



Responding to an IDHR Discrimination Charge

An employer-client with only a single worker can be the subject of an employment discrimination claim filed with the Illinois Department of Human Rights. Here's what to do if that happens.

Illinois companies with as few as one employee can be the subject of a charge of employment discrimination filed with the Illinois Department of Human Rights (IDHR) under the Illinois Human Rights Act (IHRA), found at 775 ILCS 5/1 et seq. Practitioners should keep the following in mind when responding to the charges.

Understand IDHR/EEOC work sharing. In Illinois, a discrimination claim can be filed either with the IDHR or the Equal Employment Opportunity Commission (EEOC). The two agencies have what is called a "work-sharing agreement," which means they cooperate with each other to process claims. Filing a claim with both agencies is unnecessary, as long as you indicate to one that you want it to cross-file with the other.

Docket immediately. When your client receives a charge of discrimination from the IDHR, docket the due date of the verified response and position statement immediately: they are due within 60 days after receipt of notice of the charge. A respondent can be defaulted for not filing a verified response within 60 days.

Assess your defenses quickly. The response will be subject to legal scrutiny and may resurface in depositions (because some of these cases can end up in court) or at trial or a public hearing. Determine quickly if a clear defense, such as the timeliness of the charge, exists, and decide whether an immediate response raising this defense is appropriate. Also, determine whether the case arose under circumstances that would justify a rapid resolution before the formal investigation occurs (i.e., there appears to be clear evidence of discrimination with no available defense). The IDHR does offer a mediation program.

Prepare and serve the response. The verified response should consist of admissions and denials of allegations similar to the answer to a verified complaint. It should be signed by a high-ranking corporate official such as the president or chief counsel. A copy must be served on the charging party.

Avoid admissions. Avoid making admissions in the response and position statement that could preclude a positive outcome if the matter proceeds to trial.

Be careful with affidavits. Be cautious when considering the use and submission of supporting affidavits.

Use the position statement to explain. The position statement should identify all factual errors or omissions made by the employee, called the "charging party" in an IDHR proceeding. Clearly state what happened and why. A well-drafted statement includes a summary of evidence that supports the employer's reasons for its actions along with supporting case law.

Answer the questionnaire carefully. The IDHR may also require the employer to answer a questionnaire resembling a set of interrogatories about the employer's history of discrimination claims, de-

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mographic makeup, personnel issues, and other factual questions to help them investigate the charge. Be careful to answer specifically and avoid including items not asked for that may lead to additional charges.

Prepare for fact-finding. The IDHR will engage in a fact-finding conference. Be prepared to address all issues raised by the charge. The witnesses will be questioned by the IDHR representative. Make sure your witnesses are thoroughly prepared for possible questioning. The attorneys can submit questions, but only through the investigator. You may only attend if you have filed a notice of appearance.

Consider a settlement. If the IDHR issues an unfavorable decision, evaluate the case and discuss the matter with your client to determine their position on settlement. Any settlement negotiated with the IDHR should include at least a complete release of employer liability for the charge and a clause stating that the settlement agreement is not an admission by the employer of any violation of law.

The claimant can file in court. For IHRA charges

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filed after January 2008, the IHRA gives the circuit court jurisdiction over employment discrimination suits filed under the IHRA. After filing a charge with the IDHR, a claimant has the right to commence a civil action with a jury trial in the appropriate circuit court at various stages of the charge process, provided all procedural requirements triggering the court's jurisdiction have been met. The IHRA provides that the circuit court or jury may award, among other things, actual damages.

The IDHR is required to conclude all proceedings and make a finding within 365 days of filing a perfected charge or as extended by written agreement of the

parties. The investigator may request an extension of time to complete the investigation.

If one or both of the parties refuse to sign an extension, and if the IDHR does not issue a complaint or a notice of dismissal within 365 days after the date the charge was filed, the complainant has 30 days to file a complaint at the Illinois Human Rights Commission (IHRC). If the complainant does not file a complaint with the IHRC, no further action will be taken on the case.

Counsel handling these complaints must know the new IHRA and all of its procedural requirements. Also, not every provision of the IHRA corresponds with


its Title VII counterpart (especially regarding potential damages – there are no caps on compensatory damages under the IHRA), so make sure to recognize those differences when evaluating the charge. Advise clients' HR managers to be familiar with the high points of the IHRA and train staff accordingly. ■

Learn more and earn CLE credit at "Litigating, Defending, and Preventing Employment Discrimination Cases: Practice Updates and Tips Concerning the Illinois Human Rights Act," an ISBA's Law Ed program offered Thursday, March 14 at the ISBA Chicago Office and as a live webcast at <http://isba.fastcle.com>.

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