-year average investment in machinery and equipment.

Ohio Job Creation Tax Credit

Refundable state tax credits are available through an application process and agreement with the Ohio Tax Credit Authority for certain eligible projects that create at least 10 new jobs within three years and meet certain related criteria, including a minimum payroll amount. The credit is equal to a percentage of tax withheld on wages which is established in the agreement. Credit may be granted for up to 15 years.

Ohio Job Retention Tax Credit

This nonrefundable tax credit exists for large employers who qualify as an "eligible business" who foster job retention in Ohio. Upon application and consideration by Ohio Director of Budget and Management, the Tax Commissioner, and the Superintendent of Insurance (for insurance companies only), the Ohio Tax Credit Authority may grant a credit for a period of up to 15 years equal to a percentage of tax withheld on wages, which is established in an agreement with the Ohio Tax Credit Authority.

An eligible business for the tax credit includes the following: (a) if the business is engaged at the project site primarily in significant corporate administrative functions, the business must be located in a foreign trade zone, employ at least 500 employees, ***or*** have an annual Ohio employee payroll of at least $35 million; and (b) if the business is engaged at the project site primarily as a manufacturer, the business must have made or caused to be made payments for the capital investment project at the project site during a period of three consecutive calendar years in an aggregate amount is at least the lesser of (1) $50 million, or (2) 5% of the new book value of all tangible property used at the project site as of the last day of the three-year period in which capital investment payments are made.

Research and Development Sales Tax Exemption and Tax Credits

Provides an exemption from state and county sales tax for companies that purchase machinery and equipment used in research and development, and a tax credit against the commercial activity tax for qualified research and development expenses in excess of the prior three-year average of qualified research expenditures. There is also a nonrefundable credit for R&D loan payments.

Ohio Historic Preservation Tax Credit

Program provides a tax credit for the rehabilitation expenses to owners of historically significant buildings. Funding is provided through competitive rounds based on economic benefit and regional distributive balance. The tax credit subsidy is 25% of qualified rehabilitation expenditures (QRE) not to exceed the QRE estimates in the application, with an application cap of $5 million. Certain catalytic projects – large-scale rehabilitation projects that will foster significant economic development within 2,500 feet of the historic building – are eligible to receive up to $25 million in historic preservation tax credits. QREs are hard construction costs that meet the requirements of the US Secretary of Interior's Standards for Rehabilitation of Historic Properties.

Ohio New Market Tax Credit

This state program is a corollary to the federal program and provides a tax credit for investors that make a qualified equity investments (QEIs) in an eligible project. Eligible projects include office, commercial and retail projects located in low-income communities. Tax credits are awarded through community development entities (CDEs) located throughout the state on a competitive basis. For investors, the tax credit subsidy is 39% of an investor's QEI.

TAXATION

STATE TAXATION

PERSONAL INCOME TAX

Ohio imposes a personal income tax on resident individuals, trusts and estates at progressive rates. Non-residents are taxable on Ohio-sourced income. A pass-through entity must either withhold ~~5% (~~3% ~~for tax year 2023 and thereafter)~~ for out-of-state individual owners, or file on a composite basis and pay tax on their behalf. Taxes so withheld can be claimed as a refundable credit on the applicable Ohio tax return. For residents, income taxed by other jurisdictions is subject to a credit.

Generally, Ohio taxable income is based on federal adjusted gross income, with certain adjustments (e.g., excluding interest on federal obligations and adding back most interest on non-Ohio government bonds). For ~~2022~~2025, the maximum rate is ~~3.990~~3.125% on taxable income over $~~110,650~~100,000. In general, individuals who have business income in Ohio from sole proprietorships and pass-through entities such as S corporations, partnerships or LLCs receive a special deduction, and the income is subject to a different tax rate. These taxpayers may deduct 100% of business income (up to a maximum deduction of $250,000 if filing a joint return, or $125,000 otherwise) and any such business income above the threshold is taxed at a flat rate of 3%.

Most municipalities and many school districts in Ohio impose income taxes, at rates of up to 3.0%. No local income taxes are imposed by designated “townships.” Municipal taxes are based on earned income and business income, but not passive income such as interest or dividends. There are two tax bases for school district income taxes. One is, generally speaking, based on the Ohio state income tax return computation of income. The other is based on earned income.

COMMERCIAL ACTIVITY TAX (CAT)

Effective January 1, 2025, Ohio implemented major changes to the CAT. A business privilege tax, the Commercial Activity Tax (CAT) is primarily imposed at a flat rate of .26% on taxable gross receipts (not net income) in excess of $6 million (as opposed to $1 million~~. There is also an~~ in 2024), and the annual minimum tax ~~on the first $1 million of taxable gross receipts. The amount varies between $150 and $2,600 and is determined by the total amount of taxable gross receipts for the preceding year. Generally, businesses~~

~~are excluded from the tax entirely where taxable gross receipts are $150,000 or less.~~ is eliminated for tax periods 2024 and thereafter.

The CAT applies to all taxable gross receipts attributable to a "taxpayer." Combination of entities is mandatory where there is more than 50% common business ownership. Combined groups must share the $~~150,000 floor and $1~~6 million base. Federal tax attribution rules do not apply in determining ownership. Vertical attribution must be used. In a combination, only members with Ohio nexus need to be included.

Where combination is not mandatory, an optional "consolidation" is available. The effect of such an election is to eliminate inter-company gross receipts, but also to require all related domestic companies to be included in the grouping whether or not such entities have Ohio nexus (offshore entities can be included optionally). This election is available where there is common ownership of at least 50% (but can be limited to only include entities with at least 80% common ownership). Once made, the election is binding for two years.

The CAT applies to any business activity regardless of form and, therefore, includes corporations, partnerships, limited liability companies, disregarded entities, sole proprietorships, joint ventures, trusts, clubs and associations. The CAT does not apply to (1) nonprofit organizations (but does apply to a subsidiary, including a disregarded entity, if it is incorporated as a for-profit); (2) financial institutions including insurance companies, banks, savings & loans and most financial services companies; and (3) some public utilities that pay the public utility excise tax.

Taxable gross receipts include (1) sales, exchanges or dispositions of property in Ohio (including goods or property shipped in from an out-of-state vendor and used in the state); (2) services rendered (other than in an employee capacity); and (3) rentals, leases or other permissible uses of a taxpayer's property or capital to the extent the foregoing is used by the taxpayer in the state (including real estate or equipment leased in Ohio, software or patents). Excluded from taxable gross receipts are (1) interest income except on credit sales; (2) dividends and distributions from corporations; (3) damages from litigation or life insurance proceeds; and (4) activities that are out-of-state or revenue from goods shipped out-of-state.

A bright-line test is used to determine Constitutional nexus, and nexus exists if any of the following applies: (1) property of at least $50,000 in Ohio; (2) payroll of at least $50,000 in Ohio (including hiring independent contractors); (3) annual taxable gross receipts of at least $500,000 in Ohio; (4) at least 25% of total property, payroll, or gross receipts in Ohio; or (5) Ohio domicile.

Registration for the CAT~~, including designating all companies in a combination or electing consolidation, must be made when taxable gross receipts exceed $150,000. Where~~ is no longer required unless the estimated taxable gross receipts exceed $~~1~~6 million~~,~~. Taxpayers who anticipate having $6 million or less in taxable gross receipts in 2025 may cancel their

CAT account immediately. Taxpayers who anticipate having more than $6 million in taxable gross receipts in 2025 must register, and quarterly filings are required. Quarterly filings must be made by the tenth day of the second month after the end of each calendar quarter.

SALES AND USE TAXES

Retail sales of most goods and many services are subject to a state sales tax of 5.75%. As this tax is also a county source of revenue, the state rate may be increased by up to another 3% by the various counties and certain transit districts. Combined sales taxes are as high as 8% in some counties of the state, but the average is closer to 7%.

The companion use tax is imposed on the same base and at the same rate as the sales tax. It is a tax on use, storage or consumption in Ohio of goods and services on which the sales tax was not collected (e.g., because the seller was not located in Ohio). It is assessed at the sales tax rate of the county where the property is being used (location of consumer).

Food and some beverages sold at retail for off-site consumption are not subject to sales tax, nor are goods and services that are to be resold. Other exemptions apply to goods and certain services used in manufacturing, agriculture, commercial fishing, aircraft repair and to goods sold to charitable organizations. The sales tax base also includes certain services, such as personal care services, leasing of tangible personal property, storage, towing, delivery charges ~~and~~, landscaping~~.~~, laundry and dry cleaning, motor vehicle cleaning and detailing, repair and installation of tangible personal property, and automatic data processing and electronic information services (when the true object is the service itself).

The state participates in the Streamlined Sales Tax Project (SSTP) which is a multi-state agreement involving more than 20 states aimed at developing uniform standards and facilitating sales and use tax collections among the participating states. One of the primary goals of the program is to help states collect use tax on items that previously bypassed vendor tax collections, such as catalogue and internet sales delivered to out-of-state destinations.

Under the SSTP, sales are sourced as follows: (1) over-the-counter transactions in which the purchaser receives the product are sourced to the location of the seller, even if delivered to the customer at another location; (2) remote sales (e.g. mail order, telephone, or internet) by Ohio vendors to Ohio consumers are sourced to the place where the order was received; (3) sales by out of state vendors to Ohio consumers are sourced to the Ohio consumer's place of receipt; and (4) sales by Ohio vendors to out-of-state consumers are interstate commerce transactions and thus are not taxable by Ohio. Services, to the extent they are taxable, are sourced to the location at which the customer first makes use of the service (e.g., where the consumer takes possession of repaired property, where a business uses data processing services, etc.). Most leases of tangible personal property are sourced

to the location where the property is primarily used at the time of entering into the lease, subject to some exceptions.

PROPERTY TAXES

Real property situated within the state is subject to annual taxation. Real property held by charitable organizations is generally exempt from property taxes, but Ohio's definition of "charitable" is not identical to the Federal definition.

Real property taxes are imposed at rates determined by local tax levies on the taxable value of the property. The taxable value of real property is generally equal to 35% of the appraised fair market value, except for lands devoted exclusively to agricultural use. State rollbacks on rates for which the state reimburses local governments typically apply. Rate reductions are available for forest lands.

Business incentives include enterprise zones, which may provide for up to a 75% exemption for increases in the assessed value of real property constituting the project site in a 15-year period.

Neither intangible nor tangible personal property (e.g., machinery, equipment, inventories) is currently subject to property taxation in Ohio.

LABOR AND EMPLOYMENT

Employment relations in Ohio are governed by federal and state statutes and regulations, as well as local ordinances and the common law. This guide will address both federal considerations and the state of Ohio considerations.

FEDERAL CONSIDERATIONS

A number of federal laws and regulations affect the employment relationship by addressing the areas of employment discrimination, wages and hours, safety and health, veterans' rights, immigration reform and control, and employer/union relationships. Summaries of the more significant laws appear below.

Title VII of the Civil Rights Act of 1964 (Title VII)

Title VII of the Civil Rights Act of 1964, as amended, is a federal statute prohibiting employment discrimination on the basis of race, color, religion, sex or national origin. Sex discrimination under Title VII includes discrimination on the basis of pregnancy, as well as sexual harassment. The statute applies to all employers with 15 or more employees engaged in an industry affecting commerce. Violations of the statute occur if an employer fails or refuses to hire, discharges, segregates or otherwise discriminates against individuals concerning their wages, terms, conditions or privileges of employment on account of their membership in one of the protected classes.

Title VII is enforced by the Equal Employment Opportunity Commission (EEOC) which investigates charges of discrimination filed by individuals against employers. A charge must be filed with the EEOC within 180 days of any alleged discriminatory act; however, if the aggrieved individual initially files a charge with a state or local civil rights agency, the time period for filing with the EEOC is extended to 300 days or within 30 days after receipt of notice that the state or local agency has terminated its proceedings, whichever is earlier. The EEOC *sua sponte* may file charges against an employer. Following an investigation by the agency, the agency will determine whether there is probable cause to believe that discrimination occurred. If it finds probable cause, the EEOC will attempt to resolve the situation through mediation, conciliation and persuasion. Whether it finds probable cause or not, the EEOC typically will issue a right to sue letter to the charging party and that person may commence a lawsuit against the employer in federal court within 90 days of receipt of the letter. Alternatively, the EEOC may sue the employer in its name, if it found probable cause and conciliation failed.

The 1991 Civil Rights Amendments broadened the remedies available under the Act to include capped compensatory and punitive damages ranging from $50,000 to $300,000, depending on the size of the employer, in addition to back pay, injunctive relief, reinstatement or hiring of employees, and possible front pay and attorneys' fees under certain circumstances. The 1991 Amendments also allowed trial by jury.

In 1998, the United States Supreme Court held that Title VII's prohibition of sex discrimination and sexual harassment can include "same sex" harassment, which need not be motivated by sexual desire in order to be actionable. The Court also held that where harassment results in a "tangible employment action," an employer will be held vicariously liable for the sexual harassment committed by supervisors~~; where~~. Where no tangible employment action is taken, by contrast, the employer can avoid liability if it can prove the elements of a two-pronged affirmative defense, showing that (1) the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (2) the employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer or to avoid harm otherwise. Moreover, for sexual harassment by a co-worker, an employer is not automatically liable unless the employer knew or should have known of the harassment, yet failed to take prompt and appropriate corrective action, reasonably calculated to end the harassment.

On June 15, 2020, the U.S. Supreme Court held in Bostock v. Clayton County, Georgia, 140 S.Ct. 1731 (2020), that Title VII's prohibition of employment discrimination on the basis of sex also prohibits workplace discrimination on the basis of sexual orientation and gender identity.

The Age Discrimination in Employment Act

The Age Discrimination in Employment Act of 1967 (ADEA), as amended, makes it unlawful for employers to fail or refuse to hire, to discharge, limit, segregate, or classify employees aged 40 or above or to otherwise discriminate against said employees regarding their compensation, terms and conditions of employment on account of their age. The statute applies to employers of 20 or more employees.

Aggrieved persons may file claims of age discrimination with the EEOC, which administers the statute. An age-based charge must be filed with the EEOC within 180 days from the date of notice of any alleged discriminatory act; however, where the alleged unlawful practices occur in a state that has a law prohibiting age discrimination in employment and has authorized a state authority to pursue relief from discriminatory practices, this time period is extended to 300 days or within 30 days after receipt of notice that the state or local agency has terminated its proceedings, whichever is earlier. After proceeding through the EEOC, regardless of result, a charging party may bring a civil action in court of competent jurisdiction within 90 days of receipt of a right to sue letter, have a trial by jury and receive legal and/or equitable relief including, but not limited to, back pay, possible liquidated damages of two times actual damages for willful violations, orders of

reinstatement and/or front pay, and possible reasonable attorneys' fees. Alternatively, the EEOC may sue the employer in its name, if it found probable cause and conciliation failed.

There are certain limited exceptions to the ADEA, including age as a bona fide occupational qualification (BFOQ) or for bona fide executives or high policymakers who have attained 65 years of age and are entitled to an immediate non-forfeitable annual retirement benefit from a pension or profit-sharing plan or deferred compensation plan of the employer which equals at least $44,000 per year. The amended Act also regulates waivers and releases of ADEA claims.

Americans with Disabilities Act

The Americans with Disabilities Act of 1990 (ADA) covers employers with 15 or more employees engaged in industries affecting commerce. The ADA prohibits discrimination against qualified individuals with disabilities because of the disability in regard to job application procedures, hiring, advancement, or discharge of employees, compensation, job training, and other terms, conditions, and privileges of employment. Discrimination includes limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of the employee.

At the pre-employment level, the Act prohibits pre-employment medical examinations and inquiries of job applicants as to whether they are individuals with disabilities or as to the nature or severity of the disability. Employers, however, may make pre-employment inquiries into the ability of an applicant to perform job-related functions. The statute allows post-offer/pre-employment medical examinations with certain restrictions. Pre-employment drug testing is not considered to be a medical examination under the statute.

Disability is defined as a physical or mental impairment that substantially limits one or more of the major life activities of the individual, having a record of such an impairment, or being regarded as having such an impairment. In 2008, the ADA was amended to expand the definition of disability and ensure broad interpretation of the ADA. Certain conditions are specifically excluded from the term "disability," including homosexuality, bisexuality, transvestitism, transsexualism, voyeurism, compulsive gambling, kleptomania or pyromania. The term "qualified individual with a disability" means an individual who, with or without reasonable accommodation, can perform the essential functions of the job. Current illegal drug users are excluded from the definition. The remedies set forth in Title VII, including a jury trial, are the remedies available under the ADA.

The ADA also prevents discrimination based on an employee or applicant's "association with a person with a disability."

Employers are obliged to make reasonable accommodation to employees or applicants requiring same, unless the employer can establish that the accommodation would cause an

undue hardship, which determination includes considerations of difficulty and expense in light of the overall financial resources of the employer.

Aggrieved persons may file claims of disability discrimination with the EEOC, which administers the statute. A disability-based charge must be filed with the EEOC within 180 days from the date of the last alleged discriminatory act; however, if the aggrieved individual initially files a charge with a state or local civil rights agency, the time period for filing with the EEOC is extended to 300 days or within 30 days after receipt of notice that the state or local agency has terminated its proceedings, whichever is earlier. Whether it finds probable cause or not, the EEOC typically will issue a right to sue letter to the charging party and that person may commence a lawsuit against the employer in federal court within 90 days of receipt of the letter. Alternatively, the EEOC may sue the employer in its name, if it found probable cause and conciliation failed.

Genetic Information Nondiscrimination Act of 2008

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers with 15 or more employees from discriminating against employees on the basis of genetic information ascertained from genetic testing. Genetic information includes an individual's genetic tests, family medical history, and information about the manifestation of a disease or disorder in family members. In addition, subject to certain enumerated exceptions, it is also an unlawful employment practice for an employer to request, require, or purchase genetic information with respect to an employee or a family member of the employee. EEOC regulations state that a cause of action for disparate impact is not available under GINA. However, an employer may not discriminate against any individual because such individual has opposed any act or practice made unlawful by GINA or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under GINA. The EEOC enforces the employment provisions of GINA.

Family and Medical Leave Act

The Family Medical Leave Act of 1993 (FMLA) applies to employers engaged in commerce or in industry or activity affecting commerce which employ 50 or more employees within 75 miles. Employees eligible for family and medical leave are persons who have been employed for at least 12 months and have at least 1,250 hours of service with such employer during the previous 12-month period.

Employees eligible for family and medical leave are entitled to a total of 12 work weeks of leave during a 12 month period for any of the following reasons: (1) for the birth of a son or daughter of the employee in order to care for the child; (2) for the placement of a child with the employee for adoption or foster care; (3) for the care for a spouse, a child under eighteen (18) years of age, or parent of the employee if such spouse, child or parent has a serious health condition; or (4) because of a serious health condition of the employee that renders the employee unable to perform the functions of his or her position. The statute

provides for intermittent or reduced schedule leaves for certain qualifying leave. In 2008, the law was amended to permit up to 26 weeks of leave for caregivers to wounded and disabled military service members, and to permit up to 12 weeks of leave for service members and their families who need time off for "qualifying exigencies" to handle the service member's affairs while the service member is on active duty, called to active duty, or has been notified of an impending call or order to active duty.

