

Labor and Employment Law Notes

Recent Illinois House and Senate Amendments to the Illinois Human Rights Act

A. House Bill 1509 to Amend Article 2 (Employment) of the Illinois Human Rights Act, Scheduled to Take Effect by January 1, 2008

1. In General

Illinois House Bill 1509 (“HB 1509”) provides that a review of certain decisions of the Director of Human Rights (“Director”) regarding charges of violation of the Illinois Human Rights Act (“Act”) shall be conducted by the Illinois Human Rights Commission (“Commission”), rather than the Chief Legal Counsel of the Department of Human Rights (“Department”). More notably, HB 1509 authorizes claimants to commence a civil action directly in the appropriate Circuit Court instead of exhausting the administrative requirement of filing a charge with the Commission. HB 1509 also provides that if a claim is filed with the Commission, a claimant may not later commence a civil action in the Circuit Court. HB 1509 makes corresponding changes elsewhere in the Act that will be more specifically discussed below.

2. HB 1509’s Anticipated Effect on Insurance Carriers and Their Claims Handlers/Departments

HB 1509 will likely result in claimants filing an increased number of employment discrimination lawsuits based upon violations of the Act directly with the Circuit Court.

The prospect of being able to try a case in front of a jury will likely cause claimants to forego pursuing their claims through the Commission where their claims are presented to an administrative law judge. Although HB 1509 does not expand the scope of protected activities, it will remove one additional procedural obstacle that has, heretofore, prevented claimants from directly filing lawsuits in Illinois Circuit Courts. It is our opinion that the legal effect of HB 1509 will be to cause claimants to more frequently seek legal redress for alleged violations of the Act in Circuit Courts rather than before the Commission, resulting in potentially higher damage awards (and concomitantly, possibly higher settlements) and increased costs of defense.

The direct access to the Circuit Courts allowed by HB 1509 is similar to the procedural structure for filing a claim pursuant to the California Fair Employment and Housing Act (“FEHA”). As a former Deputy Attorney General for the State of California, I defended FEHA claims for many years, litigating cases in California Circuit Courts instead of in its overburdened administrative agencies. In California, a potential plaintiff with an employment discrimination claim under the FEHA was required to first file a claim with the California Department of Fair Employment and Housing. The department then has a statutorily specified length of time in which to investigate the claim. The Department may either issue a right to sue letter to the claimant, which would trigger the claimant’s time to file a lawsuit directly with the California Superior Court or sue on the complainant’s behalf. Similarly, HB 1509 allows a claimant to file a claim with the Commission and the generation of a report or letter thereby triggering the claimant’s time to proceed with the Commission or file a complaint directly in the Circuit Court.

3. Significant Additions to the Act by HB 1509

HB 1509 adds language that will be effective January 1, 2008 that provides the following pertinent changes to the Act:

- The Department shall, within 10 days of the date on which the charge was filed, and again no later than 335 days thereafter, send by certified or registered mail written notice to the complainant and to the respondent informing the complainant of the complainant's right to either file a complaint with the Human Rights Commission or commence a civil action in the appropriate Circuit Court, including in such notice the dates within which the complainant may exercise this right.
- In the notice the Department shall notify the complainant that the charge of civil rights violation will be dismissed with prejudice and with no right to further proceed if a written complaint is not timely filed with the Commission or with the appropriate Circuit Court.
- If the Director determines that there is no substantial evidence, the charge shall be dismissed by order of the Director and the Director shall give the complainant notice of his or her right to seek review of the dismissal order before the commission or commence a civil action in the appropriate Circuit Court.
- If the complainant chooses to have the Commission review the dismissal order, he or she shall file a request for review with the Commission within 30 days after receipt of the Director's notice.
- If the complainant chooses to file a request for review with the Commission, he or she may not later commence a civil action in a Circuit Court.
- If the complainant chooses to commence a civil action in a Circuit Court, he or she must do so within 90 days after receipt of the Director's notice.
- If the Director determines that there is substantial evidence, he or she shall notify the complainant and respondent of that determination, as well as notify the parties that the complainant has the right to either commence a civil action in the appropriate Circuit Court or request that the Department file a complaint with the Commission on his or her behalf. Any such complaint shall be filed within 90 days after receipt of the Director's notice.
- If the complainant chooses to have the Department file a complaint with the Commission on his or her behalf, the complainant must, within 14 days after

receipt of the Director's notice, request in writing that the Department file the complaint.

