



Illinois Human Rights Act Amended

Insights

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Last August, Gov. Blagojevich signed an amendment to the Illinois Human Rights Act that made significant changes to the State's employment law landscape. The changes go into effect on January 1, 2008, and will have considerable implications for Illinois employers.

Under current law, after a charge of discrimination is investigated by the Illinois Department of Human Rights (IDHR), a complainant may only seek administrative relief from the Illinois Human Rights Commission, where his or her claim is adjudicated by an Administrative Law Judge. The amended law allows employees to have their claims heard by a jury in State court.

Here is a brief summary of the new law's most important provisions.

What Has Changed

While the amendment makes a number of minor changes to the Act, by far the most significant change is the newly created option for a complainant/plaintiff to have his or her claim heard by a jury in State court upon completion of an investigation by the IDHR. Prior to the amendment, the only judicial forum for employment discrimination disputes was federal court. The State law had no judicial remedies.

The amendment will allow complainants who have filed a charge of discrimination under the Act to go to State court under the following circumstances:

- The IDHR must complete its investigation and issue a report within 365 days of the date a charge of discrimination is filed (unless the parties agree to a longer period). A complainant will now have 90 days from the expiration of the 365-day deadline to file a complaint either in State court or with the Human Rights Commission. Currently, the Act gives complainants only 30 days from the 365-day mark to file a complaint with the Human Rights Commission, and no option to file a suit in State court.
- If the IDHR determines that there is *substantial evidence* to support a complainant's charge of discrimination, complainants will have 14 days to request that the IDHR file a complaint with the Human Rights Commission on their behalf. If no such request is made, a complainant may now file a lawsuit in State court within 90 days.
- If the IDHR dismisses the charge because there is *no substantial evidence*, complainants will have two options: 1) request a review of the IDHR's decision by the Human Rights Commission

within 30 days; or 2) file a lawsuit in State court within 90 days.

In all cases, if a complaint is filed by or on behalf of a complainant with the Human Rights Commission, the complainant waives his or her right to commence an action in State court.

What to Expect

It's uncertain how State courts will handle their new responsibilities to adjudicate claims of employment discrimination. Previously, only federal courts or the Human Rights Commission have dealt with these cases in Illinois. It seems likely that plaintiff's attorneys will seize upon the opportunity to bypass administrative remedies for their clients in order to get their cases in front of State court juries. This may be a disadvantageous situation to employers for a number of reasons.

The biggest reason? Damages. The Act provides for the recovery of compensatory damages, including backpay, front pay, punitive damages, attorney's fees, and equitable relief to a successful complainant. Jury verdicts have historically been larger and more unpredictable than awards by administrative agencies. State court verdicts have tended to be even larger than those of their federal court counterparts. Plaintiffs attorneys can therefore be expected to jump at the opportunity to have their cases heard in what they perceive to be the more friendly forum of State court.

Exacerbating this concern is the fact that the process of defending a claim in State court is far more involved and therefore more expensive than defending a claim in front of the Human Rights Commission. In particular, the discovery process in State court dwarfs the comparable system in the Human Rights Commission, where depositions are rare and parties are largely limited to exchanging written requests. There is also a far greater variety of motions that can be filed in State court than in an administrative forum, all of which can drive up the cost of defending a claim. Even in cases that are settled, settlement amounts will likely creep up because of the threat of costlier litigation in State court.

Finally, the inexperience of State courts and State court judges with respect to employment discrimination litigation means that employers face even more uncertainty when defending a claim. While the language of the Act closely mirrors federal laws on employment discrimination, Illinois courts may or may not adopt the federal standards that are familiar to management and defense lawyers.

What You Should Do

In light of these changes to the Act, it's more important than ever for Illinois employers to have policies and procedures carefully designed to avoid claims of employment discrimination. One option may be an arbitration agreement or other similar agreement that is signed by the employee at the time of employment.

When claims do arise, a complainant's newfound right to bring claims to a jury in State court will make it more crucial than ever to address these claims quickly and effectively.

If you have any questions regarding these changes to the Illinois Human Rights Act or any other employment law issues, contact any of the attorneys in our Chicago office at 312.346.8061.

This Legal Alert provides a brief summary of the most important aspects of this new law. It is not intended to be, and should not be considered as, legal advice for any particular fact situation.