The statute generally requires that the employee be restored to the position of employment held by the employee when the leave commenced or be restored to an equivalent position with the equivalent employment benefits, pay and other terms and conditions of employment. There are exceptions to the restoration requirement for certain highly compensated employees. The FMLA does not require that leave be paid, nor does it require employers to offer health insurance. However, the statute requires employers to maintain coverage under any group health plan during the period of the leave, under the same conditions coverage would have been provided had the employee continued in employment for the duration of the leave.

The statute is administered by the U.S. Department of Labor. Employees damaged by violations of the FMLA can bring an action in any federal or state court of competent jurisdiction for back pay, liquidated damages, and equitable relief.

Fair Labor Standards Act

The Fair Labor Standards Act of 1938 (FLSA), as amended, regulates wages and hours of employees of employers engaged in commerce or in the production of goods for commerce. Employees must receive a minimum hourly rate of pay, currently $7.25, for each hour worked up to 40 hours per workweek. Many states, cities and local governments have enacted higher minimums with which employers must comply. Unless exempted, employees must receive time and one-half of the regular hourly rate for all hours worked over 40 in a workweek.

The Wage and Hour Division (WHD) of the Department of Labor administers the FLSA. The WHD conducts wage and hour investigations of employers randomly, but more frequently after the receipt of a complaint by a current or former employee. In addition, aggrieved employees may bring an action for unpaid minimum wages or overtime and receive an additional identical amount as liquidated damages, unless the employer can show that it acted in "good faith" and had "reasonable grounds to believe" that it was not violating the FLSA, in addition to attorneys' fees. This direct-action statute has a two-year statute of limitations for non-willful violations and a three-year statute of limitations for willful violations.

Occupational Safety and Health Act

The Occupational Safety and Health Act of 1970 (OSHA), as amended, applies to employers engaged in a business affecting commerce which utilizes employees. The Act

requires each employer to furnish a place of employment, free from recognized hazards that are causing or are likely to cause death or serious physical harm to the employees and requires the employer to comply with occupational safety and health standards promulgated under the statute. Additionally, employers are prohibited from discharging or discriminating against employees for exercising rights under OSHA.

The Act created the Occupational Safety and Health Administration, which is empowered by statute to conduct inspections of workplaces and to cite employers if violations are found. Citations issued for non-compliance or violations can be accompanied by a civil penalty of up to $~~14,000~~ 16,550 for each serious or non-serious violation, $~~14,000~~ 16,550 for each day during which an employer fails to correct the violation and, in the case of a willful violation causing an employee's death or repeated violations, fines up to $~~145,000~~ 165,500, imprisonment for not more than six months (up to one year for a second conviction, or both.

Ohio is a federal plan state for OSHA purposes and is part of Chicago-based Region V. Ohio's OSHA Area Offices are located in Cincinnati, Cleveland, Columbus, and Toledo. Historically, inspection and compliance assistance activity for each office has been driven more by the Area Director in charge as opposed to "inside the beltway" politics. The Cleveland office's inspection efforts, for example, has been largely complaint driven, while other offices see more SST, NEP, LEP, and other targeted industry or hazard inspections.

Recent years ~~have~~had seen an up-tick in the use of the "General Duty" clause to cite perceived hazards otherwise not covered by a specific standard, and a broadening of the definition of "employer," including, ~~but not limited to,~~ citations under OSHA's multi-employer worksite doctrine. In 2025, OSHA proposed reducing the scope of the application of the clause, but it still remains available to OSHA's inspectors. Ohio Area Offices also actively disapprove of and sometimes cite employers for safety incentive programs, that OSHA finds discourage reporting of safety violations and there has been liberal use of the "willful" and "repeat" classifications for citations, particularly when there has been an injury or fatality associated with the citation.

The significant increases in penalties across the board ~~instituted since August 2016~~ which were again increased in 2025,have heightened Ohio employers concerns with OSHA. ~~In addition,~~That said, OSHA does have the ability to reduce penalties in certain circumstances, including where good faith efforts to correct violations, small employers are involved, or the penalties are for less severe violations, and penalty reduction was expanded in 2025. In addition, while violations are not conclusive evidence of a breach of a duty to an employee. Ohio courts have been liberal in allowing admission of OSHA citations and related documents into evidence in collateral personal injury/wrongful death litigation, as well as workers' compensation VSSR litigation. From a tactical standpoint, seemingly reasonable settlement offers that are rejected out of hand by the Area Director or his or her designee at an informal conference can be achieved upon the filing of a notice of contest well short of any Administrative Law Judge (ALJ) hearing. Ohio Area Offices,

perhaps consistent with their national counterparts, appear to have some agency pressure to resolve citations at the Area Office level.

Uniformed Services Employment and Reemployment Rights Act of 1994

Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) provides reemployment rights and protects uniformed service persons from employment discrimination on the basis of their military status. All branches of the uniformed services, as well as the reserve components of those branches and the National Guard, are covered. Uniformed service persons who leave a position for training or service in the uniformed services, complete their service under honorable conditions, and wish to return to employment are entitled to reemployment rights and benefits, provided they give advance notice of service to their employers; the cumulative length of this and all previous absences from their employers for service does not exceed five years; and they make a timely application for reemployment. The Act also protects employees from retaliation. In addition, when a uniformed service person's service lasted longer than 180 days, private employers are prohibited from discharging them without cause for one year after they return to work. When their service lasted longer than 30 days but less than 181 days, private employers may not terminate, except for cause, within 180 days of their reemployment. Additionally, the Act requires employers to provide the position, pay rate, seniority and benefits to employees returning from military leave they would have received had they never left their employment.

Immigration Reform and Control Act

The Immigration Reform and Control Act (IRCA) requires employers to verify the identity and eligibility to work in the U.S. of all persons hired after November 6, 1986. The Act authorizes specific documents for this purpose and employers are required to prepare and retain I-9 forms to prove compliance. The Act provides significant fines and penalties for employers failing to comply with the documentation requirements, hiring unauthorized workers or discriminating against persons because of national origin or citizenship status. IRCA is enforced by the U.S. Department of Homeland Security and the U.S. Immigration and Customs Enforcement (ICE).

Worker Adjustment and Retraining Notification Act

The Worker Adjustment and Retraining Notification Act (WARN) requires employers of 100 or more employees to give 60 days' notice in advance of a plant closing (if the shutdown results in an employment loss of 50 or more employees) and/or of a mass layoff, which is defined as a reduction in force of six months or longer which results in an employment loss both of at least 33% of the employees at the location and of at least 50 employees, or at least 500 employees. There are several exceptions to the notice requirement. However, employers who cannot avail themselves of an exception are liable for a day's wages and benefits for each aggrieved employee for the number of workdays occurring during the 60

calendar days when the notice was not given. Other civil penalties exist for failure to comply with the provisions of the WARN Act.

Employee Polygraph Protection Act

The Employee Polygraph Protection Act of 1988 severely circumscribes employers' rights to use lie detectors, defined to include polygraphs, deceptographs, voice stress analyzers, psychological stress evaluators or other similar devices, the results of which are used for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual. Private sector exceptions from the Act's coverage are limited to security services providers, ongoing investigations involving economic loss when supported by reasonable employer's suspicion, and FBI contractors. Employers subject to the Act that directly or indirectly require, request, suggest or cause an employee or prospective employee to take a test or use, accept, refer to or inquire concerning the results, or discharges, disciplines or discriminates against, or threatens to do so because of an employee's refusal to take a test are subject to civil penalties of not more than $10,000; an injunctive action by the Secretary of Labor; and private civil actions by employees or prospective employees damaged by a violation of the statute. The statute contains a broad anti-waiver of rights provision.

National Labor Relations Act

The National Labor Relations Act of 1935 (NLRA), as amended, created a federal administrative agency, the National Labor Relations Board (NLRB), as the federal authority to regulate the relations between labor and management. The 1935 Act is also sometimes referred to as the Wagner Act. The Wagner Act was amended by the Taft-Hartley Act of 1947, also called the Labor Management Relations Act (LMRA) and by the Landrum-Griffin amendments of 1959, also called the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA). The NLRA, basically divided into two parts, regulates and governs the selection of an employee representative and the prevention of unfair labor practices by employers or labor organizations. The NLRB maintains a number of regional offices, including Region 8 in Cleveland, Ohio and Region 9 in Cincinnati, Ohio.

Petitions for selection of an employee representative are filed in the regional office and result in NLRB-conducted secret ballot elections which, depending on the type of petition, can result in selection of a labor organization as an exclusive bargain representative, deselection of a labor organization or withdrawal of union security authorization.

Unfair labor practice charges are filed in the regional office having geographic jurisdiction over the employer. The regional office investigates the charge, and if after investigation, the regional director finds probable cause, a complaint and notice of hearing is issued, and the matter is set for hearing before an NLRB administrative law judge.

Equal Pay Act of 1963

The Equal Pay Act of 1963, codified as part of the Fair Labor Standards Act, prohibits discrimination in the payment of wages on the basis of sex. The Act requires equal pay for equal work on jobs requiring equal skill, effort, and responsibility, and which are performed under similar working conditions. Courts in EPA cases apply the "substantially equal work" test, which requires more than mere similarity between jobs but something less than identical jobs. Exceptions exist based on bona fide seniority systems, bona fide merit systems, systems measuring earnings by quantity or quality of production, and differentials based on any factor other than sex. The U.S. Supreme Court has interpreted the "factor other than sex" defense as follows: (1) the burden of establishing the "factor other than sex" affirmative defense is on the employer; (2) the factor on which the employer relies to justify a pay disparity must be at least facially neutral; and (3) pay differentials based on a bona fide job rating plan are protected. The Sixth Circuit has adopted a "legitimate business reason" standard as "the appropriate benchmark against which to measure the 'factor other than sex' defense." Thus, according to the Sixth Circuit, this defense "does not include literally *any* other factor, but [includes only] a factor that, at a minimum, was adopted for a legitimate business reason." This direct-action statute has a two-year statute of limitations for non-willful violations and a three-year statute of limitations for willful violations.

Norris-LaGuardia Act of 1932

The Norris-LaGuardia Act of 1932 predated the Wagner Act by some three years. The Act severely restricts the federal courts from issuing restraining orders or temporary or permanent injunctions in labor disputes, renders unenforceable in federal courts the "yellow-dog" contract, by which employees obligated themselves to refrain from union membership, and limited the imposition of vicarious liability upon union officials and members for acts of other agents in the union. Several exceptions exist, most notably the *Boys Markets* exception which allows the issuance of restraining orders against labor organizations on strike in breach of a no strike clause in certain circumstances.

Obligations of Government Contractors and Subcontractors Pursuant to ~~Executive Order 11246, as Amended,~~ the Rehabilitation Act of 1973 and the Vietnam Era Veterans Readjustment Assistance Act of 1974 and Other Statutes

Employers that are federal contractors or subcontractors, depending on the type and size of their contracts, may have affirmative action obligations to ~~minorities and women under Executive Order 11246, as amended, to handicapped~~disabled persons under the Rehabilitation Act of 1973 and to Vietnam-era veterans and disabled veterans under the Vietnam Era Veterans Readjustment Assistance Act of 1974.

Employers who have contracts with the federal government for the procurement of certain property or services have certain obligations under the Drug Free Workplace Act.

Additionally, employers holding various sorts of contracts with the federal government, depending on the size and type of contract, may have obligations under one or more of the following federal statutes: Davis-Bacon Act, Contract Work Hours and Safety Standards Act, Walsh-Healey Government Contracts Act, Anti-Kickback Act of 1986 and Service Contract Labor Standards Act.

STATE LAW CONSIDERATIONS

Employers doing business in Ohio are subject to a number of state statutes, some of which are similar to federal statutes and some of which are not, as well as certain judicially created causes of action.

Presently, Ohio has no laws which require allowing an employee to review his or her personnel file~~,~~ and no "little Norris-LaGuardia ~~Act" and no "little WARN~~ Act." However, an employee has the right to inspect his or her medical records generated in connection with the employment relationship. Additionally, an amendment to the Ohio Constitution (Article II, § 34a), as well as Ohio Rev. Code § 4111.14(G), requires employers to provide information about an employee's wages and hours (including pay rates and hours worked) to an employee or a person acting on behalf of an employee, upon request and at no charge.

Ohio law does require that all employers report new hires to the Ohio Department of Job and Family Services' New Hire Reporting Center within 20 days of an employee's hiring or rehiring or face a fine of $25 per employee. If the failure to make a report is the result of a conspiracy between the employer and the employee, the employer can be fined up to $500 for each failure.

Employment Discrimination

Ohio laws against discrimination, also known as the Ohio Civil Rights Act, are contained in Chapter 4112 of the Ohio Revised Code, which also created the Ohio Civil Rights Commission (OCRC), the state agency which administers the "administrative side" of the laws against discrimination. The Ohio Civil Rights Act first became effective in 1959 and preceded Title VII by five years. The law applies to employers of four or more employees within the state of Ohio and prohibits discrimination on the basis of race, color, religion, sex (which includes pregnancy discrimination, as well as sexual harassment, including "same sex" harassment), national origin, disability, age, ancestry, or military status.

Unlike the U.S. Supreme Court with respect to Title VII, Ohio courts have not yet recognized claims under the Ohio Civil Rights Act for discrimination or harassment based on one's sexual orientation. Employers should be aware, however, that approximately 26 cities in Ohio, including all of Ohio's large cities, and Cuyahoga County have ordinances prohibiting discrimination based on sexual orientation and gender identity in private employment, although employees may not bring a private cause of action for civil remedies under those ordinances.

Moreover, federal case law construing Title VII of the Civil Rights Act of 1963 is generally applicable to cases involving alleged violations of the Ohio Civil Rights Act. Likewise, for the most part, Ohio courts construe the disability discrimination provisions of the Ohio Civil Rights Act consistent with the manner in which the federal courts have construed the ADA, as the definition of disability under the Civil Rights Act parallels the definition of disability that was contained in the federal ADA and contains the same exclusions from the definition as the federal act before that Act was amended by the Americans With Disabilities Act Amendments Act.

That said, until recently, there were certain statutory provisions and judicial decisions governing employment discrimination claims under the Ohio Civil Rights Act that were considered anomalies and differed significantly from federal and other states' nondiscrimination laws, such as an expansive definition of "employer" that exposed individual supervisors and managers to personal liability for acts of discrimination, allowing direct civil actions to be filed in state court without requiring the exhaustion of administrative remedies before the Ohio Civil Rights Commission ("OCRC"), and a six-year statute of limitations for pursuing discrimination claims (one of the longest statutes of limitations for employment discrimination in the nation). The Ohio Employment Law Uniformity Act (the "Uniformity Act"), which took effect on April 15, 2021, amended the Ohio Civil Rights Act to change these aspects of Ohio law and better align them with federal law and most other states' laws in the area of employment discrimination claims in various respects.

First, prior to the Uniformity Act, the Ohio Civil Rights Act's definition of "employer," which included any person acting directly or indirectly in the interest of an employer, was construed by the Ohio Supreme Court in Genaro v. Central Transport, Inc., 84 Ohio St. 3d 293 (1999), to include individual supervisors and managers, who could be held jointly or individually liable with the employer for discriminatory conduct. The Uniformity Act excludes such individuals from the definition of employer, effectively eliminating supervisor/manager personal liability unless that supervisor or manager is also the actual employer or the claim is one for retaliation, aiding a discriminatory practice, or obstructing a person from complying with the Ohio Civil Rights Law.

Second, before the Uniformity Act, a person could either (1) file a charge of discrimination with the Ohio Civil Rights Commission within six months after the alleged discriminatory act occurred or (2) bring a civil action alleging employment discrimination directly to state court without first filing a charge and exhausting administrative remedies before the OCRC within six years after the alleged discriminatory act occurred. Ohio law now requires that discrimination claimants exhaust administrative remedies by timely filing a charge with the OCRC and obtaining a notice of right to sue prior to filing suit in court, unless only seeking injunctive relief. Claimants now have two years from the date of the alleged discriminatory act to file such a charge. The Uniformity Act also shortens the time in which an employee has to file a lawsuit from six years to two years. That two-year statute of limitations will be

tolled for the period during which the charge is pending before the OCRC (or, if the charge is filed less than 60 days before the two-year cutoff to file with the OCRC, the statute of limitations will be tolled through 60 days following the disposition of the OCRC charge).

Third, there were previously three different ways to file an age discrimination claim in Ohio, each with differing statutes of limitation, administrative requirements, and remedies. As in the past, age discrimination remains prohibited by R.C. §§ 4112.02 and by 4112.14 (which prohibits age discrimination in any job opening against any applicant or discharge without just cause and provides for a make whole remedy and for a mandatory award of reasonable attorneys' fees and costs to a prevailing plaintiff), and plaintiffs can still sue under either section. However, under either method, the Uniformity Act clarifies that both the exhaustion of administrative remedies requirement and the two-year statute of limitations that apply to discrimination claims on the basis of any other protected characteristic also apply to age discrimination claims.

Fourth, the Uniformity Act codifies an affirmative defense used in federal Title VII cases alleging hostile workplace harassment where a supervisor's harassment resulted in no "tangible employment action." To establish this defense, an employer must prove that: (1) the employer exercised reasonable care to prevent or promptly correct the harassing behavior; and (2) the employee alleging the hostile work environment unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer or to avoid harm otherwise.

Fifth, the Uniformity Act amends the Trial Procedure Law to specifically include civil actions "based on an unlawful discriminatory practice relating to employment" within the definition of tort action, thus clarifying that the caps on damages in Ohio's Tort Reform Act applies to claims under Ohio Revised Code Chapter 4112. Because discrimination actions are now defined as tort actions, noneconomic damages, such as pain and suffering, mental anguish, etc. are capped at the greater of $250,000 per plaintiff, three times the economic damages up to $350,000 per plaintiff, or a maximum of $500,000 for each occurrence forming the basis of the tort action. In addition, punitive damages are also capped at two times the total amount of compensatory damages and for small employers (not more than 100 full-time employees and 500 for manufacturers) and individuals, the lesser of two times compensatory damages or 10% of the employer's net worth up to $350,000. There is no cap on economic damages (i.e., lost compensation, medical expenses, etc.).

Last, the Uniformity Act provides that the procedures and remedies for unlawful discriminatory practices relating to employment available under the Ohio Revised Code Chapter 4112 are an employee's sole and exclusive remedies for employment discrimination. Therefore, an employee may not, for example, bypass the administrative filing requirements by filing common law claims in court, such as claims for wrongful discharge in violation of public policy.

With regard to the administrative process, once a charge of discrimination is filed with the Ohio Civil Rights Commission, the Commission will investigate the matter. Under the Uniformity Act, the complainant is allowed to make a written request that the OCRC cease the investigation and issue a right-to-sue notice as long as 60 days have passed since the charge was filed. If the investigation goes forward and the OCRC finds it is not probable that an unlawful discriminatory practice occurred, it will dismiss the charge. If the Commission finds probable cause, it will attempt by informal methods of conference, conciliation or persuasion to induce compliance with the law. If it is unable to secure a resolution of the matter, the OCRC will issue a complaint which will eventually be heard before an administrative law judge. Respondents and the assistant attorney general, on behalf of the complainant, have full discovery rights similar to those available under Rules 26 to 37 of the Federal Rules of Civil Procedure and the Ohio Rules of Civil Procedure. However, at hearing, the rules of evidence are not binding on the Commission or the hearing examiner. If a violation of the Act is found, the Commission may order a respondent to cease and desist from an unlawful discriminatory practice and require further affirmative or other action including but not limited to hiring, reinstatement, or promotion, with or without backpay.

