

Amendments to Illinois Human Rights Act Provide Direct Access to State Courts

On August 17, 2007, Illinois Governor Rod Blagojevich signed a bill that will enable complainants to bypass the current administrative process and assert employment discrimination claims in state court where they may be heard by a jury.

Effective for charges filed on or after January 1, 2008, Public Act 95-0243 makes several significant changes to the current procedures for investigating and adjudicating claims under the Illinois Human Rights Act. One such change is that requests for review of charge dismissals now will go to the Illinois Human Rights Commission instead of the Chief Legal Counsel of the Department of Human Rights.

By far, the most significant changes enable complainants to elect a judicial rather than administrative forum to decide their claims. Under current law, the Department of Human Rights investigates charges and, if a charge is found to have merit or is not investigated within a year of its filing, the case will be decided by an administrative law judge in the Human Rights Commission. There is no right to trial in state court, only appellate review of a final order of the Commission. Under the new amendments, a complainant will have the option to bypass the Commission and have his case heard in state court before a jury. He may bring a civil action in circuit court under the following circumstances:

- (1) If the Department of Human Rights dismisses the charge for lack of substantial evidence, the complainant will have 90 days to file suit in state court instead of requesting review by the Human Rights Commission within 30 days.
- (2) If the Department finds substantial evidence, the complainant has 14 days to ask the Department to file a complaint on his behalf before the Human Rights Commission; if no such request is made, he has 90 days to file suit in state court.
- (3) If the Department has not completed its investigation and issued a report within 365 days after a charge is filed (or a longer period agreed to by the parties), the complainant will have 90 days to either file suit in circuit court or file a complaint in the Human Rights Commission. He cannot do both. Current law provides a 30-day window between day 365 and 395 post-charge to file a complaint with the Human Rights Commission and no access to state court at all.

Significantly, any action filed in state court may be tried to a jury where the claimant may obtain the same remedies currently available in administrative hearings before the Commission. The case must be filed in the county where the alleged discrimination occurred.

Although employment litigation has been increasing in Illinois state courts over the years, state court judges have not yet been asked to preside over employment discrimination cases. That is about to change with the new amendments. The current administrative process under the Human Rights Act is viewed by many employment attorneys as cumbersome, slow and ineffectual. With state court jury trials now an option for claimants, employers can expect to see a steady stream of cases bypassing the Human Rights Commission for what will be viewed by most employee-side attorneys as a more favorable forum in Illinois state court. One issue that will likely arise sooner than later is whether employment discrimination claims brought in state court can be removed to federal court where the judges are more experienced with such claims and there is a perception of a more employer-friendly (or at least neutral) forum.

Given the certainty of new state court litigation with its attendant costs and exposure to jury verdicts, Illinois employers will face even more pressure to try to avoid discrimination claims and respond appropriately when claims are brought. Because some protections of the Human Rights Act apply to all employers, regardless of size, these changes will have an effect on small and large employers alike.

If you have any questions about this legislation, please call Jim Spizzo (312-609-7705), Bruce Alper (312-609-7890), Chris Nybo (312-609-7729), or any other Vedder Price attorney with whom you have worked.

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Questions or comments concerning the Bulletin or its contents may be directed to its Editor, James S. Petrie (312-609-7660), or the firm's Labor Practice Leader, Bruce R. Alper (312-609-7890), or the Managing Shareholder of the firm's New York office, Neal I. Korval (212-407-7780), in Washington, D.C., Theresa M. Peyton (202-312-3360) or, in New Jersey, John E. Bradley (973-597-1100).

Chicago

222 North LaSalle Street
Chicago, Illinois 60601
312-609-7500
Fax: 312-609-5005

New York

1633 Broadway, 47th Floor
New York, New York 10019
212-407-7700
Fax: 212-407-7799

Washington, D.C.

875 15th Street NW, Suite 725
Washington, D.C. 20005
202-312-3320
Fax: 202-312-3322

New Jersey

Five Becker Farm Road
Roseland, New Jersey 07068
973-597-1100
Fax: 973-597-9607

www.vedderprice.com