- If the complainant timely requests that the Department file the complaint, the Department shall file the complaint on his or her behalf; however, if the complainant fails to timely request that the Department file the complaint, the complainant may only commence a civil action in the appropriate Circuit Court.
- The Department's efforts to conciliate the matter shall not stay or extend the time for filing the complaint with the Commission or the Circuit Court.
- When the complainant requests that the Department file a complaint with the Commission on his or her behalf, the Department shall prepare a written complaint and shall file the complaint with the Commission.
- If the complainant chooses to commence a civil action in a Circuit Court, he or she must do so in the Circuit Court in the county wherein the civil rights violation was allegedly committed.
- The form of the complaint in any such civil action shall be in accordance with the Illinois Code of Civil Procedure.
- When a charge of a civil rights violation has been properly filed, the Department, within 365 days thereof or within any extension of that period agreed to in writing by all parties, shall issue its report as required by this Article.
- If the Department has not issued its report within 365 days after the charge is filed, or any such longer period agreed to in writing by all the parties, the complainant shall have 90 days to either file his or her own complaint with the Human Rights Commission or commence a civil action in the appropriate Circuit Court. If the complainant files a complaint with the Commission, the form of the complaint shall be in accordance with this Article.
- If the complainant commences a civil action in a Circuit Court, the form of the complaint shall be in accordance with the Illinois Code of Civil Procedure.
- If the complainant files a complaint with the Commission, he or she may not later commence a civil action in Circuit Court.
- If an aggrieved party files a complaint with the Commission or commences a civil action in Circuit Court pursuant to paragraph (2) of this subsection, or if the time period for filing a complaint has expired, the Department shall immediately cease its investigation and dismiss the charge of civil rights violation.

B. Senate Bill 593 to Amend Article 5 (Public Accommodation) of the Illinois Human Rights Act Immediately

1. In General

Senate Bill 593 (“SB 593”) also amends the Act albeit in a different article. SB 593 provides for a change in nomenclature, revising references in the Act to “disability” instead of “handicapped.”

Additionally, SB 593 now provides that it is a civil rights violation to deny or refuse to another the full and equal enjoyment of the facilities, goods and services of any place of public accommodation (the term “goods” being added to the section).

The new definition of “place of public accommodation” deletes the existing examples and inserts language listing facilities that are considered public accommodations for purposes the Act. The revised Act provides that the definition of public accommodation includes but is not limited to (changed from, “means”) the designated facilities or businesses identified in the Act. In the subsection that describes a lodging establishment as a place of public accommodation, the Act now provides that the owner-occupied lodging establishment exception applies to an establishment located in a building that contains not more than 5 units (instead of rooms).

A place of public accommodation now includes a non-sectarian adoption agency (instead of an adoption agency), non-sectarian nursery, day care center, elementary, secondary, undergraduate, or postgraduate school, or other place of education (in regard to the failure to enroll an individual or the denial of access to its facilities, goods, or services), as well as a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

SB 593 provides that it is not a civil rights violation for a medical, dental, or other health care professional or a private professional service provider (such as a lawyer, accountant, or insurance agent) to refer or refuse to treat or provide services to an individual in a protected class for any non-discriminatory reason if, in the normal course of his or her operations or business, the professional would for the same reason refer or refuse to treat or provide services to an individual who is not in the protected class of the individual who seeks or requires the same or similar treatment or services.

2. **SB 593's Anticipated Effect on Insurance Carriers and Claims Handlers/Departments**

SB 593 will likely result in an increased number of discrimination lawsuits against facilities/businesses for activities that were not previously violations of Act because it appears to expand the number and type of businesses against whom a violation of the Act may be sought. Additionally, SB 593 expands the scope of protection to include the denial of fair or equal enjoyment of goods to an individual who qualifies for protection under the Act, whereas previously the scope of the Act was limited to denial of fair or equal enjoyment of facilities or services. It is our opinion that the legal effect of SB 593 will be to result in an increased number of claims against an increased number of businesses for alleged violations of the Act for actions not previously considered discriminatory under the Act, i.e., denial of fair or equal enjoyment of goods. It stands to reason that since the revised Act covers more people and more claims, this will lead to increased defense costs. Coupled with HB 1509, the changes in Illinois law vis-à-vis the Act could significantly increase the scope of employment law claims in this state.

C. CUMULATIVE EFFECT OF AMENDMENTS TO THE ACT

Given the impending new changes to the Act, insurance company claims departments, managers and adjusters should consider, account for, and anticipate the likelihood of additional and increased costs of indemnity and defense for employment discrimination cases that proceed in Illinois Circuit Courts, as opposed to proceeding before the Commission. For Example, cases pending in Cook County have the potential for significantly larger verdicts being awarded by its notoriously liberal juries as opposed to the controlled environment of the Commission. Lawsuits for the failure to provide goods, not previously a violation of the Act, against an expanded scope of covered business entities, will also occur. Accordingly, the indemnity and defense reserves associated with employment and other cases in Illinois brought pursuant to the Act may potentially be greater in matters pending before Circuit Courts as opposed to matters pending before the Commission.

Labor and Employment Law Notes is authored by Ronald L. Wisniewski.

If you have questions or would like to discuss the implications of this employment law issue further, please feel free to contact Stephen Heil at Cray Huber Horstman Heil & VanAusdal LLC, 303 W. Madison, Suite 2200, Chicago IL 60606; 312-332-8709.