Judicial review of the OCRC's orders is available to any aggrieved complainant or respondent. It is triggered by the filing of petition in court of common pleas within the county where the unlawful discriminatory practice was committed, where the respondent resides or where the respondent transacts business. The common pleas court has jurisdiction over the proceeding and has the power to grant on the record and on such additional evidence as it has admitted, orders enforcing, modifying, setting aside or remanding commission orders. Objections not urged before the Commission may not be considered by the court unless the failure to urge the objection is excused because of extraordinary circumstances. The Commission's finding as to the facts are conclusive, if supported by reliable, probative, and substantial evidence on the record and such additional evidence as the court has admitted, considered as a whole.

Ohio Equal Pay Act (Ohio Rev. Code § 4111.17)

Broader than the federal Equal Pay Act, the Ohio Equal Pay Act prohibits discrimination not only based on sex, but also on the basis of race, color, religion, national origin, age, or ancestry by paying wages to an employee at a rate less than the rate paid to others for substantially equal work. An employer may defend a wage differential by showing that the jobs under comparison are not substantially equal in terms of skill, effort, or responsibility; that the jobs are not performed under similar working conditions; or that the wage differential in question is otherwise excepted from coverage. Likewise, a wage differential will be defensible if it is based on any factor other than race, color, religion, sex, age, national origin, or ancestry; or if it is paid pursuant to a seniority system, a merit system, or a system that computes earnings by the quantity or quality of production.

This statute authorizes a civil action and contains a one-year statute of limitations. An aggrieved employee can recover two times the proven wage differential, plus attorneys' fees. Employers are also prohibited from retaliating against employees who complain about unlawful wage differentials or who institute or testify in an equal pay proceeding.

Family/Medical Leave

Ohio does not have a statute similar to the federal Family and Medical Leave Act of 1993. However, an administrative regulation enacted pursuant to the Ohio Civil Rights Act requires employers that employ four or more workers within the state of Ohio to provide reasonable maternity leaves of absence for childbearing and in the event a pregnant employee becomes temporarily disabled as a result of the pregnancy.

The Ohio Supreme Court in McAfee v. Nursing Care Management of America, Inc., 2010 Ohio 2744 (2010), has construed this regulation to mean that a pregnant employee must be treated the same as non-pregnant employees under the employer's leave policies, but need not be treated better than them. Thus, if a pregnant employee is not eligible for leave time under the employer's general policy, and the policy is uniformly applied, the employer need not grant leave time to the pregnant employee. Where an employer does not have a leave policy, a reasonable leave of absence for childbearing must be granted to a pregnant employee.

The Ohio Military Family Leave Act (Ohio Rev. Code Chapter 5906) requires employers with 50 or more employees to provide two weeks or 80 hours of unpaid leave once per calendar year for an employee who is the spouse, parent, or legal custodian of a member of the uniformed services who is called to active duty for more than 30 days, or who is injured, wounded, or hospitalized while serving on active duty. As is the case under the FMLA, an employee must be employed for at least 12 months and must have worked at least 1250 hours during the 12 months preceding the leave in order to be eligible to take time off under the Military Family Leave Act. Also, the employee must not have any other leave available for use except sick leave or disability leave.

Ohio's Minimum Wage and Overtime Law (Ohio Rev. Code § 4111.03, *et seq.)*

Ohio's minimum wage in ~~2022~~2025 is $~~9.30~~10.70 per hour. This minimum wage rate is reviewed every year for adjustment by the rate of inflation for the previous year according to the consumer price index. Smaller businesses with annual gross receipts of $342,000 or less are governed by the federal minimum wage, currently $7.25 per hour. Overtime must be paid at one-and-one-half times an employee's regular pay rate for all hours worked over 40 in a workweek. Ohio's overtime law is a corollary to the Federal Fair Labor Standards Act overtime provisions, and expressly incorporates those provisions by reference. This law also contains an anti-retaliation provision.

The Ohio Director of Commerce is given authority to investigate potential violations of Ohio's wage and hour laws. Additionally, an aggrieved employee may commence his or her

own civil action to redress violations of Ohio's wage and hour laws and may recover the difference between what was paid and what should have been paid, plus attorneys' fees, as well as an additional amount of liquidated damages in the amount of two times the wages owed for minimum wage violations. The statute of limitations for a claim for overtime or minimum wage (R.C. Chapter 4111) is generally two years.

Miscellaneous Labor Laws

Ohio has various miscellaneous labor statutes which *inter alia* require the semi-monthly payment of wages, prohibit deductions from employee wages unless the employee has authorized the deduction in writing or the deduction is for court-ordered alimony or child support, prohibit compelling employees to purchase goods or supplies at certain places, forbid issuing payment in scrip, and provide that employees shall not be required to pay the cost of medical examinations required by the employer as a condition of employment. There is no general provision requiring the payment of accrued benefits at the time of termination.

Section 4113.30 of the Ohio Rev. Code, which does not apply to any public employer or to any employer who is subject to the National Labor Relations Act, provides that where collective bargaining agreement between an employer and a labor organization contains a successor clause, such clause is binding upon and enforceable against any successor employer who succeeds to the contracting employer's business until the expiration date stated in the agreement, except that no successor clause is binding upon or enforceable against any successor employer for more than three years from the effective date of the collective bargaining agreement between the contracting employer and the labor organization.

Qualified Immunity for Employer as to Job Performance Information Disclosures

Section 4113.71, effective in July 1996, provides qualified immunity for employers who have been requested by an employer or a prospective employer of an employee to disclose to the prospective employer information pertaining to the job performance of the employee and who disclosed the requested information. However, an employer is not protected where the employee proves that the employer disclosed particular information with the knowledge that it was false, with the deliberate intent to mislead the prospective employer or another person, in bad faith, or with malicious purpose, or that the disclosure of particular information by the employer constitutes an unlawful discriminatory practice.

Ohio's Mini-WARN Act

Effective September 29, 2025, Ohio Revised Code §4113.31 will require Ohio employers to provide 60 days advance notice to employees, unions, and certain government officials when effectuating a plant closure or mass layoff. While similar in many respects to the federal WARN Act described above, Ohio WARN adds state specific requirements.

Ohio WARN applies to employers that (1) employ at least one hundred employees who collectively work a minimum of 4,000 hours each week; and (2) conduct a plant closure or mass layoff of more than fifty employees at a single site of employment within a 30-day period. The terms "plant closure, "mass layoff," and "employer" are defined in Ohio WARN with reference to the federal WARN Act. Employers should be aware of one apparent inconsistency in the language of Ohio WARN. Specifically, while Ohio WARN adopts federal WARN's definition of the term "mass layoff," Ohio WARN goes on to state that employers must provide WARN notice when the employer lays off "fifty or more employees at a single site of employment during any thirty-day period." Under federal WARN, notice is only required for a "mass layoff" when the employer lays off fifty or more full time employees at a single site of employment and the total number of those laid-off employees equals 33% or more of the total amount of employees at the site of employment. Employers operating in Ohio and considering a plant closure or mass layoff should be sure to consult with counsel to assist them in interpreting this ambiguity.

The notice requirements under Ohio WARN depend on whether the affected employees are unionized or not. For union employees, employers will be required to provide notice to the union that includes: (1) the location of the affected facility; (2) a detailed explanation of the reason for the closure/layoff and whether it is permanent or temporary; (3) the expected start date of the closure/layoff and the anticipated date on which employee's employment will end; and (4) the total number of affected employees, including the job title and department or division of each. For non-union employees, employers must ensure that the notice includes: (1) a detailed description of the reason for the closure/layoff and whether it is permanent or temporary; (2) the expected dates on which the layoff/closure will begin and the anticipated date on which the employee's employment will end; (3) whether the employee has any bumping or reemployment rights; (4) information about unemployment benefits and other assistance programs; (5) contact information for a company representative who can assist the employees in answering questions; and (6) a description of other available support services such as job placement or counseling services.

Under Ohio WARN, notice of a plant closure or mass layoff must also be sent to the director of the Ohio Department of Job and Family Services, as well as the chief elected officials of the municipal corporation and the county where the closure/layoff will take place.

Ohio WARN incorporates the penalty provision from the federal WARN Act, which includes liability for damages, civil penalties, and reasonable attorneys' fees.

Ohio "Ban the Box" Law

Ohio's "Ban the Box" law prohibits public employers (defined as state agencies and political subdivisions of the state, including counties, townships, and municipal corporations) from including any question about an applicant's criminal background in any written application for employment. This law does not currently apply to private employers and does not prevent public employers from conducting criminal background checks on applicants later in the hiring process in compliance with the Fair Credit Reporting Act (FCRA) and with the EEOC's 2012 Enforcement Guidelines on Criminal Background Checks.

Salary History Bans

~~In 2019, the cities of~~Effective October 27, 2025, Cleveland will join Columbus, Cincinnati~~ and~~, Toledo ~~became the first two~~and other cities in Ohio ~~to join numerous states and other municipalities that prohibit~~prohibiting employers from inquiring about and using past salary history of job applicants during the hiring process to ensure pay equity and close the gender wage gap. ~~Cincinnati and Toledo ordinances make it unlawful for~~The Cleveland ordinance applies to any employer ~~of~~with 15 or more employees ~~within the municipality to: (1) inquire about the salary history of an applicant for employment; (2) screen job~~and prohibits employers from asking applicants ~~based on~~about their current or prior ~~wages, benefits, other compensation, or salary histories, including requiring that~~salary, relying solely on an applicant's ~~prior wages, benefits, other compensation or~~ salary history ~~satisfy minimum or maximum criteria; (3) rely on the salary history of an applicant in deciding whether~~ to offer employment ~~to an applicant during the hiring process, or in determining the salary, benefits, or other compensation for such applicant during the hiring process, including the negotiation of an employment contract; or (4) refuse to hire or otherwise disfavor, injure, or retaliate~~, or retaliating against an applicant ~~for not disclosing~~~~disclosing~~that refuses to disclose his or her salary history~~ to an employer. Neither restriction applies to voluntary and unprompted disclosures related to an applicant's pay history. Both laws provide for a private cause of action, which can be filed by an applicant within two years of any violation. Remedies for violation of these laws include compensatory damages, reasonable attorney's fees and costs, and equitable relief as a court deems proper.~~ . The Cleveland ordinance also requires employers to provide the salary range or scale in job postings. Violations of the Cleveland ordinance will be investigated by the Fair Employment Wage Board and may result in the assessment of civil penalties between $1,000 and $5,000 depending on the violation history of the employer.

The Columbus, Cincinnati, and Toledo ordinances are similar to the Cleveland ordinance, and each prohibit inquiry into the prior salary history of applicants and applicant screening based on salary history. Employers should be sure to consult with the local ordinances governing their place of business to ensure compliance when making a job positing or initiating the hiring process.

Ohio Whistleblower Protection Act

The Ohio Whistleblower Protection Act, Ohio Rev. Code §§4113.51 to 4113.53, provides protection from retaliation for employees who report certain suspected criminal violations of law by their employers in strictly defined circumstances. To be protected, the employee must notify the employer of the alleged violation orally and also file a written report describing the violation. The employee must reasonably believe the violation is a criminal offense that is likely to cause an imminent risk of physical harm or a hazard to public health or safety, a felony, or an improper solicitation for a condition. If the employer does not correct the problem, the employee may report the violation to the appropriate public authority. If the employee complies with the reporting requirements of the Act and the employer takes any adverse employment action, the employee may bring a civil action for

injunctive relief, reinstatement, backpay, and attorneys' fees. Any action must be brought within 180 days of the disciplinary or retaliatory action. If the employee strictly complies with the requirements of the Act, he or she may also recover in a common law public policy tort action and cumulate the remedies under both.

Ohio's Medical Marijuana Law

Ohio's passage of House Bill 523 (effective September 6, 2016) made it the 25th state (now 37 states and the District of Columbia) to legalize medical marijuana. However, the law as written provides that nothing in Ohio's medical marijuana law (1) requires an employer to permit or provide a legal accommodation to an employee to use, possess or distribute medical marijuana or (2) prohibits an employer from establishing or enforcing a drug testing policy, drug-free workplace, or zero-tolerance drug policy that includes testing employees for alcohol and drugs, including marijuana, and taking an adverse employment action for violating the policy even if the employee uses marijuana off premises and has a valid prescription to use due to a medical condition. The law also contains a provision providing that, for unemployment purposes, an employer has "just cause" to terminate an employee for his or her use of medical marijuana, provided the use violated the employer's drug policy. In addition, if an employee is injured at work and tests positive for medicinal marijuana, the employer retains its rebuttable presumption that his/her marijuana use was the cause of the workplace injury, and the employee would not be eligible to receive workers' compensation benefits unless he or she demonstrated that his/her drug use was not a factor in the injury.

Ohio's Recreational Marijuana Law

Ohio Revised Code §3780, made effective December 7, 2023, authorizes and regulates the recreational use of cannabis by adults over twenty-one years of age in Ohio. Of importance to Ohio employers, R.C. §3780 does not: (1) require employers to permit or accommodate employee use, possession, or distribution of cannabis; (2) prohibit employers from refusing to hire, discharging, or disciplining employees because of that employee's use, possession, or distribution of cannabis; or (3) prohibit employers from establishing and enforcing a drug-testing policy, a drug free workplace policy, or a zero tolerance drug policy. The statute does not authorize a cause of action against employers for refusing to hire, discharging, retaliating, or otherwise taking adverse employment actions against an individual for their use of recreational marijuana. An individual who is terminated from employment because of the individual's use of cannabis will be considered to have been terminated for cause for purposes of unemployment benefits eligibility, if the individual's cannabis use was in violation of an employer's drug policy.

Public Policy Exception to Employment At-Will

Although employees in Ohio are generally employed at-will, an employee can maintain a tort cause of action for wrongful discharge in violation of public policy in certain circumstances. Greeley v. Miami Valley Maintenance Contractors, Inc., 49 Ohio St. 3d 228 (1990). The employee must establish the following elements: 1) a clear public policy exists and is manifested in a state or federal constitution, statute or administrative regulation, or

the common law; 2) dismissal of employees, in circumstances similar to plaintiff's, would jeopardize that public policy; 3) plaintiff's dismissal was motivated by conduct related to the public policy; and 4) the employer lacked overriding legitimate business justification for the dismissal.

In 1995, the Ohio Supreme Court expanded the wrongful discharge in violation of public policy tort, holding that the public policy tort may be based on a public policy that is expressed in a statute, even where the employer's conduct did not specifically violate the statute (Collins v. Rizkana, 73 Ohio St. 3d 65 (1995)). Two years later, the Ohio Supreme Court held that the public policy exception is not limited to situations where an employee would otherwise have no remedy (Kulch v. Structural Fibers, Inc., 78 Ohio St. 3d 134 (1997)). However, in 2002, the Court placed a limitation on the public policy tort, holding that there is no need to recognize a common-law action for wrongful discharge if there already exists a statutory remedy that provides adequate remedies to protect society's interests (Wiles v. Medina Auto Parts, 96 Ohio St. 3d 240 (2002)). Likewise, in Leininger v. Pioneer National Latex, 115 Ohio St. 3d 311 (2007), the Ohio Supreme Court held that a wrongful discharge in violation of public policy claim cannot be premised on Ohio Revised Code Chapter 4112 because the remedies in Chapter 4112 provide complete relief for a statutory claim for discrimination. The Ohio Employment Law Uniformity Act, which took effect on April 15, 2021, codified this precedent and specifically precludes any recourse, including by way of common law wrongful discharge in violation of public policy claims, other than what is explicitly noted in Ohio Revised Code Chapter 4112, clarifying that "[t]he procedures and remedies for unlawful discriminatory practices relating to employment in this chapter are the sole and exclusive procedures and remedies available to a person who alleges such discrimination actionable under this chapter."

The statute of limitations for a wrongful discharge in violation of public policy claim is generally four years, at least insofar as it is premised on a statute, rule or law that does not contain its own statute of limitations (Pytlinski v. Brocar Products, Inc., 94 Ohio St. 3d 77 (2002)). After Pytlinski, whether the employee pursuing a public policy wrongful discharge claim must comply with a shorter statute of limitations that is contained in the underlying statute is unclear.

Unemployment Compensation

Individuals in Ohio who become involuntarily unemployed are eligible to receive unemployment compensation, after a one-week waiting period, where such individual is available and willing to accept other work. Individuals are not eligible if the unemployment is caused by: 1) a voluntary resignation without good cause related to the individual's work; 2) a termination for "just cause;" or 3) a labor dispute other than a lockout. The eligible individual will receive a weekly benefit, not to exceed $715, depending on the number of allowable dependents and the individual's average weekly wage during the relevant period prior to filing for unemployment benefits, for up to 26 weeks.

Workers' Compensation Retaliation (Ohio Rev. Code § 4123.90)

Ohio law prohibits employers from discharging, demoting, reassigning, or taking any punitive actions against an employee because he or she has filed a claim or instituted, pursued, or testified in any proceedings under the Workers Compensation Act for a work-related injury or occupational disease that occurred in the course of and arising out of his or her employment. The employee must first provide written notice of the claimed violation to the employer within 90 days following the discharge, demotion, reassignment or punitive action, and then must commence the action within 180 days of the adverse employment action. A successful plaintiff can recover reinstatement, back pay (for firing) or wages lost (offset by earnings), and attorneys' fees.

Workers' Compensation Laws

Ohio's Workers' Compensation Act requires all employers, unless approved for self-insured status by virtue of having 500 or more employees, to pay insurance premiums for exclusive coverage with the State of Ohio's Bureau of Workers' Compensation (BWC). There is no private workers' compensation insurance in Ohio. The BWC covers benefits and medical expenses for injury, occupational disease, and death claims that have occurred "in the course of and arising out of employment." The BWC collects premiums on a prospective basis. The state insurance fund is used by the BWC to pay temporary and permanent benefits, medical expenses, wage-loss benefits and vocational rehabilitation expenses. Along with the BWC, the Industrial Commission is the companion state agency that is primarily the adjudicating body entrusted with resolving all disputed claims for workers' compensation benefits.

Ohio's workers' compensation law is compulsory and the exclusive remedy for employees injured in the scope of their employment. The Ohio Constitution precludes an employee's right to pursue common law tort actions against employers participating in the system except when the employee's injury, occupational disease or death results from intentional acts on the part of the employer.

Injury claims must be filed within one year of the date of injury, and occupational disease claims must be filed within two years after disability due to the disease began, or within such longer period as does not exceed six months after the date of diagnosis.

Injury

- **Definition**: ORC 4123.01(C) defines an "injury" as *any injury*, whether caused by external accidental means or accidental in character and result, received in the course of and arising out of, the injured worker's employment.

- **Statutory Exclusions**: Statutory exclusions include: a) a psychiatric condition except where the condition arises from the injury or where the psychiatric condition

has arisen from sexual conduct in which the injured worker was forced to engage; b) injury or disability caused primarily by the natural deterioration of tissue, organ or part of the body; (c) an injury incurred during an employer sponsored recreational activity if the employee has signed a waiver of the right to participate in the workers' compensation fund prior to engaging in the activity; (d) a pre-existing condition unless it was substantially aggravated by the injury.

