

## **25 STEPS TO ENFORCING YOUR RIGHTS UNDER THE ILLINOIS HUMAN RIGHTS ACT**

The following are the 25 steps necessary to start and finish a complaint of employment discrimination or retaliation pursuant to the Illinois Human Rights Act:

1. File a verified charge of discrimination/retaliation with the Illinois Department of Human Rights in Chicago or Springfield.
2. Wait for the respondent/employer to receive notice and file its response and position statement with the Illinois Department of Human Rights.
3. The Department of Human Rights Investigator will be assigned and conduct a preliminary investigation which will include a complainant interview and submit a document request and interrogatories upon the employer/respondent.
4. The Department's Investigator will schedule a fact finding conference at either the Chicago or Springfield locations.
5. After the fact finding conference, the investigator will seek additional information from potential witnesses and request production of additional documents.
6. Assuming that the Department's Investigator does not request or demand an extension of time, the investigator will issue a report either upholding the charge of discrimination/retaliation or dismissing the charge based upon a lack of substantial evidence. Although the statute provides that substantial evidence means less than a preponderance but more than a scintilla of evidence, in the recent past the department has required what some attorneys and administrative law judges to suggest that the actual standard is "greater than beyond a reasonable doubt". The investigator's report by statute should be completed within 365 days but the investigator often requests/demands extensions. Attorneys are afraid to not grant an extension for fear of reprisal.
7. Assuming the IDHR Investigator dismisses the charge for a lack of substantial evidence, you have the right to appeal to the Illinois Department of Human Rights Chief Legal Counsel. Both sides are allowed to submit position statements and arguments to the Chief Legal Counsel. The Chief Legal Counsel will either uphold the dismissal which is then subject only to Appellate Court review or reverse the dismissal and remand the charge back to the Illinois Department of Human Rights for further investigation. The Department's Investigator may then dismiss your charge again which would result in a second round of appeals before the Chief Legal Counsel.
8. In the event the Department finds substantial evidence of discrimination or retaliation the Department is to engage in a conciliation process. However, by past practice little effort is put forth to create settlement or conciliation. The Department appears to not have the resources to effectuate this aspect of the statutory intent.

9. Assuming no conciliation or settlement is a substantial likelihood, the office of the Chief Legal Counsel will prepare a complaint and file the complaint on your behalf before the Illinois Human Rights Commission. The Chief Legal Counsel will not appear on your behalf and represent you before the Illinois Human Rights Commission which will necessitate that you retain your own attorney unless you are capable of complying with the complex rules of the Illinois Human Rights Commission (see attached summary of rules of Illinois Human Rights Commission).

10. The Illinois Human Rights Commission issues a notice to the respondent and requires the respondent to appear and file an Answer. Although by statute the case is immediately set for public hearing, either party may and always does request time to conduct discovery and motion practice.

11. The parties engage in standard discovery as governed by the Illinois Code of Civil Procedure with the exception that no depositions are conducted absent agreement or Court Order for good cause shown.

12. The respondent/employer may file a Motion for Summary Decision which is akin to a Motion for Summary Judgment under the Code of Civil Procedure. You file a Response and the matter will await determination by the assigned Administrative Law Judge.

13. Assuming all discovery and motion practice is concluded without final determination, the Illinois Human Rights Commission conducts a public hearing which is presided over by an Administrative Law Judge. The administrative law judge is a licensed attorney however the budgetary constraints of the Commission prevents what most consider to be adequate pay which results in substantial ALJ turnover and many practicing attorneys with substantial experience in this subject matter are reticent to apply as an ALJ based upon the lack of adequate compensation. The hearing is a trial governed by the standard rules of evidence.

14. After the public hearing is concluded, the parties await the preparation and submission of a transcript by the court reporter.

15. After the transcript is prepared, the parties file both an initial and responsive set of post-hearing briefs including proposed findings of fact and conclusions of law.

16. The ALJ is required to subsequently prepare and file findings of fact in conclusion of law along with a recommended liability determination.

17. Assuming you are successful, the parties next litigate over the amount of attorney's fees and costs due the complainant's attorney.

18. After the liability, damages and attorney's fees issues are resolved by the ALJ, either party may appeal to the Illinois Human Rights Commission.

19. The parties submit another round of briefs and arguments before the Commission.

20. The Commission may entertain oral argument on the appeal.

21. The Commission enters an order upholding or reversing the ALJ'S findings and conclusions. If any aspect of the ALJ'S findings and conclusions are reversed, the previous ALJ that made the determination may no longer be employed by the Commission or available to make a further determination. In that event, the parties may either stipulate to a determination by a new ALJ or engage in a repetitive round of litigation with evidence presented at public hearing to a new ALJ.

22. After the 3 panel Commission decision is final, a losing party may appeal to the full commission.

23. After all Commission orders are final and both parties have exhausted all administrative remedies, either party may appeal to the Illinois Appellate Court. The Appellate Court process includes the filing of appellant's brief, response brief and appellant's reply brief. Oral argument may be entertained by the Appellate Court and the parties await final determination and issuance of the Appellate Court mandate. Assuming the complainant prevails at the Appellate Court, the complainant must now file a new enforcement action at the Circuit Court level.

24. The complainant obtains a final and enforceable judgment action against the employer/respondent in the Circuit Court.

25. Post judgment collection action ensues, assuming the employer is still in business and the judgment is collectible.