

# One Minute Memo<sup>®</sup>



## Illinois Human Rights Act Expanded to Provide State Court Jury Trials

Effective January 1, 2008, plaintiffs will have the ability to bring lawsuits under the Illinois Human Rights Act (IHRA) directly in the Illinois Circuit Courts. This major change, which was signed into law last month by Governor Rod R. Blagojevich, gives charging parties the right to choose between proceeding with their claim before the Illinois Human Rights Commission (the "Commission") or filing a lawsuit in Circuit Court. Equally significant, individuals who choose to file a Circuit Court lawsuit are entitled to a jury trial and to seek all the remedies historically available under the IHRA, including actual damages, attorney's fees and prejudgment interest in addition to back pay and reinstatement. Given the propensity of some Illinois juries to award significant monetary damages against employers, plaintiff's lawyers are expected to seriously consider Illinois Circuit Court as an alternative to proceeding before the Commission.

For all charges filed with the Illinois Department of Human Rights (IDHR) on or after January 1, 2008, charging parties will have the option of filing a Circuit Court action once:

- The IDHR dismisses the charge for lack of substantial evidence;
- The IDHR makes a "substantial evidence determination;" or

- The IDHR fails to complete its investigation and issue a report within 365 days after the charge is filed.

A civil complaint must be filed with a Circuit Court within 90 days of any of the three events listed above. Complaints must be filed in the Circuit Court in the County in which the civil rights violation allegedly occurred.

Prior to the recent amendments, employees were limited to litigating their claims of employment discrimination under the IHRA before the Commission. While this option continues to exist, the August, 2007 amendments provide a choice of litigating before the Commission or in the Circuit Courts.

As a result of these amendments, the Circuit Courts may well become a forum of choice because of the right to a jury trial. Unlike damages under Title VII (the federal equivalent of the IHRA), the IHRA does not place a cap on "actual damages." Moreover, "actual damages" under the IHRA have to be interpreted to include compensation for emotional harm and mental suffering.

Time will tell how Illinois courts and juries will address employment discrimination claims under the IHRA. If the experiences of employers in states such as California are a predictor for Illinois, employers facing discrimination

claims will be confronted with additional financial risks. As such, employers should use this as an opportunity to review their policies, practices and procedures for preventing and addressing discrimination claims. These amendments further underscore the importance of continuing to provide meaningful and effective training to all managers, supervisors and employees with respect to the Company's policies and procedures prohibiting workplace harassment and discrimination.

*If you have any questions concerning this One Minute Memo, please contact the Seyfarth Shaw LLP attorney with whom you work or any labor & employment attorney on our website at [www.seyfarth.com](http://www.seyfarth.com).*

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