- **Time Limits/Notice**: An initial injury claim must be filed within one year from the date of injury. The purpose is to give the employer notice to investigate the claim. The "notice" requirement is satisfied when written "notice" is given to the Industrial Commission (IC), Bureau of Workers' Compensation (BWC), or Self-Insured Employer (SI) indicating that an injury has occurred to one or more specific body parts and presenting medical evidence of same (even if just a bill).

Occupational Disease (OD)

- A **Scheduled OD** is one of those diseases specifically listed in ORC 4123.68, which has been contracted in the course of employment, and which must have been contracted due to the nature of any process described in ORC 4123.68.

- An **Unscheduled OD** is a disease (a) which is contracted in the course of employment; (b) which by its causes and the characteristics of its manifestation or the condition of the employment results in a hazard which distinguishes the employment in character from employment generally; and (c) where the employment creates a risk of contracting the disease in greater degree and in a different manner from the public in general. An injured worker must establish all three elements for an OD to be compensable.

- **Time Limits:** OD claims must be filed within two years after the disability due to the illness began, or within six months after diagnosis. The Ohio Supreme Court has held that the two-year period for disability begins upon the later of the following: a) the date claimant became aware of the of the disease by medical diagnosis; b) the date claimant first received medical treatment for said disease; c) the date claimant first quit work on account of said disease.

- **Presumption of Firefighter Cancer OD**: All types of cancers and their treatments are covered under the BWC for any firefight, full-time or volunteer, who has worked for at least six years on hazardous duty and is age 70 or younger. Unless the employer can prove otherwise, a firefighter's cancer will be presumed to be work-related.

Hearing Process on Contested Issues

Ohio has a dedicated agency tasked with the adjudication of disputed workers' compensation issues, the Ohio Industrial Commission (IC).

- BWC or SI Employer to make initial determination of claim allowance, requested additional allowance(s), disability awards, and treatment issues

- Appeal of unfavorable decision issued by the BWC or SI Employer must be filed by party within 14 days of receipt of said decision

- District Hearing Officer (DHO) to conduct hearing within 45 days of filing of appeal

- Appeal of unfavorable decision from DHO must be filed within 14 days of receipt of DHO order

- Staff Hearing Officer (SHO) to conduct hearing within 45 days of filing of appeal

- Appeal of unfavorable decision of IC to the Court of Common Pleas regarding right to participate issues (i.e., claim allowance and requests for additional allowances) must be filed with the Clerk of Courts for the appropriate jurisdiction within 60 days of receipt of IC refusal order. While 60-day statute is running, Full IC or IC Deputy *may* accept discretionary appeal; discretionary appeal Order results in new 60-day statute

Note: Orders regarding extent of disability, terminating disability compensation, permanent total disability, permanent partial disability, wage loss, Violation of a Specific Safety Requirement (VSSR), and denial of medical payments or treatment are not appealable to the Court of Common Pleas (unless the order effectively terminates claim) and can only be appealed through a Writ of Mandamus.

WORKERS' COMPENSATION BENEFITS

Indemnity

- **Temporary Total Disability (TTD)** provides compensation for a period of time when an injured worker cannot return to the position of employment held on the date of injury in order to compensate for the loss of earnings which the worker incurs while the injury heals. No compensation shall be paid for the first seven days of disability unless the injured worker has been disabled for 14 consecutive days.

- **Wage Loss Compensation (WL)** may be paid for a maximum of 226 weeks. The injured worker must file an application with a doctor's report, a wage loss statement, evidence of a good faith job search, and an employment history. Wage loss compensation is paid when: (1) an employee returns to work and earns less money

than at his or her former position of employment due to restrictions based on the allowed conditions in the claim (working wage loss); or (2) the employee cannot find work consistent with his or her physical capabilities as limited by allowed claim conditions (non-working wage loss). Working wage loss ends at 200 weeks but may be supplemented by an additional 26 weeks of non-working wage loss (52-week maximum for non-working wage loss only).

- **Permanent Partial Disability (PPD)** is designed to pay compensation for permanent damage which remains as a result of the injury. In determining the amount of the award, only medical impairment is considered. For claims arising after June 30, 2006, there is a 26-week waiting period from the injury or last date of payment of TTD benefits before an application may be filed. For claims arising prior to June 30, 2006, the waiting period is 40 weeks.

- **Permanent Total Disability (PTD)** compensates for the inability of the injured worker to perform any sustained remunerative employment due to the allowed conditions in the claim. Application must be accompanied by medical evidence from an examination that was conducted within 24 months of the application and must provide evidence of the injured worker's physical and/or mental limitations resulting from the allowed conditions. Vocational evidence may also be considered. PTD is payable for the actual life of the injured worker.

- **Scheduled Loss (SL)** award encompasses amputations and loss of use, including vision and hearing, paid at the maximum rate for the year of injury. A scheduled loss award is based on the loss suffered by the injured worker prior to treatment, not on the injured worker's condition after treatment.

- **Death Benefits** are payable for the final medical expenses, the funeral, and to dependents. Remarriage results in a two-year final payment. Attaining majority also terminates benefits.

Violation of Specific Safety Requirement (VSSR)

A penalty of between 15% and 50% of all past, present, and future compensation (paid at maximum rate for the year of injury) may be imposed for a violation of the Ohio Administrative Safety Requirements covering various industries, including construction and "workshops and factories," that is the proximate cause of claimant's injury. The VSSR and any percentage awarded is determined by the Industrial Commission at an evidentiary hearing before a Staff Hearing Officer. This penalty is not paid through BWC coverage for a state-funded employer, but is a penalty paid out of pocket by the employer. For all claims arising on or after September 15, 2020, there is a one-year statute of limitations for filing a VSSR petition.

Calculation of Rates

TTD: Amount of TTD for the first 12 weeks is based on the full weekly wage (FWW determined by the higher of wages for the week or six weeks before date of injury). Compensation is paid for the first 12 weeks at 72% of the injured worker's FWW. After the first 12 weeks have been paid, the TTD benefit is based on 66 2/3 % of the average weekly wage (AWW of the injured worker for the year before the injury). The amount of compensation paid cannot exceed the statewide average weekly wage.

PPD: For injuries sustained on or after January 1, 1979, the maximum PPD award is one-third of the statewide AWW, but not to exceed two-thirds of the injured worker's AWW.

PTD: For injuries sustained on or after January 1, 1976, the maximum PTD award is 100% of the statewide AWW. The actual rate paid is based on the injured worker's AWW.

MAXIMUM RATES		MINIMUM RATES
DATE	TTD&PTD / PPD	TTD
~~1/1/2005~~	~~678.00 / 226.00~~	~~226.00~~
~~1/1/2006~~	~~704.00 / 234.67~~	~~234.67~~
~~1/1/2007~~	~~730.00 / 243.33~~	~~243.33~~
~~1/1/2008~~	~~751.00 / 250.33~~	~~250.37~~
1/1/2009	767.00 / 255.67	255.67
1/1/2010	775.00 / 258.33	258.33
1/1/2011	783.00 / 261.00	261.00
1/1/2012	809.00 / 269.67	269.67
1/1/2013	839.00 / 279.33	279.33
1/1/2014	849.00 / 283.00	283.00

1/1/2015	862.00 / 287.33	287.33
1/1/2016	885.00 / 295.00	295.00
1/1/2017	902.00 / 300.67	300.67
1/1/2018	932.00 / 310.67	310.67
1/1/2019	950.00 / 316.67	316.67
1/1/2020	980.00 / 326.67	326.67
1/1/2021	1,019.00 / 339.67	339.67
1/1/2022	1,085 / 361.67	361
1/1/2023	1,149 / 383	383
1/1/2024	1,195 / 398.33	398.33
1/1/2025	1,231 / 410.33	410.33

SCHEDULE OF LOSSES (WEEKS)	
Loss of thumb	60
Loss of first finger (index finger)	35
Loss of second finger	30
Loss of third finger	20

Loss of fourth finger (little finger)	15
Loss of metacarpal	10
Loss of hand	175
Loss of arm	225
Loss of great toe	30
Loss of any other toe	10
Loss of foot	150
Loss of leg	200
Loss of sight of eye (%; 25% minimum)	125
Loss of hearing in one ear	25
Loss of total hearing	125

Other Ohio Features**:** Intentional Tort (limited by legislature and subsequent judicial decisions), Monopolistic State Fund with numerous rating options, Settlement, Subrogation, Successorship.

Managed Care Organization (MCO): Ohio law requires employers to select one of the state-approved MCOs to medically manage the employer's workers' compensation claims. Costs for the MCO are paid by the BWC from the employer's activity for the year.

~~Drug-Free Safety Program~~

~~Ohio has instituted the Drug-Free Safety Program (DFSP), which offers premium reductions to employers who implement a loss-prevention strategy addressing workplace use and misuse of alcohol and other drugs. The program's goal is to eliminate workplace injuries caused by employee substance abuse, but the employees remain employed with the focus of rehabilitation. The program functions as a risk management assistance for~~

~~businesses and currently offers 7% premium savings to eligible and participating employers.~~

REAL ESTATE

METHODS OF HOLDING TITLE

Generally, individuals; certain unincorporated religious, educational or other charitable organizations; labor unions; real estate investment trusts and/or business trusts; trustees of a trust; domestic corporations; foreign corporations licensed to do business in the state; domestic partnerships; domestic registered partnerships having limited liability; domestic limited partnerships or domestic limited liability companies; or foreign partnerships, limited partnerships or limited liability companies licensed to do business in the state can hold title to real property in Ohio.

INDIVIDUAL OWNERSHIP

Generally, all individuals can own real property in Ohio. However, contracts and deeds by individuals younger than 18 years of age or who are legally incompetent are voidable. Under §5301.254 of the Ohio Rev. Code (the "Code"), any individual who is not a citizen of and is not domiciled in the U.S. and who acquires, either in his or her own name or in the name of another, (1) an interest in real property located in the state that is in excess of three acres or that has a market value greater than $100,000, or (2) any interest in and to minerals and any mining or other rights appurtenant thereto or in connection therewith that has a market value in excess of $50,000, must file information with the Ohio Secretary of State on a form prescribed by the Secretary of State, within 30 days of acquiring such interest, together with a filing fee, including the following: name, address, and telephone number; country of citizenship; location and amount of acreage of real property; and intended use of real property. The filing must be updated to reflect any change in such information.

CORPORATE OWNERSHIP

A domestic or foreign business entity when organized in the state or when licensed to do business in the state can own property in Ohio. The filing requirements vary depending upon the type of business entity. In addition, under §5301.254 of the Code, a business entity (1) that is created or organized under the laws of any state or a foreign nation or that has its principal place of business in a foreign nation, and (2) in which either an individual who is not a citizen of, and is not domiciled in, the U.S. acquires at least 10% of the shares of stock or other interests or in which any number of such individuals acquire at least 40% of the shares of stock or other interests, which acquires, either in its own name or in the name of another, (a) an interest in real property located in the state that is in

excess of three acres or that has a market value greater than $100,000 or (b) any interest in and to minerals and any mining or other rights appurtenant thereto or in connection therewith that has a market value in excess of $50,000, must file information with the Ohio Secretary of State on a form prescribed by the Secretary of State, within 30 days of acquiring such interest, together with a filing fee, including the following: name, addresses of principal place of business and principal Ohio office; name, address, telephone number and country of citizenship of each nonresident alien; certain information regarding the organization of the entity; the location and amount of acreage of the real property; and intended use of the real property. The filing must be updated to reflect any changes in such information. The primary advantage of a corporation is that the shareholders are generally not personally liable for obligations of the corporation. However, federal and state tax treatment of corporations may be disadvantageous in certain situations.

PARTNERSHIP OWNERSHIP

Domestic and foreign partnerships can own property in the state when duly organized in Ohio or licensed to do business in the state. The filing requirements vary depending on the type of partnership. Limited partnerships generally provide the advantage of limited liability for limited partners. General partners of limited partnerships and partners of general partnerships have personal liability for obligations of the partnership. Federal and state tax treatment of partnerships may be advantageous in certain circumstances.

LIMITED LIABILITY COMPANIES

A limited liability company can own property in the state if it is duly formed in accordance with state law or, if formed in another state, if registered with the Ohio Secretary of State. Limited liability companies provide limited liability to all members.

DOWER

Ohio recognizes an individual's inchoate dower interest in the real property of their spouse. ~~Upon the death of one's spouse, that dower interest becomes consummate.~~ The dower rights in Ohio are the same for a husband as for a wife.

Under §2103.02 of the Code, a spouse who has not relinquished or been barred from it has a life estate in one-third of the real property which the consort owned at any time during the marriage. The dower interest terminates upon the granting of an absolute divorce by a court of competent jurisdiction or upon the death of the consort except as to property conveyed or encumbered during the marriage without proper release of dower rights. In lieu of a dower right which terminates upon death, a surviving spouse is entitled to the distributive share provided for under §2105.06 of the Code.

A spouse who is not a mortgagor is generally required to release his or her dower rights in connection with the granting of a mortgage by the other spouse.

CONCURRENT OWNERSHIP

Tenancy in Common

A tenancy in common can be created by deed, devise or can be inferred to exist by a court. Each cotenant has a separate and distinct title to the same property, with a specified share in the entire estate. However, when a deed is silent as to each cotenant's share of the interest, the interests of all cotenants are presumed to be equal. Possession by one cotenant is equivalent to possession by all cotenants, and any benefit inures to all cotenants. Each cotenant must defend and protect the common property for the benefit of all cotenants. There is no right of survivorship. Upon receiving a share of the deceased cotenant, the successor becomes a tenant in common with the remaining tenants in common. A tenancy in common may be dissolved by a voluntary partitioning, judicial partitioning or conveyance.

Joint Tenancy

A joint tenancy under common law must be created by explicitly evidencing the parties' intent. The joint tenants must receive their interests at the same time and by the same document, have equal interests in the estate, and have equal and coextensive rights of possession. The joint tenants also have a right of survivorship. However, Ohio courts have held that without an express intent of holding jointly with rights of survivorship, a tenancy in common rather than a joint tenancy is created.

~~Chapter~~Section 5302.17 of the Code provides for a statutory survivorship deed. This statute supersedes common law joint tenancies and tenancies by the entireties in Ohio. The survivorship tenancy is similar to a joint tenancy, but unlike a common law joint tenancy, a conveyance by one survivorship tenant does not terminate the right of survivorship; upon the death of the conveying survivorship tenant the interest of his or her grantee terminates and title vests in the remaining original survivorship tenants.

Tenancies by the Entireties

A tenancy by the entireties is a joint tenancy in which the joint tenants are spouses. The creditor of one spouse cannot foreclose on the other spouse's interest to satisfy a debt. A tenancy by the entireties may no longer be created in Ohio. However, under §5302.21(A) of the Code, a tenancy by the entireties created prior to April 4, 1985, continues to be valid.

Survivorship Tenancy

See Types of Deeds, below.

OHIO PURCHASE AND SALE TRANSACTIONS

STATUTE OF FRAUDS

The Statute of Frauds is codified in Chapter §1335 and, under that Chapter, contracts for the sale or transfer of an interest in real property must be in writing in order to be enforceable.

PURCHASE AGREEMENTS

A purchase agreement is typically drafted by the purchaser. Purchase agreements usually provide for an inspection or due diligence period during which the purchaser is given the opportunity to inspect the property, review documents and information regarding the property and obtain financing and any necessary governmental approvals. The purchase and sale transaction is typically completed in escrow utilizing an escrow agent, and often the escrow agent is the title insurance company that is providing the purchaser's title insurance policy. In more rural locations, round table closings may still be utilized.

In residential sales, the seller is required to complete and provide to the purchaser a disclosure form mandated by the Department of Commerce. There are several exemptions to the disclosure requirement. Failure to deliver the statement when required gives purchaser certain rescission rights. Under federal regulations, sellers of residential real estate are also required to make certain disclosures regarding the presence or possible presence of lead-based paint at the property.

A purchase agreement typically includes the following: representations and warranties regarding the property (in commercial transactions); provisions for obtaining a title insurance policy in favor of the purchaser at the closing; contingencies for inspection of the property and improvements; a contingency for the review of a land survey and title report permitting the purchaser to object to title defects and giving the seller the obligation and/or the opportunity to remove or correct any title defects; a financing contingency; a contingency for obtaining an environmental site assessment and verification of compliance with applicable environmental laws; a contingency for verification of compliance with building and zoning regulations; and procedures for closing the transaction in escrow through an escrow agent. A purchase agreement also typically places the risk of the occurrence of a casualty loss or taking by eminent domain prior to closing on the seller by permitting the purchaser to elect either to terminate the agreement or to close and receive any insurance proceeds or taking awards.

If the parties intend that any of the representations, warranties or covenants in the purchase agreement will survive the closing and the filing of the deed for record, the purchase agreement must expressly provide for such survival. If the agreement is silent, the representations, warranties and covenants will merge with the deed and only those covenants and warranties contained in the deed will continue after closing.

TITLE INSURANCE

Evidence of title is typically provided by purchasing title insurance from a title insurance company. A title insurance policy insures that the ownership interest being transferred is good and marketable. Generally, title insurance commitments list the current owner of the property, a legal description of the property, standard exceptions which are applicable to all policies, and specific exceptions to title which apply only to that parcel of property. Examples of specific exceptions include mortgages, construction liens, easements and other encumbrances. It may be possible for both standard and specific exceptions to be removed upon presentation of a survey and proper documentation, including a customary owner's affidavit, to the title company.

The rates and premium charges for title insurance and title insurance products are regulated by the state department of insurance. The cost of title insurance is typically paid at least in part by the seller; the allocation is usually negotiated between the seller and the buyer.

TRANSFER TAXES

A real property conveyance fee is levied on a seller in connection with the sale of real property. The fee is calculated based on the purchase price for the real property. The fee is typically paid in full or in part by the seller, although this item is frequently a negotiated item between buyer and seller, especially in commercial transactions. The amount of the fee varies from county to county, but it is generally $4.00 per thousand dollars of consideration based on the purchase price. Certain transactions are exempt from the imposition of the conveyance fee. The Statement of Reason for Exemption, as promulgated by the county fiscal officer where the property is located and, in certain cases, an explanatory affidavit must accompany a deed at the time of recording if an exemption applies.

Real Property Taxes are prorated as of the closing date based on the most recent available tax bills or tax duplicate to the extent available from the county where the property is located. Because real estate taxes are generally paid in arrears, the tax duplicate may be more current than the last available bill. The proration procedures may vary slightly from county to county, depending upon how and when taxes are billed. A purchase agreement may provide that, upon the receipt of the final tax bill for the period in which the closing has occurred, the seller and buyer will recalculate the tax proration and make any necessary adjustments outside of escrow. In some circumstances, the parties may wish to hold some funds in escrow for the purpose of this adjustment in the tax proration, especially if it is known that a current re-assessment will impact the proration of the arrearages.

