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The Illinois Human Rights Act Now Provides Employees With Access To A Jury Trial in State Court

Traditionally, employees with harassment or discrimination claims in Illinois had to initially maintain them before the Illinois Department of Human Rights ("IDHR"), a state administrative agency, or the U.S. Equal Employment Opportunity Commission ("EEOC"). However, due to recent amendments to the Illinois Human Rights Act ("IHRA"), which take effect on January 1, 2008, employees in Illinois will now be able to essentially disregard the IDHR investigative process and sue their employers for harassment or discrimination in Illinois state courts.

As a matter of background, under existing federal and state employment practice laws, an employee alleging harassment or discrimination based on various protected classifications (such as age, sex, race or disability) is first required to file a "charge of discrimination" with either the federal administrative agency (the EEOC) or the state administrative agency (the IDHR). These respective agencies are statutorily obligated to investigate such charges and, absent a settlement between the parties, the agencies ascertain whether discrimination or harassment occurred in the workplace.

Prior to this recent legislation, if the IDHR Investigator did not find evidence of discrimination or harassment (which was often the case), the matter would be dismissed, leaving the charging employee with only the ability to appeal the dismissal to the Chief Legal Counsel of the IDHR. Alternatively, if the Investigator did find that discrimination or harassment occurred, the IDHR would file a complaint on the complaining employee's behalf with the Illinois Human Rights Commission ("Commission") and the matter would proceed to a trial before an Administrative Law Judge. Significantly, the trial would be a bench trial, as no jury trials are conducted before the Commission.

The recent amendments to the IHRA significantly change the legal risks facing Illinois employers. First and foremost, allowing employees to file a state court action means employees will be able to seek a trial by jury (as opposed to a hearing before an Administrative Law Judge), even if the IDHR fully investigates and dismisses the charge for lack of evidence. This is a real problem for employers in Cook County, where juries tend to be plaintiff friendly and verdicts tend to be higher than elsewhere in Illinois.

Second, unlike the administrative proceedings before the IDHR and the Commission in the past, there will likely be significantly more discovery allowed to the employee in the state court proceeding, which means increased costs of litigation for employers, more time spent fighting discrimination claims, and a greater likelihood of adverse publicity and large verdicts.

Third, since an employee can file a lawsuit in state court even after a dismissal of his or her charge by the IDHR, the amendments effectively provide complaining employees with a "second bite at the apple" and one more chance to impose liability on the employer.

Finally, it is currently unknown how Illinois courts will handle the influx of new employment-related lawsuits that will be filed in state court as a result of the amendments to the IHRA. Illinois courts are already overloaded and it often takes years before a case gets to trial. Moreover, state court judges, unlike their federal counterparts, have not handled employment discrimination and harassment claims in the past and are not experienced with them. Some state court judges are already reluctant to dismiss frivolous complaints (or grant summary judgment motions for defendants), and this will likely only continue in these employment-related lawsuits.

The new amendments to the IHRA will apply to all charges of discrimination or harassment filed before the IDHR on or after January 1, 2008. They will make it even more important for employers in Illinois to handle employment problems properly and with an eye towards avoiding litigation. For further information on this significant new amendment to the IHRA, and how to protect your company from employee lawsuits, please contact your employment and labor law attorney at Arnstein & Lehr LLP.