Illinois Issues Guidance For Employers' Requirement To Report Adverse Judgments And Administrative Rulings

Insights
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After state lawmakers passed sweeping expansions to the Illinois Human Rights Act (IHRA) in August 2019, employers have been left in the dark as to how the state would interpret and enforce the new requirement forcing employers to report adverse judgments or administrative rulings regarding unlawful discrimination to the Illinois Department of Human Rights (IDHR). This has been particularly frustrating given that the change went into effect on July 1, 2020. Fortunately, the IDHR just issued guidance for these requirements. What do Illinois employers need to know in order be ready to comply with their reporting obligations under the IHRA?

What Do The Amendments Require?
The IDHR's guidance is reliant upon the amendments to the IHRA, so it is necessary to provide some background about the amendments themselves. The IHRA now provides that, beginning July 1, 2020, employers must provide the following information to the IDHR on an annual basis: (1) the total number of adverse judgments or administrative rulings during the preceding year, (2) whether any equitable relief was ordered against the employer, and (3) a categorical breakdown of the total number of adverse judgments or administrative rulings. Moreover, employers' reports must not contain the names of the alleged victims of harassment or discrimination.

These requirements raise several questions for employers:

- **What is an "employer"?** Under the new amendments to the IHRA, the definition of an "employer" for purposes of the statute's reporting requirements is broad. An "employer" includes any person employing one or more employees within Illinois. In other words, to be subject to the reporting requirements, an employer need not be physically located in Illinois, but rather employ a single individual in the state.
- **What are "adverse judgments or administrative rulings"?** This term means final and non-appealable judgments against an employer for sexual harassment or unlawful discrimination. Examples of this may include final orders against an employer by a court, the Illinois Human Rights Commission, or the Cook County Commission on Human Rights (among other agencies).
- **What type of categorical breakdown is necessary?** Employers must identify the number of adverse judgments or administrative rulings in each of the following categories: (a) sexual harassment, (b) sex discrimination, (c) race, color, or national origin discrimination or harassment, (d) religious discrimination or harassment, (e) age discrimination or harassment, (f)

harassment, (d) religious discrimination or harassment, (e) age discrimination or harassment, (f) disability discrimination or harassment, (g) military status or unfavorable military discharge status discrimination harassment, (h) sexual orientation or gender identity discrimination or harassment, and (i) discrimination or harassment based upon any other characteristic protected by the IHRA.

- **Do settlements constitute "adverse judgments or administrative rulings"?** Generally, settlements are not adverse judgments or administrative rulings, and therefore are not subject to the same reporting requirements. However, settlements are subject to their own reporting requirements, in that employers are required to disclose the number of workplace harassment and discrimination settlements (divided into the above categories) during the previous five years to the IDHR upon the IDHR's request (rather than annually).
- **What are the penalties for noncompliance?** The statute provides for penalties that are contingent upon the size of the employer. For employers with fewer than four employees, the IHRA imposes a penalty of $500 for a first offense, $1,000 for a second offense, and $3,000 for third and subsequent offenses. For employers with four or more employees, the IHRA imposes a penalty of $1,000 for a first offense, $3,000 for a second offense, and $5,000 for third and subsequent offenses. Despite these penalties, there is a 30-day grace period for employers to disclose the necessary adverse judgments or administrative rulings after being notified by the IDHR of a failure to do so. This grace period is required before any fines are implemented.

Plainly, the amendments to the IHRA impose several additional requirements and penalties upon employers. With this background in mind, we can look to the IDHR's recent guidance.

What Does The IDHR's Guidance Provide?

Perhaps most significantly, the IDHR's recent guidance clarifies the timeline and methods for which employers must report adverse judgments and administrative rulings to the agency. With respect to employers' timeline for reporting, the IDHR identified the following reporting periods and deadlines:

- For adverse judgments and administrative rulings from January 1, 2019 through December 31, 2019, employers must provide the necessary reporting to the IDHR by October 31, 2020;
- For adverse judgments and administrative rulings from January 1, 2020 through December 31, 2020, employers must provide the necessary reporting to the IDHR by July 1, 2021;
- For adverse judgments and administrative rulings from January 1, 2021 through December 31, 2021, employers must provide the necessary reporting to the IDHR by July 1, 2022; and
- For adverse judgments and administrative rulings from January 1, 2022 through December 31, 2022, employers must provide the necessary reporting to the IDHR by July 1, 2023.

The guidance permits employers to report adverse judgments and administrative rulings via email using a form provided by the IDHR. That form is now available from the IDHR.

Of further note, the IDHR's guidance provides other relief and burdens for employers. With respect to the former, the IDHR explained in its guidance that decisions in **unemployment insurance**

to the former, the IDHR explained in its guidance that decisions in **unemployment insurance proceedings** are not subject to the IHRA's annual reporting requirements and need not be included in employers' disclosures. As to employers' burdens, on the other hand, the IDHR has taken a broad position with respect to employers' reporting requirements. Specifically, the IDHR has advised that employers are required to report **adverse judgments and administrative rulings from outside of Illinois**. Additionally, the IDHR's guidance does not address the potential situation of an employer having no adverse judgments or administrative rulings from within Illinois, but having such events occur outside of the state.

What's Next?

In any event, the scope of the IDHR's interpretation is far-reaching. It remains to be seen whether this interpretation will survive a legal challenge, but employers should be prepared to comply with the IDHR's expansive reading of the IHRA for the time being.

Fisher Phillips is pleased to offer additional guidance as to employers' reporting requirements and obligations pursuant to the IHRA. Should you have any questions, please contact your Fisher Phillips attorney or any attorney in our Chicago office. We will continue to monitor any further developments and provide updates on this and other labor and employment issues affecting Illinois employers, so make sure you are subscribed to Fisher Phillips' alert system to gather the most up-to-date information.

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