DEEDS

~~Effective February 1, 2002, deeds are no longer~~Deeds are not required to be executed in the presence of witnesses. To be in proper form in Ohio, deeds must be signed by the grantor and acknowledged by the grantor in the presence of a notary public or other officer

authorized to take acknowledgments by statute. Deeds must recite the name ~~and address~~ of the person who prepared such instrument at the bottom. A deed is in compliance with §~~317.11.1~~317.111 of the Code if it contains a statement in the following form: "This instrument was prepared by (name ~~and address~~)." Deeds must contain a sufficient description of the property and, if the deed contains a new legal description (different from the last title instrument of record), then the description must recite the name of the surveyor who prepared it. *See* § 5301.25 of the Code. A newly prepared legal description or change in the legal description from the last recorded instrument of title may cause delay in recording because it is likely to be reviewed by the recorder or county engineer. The deed must be filed in the office of the recorder of the county where the property is located. In addition, written standards governing the conveyances in each Ohio county are promulgated by each county's auditor and engineer. *See* § ~~319.20.3~~319.203 of the Code.

A deed may contain a reference by volume and page to the record of the deed or other recorded instrument under which the grantor claims title, but the omission of such reference shall not affect the validity of the same. *See* § ~~5301.01~~5301.011 of the Code. The use of the word "grant" is sufficient for conveyance without need for additional language, and all rights, easements, privileges, and appurtenances belonging to the granted estate shall be included in the conveyance, unless the contrary is stated in the deed, and it is unnecessary to enumerate or mention them either generally or specifically.

TYPES OF DEEDS

There are five statutory forms of deeds established under the ~~Ohio Rev.~~ Code: general warranty deed, limited warranty deed, quit claim deed, fiduciary deed and survivorship deed. Deeds must be recorded in the county in which the real property is located. See §~~5301.01~~5301.25 of the Code. Statutory forms are prescribed but are not mandatory.

General Warranty Deed

In a conveyance of real estate, or any interest therein, the words "general warranty covenants" have the full force, meaning, and effect of the following words: "The grantor covenants with the grantee, his or her heirs, assigns, and successors, that he or she is lawfully seized in fee simple of the granted premises; that they are free from all encumbrances; that he or she has good right to sell and convey the same, and that he or she does warrant and will defend the same to the grantee and his or her heirs, assigns, and successors, forever, against the lawful claims and demands of all persons" (§5302.06 of the Code). The statutory form of general warranty deed is reviewed in §5302.05 of the Code.

Limited Warranty Deed

In a conveyance of real estate, or any interest therein, the words "limited warranty covenants" have the full force, meaning, and effect of the following words: "The grantor covenants with the grantee, his or her heirs, assigns, and successors, that the granted

premises are free from all encumbrances made by the grantor, and that he or she does warrant and will defend the same to the grantee and his or her heirs, assigns, and successors, forever, against the lawful claims and demands of all persons claiming by, through, or under the grantor, but against none other" (§5302.08 of the Code). The statutory form of limited warranty deed is reviewed in §5302.07 of the Code.

Quit-Claim Deed

In a conveyance of real estate, or any interest therein, the words "quit-claim" have the force and effect of a deed in fee to the extent of grantor's interest to the grantee, his or her heirs, assigns, and successors, and to his or her and their own use, but without covenants of any kind on the part of the grantor. The statutory form of quit-claim deed is found in §5302.11 of the Code.

Transfer on Death Affidavit

~~In 2009,~~Under Section 5302.22 of the Code ~~was amended so that~~, a person or persons who own real property or an interest in real property may create, by affidavit, a durable designation of a survivor beneficiary or beneficiaries of that interest in the real property, which beneficiary or beneficiaries may include a trust. The transfer on death deed was abolished.

Upon the death of the affiant, the interest of the decedent affiant vests in the beneficiary or beneficiaries who are identified in the affidavit by name and who survive the deceased affiant. The transfer of the decedent's interest is effected by the recording of an affidavit, accompanied by a certified copy of the decedent's death certificate, filed with the county recorder's office in the county where the real property is located.

Fiduciary Deed

In a conveyance of real estate, or any interest therein, the words "fiduciary covenants" have the full force, meaning and effect of the following words: "The grantor covenants with the grantee, his or her heirs, assigns, and successors, that he or she is duly appointed, qualified, and acting in the fiduciary capacity described in such deed, and is duly authorized to make the sale and conveyance of the granted premises, and that in all of his or her proceedings in the sale thereof he has complied with the requirements of the statutes in such case provided" (§5302.09 and §5302.10 of the Code).

Survivorship Deed

~~Effective April 4, 1985,~~ Ohio provides for a statutory form of deed, whereby the grantor may create a survivorship tenancy. As prescribed in §5302.17 of the Code, a deed conveying any interest in real property to two or more persons, using the words "for their joint lives, remainder to the survivor of them," creates a survivorship tenancy in the

grantees, and upon the death of any such grantee, vests the interest of the decedent in the survivor or survivors of the grantee, or his or her or their separate heirs and assigns. The statutory form of survivorship deed is found in §5302.17 of the Code.

CLOSING: FORMALITIES OF TRANSFER INSTRUMENTS

If financing is required for a buyer to complete a real property purchase, a financing contingency is typically included in the purchase agreement. Financing may be obtained through commercial lending institutions or other third parties. In some cases, financing programs through state agencies or local enterprise zones or economic development departments may be available to provide incentives for the buyer to locate its business in the subject community. A prospective purchaser should explore the available financing sources prior to entering into a binding agreement to purchase real property.

Ohio has used both round table closings and "mail" closings; however, the most common method is the "mail closing." Most closings are completed in escrow utilizing a title insurance company. The HUD-1 settlement statement form is typically used even if not required by federal law.

MORTGAGES AND LAND CONTRACTS

In form, a mortgage in Ohio is a conveyance of an estate, but Ohio is a "lien" state. The conveyance is then stated as made to secure the repayment of money or to guarantee performance of an agreed act. If the obligor repays the money or discharges the act, the conveyance becomes void.

In Ohio, mortgages are used as opposed to deeds of trust. Any real property interest may be mortgaged in Ohio, such as a tenant's leasehold interest, a land contract vendee's interest or an interest in minerals. However, in order for a mortgage to constitute a lien, there must be a genuine and valid obligation created for which consideration has been given.

Mortgages must be executed by the mortgagor and recorded in the same manner as deeds (described above). The notice to third parties created by a recorded valid mortgage expires 21 years after the date of the mortgage or 21 years after the stated maturity date of the principal sum, if a stated date of maturity is provided in the mortgage, whichever is later, unless the mortgage is refiled.

TYPES OF OHIO MORTGAGES

There are several types of mortgages in Ohio, including a purchase money mortgage, vendor's lien mortgage, construction mortgage, wrap around mortgage and open-end mortgage. The most common in commercial transactions is the open-end mortgage. The open-end mortgage, under § 5301.232 of the Code, secures unpaid balances of loan advances made after the mortgage is delivered to the county recorder for record, to the

extent that the total unpaid loan indebtedness, exclusive of interest, does not exceed the maximum amount of loan indebtedness which the mortgage states may be outstanding at any time.

ELEMENTS OF AN OHIO MORTGAGE

In order for a mortgage to be in recordable form, Ohio law requires the names of the parties, current address of the mortgagee and ~~must specify~~specification of the secured property, including a legal description. Ohio follows the general rule that as between two mortgages on the same property, generally the mortgage first recorded has priority, unless the mortgagee under the first recorded mortgage had actual notice of a pre-existing but subsequently recorded mortgage. However, a mortgage that has been recorded first may be made expressly subordinate to a subsequent mortgage if valid consideration is given, and an Ohio court sitting in equity has the power to equitably subordinate any otherwise prior mortgage in certain uncommon circumstances.

All properly executed mortgages shall be recorded in the office of the county recorder of the county in which the mortgaged premises are situated and shall take effect at the time they are delivered to the recorder for record. If two or more mortgages pertaining to the same premises are presented for record on the same day, they shall take effect in the order of their presentation. The first mortgage presented shall be the first recorded, and the first mortgage recorded shall have preference. A mortgage that is presented for record shall contain the then current mailing address of the mortgagee. The omission of this address or the inclusion of an incorrect address shall not affect the validity of the instrument or render it ineffective for purposes of constructive notice.

A mortgage securing unpaid balances of advances is a lien on the mortgaged premises from the time the mortgage is delivered for recording, for the full amount of the total unpaid loan indebtedness, including the unpaid balances of advances made under the mortgage, plus interest, regardless of when the advances are made. Thus, the priority of each future advance relates back to the time the open-end mortgage was filed. However, to secure such advances, the mortgage must state, in substance or effect, that the parties thereto intend that the mortgage shall secure the same, the maximum amount of unpaid loan indebtedness, exclusive of interest thereon (§5301.232 of the Code). A mortgage may also secure protective advances made by the secured party (See §5301.233 of the Code) if the mortgage states that it secures such unpaid advances.

An open-end mortgage is effective only if it:

- States that the parties intend for it to secure such balances
- States the maximum amount of unpaid loan indebtedness, exclusive of interest, which may be outstanding at any time

- Contains at the beginning the words “Open-End Mortgage” (§ 5301.232 of the Code)

FORECLOSURE

Foreclosures through judicial process are used almost exclusively in Ohio. Strict foreclosure is not an available remedy in Ohio. Local court rules govern the conduct of foreclosure proceedings, and, in particular, the requirements of furnishing evidence of title to the court. Further, the plaintiff needs to prove that it is the real party in interest that has standing to bring the foreclosure suit by showing that it is the holder of the note secured by the mortgage. The foreclosure process may take several months to complete. Upon entry of a decree of foreclosure, a sheriff’s sale is held at which the property is sold to the bidder, providing such bid exceeds the legal minimum bid. The holder of a mortgage may bid any amount up to or above the amount of its outstanding lien. The property owner may redeem the property at any time prior to confirmation of the sale by the court upon payment of the amount of the judgment, plus costs and interest. Upon confirmation of the sale, the property is conveyed to the highest bidder by sheriff’s deed. A receiver may be appointed for the property by the court pending the completion of the foreclosure process to protect and preserve the property. Also, Ohio has a receivership statute that allows a receiver who obtains court approval to sell the mortgaged property free and clear of liens in a process that is similar to a Section 363 sale under the U.S. Bankruptcy Code. Mortgagee may avail itself of the deed-in-lieu of foreclosure process.

LAND CONTRACTS

Land installment sales contracts are recognized in Ohio. Although §Chapter 5313 of the Code provides for a residential land installment contract, it has not been clearly established if and to what extent these statutes govern commercial land installment contracts. Under statute, land contracts are foreclosed by judicial foreclosure process in the same manner as mortgages after the contract has been in effect for five years or the purchaser has paid more than 20% of the purchase price. Because the state laws concerning mortgages are more established, it is more typical for a seller to finance a purchase and sale by taking back a note and mortgage in the amount of the purchase price than by using a land installment sales contract.

EASEMENTS

Easements may be created by grant in an instrument in writing executed in the same manner as a deed and recorded in the real property records of the county in which the subject property is located. Easements may also be created by reservation or exception in a deed or by prescription by one who uses the land of another for the statutory period of 21 years, provided that the use is open, notorious, continuous, hostile or under claim of right to the interest of the owner. Courts may also recognize the existence of an easement in certain circumstances. However, easements created by grant are favored by the courts. Easements may be granted as an appurtenance to a specific parcel of real property if that

property is properly described in the easement. Easements are estates in land and can only be transferred as real property. There are generally no restrictions or limitations on the types of uses that the parties may provide for in an easement.

REAL PROPERTY LEASES

ACKNOWLEDGEMENT

Under ~~Ohio Rev.~~ Code §§5301.01 and 5301.08, a lease for a term of greater than three years (including renewal terms) must be signed by the lessor and acknowledged by the lessor before a notary or other officer authorized by statute to take acknowledgements. ~~Section 5301.01 of the Code was previously revised to eliminate the requirement~~The Code no longer requires that a lease for a term of greater than three years be acknowledged by the lessor in the presence of two witnesses.

TERM

Leases in Ohio may be for a fixed term or may be entered into on a periodic basis, such as month-to-month. A lease for a term greater than one year must, however, be in writing in order to be enforceable. Under an oral lease for a periodic tenancy, either party may terminate the lease upon seven days' notice for a week-to-week tenancy or 30 days' notice prior to the periodic rental date for a month-to-month tenancy.

COSTS AND EXPENSES

A written lease should allocate responsibility between the landlord and the tenant for expenses in addition to rent. Such expenses include taxes, insurance and property maintenance. A lease under which the tenant pays a flat sum for rent is referred to as a "Gross Lease." Under a Gross Lease, the landlord is expected to pay other expenses related to the property out of the rent paid by the tenant. A lease under which the tenant assumes responsibility for base rent, utilities, insurance, taxes, property maintenance and all other expenses associated with the property, potentially including mortgage interest and amortization, is called a "Triple Net Lease."

DEFAULT REMEDIES

Residential leases are governed by Chapter 5321 of the Code, which provides for various default remedies for breach of a rental agreement by either the landlord or the tenant. Commercial leases, on the other hand, are generally viewed as contracts between sophisticated parties, and as such, the parties are limited to the remedies specified in the lease or to general contract remedies. Therefore, the default remedies discussed in this section are applicable to residential leases.

When either the landlord or the tenant breaches a residential lease, a cause of action accrues in favor of the injured party. The injured party may bring a claim for damages sustained as a result of the breach or may seek an injunction from the court to enforce the covenant in the lease that has been breached by the other party. ~~An action for breach of~~

~~the lease may bar subsequent actions between the parties unless the action is considered one for breach of a specific provision of the lease, such as an action for the agreed rent, rather than for a breach of the entire lease (*See* 65 Oh. Jur. 3d Landlord and Tenant §121 (2006)).~~

A residential landlord may bring an action for forcible entry and detainer for possession of the premises under certain conditions as provided in Chapter 1923 of the Code. Other than as provided in Chapter 1923, a landlord may not, however, initiate any retaliatory action such as termination of utilities or exclusion from premises in order to recover possession of the premises in light of a tenant's breach. A landlord that violates the provisions of the Code governing the remedies available for recovery of residential premises may be liable to the tenant for any damages sustained and for reasonable attorneys' fees and the tenant may recover possession of the premises or terminate the lease (*See* §5321.02(B) of the Code).

RESIDENTIAL LEASES

Residential leases are governed by Chapter 5321 of the Code. They may be oral or written and are not typically recorded. These statutory provisions limit the obligations that a landlord can impose upon a residential tenant and provide for strict eviction and lease termination procedures. The landlord is required to comply with health and safety requirements, properly maintain the premises, supply heat and running water under specified conditions, and provide reasonable notice (usually 24 hours) of his or her intent to enter the premises. Under §5321.04 (B) of the Code, if the landlord unlawfully enters the premises, the tenant may seek, among other remedies, damages or may terminate the lease. If the landlord fails to fulfill any other obligation imposed on him or her by §5321.04 of the Code or by the rental agreement, and the tenant has given notice to the landlord of such failure, there are several remedies available to the tenant under §5321.07 of the Code; provided, this section does not apply to a landlord who is a party to leases covering three or fewer dwellings or student housing. These remedies include depositing any rent due with the clerk of the municipal or county court having jurisdiction, application to the court for an order directing the landlord to remedy the condition, or termination of the rental agreement.

The tenant's obligations are defined in §5321.05 of the Code and include a requirement to keep the premises safe and sanitary and a requirement that the tenant conduct him or herself in a manner that does not interfere with his or her neighbors' right to peaceful enjoyment of the premises. If the tenant violates any provision of § 5321.05 of the Code, the landlord may be entitled to actual damages and to termination of the rental agreement.

GROUND LEASES

A ground lease is a lease of vacant or unimproved real property. Generally, a ground lease is a long-term lease under which the ground lessor retains title to the property, but the ground lessee takes possession of the land and is entitled to construct and own the improvements on the property. A ground lease is often a "Triple Net Lease;" in addition to

rent, the lessee pays such expenses as taxes, insurance and maintenance charges. Upon expiration of the ground lease, title to the improvements typically passes to the ground lessor as owner of the property.

COMMERCIAL LEASES

While residential leases are governed by Chapter 5321 of the Code, commercial leases generally are not. Section 5321.01 of the Code defines "tenant" as a person entitled under a rental agreement to use and occupy residential premises and "landlord" as the owner, lessor or sublessor of residential premises. Unless the agreement expressly deals with an item covered by Chapter 5321, a commercial lease is commonly viewed as a contract between sophisticated parties and is governed by the terms of the lease itself rather than by provisions of the Code.

In addition, commercial leases, as well as a third party's guaranty of the performance of the tenant's obligations under such leases, generally must be in writing to be enforceable. Leases for a term of greater than three years (including renewal terms) must be executed in the same manner as deeds and may be recorded in the real property records of the county in which the subject property is located. In lieu of recording the entire lease, a memorandum of lease may be recorded setting forth the landlord, the tenant, the addresses of such parties as set forth in the lease, date of the execution of the lease, the term of the lease, a description of the leased premises, any rights of renewal or extension, the date of commencement of the term and setting forth such other information as the parties wish to include, which memorandum shall be executed and acknowledged in accordance with §5301.01.

ZONING AND LAND USE

Zoning is determined on a local level (city or county, in the case of unincorporated townships) and regulations vary across the state. Ohio is a home rule state where the zoning powers of cities are derived directly from police powers granted to municipalities in the Ohio Constitution. Zoning powers of counties and townships are granted by the State General Assembly in the Ohio Revised Code. Additional land use restrictions may apply to properties located in designated historic districts or designated as having special historic significance, or properties located in environmentally sensitive areas. Because zoning regulations apply to all property within a jurisdiction and are generally not a title matter that will be evidenced through a title examination, they are not necessarily covered by a title examination and should be reviewed carefully at the outset and again at the closing of any real estate transaction.

Under §713.13 of the Code, the municipality or a neighboring property owner who would be harmed may institute an action for injunction to prevent or terminate a violation of a zoning ordinance. A variance may be granted by a township board of zoning appeals under § 519.14 of the Code where unnecessary hardship would result from enforcement of a zoning ordinance.

CONDOMINIUM PROPERTY AND PLANNED UNIT DEVELOPMENTS

Under ~~§~~Chapter 5311 of the Code, before an interest in a condominium unit may be conveyed, a declaration submitting the property to the provisions governing condominium developments is required to be signed and acknowledged by the property owner and then filed with the recorder and the auditor for the county in which the property is located. The information that must be included in the declaration is listed in § 5311.05 of the Code.

A planned unit development is defined as a development which is planned to integrate residential, commercial, industrial and any other use (*See* 10 Oh. Jur. 3d Buildings, Zoning, and Land Controls §~~89 (2013)~~88). A planned unit development may be established or modified by a county or a township zoning resolution or amendment (*See* §§303.022 and 519.021). Each of these sections of the ~~Ohio Rev.~~ Code contains the available procedures for including a planned unit development in a zoning resolution for a county or township. Also, under these sections of the Code, "regulation of planned unit developments must further the purpose of promoting the general public welfare, encouraging the efficient use of land and resources, promoting greater efficiency in providing public and utility services, and encouraging innovation in the planning and building ~~or~~of all types of developments" (10 Oh. Jur. 3d Buildings, Zoning, and Land Controls §~~89 (2013~~88)~~)~~. Planned unit developments allow for varying uses within an area with a single zoning classification. Under these sections of the Code, the initial designation of a property as a planned unit development act is considered a legislative act and is, therefore, subject to referendum. Regulations establishing a planned unit development apply to the property only at the election of the property owner. Planned unit developments may also be utilized by municipalities in accordance with the adoption of new legislation or existing zoning codes.

