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ILLINOIS LAW MANUAL

CHAPTER XVII EMPLOYMENT LAW

E. PROCEDURAL MECHANISMS IN THE IDHR AND THE EEOC

1. IDHR

In Illinois, an aggrieved party has 180 days to complain that an employment decision was the result of a violation of the Human Rights Act. 775 ILCS 5/7A-102. The complaint, or “charge,” must be made in writing under oath. The charge must be filed with the Department of Human Rights and must be written in enough detail to put the employer on notice of the nature of the complaint and what facts surround the making of the complaint. As with the aggrieved party, the Department has the same 180 days to file a charge itself.

Within ten days of the filing of the charge, the Department will serve a copy of the charge on the employer. Without demonstrating good cause for an extension of time, the employer has 21 days to serve the complainant with a verified response. All allegations in the charge that the employer neither denies nor alleges that it does not have sufficient knowledge to answer will be considered admitted. After receiving the verified response, the complainant has 60 days to file a response, but a response is not mandatory.

After the employer has been notified of the charge, the Department will begin an investigation into the allegations. During the investigation, the Department has the power to subpoena witnesses as well as any other relevant material. Once the investigation has commenced, the Department will hold a “fact

finding” conference which all parties are required to attend. A conference may not take place if, from its initial investigation, the Department determines that there is “substantial evidence” of a civil rights violation.

Each charge that is investigated will result in a report being generated by the Department. If after reviewing the report the director finds that there is no substantial evidence of a violation, the charge will be dismissed and the complainant will have 30 days to file a request for review by the Illinois Human Rights Commission. If substantial evidence is found, the Department will appoint one of its attorneys to attempt to settle the dispute in a conciliation conference.

A conciliation conference is a confidential settlement conference scheduled by the Department within 35 miles of the place where the alleged violation occurred. If the conciliation conference fails to produce a settlement, the Department will file a formal complaint with the Human Rights Commission on behalf of the complainant. If 300 days have passed since the original charge was filed and the Department has neither filed a complaint with the Commission nor dismissed the charge, the complainant may file a complaint with the Commission.

Within 5 days of receiving the complaint, the Commission will notify the employer of a hearing to be scheduled between 30 and 90 days from the Commission’s receipt of that complaint. 775 ILCS 5/8A-102. The hearing is to be conducted by a hearing officer, who is a licensed attorney and an employee of the Commission. After the employer

receives the original or an amended version of the complaint, it has 30 days to file its answer or a motion to dismiss. If a motion to dismiss is denied, the employer then has 15 days in which to file its answer. Both sides to the dispute are entitled to review each other's documents in accordance with the same rules of discovery permitted in civil cases. The only difference to the usual rules of discovery is that the parties must seek the permission of the hearing officer to conduct depositions.

Both parties are entitled to attend the hearing and may examine and cross-examine witnesses pursuant to the rules of evidence in civil cases. After all the evidence has been heard, the hearing officer will make a ruling as to whether the employer violated the Act. The complainant bears the burden of proving the case by a preponderance of the evidence. A violation is proved by preponderance of the evidence if the hearing officer finds it more likely than not that a violation occurred.

If the hearing officer finds that there was a violation, the officer may order relief for the complainant including orders to cease and desist, an order to pay money damages, an order to rehire the complainant, and/or an order to accommodate the complainant's needs.

Following the hearing officer's ruling, either party has 30 days to request a review of the decision by the Commission. Review is given as a matter of right, and oral arguments are heard before a three-member panel of the Commission. The panel may adopt, reverse, or modify the hearing officer's decision.

Once the three-member panel has issued its decision, either party has 30 days to request a rehearing before the full Commission. Application for rehearing is looked upon unfavorably by the Commission and will only be granted if six of the thirteen Commission members vote for rehearing

or if the threemember panel's decision was in conflict.

The Illinois Human Rights Commission is the Illinois equivalent to the EEOC. Federal employment discrimination complaints under Title VII begin at the EEOC.

2. EEOC

As in the IDHR procedure, a complaint filed with the EEOC is known as a charge. 42 U.S.C. Section 2000e-5. A charge must be filed within 180 days of the date of the alleged civil rights violation, unless a charge has already been filed with the IDHR. Once the charge has been filed with the IDHR, the charging party must wait 60 days to file with the EEOC. If there has been a charge filed with the IDHR, the EEOC's 180-day deadline is extended to 300 days from the date of the alleged unlawful employment practice or 30 days after the termination of all proceedings in front of the IDHR, whichever day comes first.

Once the charge has been filed, the EEOC will serve a copy upon the employer and begin an investigation. The EEOC requires that the employer respond to the charge, and the Commission gives deference to earlier findings by state and municipal bodies. If reasonable cause is found, the Commission may try to settle the dispute in a conciliation conference. If no settlement is reached, the Commission will issue a right-to-sue letter to the complainant. After receipt of the right-to-sue letter, the complainant has 90 days to file a civil suit in Federal District Court.

Even where the Commission finds no violation of the law, the claimant will have 90 days from receipt of its determination to file suit in Federal District Court.