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A Change In Illinois Law Allows Jury Trials In Discrimination Claims

Recent amendments to the Illinois Human Rights Act will soon allow employees the right to take their employment discrimination claims to state court and demand a jury trial. Until this recent change in the law, employees had no access to state trial courts.

Under the current law, an employee files a charge with the Illinois Department of Human Rights, which investigates the charge. If the Department's investigation determines the charge has merit or if the investigation is not completed within 365 days or any extension of that time period, the Department or the employee, respectively, may file a complaint with the Illinois Human Right Commission, a companion agency. There cases are decided by an administrative law judge.

Amendments to the Illinois Human Rights Act, effective for charges filed on or after January 1, 2008, allow an employee to file a complaint in a state trial court, after filing a charge with the Department. This can occur in one of three ways. First, if the Department dismisses the charge for lack of substantial evidence of discrimination, the employee may either seek review of that decision with the Commission or file a civil suit in state court.

Second, if the Department determines there is substantial evidence of discrimination, the employee may either ask the Department to file a complaint with the Human Rights Commission on his or her behalf or file a complaint in state court.

Finally, if the Department does not conclude its investigation of the charge within 365 days, or any extension agreed to by the parties, the employee has the option of filing his or her own complaint with the Commission or filing a complaint in state court. If an employee chooses to file a complaint with the Commission, the individual is barred from filing a complaint in state court at a later time. Employees who choose to file a complaint in state court must file within 90 days and must do so in the county where the alleged civil rights violation occurred.

State court employment discrimination litigation before a jury, while long-heralded by attorneys who represent employees, does not bode well for Illinois employers. Employers may now be faced with the increased cost of

defending against a civil suit that involves more extensive discovery, such as depositions. Furthermore, state court judges and juries lack the expertise with employment discrimination cases possessed by the Commission's administrative law judges who deal with these cases on a daily basis. Finally, state court judges are not as experienced as federal judges in presiding over employment litigation. This may result in inconsistent and expensive verdicts.

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If you have questions about the amendments to the Illinois Human Rights Act or any other developments in the labor and employment area in Illinois, please contact Peter Steinmeyer (312-499-1417, psteinmeyer@ebglaw.com), Julie Badel (312-499-1418, jbadel@ebglaw.com), Michael Butler (312-499-1416, mbutler@ebglaw.com), Jake Schmidt (312-499-1421, jschmidt@ebglaw.com), or Sean Connolly (312-499-1425, sconnolly@ebglaw.com).

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