MUNICIPAL SUBDIVISION REGULATIONS

Zoning rules and regulations in Townships of Ohio are specified under ~~§~~Chapter 519.01.99 of the Code. Municipal Corporations zoning rules are specified under ~~§~~Chapter 713.06.15 of the Code.

MINERAL RIGHTS

When real property is conveyed or granted without specific exception or reservation of the underlying minerals, the rights to the property conveyed will include both the subsurface rights and minerals. The mineral interest may be conveyed separately as land, using the same formalities as an estate in land. The grant of mineral interests gives the owner of the mineral interest an easement across the surface estate of the grantor that is reasonably sufficient to gain access to, and allow for extraction of, the underlying minerals. The owner of the surface rights is entitled to use his or her property provided that no activity derogates the rights of the mineral owner. The owner of the mineral interests is obligated not to act negligently in failing to provide lateral support for the surface, unless the right is waived by the surface owner. A conveyance of mineral rights without specific limitation as to which minerals are conveyed includes a broad list of substances, including oil and gas. Mineral

rights may also be created by lease, in which case the lessee is granted the right to enter the surface and extract such substances as are specifically identified in the lease, upon the terms and conditions set forth in the lease. A right to extract minerals may also be given in the form of a license, which does not create any interest in land. Mineral leases and oil and gas leases must comply with the requirements for conveyances of land in §5301.01 of the Code. Oil and gas leases must also be recorded and must comply with §5301.09 of the Code. Oil and gas leases are also subject to securities laws and §Chapter 1509 of the Code. Mining and mineral operations (including the production of oil and gas and closing and capping of wells) are governed by the Ohio Department of Natural Resources.

CREATION

The Ohio Supreme Court has determined that a person may own a fee interest in mineral rights (*See* Ohio Sand and Gravel Co. v. Masheter (1964) 176 Ohio St. 327). Additionally, under Ohio law, it is possible for the total interest in real property to be divided in such a way that the surface estate is severed from the mineral estate. When a deed grants or reserves the minerals but does not specifically mention the grant or retention of the right to explore for and extract the minerals, such a right is implied (*See* Quarto Mining Co. v. Litman (1975) 42 Ohio St. 2d 73).

Ohio has a Dormant Mineral Act which allows a surface owner to reunite the surface estate with a severed mineral estate which has not been mined or otherwise used for a period of years. The requirements for reuniting these two estates are found in §5301.56 of the Code.

LEASING

A mineral interest may be leased in Ohio. A standard lease form is usually used. Leases for oil and gas must be recorded in the record of leases in the county where such land is located and must state the name and addresses of both the lessor and lessee and the property's permanent parcel numbers or sectional indexes (*See* §5301.09 of the Code).

DRILLING

Permits to drill, deepen, plug, reopen or convert wells are issued by the Chief of Division of Oil and Gas Resources Management. Rules governing the application are set forth in §1509.06 of the Code. Each application must be accompanied by a map prepared by a registered surveyor. Wells in coal bearing townships are specially regulated and subject to additional requirements (*See* §1509.18 -.181 of the Code).

EMINENT DOMAIN

Broad eminent domain power has been granted to municipal corporations under the Ohio Constitution, together with the authority to delegate such power to boards or commissions other than city councils. Universities and institutions of higher learning, railroad companies, regional transit authorities, park districts, providers of communications facilities and public utility providers are granted the power of eminent domain by statute. Appropriation of land

by the state is governed by ~~Ohio Rev.~~ Code Chapter 163, townships are governed by §§504.19 and 511.24, municipalities are governed by Chapter 719, and counties are governed by §307.08. Other relevant provisions of the ~~Revised~~ Code governing appropriations of land include the following: Chapter 1501 for the Department of Natural Resources; Chapter 4933 for gas, electric and water providers; Chapter 4951 for street railways and interurban railroads; §306.35 for regional transit authorities; Chapter 5519 for highways and bridges; Chapter 6103 for county water supply systems; Chapter 6117 for sewer systems; Chapter ~~1541~~1545 for park districts; Chapter 1723 for certain corporations and §3333.08 for private colleges and universities.

Owners of property subject to condemnation action may seek damages (i.e., the difference between the value of the land before and after the taking) and compensation in the amount of the fair market value of the land taken. The right of eminent domain extends generally to every kind of property and all interests in that property.

ENVIRONMENTAL LAW

The state agency charged with primary responsibility for environmental matters, the Ohio Environmental Protection Agency (Ohio EPA), operates through a number of divisions. The Divisions of Surface Water, Drinking and Ground Waters, Air Pollution Control, Materials and Waste Management and Environmental Response and Revitalization administer and enforce state statutes and regulations corresponding to the Clean Air Act (CAA), the Federal Water Pollution Control Act (FWPCA, also known as the Clean Water Act or CWA), the Safe Drinking Water Act (SDWA), the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or RCRA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), respectively.

The office of the Director of Ohio EPA is located at its Central Office (headquarters) in Columbus, the state capital, at:

Lazarus Government Center
50 West Town Street, Suite 700
Columbus, Ohio 43215
Telephone: 614.644.3020
https://epa.ohio.gov/home

In addition to the headquarters office, there are five district offices serving the different areas of the state:

Central District Office (Delaware, Fairfield, Fayette, Franklin, Knox, Licking, Madison, Morrow, Pickaway and Union Counties)

Lazarus Government Center
50 West Town Street, Suite 700
Columbus, Ohio 43215
Telephone: 614.728.3778
Fax: 614.728.3898

Mailing Address:
Ohio EPA - CDO
P.O. Box 1049
Columbus, OH 43216-1049

Northeast District Office (Ashtabula, Carroll, Columbiana, Cuyahoga, Geauga, Holmes, Lake, Lorain, Mahoning, Medina, Portage, Stark, Summit, Trumbull and Wayne Counties)
2110 East Aurora Road
Twinsburg, Ohio 44087
Telephone: 330.963.1200
Fax: 330.487.0769

Northwest District Office (Allen, Ashland, Auglaize, Crawford, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Richland, Sandusky, Seneca, Van Wert, Williams, Wood and Wyandot Counties)
347 North Dunbridge Road
Bowling Green, Ohio 43402
Phone: 419.352.8461
Fax: 419.352.8468

Southeast District Office (Adams, Athens, Belmont, Coshocton, Gallia, Guernsey, Harrison, Hocking, Jackson, Jefferson, Lawrence, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Pike, Ross, Scioto, Tuscarawas, Vinton and Washington Counties)
2195 Front Street
Logan, Ohio 43138
Phone: 740.385.8501
Fax: 740.385.6490

Southwest District Office (Brown, Butler, Champaign, Clark, Clermont, Clinton, Darke, Greene, Hamilton, Highland, Logan, Miami, Montgomery, Preble, Shelby and Warren Counties)
401 East Fifth Street
Dayton, Ohio 45402
Phone: 937.285.6357
Fax: 937.285.6249

Other state agencies with responsibility for environmental compliance include the Ohio Department of Natural Resources (ODNR) and the Bureau of Underground Storage Tank Regulations (BUSTR), within Ohio's Department of Commerce-Office of State Fire Marshal. ODNR is responsible for the management of the state's natural resources, including parks, waterways and mineral resources. BUSTR is responsible for regulating the operation of underground storage tanks containing petroleum and other "regulated substances" and any related investigation and cleanup of releases from underground storage tanks. In addition, Permits to Install and general NPDES permits for wastewater

discharges from certain concentrated animal feeding facilities are issued by the Ohio Department of Agriculture.

Ohio is also home to state or regional offices of virtually all major environmental organizations, including the Sierra Club, the Nature Conservancy and the Audubon Society. All of these, and many others, are politically active and are represented by lobbyists at the state capital in Columbus. In addition, as might be expected in one of the more industrialized states, the Ohio Chamber of Commerce, the Ohio Chemistry Technology Council, the Ohio Manufacturers Association and the American Petroleum Institute maintain full- or part-time offices and personnel in Ohio, devoted to environmental issues.

AIR POLLUTION CONTROL

AREA OF INTEREST	REFERENCE
Statute(s)	Ohio Rev. Code § 3704.01, *et seq*.
Regulation(s)	OAC Chapters 3745-14 to 26; 3745-31; 3745-71 to 80; and 3745-101 to 103
Internet	https://epa.ohio.gov/divisions-and-offices/air-pollution-control/air-pollution-control

Ohio Rev. Code § 3704.01, et seq. empowers the Director of Ohio EPA to meet the Agency's obligations under the Clean Air Act, including monitoring, enforcing the state and federal air toxics regulations, bringing non-attainment areas into attainment, reviewing new sources and strategic planning. Permits for Title V and non-Title V sources are issued and enforced by the district offices of Ohio EPA and by local air agencies throughout the state.

Pursuant to Ohio Administrative Code (OAC) 3745-31-02, no person may cause, permit or allow installation of a new source of air pollution without a Permit-to-Install and Operate (PTIO) from Ohio EPA or the local air agency. In general, any air pollutant source which emits more than 10 pounds of pollutants per day is subject to the PTIO requirements, unless the source is specifically exempted pursuant to OAC 3745-31-03 or is subject to Title V permit requirements under OAC Chapter 3745-77. Title V permits are required for the same categories of sources as those included in Title V of the CAA.

Ohio Rev. Code § 3704.03(F) requires that applications for permits for new and modified sources must be accompanied by plans, specifications, construction schedules, and such other pertinent information and data, including data on ambient air quality impact, and a demonstration of "best available technology" (BAT). Pursuant to legislation passed in 2006, however, sources with a potential to emit of less than 10 tons per year are not required to install BAT (*See* Ohio Rev. Code § 3704.03(T)). In *Sierra Club v. Korleski*, 716 F.Supp.2d

699 (S.D. Ohio 2010), the Court held that the Director of Ohio EPA had violated the Clean Air Act by failing to enforce the state implementation plan requirement that all new or modified sources whose potential to emit is less than 10 tons per year employ BAT. However, on May 25, 2012, the Sixth Circuit Court of Appeals reversed the District Court's decision and, thus, removed the lower court's injunction against implementation of the BAT exemption for sources with potential emissions under 10 tons per year (*See Sierra Club v. Korleski*, 681 F.3d 342 (6th Cir. 2012)).

For sources installed or modified after February 7, 2014, that are not exempt from BAT, Ohio EPA has issued a guidance document that sets forth the procedures for determining BAT (*See* "BAT Requirements for Permits Issued On or After February 7, 2014").

Ohio EPA has developed certain model general Permits-to-Install and model general Permits-to-Install and Operate for select sources, pursuant to OAC 3745-31-29. The list of currently available general permits can be found here. In addition, a Permit-by-Rule is another option for avoiding air permitting requirements for certain types of low-emitting emissions sources that fall into one of the source categories listed in OAC 3745-31-03 and otherwise meet the applicable requirements set forth in the rule.

In Ohio, facilities which are subject to Risk Management Plan (RMP) requirements that add an RMP-regulated substance over the threshold quantity must submit an RMP to U.S. EPA no later than the date that the regulated substance is on-site. All facilities must update and resubmit the RMP to U.S. EPA at least every five years or whenever changes involving RMP-regulated substances or processes occur at the facility. Ohio EPA requires facilities to submit copies of their initial RMP and RMPs resubmitted due to a major change to the Agency's Division of Air Pollution Control. However, facilities are not required to submit their five-year anniversary RMPs to The Ohio EPA.

Ohio's asbestos regulations are found at OAC Chapter 3745-20 and include notification, work practice and disposal requirements intended to control asbestos emissions from demolition and renovation projects. Initially, each owner or operator of a demolition or renovation operation must have the affected facility where a demolition or renovation will occur thoroughly inspected by a certified asbestos hazard evaluation specialist. Notification of demolition activity must be submitted, regardless of whether asbestos is involved, to the applicable District Office of Ohio EPA's Division of Air Pollution Control or the local air agency with jurisdiction over the county where the demolition will occur at least 10 working days before demolition activity is to commence.

WATER POLLUTION CONTROL

SURFACE WATERS

AREA OF INTEREST	REFERENCE
Statute(s)	Ohio Rev. Code § 6111.01, *et seq*. Ohio Rev. Code § 3745.113 and Ohio Rev. Code §§ 6111.020 to 6111.028 (isolated wetlands)
Regulation(s)	OAC Chapters 3745-1 and 2 (water quality standards); 3745-3 (pretreatment standards); 3745-4 (surface water monitoring); 3745-5 (water quality trading program); 3745-33 (NPDES individual permits); 3745-32 (401 certifications); 3745-36 (indirect discharge permits); 3745-38 (NPDES general permits); 3745-42 (PTIs) and 3745-1-50 to 3745-1-54 (wetlands)
Internet	https://epa.ohio.gov/divisions-and-offices/surface-water/surface-water

Ohio Rev. Code § 6111.01, *et seq*. reflects the goals of the FWPCA; achieving these goals is the responsibility of Ohio EPA's Division of Surface Water. Ohio's water quality standards are set forth in OAC Chapter 3745-1. OAC 3745-1-04 sets forth narrative standards and general water quality criteria which must be met for all waters of the state. Numeric criteria (chemical, whole effluent toxicity and biological) are set forth in OAC 3745-1-07, while beneficial use designations for specific waterbodies are set forth in OAC 3745-1-08 through 3745-1-32. As with the federal scheme, these standards are intended to be met through the imposition of water quality-based effluent limits in NPDES permits, issued by the Division of Surface Water under a program which has been approved by U.S. EPA. OAC 3745-42-02 requires generally that a PTI be obtained from Ohio EPA prior to installing or modifying any system for disposing of sewage, industrial waste or other liquid wastes, including sewage systems and treatment works.

Mirroring the federal system, OAC 3745-33-02 requires permits for point sources which discharge sewage, sludge or any other pollutant to the waters of the state. More specifically, each point source is required to have either an individual or general NPDES permit or, for certain facilities that discharge to a publicly owned treatment works, an indirect discharge permit. General NPDES permits govern direct discharges from general categories of activities. Ohio EPA has issued a number of general permits for wastewater discharges, including permits governing storm water discharges associated with industrial

activity or construction activity, coal strip mining activities, discharges from petroleum-related corrective action sites, non-contact cooling water discharges, small sanitary wastewater treatment systems, small municipal separate storm sewer systems, geosystem thermal discharges and petroleum-related corrective actions. As the name implies, individual permits are issued to individual operations if their discharges are significant or are not in compliance with the terms of the general permit, if the operation is subject to specific effluent limitation guidelines or if the general permit covering the operation has been revoked by the Director of Ohio EPA. Individual permits are governed by OAC Chapter 3745-33 and general NPDES permits are governed by OAC Chapter 3745-38. Copies of the general permits issued by Ohio EPA are available here.

Ohio EPA also administers the state's storm water permitting program. As noted above, Ohio EPA has issued general permits applicable to storm water discharges from industrial activity and construction activity. Both general permits require the permittee to develop and implement a Storm Water Pollution Prevention Plan, which identifies potential sources of pollution and describes control practices to be implemented at the facility in order to minimize pollutants in storm water discharges. Ohio's current general permit for storm water discharges associated with industrial activity (OHR000007) became effective on June 1, 2022, and expires on May 31, 2027; the general permit for storm water discharges from small and large construction activities (OHC000005) went into effect on April 23, 2018 and will expire on April 22, ~~2023~~2028.

In order to obtain a permit to discharge dredge or fill materials from the U.S. Army Corps of Engineers under CWA § 404, the applicant must obtain a § 401 Water Quality Certification from Ohio EPA, certifying that the discharge will not violate state water quality standards. OAC Chapter 3745-32 contains the administrative and technical requirements for submitting a Section 401 Water Quality Certification application to the Agency's Division of Surface Water. Ohio EPA has pre-granted Section 401 Water Quality Certifications to 404 permits for certain projects, which are believed to cause minimal degradation to waters of the state and, therefore, are eligible for expedited permitting through Nationwide Permits issued by the U.S. Army Corp of Engineers. Specifically, on ~~March 30~~October 13, ~~2012~~2021, Ohio EPA finalized ~~2012~~the 2022 Clean Water Act Section 401 Water Quality Certifications for Nationwide Permits ~~1-20, 22-48, 51 and 52 and on April 19, 2012, Ohio EPA finalized Clean Water Act Section 401 Certifications for Coal~~1-11, 13-20, 22-28, 30-38, 41, 45-46, 49, 53, 54 and 59. These Nationwide Permits ~~21, 49 and 50.~~will expire on March 15, 2026. Additionally, sixteen (16) Nationwide Permits were not reissued or modified by the U.S. Army Corps of Engineers; those Nationwide Permits will remain in effect until the U.S. Army Corps issues a fine rule reissuing them, or until March 14, 2026, whichever is earlier. These sixteen Nationwide Permits are 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, 44, 54, 57 and 58..

Following the U.S. Supreme Court's decision in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001), in which the Court limited the authority of the Corps to assert jurisdiction over certain non-navigable, isolated,

intrastate wetlands, legislation was enacted in 2001 which requires that anyone who proposes to engage in an activity that involves the filling of an isolated wetland, *i.e.*, any wetland that is not subject to regulation under the FWPCA, must obtain a permit from Ohio EPA.

Ohio EPA has established three levels of review for isolated wetland permit applications. Filling of Category 1 and 2 Isolated Wetlands with a potential impact of no more than 0.5 acres may be authorized under Ohio General Permit for ~~Filling~~Filing Category 1 and Category 2 Isolated Wetlands and is subject to a Level 1 review. Level 1 review requires the submission of a pre-activity notice (PAN) that includes an application, wetland delineation, wetland categorization, description of the project, description of the acreage of the isolated wetland that will be subject to filling, site photographs and a mitigation proposal for the impact to the isolated wetland. The current General Permit became effective on July 21, 2022, and will expire on July 21, 2027. Within 15 days after receiving the PAN, Ohio EPA will notify the applicant whether the application is complete, including identifying additional information needed. After submitting a complete PAN, the applicant will receive notice within 30 days if the project does not qualify for a Level 1 permit. Within 30 days, if the applicant does not receive a notice that the project is not authorized, the applicant may move forward with the proposed project in accordance with the conditions stated in the general permit. Any filling or discharge must be completed within two years of the Director of Ohio EPA's receipt of a complete PAN.

All other isolated wetlands require individual permits. Filling of Category 1 and 2 isolated wetlands with impacts of more than 0.5 but less than three acres are subject to Level 2 review. In addition to the requirements for Level 1 review, Level 2 review requires an analysis of practicable on-site alternatives that would have a less adverse impact on the isolated wetland ecosystem and information indicating whether high quality waters (as defined in the Ohio Administrative Code) are to be avoided by the proposed filling of the isolated wetland. Category 2 wetlands with impacts of more than three acres and all Category 3 wetlands are subject to Level 3 review. Level 3 review also requires documentation confirming that the applicant has requested comments from the Ohio Department of Natural Resources and the U.S. Fish and Wildlife Service regarding threatened and endangered species, including the presence or absence of critical habitat, and descriptions, schematics and economic information for the applicant's preferred alternative, non-degradation alternatives and minimal degradation alternatives for design and operation of the activity. Both Levels 2 and 3 reviews require public notice and possible public hearings. Ohio EPA must take action within 90 days of submittal of a complete application for Level 2 reviews and 180 days for Level 3 reviews.

