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New Illinois Law Allows Filing of Discrimination and Harassment Claims in the Illinois State Courts

In a significant change to employment law in Illinois, the Illinois Human Rights Act was amended on August 17, 2007, to permit plaintiffs to file lawsuits alleging employment discrimination or workplace harassment in the Illinois state courts. Previously, discrimination and harassment claims brought under the Illinois Human Rights Act – the state law analogous to Title VII, the ADA and the ADEA – had to be filed with and were adjudicated exclusively by a state administrative agency, the Illinois Human Rights Commission. The change was signed by Governor Blagojevich and passed by the Illinois legislature (Public Act 95-0243), after various criticisms that Illinois agency procedures were overly time-consuming and cumbersome.

- The effective date of the change in law is January 1, 2008.
- As of that date, an individual claiming discrimination or harassment under the Illinois Human Rights Act will have the right to file a lawsuit in the Illinois state courts, i.e., the Circuit Court for the county where the alleged discrimination occurred.
- A complaining party still has the option to file with the Illinois Human Rights Commission, as an alternative to a lawsuit filed in the state court.
- A lawsuit in state court may become the preferred forum over the Illinois Human Rights Commission (“Commission”) for discrimination and harassment claims given two key factors: (i) the charging party has the right to a jury trial in a state court lawsuit, which is not available at the Commission; and (ii) discovery is more expansive in state court, including depositions (depositions at the Commission are generally prohibited absent a special order).
- The new law does not change available remedies in the event a lawsuit is filed. Backpay, actual damages, equitable relief such as reinstatement and attorney’s fees are recoverable, but punitive damages are not. Importantly, unlike Title VII and other similar federal statutes, the Illinois Human Rights Act *does not cap* damages, such as those for emotional distress. Thus, there may be an incentive for plaintiffs to file in state court where a jury has the latitude to award more substantial damages and damage caps do not apply.
- As an initial step, the charging party still will be required to file a charge of discrimination with the Illinois Department of Human Rights (“IDHR”). However, under the new law, a lawsuit may be filed with the state court within 90 days of either: (i) the IDHR acting on the charge (by dismissal or a finding of substantial evidence of discrimination); or (ii) the IDHR failing to complete its investigation and issue a finding within 365 days of the charge filing.

■ Significantly, the new law allows a plaintiff to file a lawsuit in state court even if the IDHR dismisses the charge after investigation with a finding of no substantial evidence of discrimination. Thus, it is likely employers will be required to defend claims in lawsuits that previously could not have been pursued by complaining parties under prior procedures.

■ In addition, the federal courts will now have the power to hear and determine cases of discrimination and harassment arising under the Illinois Human Rights Act (as the Illinois administrative agency will no longer have exclusive jurisdiction). In other states where this change in the law has occurred, the federal courts have permitted co-extensive claims under both federal and state law. Pendent state law claims are filed in such situations as a strategy to avoid federal statutory caps on damages.

■ The Illinois Human Rights Act covers virtually all Illinois employers: any employer with one (1) or more employees is subject to the Act for claims of handicap discrimination or sexual harassment, and any employer with at least fifteen (15) employees is covered on all other types of discrimination or harassment claims under the Act.

This new law may increase the overall number of employment discrimination claims filed against Illinois employers. With the right to a jury trial and possible increased damage recoveries permitted with no statutory caps on damages, the Illinois Human Rights Act is likely to become a prevalent basis for litigation claims. Employers may further see a surge of lawsuits filed in the Illinois courts on such claims – particularly in historically plaintiff-friendly venues such as Cook County and Madison County.

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