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Labor and Employment Law Notes

RECENT AMENDMENTS TO THE ILLINOIS HUMAN RIGHTS ACT AND THEIR IMPACT ON EMPLOYERS AND THEIR INSURERS

The Illinois Human Rights Act (“IHRA”) has recently amended several areas that are of significance to employers and their insurers.

1. Amendments to the Definition of a “Disability” under 735 ILCS 5/1-103

A disability now also includes “any mental, psychological, or developmental disability, including Autism Spectrum Disorders.” This seems to broaden the definition of a “disability” for purposes of pleading and proving a disability discrimination claim under the Illinois Human Rights Act.

2. Pregnancy Discrimination under 775 ILCS 5/2-102

It is now unlawful for “an employer to refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or term, privileges or conditions of employment on the basis of pregnancy, childbirth or related medical conditions.” The Amendment goes on to read: “Women affected by pregnancy, childbirth or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work.”

3. Procedures for Filing a Charge with the Illinois Department of Human Rights under 775 ILCS 5/7A-102(a)(3)(A-1)

The amendments make significant changes to the charge filing procedure and time for the Illinois Department of Human Rights (“IDHR”) to investigate a claim and adoption of EEOC decisions, and the handling of charges with state and federal employment law violations.

A. Charge Filing Procedure

Section 7(A)(1) pertains to the Equal Employment Opportunity Commission (“EEOC”) charges and the cross-filing of those charges with the IDHR. Section 7(A)(1) now reads:

“If a charge is filed with the EEOC within 180 days after the date of the alleged civil rights violation, the charge shall be deemed filed with the Department on the date filed with the EEOC. If the EEOC is the governmental agency designated to

investigate the charge first, the Department shall take no action until the EEOC makes a determination on the charge and after the complainant notifies the Department of the EEOC's determination. In such cases, after receiving notice from the EEOC that the charge was filed, the Department shall notify the parties that (i) a charge has been received by the EEOC and has been sent to the Department for dual filing purposes; (ii) the EEOC is the governmental agency responsible for investigating the charge and that the investigation shall be conducted pursuant to the rules and procedures adopted by the EEOC; (iii) it will take no action on the charge until the EEOC issues its determination; (iv) the complainant must submit a copy of the EEOC determination within 30 days after service of the determination by the EEOC on complainant; and (v) that the time period to investigate the charge contained in subsection (G) of this Section is tolled from the date on which the charge is filed with the EEOC until the EEOC issues its determination."

What this Amendment means to employers is that if an employee initially files a charge of discrimination with the EEOC within 180 days of the occurrence of the alleged act of discrimination, the charge will be cross-filed with the IDHR. The IDHR will take no action to investigate the allegation and its timeframe for doing so will be tolled pending the outcome of the investigation by the EEOC. Prior to the amendment there was no such tolling language in this section of the statute.

B. Adoption of Findings

735 ILCS 5/7A-102(A-1) subsection (2) is added and states that if the EEOC finds reasonable cause to believe there has been a violation of federal law and if the IDHR is timely notified of their findings by the complainant, the IDHR shall notify the complainant that the IDHR has adopted the EEOC determination of reasonable cause and that the complainant has the right, within 90 days after receipt of the IDHR's notice, to either file his or her own complaint with the Illinois Human Rights Commission or commence a civil action in the appropriate circuit court or other appropriate court of competent jurisdiction. The IDHR's notice to complainant that the IDHR has adopted the EEOC determination of reasonable cause shall constitute the IDHR's Report for purposes of subparagraph (D) of this Section.

4. Charges Alleging Violations of the IDHR and Federal Law

735 ILCS 5/7A-102(A)(1) subsection (3) is added and reads that for charges alleging violations within the jurisdiction of both the EEOC and the IDHR and for which the EEOC either (i) does not issue a determination, but does issue the complainant a notice of a right to sue, including when the right to sue is issued at the request of the complainant, or (ii) determines that it is unable to establish that illegal discrimination has occurred and issues the complainant a right to sue notice, and if the IDHR is timely notified that the EEOC's determination by complainant, the IDHR shall notify the parties that the IDHR will adopt the EEOC's determination as a dismissal for lack of substantial evidence unless the complainant requests in writing within 35 days after receipt of the IDHR's notice that the IDHR review the EEOC's determination.

This section goes on to say that if a complainant does not file a written request with the IDHR to review the EEOC's determination within 35 days after receipt of the IDHR's notice, the IDHR

shall notify complainant that the decision of the EEOC has been adopted by the IDHR as a dismissal for lack of substantial evidence and that the complainant has the right, within 90 days after receipt of the IDHR's notice, to commence a civil action in the appropriate circuit court or other appropriate court of competent jurisdiction. The IDHR's notice to complainant that the IDHR has adopted the EEOC's determination shall constitute the IDHR's report for purposes of subparagraph (D) of this Section.