DRINKING AND GROUND WATERS

AREA OF INTEREST	REFERENCE
Statute(s)	Ohio Rev. Code § 6109 (Safe Drinking Water)

	Ohio Rev. Code § 6117 and Ohio Rev. Code § 6119 (Sewer Districts) Ohio Rev. Code § 6111.043-049 (Underground Injection Control)
Regulation(s)	OAC Chapters 3745-7 (Water Supply Works); 3745-9 (Water Well Standards); 3745-34 (Underground Injection Control); 3745-81 to 3745-96 (Drinking Water Rules and Public Water Systems)
Internet	https://epa.ohio.gov/divisions-and-offices/drinking-and-ground-waters

The Ohio EPA's Division of Drinking and Ground Waters (DDAGW) ensures compliance with the Safe Drinking Water Act (SDWA), as reflected in Ohio Rev. Code § 6009, § 6117 and § 6119. The DDAGW manages the federally delegated drinking water program and implements both state and federal drinking water statutes and rules.

The DDAGW is primarily tasked with regulating Ohio's public water systems (PWS) and drinking water sources through the Source Water Assessment and Protection (SWAP) program. A PWS is any system that provides water for human consumption to at least 14 service connections or serves and average of at least 25 people for at least 60 days each year. This includes any water used for drinking, food preparation, bathing, showering, tooth brushing, and dishwashing. Public water systems range in size from large municipalities to restaurants or gas stations that rely on a single well. The DDAGW does not oversee private water systems. Private water systems, which include small business that serve fewer than 25 people per day 60 days out of the year, are regulated by the Ohio Department of Health.

For each PWS, the DDAGW implements two phases of oversight: assessment and protection. The assessment phase is used to (1) delineate the area around the PWS well or intake that will be the focus of protection, and then (2) list the facilities or activities within the delineated area that may potentially release chemicals that would contaminate the source water. A susceptibility analysis is then performed to determine the likelihood that the source water may become contaminated. The protection phase refers to activities undertaken by the public water supplier to protect the SWAP area, including the development of a Drinking Water Source Protection Plan.

Certain activities are limited and/or restricted within designated Drinking Water Source Protection Areas, including: manure storage or treatment facilities (OAC 901:10-2-02), land application of wastewater, wastewater storage facilities (OAC 3745-42-13), stockpiling, storage, and land application of biosolids (OAC 3745-40-07 to 40-08), siting of landfills for solid waste (OAC 3745-29-97 and 27-07), residual waste (OAC 3745-30-06), and/or scrap

tires (OAC 3745-27-71), leaking underground storage tanks, or site clean-up through the voluntary action program.

The DDAGW also manages Ohio's Underground Injection Control (UIC) program, which regulates the types and amounts of waste that can be injected into underground geologic formations. As established under ORC 6111.043 & 6111.044, the UIC program is responsible for the regulation of Class I, IV and V injection wells, and for assuring that their operation does not contaminate underground sources of drinking water. *See* OAC 3745-34. The DDAGW implements strict siting, construction, operation, and maintenance requirements for wells to protect sources of drinking water.

Class I wells are used to inject hazardous and non-hazardous wastes into rock formations below the lowermost underground source of drinking water, typically from 2,700 to more than 7,000 feet in depth. Class I injection wells are required by ORC 6111.043 to apply for and obtain a permit to drill and a permit to operate.

Class IV wells are shallow wells used to inject hazardous or radioactive wastes into or above a geologic formation containing an underground source of drinking water. As of 1984, the U.S. EPA banned the use of Class IV wells to dispose of hazardous or radiative waste. Currently, Class IV wells may only be used as part of Federal or state-authorized clean-up actions.

Class V wells include any wells used to inject non-hazardous fluids underground. There are 18 types of Class V wells, including surface water runoff drainage wells, septic systems, dry wells, motor vehicle waste disposal wells, and industrial, commercial and utility disposal wells. Under OAC 3745-34-11(M), the owner or operator of a Class V well is required to notify the Ohio EPA of the well's existence and complete an Underground Injection Control Class V Well Inventory Form within 30 days of installing said well. Prior to operation, all Class V injection wells injecting industrial waste or other waste, as defined by OAC 3745-3401, must obtain a permit to drill and a permit to operate. Class V injection wells injecting only sanitary waste that have been permitted or authorized by Ohio EPA's Division of Surface Water, or the relevant local health department do not need a permit from the DDAGW. All other types of Class V injections wells (such as storm water drainage wells) can inject wastes into the subsurface provided they have been registered with Ohio EPA. The Director of the Ohio EPA can require any Class V well to apply for and obtain a UIC permit if the injection well is not in compliance with any requirements of OAC 3745-34 or if the protection of an underground source of drinking water necessitates that injection be further regulated.

The DDAGW is also responsible for administering the water and wastewater operator certification program for professional operators of water treatment plants and distribution systems, pursuant to OAC 3745-7. The DDAGW also certifies laboratories to ensure proper analysis of drinking water samples (See OAC 3745-81, 3745-82 and 3745-89).

HAZARDOUS WASTE MANAGEMENT

AREA OF INTEREST	REFERENCE
Statute(s)	Ohio Rev. Code Chapter 3734 (hazardous waste); 3752 (cessation of regulated operations)
Regulation(s)	OAC Chapters 3745-50 to 69, -205, -256, -266; 3745-270 (land disposal restrictions); 2745-273 (universal waste); 3745-279 (used oil); 3745-352 (cessation of regulated operations)
Internet	https://epa.ohio.gov/divisions-and-offices/materials-and-waste-management/material-and-waste-management

Hazardous waste management in Ohio, including regulation of the generation, transport, storage and disposal of hazardous wastes at permitted sites, is largely the responsibility of the Division of Materials and Waste Management (DMWM) under the authority of Subtitle C of RCRA, Chapter 3734 of the Ohio Revised Code, and OAC Chapters 3745-50 through 58, 65 through 69, 248, 270, 273 and 279. DMWM has primary responsibility for carrying out the Ohio version of the federal RCRA regulations governing the generation, transport, storage, and disposal of hazardous wastes. The requirement that each hazardous waste facility be issued an installation and operation permit is set forth in Ohio Rev. Code § 3734.02(E)(2).

Ohio EPA has been delegated authority to administer some, but not all, of the federal programs under RCRA. For example, Ohio EPA has not been authorized to implement the Subpart AA (air emissions standards for process vents), BB (air emissions standards for equipment leaks) or CC (air emissions standards for tanks, surface impoundments and containers) regulations, some of the Land Disposal Restrictions or the Boiler and Industrial Furnace regulations. For more information on Ohio EPA's authority to administer various RCRA programs (*see* here).

Prompted by an incident at the closed Dayton Tire & Rubber facility in 1987 in which vandals removed the copper cores from several large transformers resulting in a discharge of PCB oil to Wolf Creek and an $8 million clean-up, Ohio enacted a Cessation of Regulated Operations (CRO) program. The CRO program was designed to prevent abandonment of property where chemicals were used, stored or treated. The CRO program applies to "regulated facilities," *i.e.*, all facilities that are required to submit hazardous chemical reports to the State Emergency Response Commission (with limited exceptions) that discontinue or terminate the production, use, storage or other handling of regulated substances or finalize any transaction which results in discontinuation of such

operations. Among other things, the CRO program requires facilities to submit a notice of CRO to Ohio EPA, the Local Emergency Planning Committee, and the local fire department, and to secure the facility and designate a contact person within 30 days after CRO. Additional steps must be taken within 90 days after CRO, which include, generally, submitting the facility's most recent chemical inventory form and most recent hazardous chemicals list (or MSDSs), removing all regulated substances from the facility and certifying compliance with the CRO requirements to Ohio EPA. The CRO program also imposes requirements on certain holders of first mortgages and fiduciaries to notify Ohio EPA and to secure the facility when an owner or operator has abandoned the facility.

DMWM is also responsible for implementing the used oil management and disposal regulations at OAC Chapter 3745-279 and universal waste (unused pesticides, mercury-containing thermostats that fail the Toxicity Characteristic Leaching Procedure and spent batteries) regulations at OAC Chapter 3745-273.

SOLID AND INFECTIOUS WASTE MANAGEMENT

AREA OF INTEREST	REFERENCE
Statute(s)	Ohio Rev. Code Chapters 3714 (construction and demolition debris); and 3734 (solid waste)
Regulation(s)	OAC Chapters 3745-27 to 31; 3745-37; 3745-400 (construction and demolition debris)
Internet	https://epa.ohio.gov/divisions-and-offices/materials-and-waste-management/material-and-waste-management

Regulations governing solid waste facilities are also administered by Ohio EPA's Division of Materials and Waste Management, in conjunction with delegated health departments throughout the state. Operations regulated include composting facilities, municipal solid waste landfills, construction and demolition debris landfills, industrial and residual waste landfills, scrap tire facilities, infectious waste generators, infectious waste transporters and scrap tire transporters.

Under Ohio Rev. Code § 3734.04, the board of health for the area in which a solid waste facility is located is responsible for licensing, inspection and enforcement at solid waste facilities, other than scrap tire or hazardous waste facilities, which are the responsibility of Ohio EPA. Solid waste facilities are required by Ohio Rev. Code § 3934.05 to obtain a PTI before construction of the facility may begin and, once operational, must maintain an annual license to operate (*See* Ohio Rev. Code § 3734.05).

Pursuant to Ohio Rev. Code Chapter 3714, Ohio EPA has promulgated regulations governing the disposal of construction and demolition debris (C&DD). Briefly, C&DD may

only be disposed of in a licensed C&DD or solid waste landfill or by open burning, if otherwise permissible under Ohio's open burning regulations (OAC Chapter 3745-19). However, construction debris, trees and brush removed in clearing a construction site may be used as fill material on the site where the materials are generated or removed. In addition, "clean hard fill" may be used as fill material on a site other than the one from which it was generated, provided that the person placing the fill provides a written "Notice of Intent to Fill" to each licensing authority where the clean hard fill is to be placed.

UNDERGROUND STORAGE TANKS

AREA OF INTEREST	REFERENCE
Statute(s)	Ohio Rev. Code § 3737.87, *et seq.*
Regulation(s)	OAC Chapter 1301:7-7 (Ohio Fire Code) and OAC Chapter 1301:7-9 (underground storage tanks)
Internet	https://com.ohio.gov/divisions-and-programs/state-fire-marshal/underground-storage-tanks-bustr/bustr-overview

The regulation of underground storage tanks (USTs) in Ohio is carried out by the Bureau of Underground Storage Tank Regulations (BUSTR), a unit of the State Fire Marshal's Office within the Ohio Department of Commerce. Recent changes to BUSTR regulations have expanded the regulatory obligations of owners/operators of USTs, particularly at "closure." UST activities regulated by BUSTR, which require a permit issued by the State Fire Marshal or a delegated fire department, include temporary closure, permanent abandonment, permanent removal, replacement and change in service. In addition to permitting, BUSTR is also responsible for release prevention, enforcement, corrective action, testing and registration of underground storage tanks.

CLEANUP OF CONTAMINATED PROPERTIES

AREA OF INTEREST	REFERENCE
Statute(s)	Ohio Rev. Code § 3745.12, § 3746.01, *et seq.* (Voluntary Action Program); Chapters 3750 (emergency planning), 3734, 3745 and 6111 (remedial actions at unregulated sites)
Regulation(s)	OAC Chapter 3745-300 (Voluntary Action Program)
Internet	https://epa.ohio.gov/divisions-and-offices/environmental-response-revitalization https://epa.ohio.gov/divisions-and-offices/environmental-response-revitalization/derr-programs/voluntary-action-program https://epa.ohio.gov/divisions-and-offices/emergency-response/office-of-emergency-re

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Ohio does not have a statute that tracks the liability scheme of CERCLA. However, Ohio law provides that any person responsible for causing or allowing an unauthorized spill, discharge or release of material into or upon the environment that requires emergency action to protect public health, safety or the environment is liable to Ohio EPA for costs incurred to investigate, mitigate, minimize, remove or abate such spill, release or discharge. Ohio Rev. Code § 3745.12.

Ohio's "brownfields" program, known as the Voluntary Action Program (VAP), was enacted in 1995 to facilitate the cleanup, redevelopment and reuse of properties contaminated with hazardous substances or petroleum that might otherwise remain idle, due to fear of potential liability and cleanup costs that would be incurred in order to redevelop these properties. The VAP permits any person to establish that there is no contamination underlying a piece of property exceeding applicable standards or that those standards have been achieved through remedial activities or will be achieved within time frames established in an operation and maintenance agreement entered into with the Director of Ohio EPA, all with minimal oversight by the agency. The VAP provides liability protection, in the form of a Covenant Not to Sue (CNS) issued by Ohio EPA, for a volunteer who complies with the requirements of the VAP. However, certain properties are not eligible to participate in the VAP, including sites that are:

- Listed or proposed to be listed on the National Priorities List
- Subject to cleanup under the Underground Injection Control Program of the Safe Drinking Water Act or Ohio Rev. Code Chapters 6111 or 3734
- Subject to RCRA corrective action
- Subject to federal enforcement or response which requires site assessment, removal or remedial action under federal law
- Subject to hazardous waste or solid waste closure
- Subject to petroleum underground storage tank assessment, removal or remediation (with certain exceptions)
- Subject to oil and gas well abandonment

- Subject to state enforcement relating to the release or threat of release of hazardous substances or petroleum

Under the VAP, Ohio EPA has established generic numerical cleanup standards for the treatment or removal of soils, sediments and water media for hazardous substances and petroleum. The rules establish separate generic numerical standards, based upon whether the intended use of the property following the voluntary action is for industrial, commercial or residential purposes; the VAP regulations include generic numerical standards for indoor air exposure due to vapor intrusion from environmental media to human receptors (*See* OAC 3745-300-08(D)). In lieu of meeting generic cleanup standards, the volunteer may perform a property-specific risk assessment to establish site-specific cleanup standards. The risk assessment must demonstrate that the remedy selected by the volunteer is sufficiently protective of public health and safety and the environment. The VAP rules contain detailed procedures for performing property-specific risk assessments, including procedures for property-specific human health risk assessments, ecological risk assessments, and assessment and remediation of sediments.

The VAP contains a classification system for characterizing ground water, based upon its capability to be used for human use and its impact on the environment; the ground water classification system is used to determine the applicable standard and point of compliance. In certain circumstances, the volunteer may request an urban setting designation (USD) from Ohio EPA for the property for the purpose of classifying ground water and determining applicable standards. For a property located in an area designated as an urban setting, ground water remediation standards will be less stringent.

Any person who participates in the VAP must utilize the services of a "Certified Laboratory" to perform any required analyses and a "Certified Professional" (CP) to verify that the property and any remedial activities undertaken at the property in connection with the VAP meet applicable standards. The VAP regulations establish criteria for an environmental professional to become a CP and for a laboratory to become a Certified Laboratory.

To participate in the VAP, a property owner or other volunteer undertakes a "voluntary action," which may include a Phase I property assessment, a Phase II property assessment, a sampling plan, a remedial plan or other remedial activities. When the volunteer is ready to seek concurrence that the property meets VAP standards, the volunteer will submit a No Further Action Letter (NFA) along with the executive summary of the Phase I and/or Phase II property assessments, operation and maintenance documentation and draft environmental covenant. After Ohio EPA's review and, upon its approval, the Director will issue a CNS. After the CNS is issued, the volunteer will be required to file additional supporting documentation including the entire Phase I and/or Phase II property assessments, as well as any risk assessment work.

A CNS under the VAP releases the volunteer from all civil liability to the State of Ohio to perform additional investigative and remedial activities to address a release of hazardous

substances or petroleum at the property, except claims for natural resource damages under CERCLA. A CNS remains in effect only so long as the property continues to comply with the applicable standards, which were in effect when the voluntary action was performed, a violation of an activity and use limitation required under the CNS voids the Covenant. Like the NFA letter, the CNS and any restrictions on the use of the property must be properly recorded. The NFA letter, CNS and any agreement authorized under the VAP may be transferred to any other person.

However, there are limitations to the protections provided by a CNS. For example, while a CNS releases the volunteer from civil liability to the State of Ohio, it does not shield the volunteer from liability to private parties. With respect to potential liability to the United States, U.S. EPA and Ohio EPA entered into a Memorandum of Agreement (MOA) in July 2001 which states that U.S. EPA generally will not take action under CERCLA with respect to a site that is cleaned up in accordance with the so-called "MOA Track" procedures. Region 5 of the U.S. EPA and the Ohio EPA entered into a new MOA in 2007. In 2017 the 2007 MOA was modified to allow an exception to the Voluntary Action Program (VAP) exclusion of properties subject to Petroleum Underground Storage Tank System assessment, removal or remediation for Class C releases and releases (other than Class C releases) that are subject to the corrective action rules adopted by the Fire Marshal, provided (the volunteer is not a responsible person as defined in ORC §§ 3737.87 and) that: (1) the voluntary action also addresses hazardous substances or petroleum that are not subject to the corrective action rules adopted by the Fire Marshal; and (2) the Fire Marshal has not issued an administrative order concerning the release or referred the release to the Attorney General for enforcement. In addition to the requirements for VAP cleanups set forth in OAC Chapter 3745-300, the MOA Track requires a participant to notify Ohio EPA of its entry into the MOA Track VAP Program in writing. An MOA Track volunteer must comply with certain public notification and participation procedures~~, including publishing a notice of intent in the local newspaper and making~~; specifically, the volunteer must create a document depository available to the public, for example at a local library, and the document depository must include the notice of intent to participate in VAP and any associated document. The volunteer must also make public a proposed work plan, and the work plan must be made available for review ~~in the local library; the proposed Remedial Work Plan must also be published in the local newspaper~~and comments. The comment period is 30 days. Furthermore, the volunteer must host a public meeting to discuss the plan. In addition, the MOA Track provides for direct oversight by Ohio EPA by requiring the submittal of site assessments and work plans developed under the VAP to Ohio EPA for its review and approval. Under the MOA Track procedures, Ohio EPA is authorized to take enforcement action if it determines that the cleanup was deficient. Under the 2002 amendments to CERCLA, no federal administrative or judicial enforcement action may be taken by U.S. EPA with respect to a site at which response action is being taken in compliance with a state program that specifically governs response actions.

Audits are performed annually by the Ohio EPA with respect to NFA letters submitted during the prior calendar year in support of a request for a CNS. NFA letters fall into one of

two audit pools after submission: random or discretionary. All NFA letters that are submitted with a request for a CNS will be placed in the random audit pool. NFA letters that were not selected for the random audit will then fall into the discretionary audit pool. The purpose of the audit is to determine if property for which voluntary action was completed meets applicable standards, to determine if CP's possessed qualifications required for certification and to determine whether the Certified Laboratory possessed the qualifications required to perform VAP certified analyses. In addition, Ohio EPA performs compliance audits should a compliance issue arise with a property.

