

**GETTING STARTED – WHERE AND WHEN TO
FILE A CHARGE OF EMPLOYMENT DISCRIMINATION**

The first step in an employment discrimination case begins with a Charge of Discrimination. (Exhibit A). The Charge of Discrimination can be filed with the Illinois Department of Human Rights (IDHR) or the Equal Employment Opportunity Commission (EEOC), or both. When a Charge of Discrimination is filed with the Illinois Department of Human Rights, the Charge is also automatically filed with the EEOC pursuant to the work sharing agreement between the agencies, (Compliance Manual §5.4 CCH ¶1284), when the box in the lower left hand corner of the Charge is checked. As a general rule, complainants should always cross-file with the IDHR and EEOC. There is no filing fee to file a Charge of Discrimination at the IDHR or EEOC.

The address, phone number and web site for the Illinois Department of Human Rights is:

Illinois Department of Human Rights
Thompson Center, 10-100
100 West Randolph Street
Chicago, Illinois 60601
312.814.6242
www.il.us/dhr/

The address, phone number and web site for the Equal Employment Opportunity Commission is:

Equal Employment Opportunity Commission
500 West Madison, Suite 2800
Chicago, Illinois 60661
312.353-2713
www.eeoc.gov

The time to file a Charge of Discrimination with the IDHR is within 180 days (approximately 6 months) of the alleged discrimination. The time to a Charge of Discrimination with the EEOC is 300 days (approximately 10 months) of the alleged discrimination. The

limitation period begins to run when the discriminatory acts occur, not when the discriminatory acts are felt. *Delaware State College v. Ricks*, 449 U.S. 250 (1982). Under the equitable tolling doctrine, if the plaintiff did not have reason to know that a series of acts were discriminatory, he can file a charge after the 300 day limit if he brings the charges promptly after he or she knows, or with the exercise of reasonable diligence would have known, of their discriminatory nature.

Moskowitz v. Trustees of Purdue University, 5 F.3d 279 (7th Cir. 1993).

The content of the charge of discrimination must be in writing under oath or affirmation, 42 U.S.C. §2000 e-5(b). The EEOC regulations hold that a charge is adequate if it contains a written statement sufficiently precise to identify the parties and to generally describe the discrimination, 29 C.F.R. §1601.12. The courts and the EEOC liberally construe the formal pleading requirements of describing the nature of the discriminatory conduct.

Prior to filing a Title VII or ADA civil lawsuit in either state or federal court, the plaintiff must receive a right-to-sue letter. 42 U.S.C. §2000 e-5(f)(1), 42 U.S.C. §1217. The plaintiff must file the lawsuit within 90 days after receipt of the right-to-sue letter or their claim is forever barred. Thus, there are essentially two dates that employment discrimination practitioners must be cognizant of, the first being 300 days for the discriminatory employment action and, second, within 90 days after a right-to-sue letter has been received by the complainant.

If a plaintiff is anxious to file his employment discrimination civil lawsuit in state or federal court, must he wait until the EEOC completes its investigation? **The answer is NO.** The charging party may request the EEOC issue a right-to-sue letter 60 days after the filing of a Charge of Discrimination. The complainant would then have 90 days after receipt of the right-to-sue letter to file a lawsuit.

SIZE MATTERS!

The size of the employer, number of employees, determines whether there is jurisdiction with the EEOC or IDHR. Employers that have less than 15 employees are not subject to the jurisdiction of either the EEOC or IDHR for race, sex, national origin, religion and Title VII retaliation in non-federal employment cases. There is an exception to this rule for sexual harassment cases with the Illinois Department of Human Rights, 775 ILCS 5/2-101(b)(1)(b) and for retaliation, 775 ILCS 5/6-101. Thus, if a practitioner has a situation where their client has been sexually harassed or retaliated against for their reasonable opposition to discrimination and the employer has under 15 employees, the IDHR is the only option for filing a Charge of Discrimination as the EEOC will not have jurisdiction.

For handicapped cases, the IDHR only requires one employee for jurisdiction to apply, whereas the ADA requires the employer to have at least 15 employees before the Act applies. The only recourse a handicapped employee, who has been discriminated against because of their handicap, has against an employer with less than 15 employees is with the IDHR.

For age discrimination cases, the IDHR requires 15 employees for jurisdiction to apply and the EEOC requires 20 employees for jurisdiction to attach. There exists no remedy for an older employee (over 40) who has been discriminated against in his employment because of his age with the ADEA, Age Discrimination Employment Act, 29 U.S.C. §621, or pursuant to the Illinois Human Rights Act, 775 ILCS 5/1-101.

TABLE OF EMPLOYER SIZE FOR JURISDICTION

Type of Discrimination Alleged	Number of Employees	Agency
Age	1-14 15-19 20 or more	No jurisdiction IDHR EEOC or IDHR
Handicapped	1-14	IDHR
Disability	15 or more	EEOC or IDHR
Race, Sex (Gender), National Origin, Religion	1-14 15 or more	No jurisdiction EEOC or IDHR
Retaliation	1-14 15 or more	IDHR EEOC or IDHR

NOTE

Can a claimant obtain access to the IDHR or EEOC investigation file at the conclusion of the investigation? Answer: Yes.

56 Ill. Administrative Code §1610.5 at the state level, and 29 C.F.R. §1610.5 at the federal level, allow the complainant access to the investigation file. Complainant can obtain the respondent's position statement and other relevant documents that they were prohibited from viewing during the investigation with either the EEOC or IDHR. This access is important and should not be overlooked by the complainant as access to the file may highlight the strength or weakness of the respondent's position and allows an attorney to re-evaluate the employment discrimination case prior to filing suit in state or federal court.

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