If the complainant does not file a written request with the IDHR to review the EEOC's determination, the IDHR shall review the EEOC's determination and any evidence obtained by the EEOC during its investigation. If, after reviewing the EEOC's determination and any evidence obtained by the EEOC, the IDHR determines there is no need for further investigation of the charge, the IDHR shall issue a report and the Director shall determine whether there is substantial evidence that the alleged civil rights violation has been committed pursuant to subsection (D) of Section 7A-102. If, after reviewing the EEOC's determination and any evidence obtained by the EEOC, the IDHR determines there is a need for further investigation of the charge, the IDHR may conduct any further investigation it deems necessary. After reviewing the EEOC's determination, the evidence obtained by the EEOC, and any additional investigation conducted by the IDHR, the IDHR shall issue a report and the Director shall determine whether there is substantial evidence that the alleged civil rights violation has been committed pursuant to subsection (D) of Section 7A-102 of this Act.

5. Tolling of the IDHR's Time to Investigate

735 ILCS 5/2-102(A-1) subsection 5 is also added now and states that the time limit set out in subsection (G) of this Section for the IDHR to investigate this charge is tolled from the date on which the charge is filed with the EEOC to the date on which the EEOC issues its determination.

IMPACT ON EMPLOYERS

The Amendment to the charge filing procedure makes it clear that charges with the EEOC will be cross-filed with the IDHR. More importantly, if the EEOC is designated to investigate the charge first, this will toll the time within which the IDHR is supposed to investigate the charge. It will now wait for the EEOC to investigate unless the EEOC investigates an issue to a determination, the IDHR will then act upon that determination. It will either adopt the determination, inform the complainant that he or she has 90 days to file a complaint with the Illinois Human Rights Commission or commence an action in circuit court. As a result, the IDHR will not be taking any further action to investigate the charge. The IDHR does not have to start the investigation right away and may avoid spending time/money to investigate the charge.

For those charges alleging violations within the jurisdiction of both the EEOC and the IDHR for which the EEOC either does not issue a determination but issues a right-to-sue letter or for which the EEOC determines it is unable to establish that illegal discrimination has occurred and issues a right-to-sue letter, the IDHR may notify the parties that it has adopted the EEOC determination with a dismissal for lack of substantial evidence unless a complainant requests in writing (within 35 days after receipt of the IDHR's notice) that the IDHR review the EEOC's determination. If the complainant does not file a timely written request, the IDHR shall notify the complainant that it has adopted the EEOC decision and is dismissing the charge for lack of substantial evidence. The notice will also inform the complainant that he or she has 90 days after the receipt of the

notice to file a civil action with the appropriate court or a court of competent jurisdiction. That notice will constitute the investigation of the charge and the EEOC and the IDHR will take no further action. Plaintiffs will likely forego this request for review and go directly to court.

If the complainant does file a written request to the IDHR to review the EEOC determination, the IDHR shall review the determination and the evidence. If it so chooses, the IDHR will seek to obtain additional evidence regarding the charge. After reviewing the EEOC's determination, evidence obtained by the EEOC and any additional investigation conducted by the IDHR, the IDHR will issue a report and the Director will determine whether there is substantial evidence that the alleged civil rights violation has been committed.

Finally, if the EEOC dismisses the charge or a portion of the charge of discrimination because it determines it lacks jurisdiction over the charge under federal law, and it alleges employment discrimination under the Illinois Human Rights Act, the IDHR has jurisdiction over the charge. The IDHR shall investigate the charge or the portion of the charge dismissed by the EEOC for lack of jurisdiction pursuant to jurisdiction. The timeframe for investigation of that charge dismissed by the EEOC for lack of jurisdiction is tolled pending the EEOC's dismissal and does not start until the EEOC's dismissal of the charge.

In a nutshell, a complainant can now file a charge of discrimination alleging violations of federal anti-employment discrimination laws, as well as Illinois anti-discrimination laws as defined under the Illinois Human Rights Act, and the IDHR's timeframe for investigating various claims of discrimination under the Illinois Human Rights Act are tolled pending the EEOC's investigation and/or determination that it lacks jurisdiction over the Illinois Human Rights Act claims. Moreover, the amendments also implement "automatic" adoption of the EEOC's determinations. These changes give the IDHR more time to investigate, place more of a burden on claimants to notify the IDHR of the EEOC's determination and will most likely funnel more charges into court. The IDHR is allocating less resources to investigating violations of the IDHR and when they do it is taking longer and will likely lead to an increase in costs and expenses.