Several types of grants and loans for brownfield cleanups are available from the state. The Ohio Water Pollution Control Loan Fund (WPCLF) is authorized to provide low interest loans for activities conducted under the VAP that benefit the state's water resources. Anyone taking responsibility for the cleanup of an eligible property under the VAP may apply for WPCLF assistance, including individuals, businesses and political subdivisions. Loans may also be available to municipalities under the Ohio Department of Development's Brownfield Fund. Other sources of financial assistance to private entities include Ohio EPA's Pollution Prevention Program and the Ohio Water Development Authority. In addition, the Ohio Department of Development's Urban and Rural Initiative Corporate Franchise Tax Abatement and Grant Assistance Program provides an opportunity for both nonprofit and for-profit entities to take advantage of economic incentives offered to volunteers in the VAP. Assistance may also be available through local governmental programs, such as the Cuyahoga Brownfield Redevelopment Fund, which provides loans to municipal and county entities, nonprofit community development corporations and private businesses through the Cuyahoga County Department of Development.

In addition, loans and grants from the JobsOhio Revitalization Program (JobsOhio) may be available for the redevelopment, remediation, renovation and demolition of brownfield sites and other sites that support future job creation and tax revenue. Created in 2013, JobsOhio was designed to support the acceleration of redeveloping sites in Ohio. Primary focus is placed on projects where the cost of the redevelopment and remediation is more than the value of the land, focusing on sites that cannot be competitively developed in the current marketplace. JobsOhio provides funding through both loans and grants. Revitalization loans range from $500,000 to $5 million and provide between 20% and 75% of eligible costs with a term between 10 and 15 years. Revitalization grants are also available up to $1 million. These grants are typically coupled with revitalization loans and are provided to fill funding gaps where remediation costs exceed the anticipated net gain in land and improvement value, making successful redevelopment infeasible.

The JobsOhio selection process utilizes three basic criteria: jobs, investment, and certainty of completion. Priority is given to revitalization projects, which retain and/or create at least 20 jobs at a wage rate commensurate with the local market. Priority will also be given to those making additional capital investment beyond remediation and redevelopment. Lastly, JobsOhio requires end user commitment to the project, with complete redevelopment plans and funding sufficient to complete the project. To receive a loan or grant from JobsOhio,

an applicant must be a business, nonprofit or local government. The entity committing the jobs must have a signed letter of intent, option, lease or must hold title for the project site. In addition, the entity must have a specific business plan, financing plan and schedule for redevelopment and job creation to occur.

EMERGENCY PLANNING

AREA OF INTEREST	REFERENCE
Statute(s)	Ohio Rev. Code Chapters 3750 (emergency planning); 3751 (toxic chemical release reporting); 3734, 3745 and 6111 (remedial actions at unregulated sites)
Regulation(s)	OAC Chapters 3745-100 (toxic chemical release reporting); 3750-10 (emergency planning); 3750-20 (chemical emergency planning); 3750-25 (emergency release reporting); 3750-30 (hazardous chemical reporting)
Internet	https://epa.ohio.gov/divisions-and-offices/emergency-response/office-of-emergency-response

Ohio's "Right-to-Know" regulations, which track the federal requirements, are administered by the Agency's Division of Air Pollution Control.

MISCELLANEOUS STATE ENVIRONMENTAL LAWS

PRIVILEGE/IMMUNITY

AREA OF INTEREST	REFERENCE
Statute(s)	Ohio Rev. Code § 3745.70-73
Regulation(s)	None

In March 1997, Ohio enacted a limited privilege and immunity statute intended to encourage the use of internal environmental audits. Under the act, since revised and codified at Ohio Rev. Code §§ 3745.70-73, information gathered pursuant to an approved audit may be inadmissible in civil or administrative proceedings. The privilege does not apply to criminal proceedings or to information gathered under certain conditions. The immunity provisions apply, generally, to the voluntary disclosure of noncompliance if: (1) the disclosure is promptly made; (2) the violation is corrected within a reasonable time; (3) the disclosure was not otherwise required by any law, court or government agency; (4) the violation did not result in serious harm or imminent threat to human health or the

environment; (5) there has not been a pattern of repeated or continuous violations over the previous three years; and (6) the party making the disclosure does not know or have reason to know that an investigation has been initiated by a governmental agency concerning the violation disclosed.

As noted above, if the information was required by law to be collected and reported, such as under an NPDES or Title V permit, it does not fall under the privilege. As a practical matter, this exception significantly limits the availability of immunity under the statute because the Ohio EPA can (and does) assert that if a permit is in place, monitoring and reporting of all violations are required under the permit and, therefore, by law. If there is no permit in place for the facility, the Agency, can assert that, under the law, a permit should have been applied for and issued and, if it had been, monitoring and reporting would have been required by law. In either case, the privilege may be held not to apply.

ADMINISTRATIVE ACTION

AREA OF INTEREST	REFERENCE
Statute(s)	Ohio Rev. Code Chapter 119 and § 3745.07 (requests for adjudication); §§ 3745.02-3745.07 (administrative appeals)
Regulation(s)	OAC Chapters 3745-47 (requests for adjudication); and 3746-1 to 3746-15 (administrative appeals)
Internet	https://epa.ohio.gov/divisions-and-offices/legal-services/office-of-legal-services

Before issuing, denying, modifying, revoking or renewing any permit, license or variance, the Director of the Ohio EPA may issue a proposed action to the applicant. If, within 30 days of issuance of the proposed action, the Director receives a written objection from any person subject to the proposed action or who would be aggrieved or adversely affected by the action, an adjudication hearing is held before one of the Ohio EPA's hearing examiners. Following the adjudication hearing, the hearing examiner must submit a written report to the Ohio EPA setting forth findings of fact, conclusions of law and a recommendation as to the action to be taken by the Agency. Within five days of filing, a copy of the written report and recommendations must be served upon the parties by certified mail. Within 10 days of receipt, the parties may file written objections to the report. After the Ohio EPA journalizes an order approving, modifying or disapproving the hearing examiner's recommendation, the Ohio EPA must serve a copy on the affected party, along with a statement of the time and method for appealing such action. Such orders are appealable to the Environmental Review Appeals Commission (ERAC).

Final actions of the Director of Ohio EPA are appealed to ERAC. In addition, appeal of a final action issuing, denying, modifying, revoking or renewing a permit, license or variance that is not preceded by a proposed action is directed to ERAC. ERAC is an independent review board with three members appointed by the Governor. Generally, anyone who was a party to a proceeding before the Director may file an appeal. Appeals must be filed with ERAC within 30 days of notice of the action, and notice of the appeal must be served on the Ohio EPA within three days after the appeal is filed. If an adjudication hearing was held, ERAC is confined to the written record, unless ERAC finds that additional evidence sought to be introduced is newly discovered and could not, with reasonable diligence, have been ascertained prior to the adjudication hearing. If no adjudication hearing was conducted, ERAC conducts a *de novo* hearing.

ERAC must affirm the Director's action if it finds that the action appealed from was lawful and reasonable. Appeals from ERAC decisions are either to the Franklin County Court of Appeals or, if the appeal arises from an alleged violation of a law or regulation, to the Court of Appeals for the district in which the violation is alleged to have occurred.

DISPUTE RESOLUTION

FEDERAL COURT SYSTEM

The trial courts of the federal court system are the U.S. District Courts. Ohio is divided into two separate districts: The Northern District of Ohio, which is subdivided into the Eastern Division which sits in Akron, Cleveland and Youngstown, and the Western Division which sits in Toledo; and the Southern District of Ohio which is subdivided into the Eastern Division which sits in Columbus and the Western Division, which sits in Cincinnati and Dayton. Federal district court judges are appointed by the President for life terms upon approval by the U.S. Senate. All cases are assigned on an individual docket system to a district court judge and a magistrate judge who may hear various types of issues, dependent partially on the agreement of the parties. Bankruptcy matters are separately assigned to bankruptcy judges. Appeals of right are to the Sixth Circuit Court of Appeals which sits in Cincinnati, and ultimately by discretionary appeal to the U.S. Supreme Court in Washington, D.C.

The federal district courts are courts of limited jurisdiction. The types of cases they may hear are managed by both the U.S. Constitution and federal statute. They have exclusive jurisdiction over bankruptcy, suites between different states, patent and copyright, antitrust, postal matters, federal securities and banking, internal revenue, admiralty, and federal crimes, federal torts, and customs. All other jurisdiction is concurrent with that of the state courts. There are generally two ways to gain access to the federal district courts when there is such concurrent jurisdiction. First is diversity jurisdiction, which involves disputes between citizens of different states with an amount in controversy exceeding $75,000. To be brought in federal court, there must be complete diversity, i.e., none of the plaintiffs may be a citizen of the same state as any of the defendants. The second primary basis involves a federal question, i.e., presenting an issue arising under the Constitution, statutes, or treaties of the United States. If a party's case does not fit within one of the statutorily mandated jurisdictions, there is no recourse to the federal courts.

The workings of the federal district courts are governed by the Federal Rules of Civil Procedure, promulgated by the U.S. Supreme Court and approved by the U.S. Congress. These are a uniform body of procedural rules applicable to every federal district court in the U.S. In addition, the U.S. District Court for the Northern District of Ohio and for the Southern District of Ohio have each established their own rules applicable only to the procedure in that district court. and each District judge may have specific standing orders. These rules often set forth very specific guidelines for the handling of an action and require

close attention. Practice before each district court, each circuit court of appeals and the Supreme Court requires admissions to the bar of that particular court. ~~These rules often set forth very specific guidelines for the handling of an action and require close attention.~~

STATE COURT SYSTEM

OHIO TRIAL COURT SYSTEM

Ohio has municipal courts with limited jurisdiction in both civil and criminal cases. Many of the municipal courts also have a small claims division where many small consumer cases are heard. The original general jurisdiction in Ohio is in the Court of Common Pleas for each of the 88 counties. These courts vary in size from one judge in rural counties to over 40 in the largest county. In addition to judges in the general division, there are separate juvenile court judges, domestic relations division and probate division judges who limit their case load to the particular area specified. Larger Ohio counties have adopted specialty dockets to expedite the resolution of cases, including but not limited to, commercial, mental health and drug offense dockets. All cases, regardless of type, are assigned on an individual docket. Busy counties also rely on retired or out-of-county judges who sit by assignment from the Chief Justice of the Ohio Supreme Court. Ohio judges are elected ~~in a non-partisan~~via general election for a six-year term after being nominated in a partisan primary election. Civil procedure is governed by the Ohio Rules of Civil Procedure which is similar to but not the same in all instances as the Federal Rules of Civil Procedure. The Ohio Rules of Civil Procedure are promulgated by the Ohio Supreme Court subject to review by the Ohio Legislature. The majority of Ohio county courts of common pleas have published local rules of procedure and Ohio publishes Rules of Superintendence that govern the processing of cases throughout Ohio. In addition to written or published procedural rules, some local courts have customs and local practice courtesies which will vary.

OHIO APPELLATE COURTS

Ohio has an intermediate Court of Appeals which is divided into 12 District Courts of Appeals. Cases are heard by a panel of three judges. Some Appellate Court districts have more than three judges and panels are selected at random without notice prior to oral argument. In addition to appellate jurisdiction in all civil and criminal cases, the Courts of Appeals have limited jurisdiction to hear original actions such as mandamus and other extraordinary writs. The Ohio Supreme Court is comprised of a chief justice and six associate justices. It hears civil and criminal appeals. Most cases are reviewed under a discretionary appeal system. The grant of a discretionary appeal requires that the appeal involve an issue of public or great general interest. Issues of constitutional law may be appealed as of right unless the court finds that no substantial constitutional issue is involved. Other categories of cases heard by the Ohio Supreme Court are death penalty appeal cases and original actions seeking extraordinary writs as well as attorney disciplinary cases.

ANTITRUST AND CONSUMER PROTECTION LAWS

STATE AND FEDERAL ANTITRUST LAW

Chapter 1331 of the Ohio Revised Code, commonly known as the Valentine Act, is Ohio's antitrust law. While the statutory language is rather extensive, civil and criminal liability under the Valentine Act generally parallel liability under Section 1 of the Sherman Act (15 U.S.C. §1). Indeed, Ohio courts interpret the Valentine Act in light of the federal judicial construction of Section 1 of the Sherman Act and cite federal Sherman Act cases in deciding claims under the Valentine Act.

Like Section 1 of the Sherman Act, recovery under Ohio's Valentine Act requires proof of the existence of a combination or conspiracy between two or more persons (*See* Johnson v. Microsoft, 106 Ohio St. 3d 278, 281, 834 N.E.2d 791, 794-795 (2005); Daily Monument Co. v. Crown Hill Cemetery Ass'n., 114 Ohio App. 143, 152-53 (Summit Cty. 1961); Volvo GM Heavy Truck Corp. v. Key GMC Truck Sales, Inc., 773 F. Supp. 1033 (S.D. Ohio 1991)). The statute prohibits agreements that restrain trade and thereby hurt competition. Some agreements among competitors, such as price fixing, bid rigging, and the allocation of geographic or product markets among competitors, violate the statute even without a showing that they harm competition. The Valentine Act does not, however, reach single firm conduct, and Ohio has no counterpart to Section 2 of the Sherman Act (15 U.S.C. §2). Thus, Ohio has no monopolization offense. ~~In addition~~

As is the case under the Sherman Act, under the Valentine Act a prevailing plaintiff in a civil case is entitled to treble damages (*See* Ohio Rev. Code §1331.08). The Ohio Attorney General is authorized to criminally enforce the Valentine Act. As to criminal enforcement, criminal offense of the statute constitutes a fifth degree felony (*See* Ohio Rev. Code § 1331.99). The applicable limitations period for civil or criminal violations of the Valentine Act is four years (*See* Ohio Rev. Code §1331.12).
Section 1331.16 of the Valentine Act provides the Ohio Attorney General with a mechanism to issue "investigative demands," which are the State's counterpart to federal civil investigative demands. The Attorney General may use investigative demands to discover information relevant to any investigation conducted to determine whether any person has violated the Valentine Act. The tools available to the Attorney General through §1331.16 are written interrogatories, requests for documentary materials, and/or demands for oral testimony. Section 1331.16(I) provides a mechanism to request, within 20 days after

service, an Ohio court to modify or set aside the investigative demand. The time permitted for compliance with the investigative demand is tolled while the request is pending in the court.

OHIO REGULATION OF FRANCHISES

The State of Ohio has not enacted a statute that specifically regulates the sale of franchises; however, Ohio Revised Code §1334.01, et seq., regulates the sale of a "business opportunity" in the State of Ohio. This statute provides, among other things, that the seller of a business opportunity, as defined within the statute, must provide a written disclosure document with specific information detailed in the statute, as well as sufficient documentation relating to the sale of such business opportunity to substantiate any claims regarding any potential sales, incomes or profits (*See* Ohio Rev. Code § 1334.02, § 1334.03). In the event of a breach of the business opportunity laws, a purchaser may sue to rescind the transaction and recover three times the purchaser's actual damages, or $10,000, whichever is greater. Attorneys' fees may be awarded in addition to the foregoing damages.

OHIO CONSUMER PROTECTION LAWS

The Consumer Sales Practices Act (CSPA), Ohio Revised Code §1345, et seq., is the primary consumer protection statute in Ohio. The CSPA regulates consumer sales practices, including sales, leases, assignments, awards by chance or other transfers of items of goods, services, franchises or intangibles to individuals for purposes that are primarily personal, family or household. CSPA is intended to protect consumers and eradicate unfair, deceptive or unconscionable acts or practices. The Attorney General's office investigates alleged violations of CSPA upon reasonable cause derived from its own inquiries, as a result of complaints, or from consumer transaction cases referred to it by the Director of Commerce. The attorney general may bring an action for declaratory judgment, temporary or permanent injunction, or a class action on behalf of consumers damaged by practices in violation of CSPA. Under the statute, a consumer may bring a class action or an action for declaratory judgment or injunction. Additionally, the consumer may rescind the transaction or recover damages. If the practice is determined to be deceptive or unconscionable, the consumer may rescind the transaction or recover three times the consumer's actual damages or $200, whichever is greater. Attorneys' fees may be awarded to a prevailing party. The attorney general may also initiate criminal proceedings to prosecute violations of CSPA.

Ohio has also enacted consumer protection statutes dealing with specific matters, including weights and measures (Ohio Rev. Code §1327.46), retail installment sales (Ohio Rev. Code §1317.01), consumer sales (Ohio Rev. Code §1345.01), equal credit opportunity (Ohio Rev. Code §4112.021), labeling commodities (Ohio Rev. Code §§1327.57, 3715.60, 3715.64, 3715.67, 3741.02), home solicitation sales (Ohio Rev. Code §1345.21), prepaid entertainment contracts (Ohio Rev. Code §1345.41), ~~travel agencies~~

~~and tour promoters (Ohio Rev. Code §1333.96),~~ pyramid sales (Ohio Rev. Code §1333.91), motor vehicles (Ohio Rev. Code §1345.71), and natural gas and public telecommunications services (Ohio Rev. Code §1345.18).

ADDITIONAL INFORMATION

RESTRICTIONS ON SPECIFIC PROFESSIONS

Ohio has customary local licensing for professions such as law, medicine, stockbrokers, investment advisers, accounting, real estate and mortgage brokers, social workers, all the way to massotherapy and barbers, without any unusual restrictions (see Ohio Rev. Code Title 47).

USURY LAWS

In the absence of a written instrument which provides otherwise, the rate of interest ~~in~~is the federal short-term rate, rounded to a whole number, plus 3% (Ohio Rev. Code §§1343.03(A) and 5703.47).

Generally, the maximum rate of interest allowed pursuant to a written instrument is 8% per annum (Ohio Rev. Code §1343.01(A)). Subsection (B) of Section 1343.01 provides, however, that parties may agree to pay a higher rate of interest under certain circumstances, including, for example: (a) if the original amount of the principal indebtedness exceeds $100,000; (b) payment is to a broker or dealer registered under the Securities Exchange Act for carrying a debit balance which is payable on demand and secured by stocks, bonds or other securities; (c) certain loans secured by real estate; (d) if the instrument is payable on demand or in one installment and not secured by goods used for personal, family or household purposes; and (e) a business loan not secured by an individual obligor's wages or compensation or household furniture or goods (Ohio Rev. Code §1343.01(B)(1)-(6)).

In addition to the foregoing, certain transactions are subject to more specific interest rate limitations (*See*, e.g., Ohio Rev. Code §1317.06 (retail installment sales), Ohio Rev. Code §1321 (loans under the Ohio Small Loans Act), Ohio Rev. Code §1321.57(A) (certain second mortgage loans) and Ohio Rev. Code §4727.06 (certain loans made by licensed pawnbrokers)).

Charging, taking, or receiving interest at an annual rate in excess of 25% constitutes "criminal usury" under Ohio law, except where a greater rate of interest is "otherwise authorized by law" or where the creditor(s) and debtor(s) are members of the same immediate family (Ohio Rev. Code §2905.21(H)(1)-(2)). Criminal usury is a fourth-degree felony (Ohio Rev. Code §2905.22(B)). It is punishable by imprisonment for up to 18 months

and a fine of up to $5,000 (Ohio Rev. Code §§2929.14 and 2929.18). It is not entirely clear under Ohio law whether Ohio's criminal usury provisions limit the interest rate that can be charged in transactions excepted under Ohio Rev. Code §1343.01(B) from the general interest rate limitations set forth in Ohio Rev. Code §1343.01(A).

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