



THE ILLINOIS HUMAN RIGHTS ACT: COVERAGE AND ENFORCEMENT

HOW IS DISCRIMINATION PROVEN?

There are three general categories of discrimination:

Disparate treatment: This occurs when a person is treated less favorably than others because of their membership in a protected class.

Disparate impact: This occurs when a policy or practice that is neutral on its face operates in a way that adversely impacts members of a protected class.

Hostile environment: This usually does not involve a single discriminatory action, but rather a pattern that is abusive and is based on protected class. It is often referred to as harassment. To be unlawful under the Illinois Human Rights Act (“Act”), the conduct must be severe or pervasive to the point that the environment is abusive, and be both subjectively and objectively offensive.

In addition, it is unlawful to retaliate against someone for opposing a violation of the Act, participating in the Commission process, or asserting their rights under the Act.

WHAT ARE THE AREAS COVERED UNDER THE ACT?

The Act forbids discrimination in employment, real estate transactions, education, public accommodations and access to financial credit.

WHICH PROTECTED CLASSES STAY COVERED?

The Act forbids discrimination based on age (40+), ancestry, arrest record, citizenship status, color, conviction record, disability (physical and mental), familial status (with respect to real estate transactions), gender identity, marital status, military status, national origin, orders of protection, pregnancy, race, religion, retaliation, sex, sexual harassment, sexual orientation and unfavorable military discharge.

DO I NEED A LAWYER?

You have the right to be represented by an attorney at all steps of Commission proceedings. An individual Complainant or Respondent is not required to be represented by counsel. However, the Commission is required by law to use the same rules of evidence that are applied in the state trial courts. Anyone who does not know the Illinois civil rules of evidence, or who is unfamiliar with civil procedure, would be at a disadvantage if their opponent is represented by an attorney.

A Respondent that is a corporation is required by law to be represented by a licensed attorney.

IF I CANNOT AFFORD A LAWYER, WILL THE COMMISSION APPOINT A LAWYER FOR ME?

No. The Commission does not appoint attorneys to represent litigants who appear before it. As a service to those who appear before the Commission, Commission staff maintains a list of legal services organizations that provide free or low cost legal assistance to low income persons. The Commission does not endorse any legal services organization.

WHAT IS DISCOVERY?

Discovery is set of procedures by which litigants can obtain the facts that his or her opponent believes supports the opponent's case and, therefore, help in the preparation of their own case. The primary purpose of discovery is to avoid unfair surprise at the public hearing. Commission procedure permits discovery through the use of written interrogatories, document requests and written requests to admit that are served upon the opposing party and are required to be answered, under oath, within 28 days of service. Commission rules also permit discovery through the use of oral depositions, but such discovery is allowed only with the permission of an Administrative Law Judge (ALJ) for good cause. Permission for discovery through the use of oral depositions is rarely granted. Discovery takes place during the period of time between the filing of answer to the complaint and the entry of an Order setting the date for the public hearing. Generally, an Order setting a discovery schedule will be entered by an ALJ not long after the complaint is answered.

CAN THE COMMISSION DECIDE MY CASE WITHOUT A HEARING?

Yes. A complaint is subject to dismissal or summary decision on factual or legal grounds. Any party may move for dismissal or summary decision in favor of the moving party. If, after considering the briefs and/or oral arguments of each side, the ALJ concludes that it is unnecessary to hear witnesses or to take additional evidence and that the moving party is entitled to a ruling in its favor, then the ALJ will enter a Recommended Order and Decision dismissing the entire case or certain claims raised in the case without the necessity of convening a public hearing.

IF THE COMMISSION FINDS AN EMPLOYER COMMITTED A CIVIL RIGHTS VIOLATION, CAN THE EMPLOYER GO TO JAIL?

No. The Human Rights Act provides no criminal penalty for committing a civil rights violation.

WILL A PREVAILING COMPLAINANT IN AN EMPLOYMENT CASE ALWAYS BE ENTITLED TO REINSTATEMENT AND FULL BACK PAY?

No. A prevailing Complainant is presumed to be entitled to such relief, but the Commission may find that in certain circumstances reinstatement or back pay would be inappropriate. For example, reinstatement would be inappropriate for a former police officer who, subsequent to his separation from the police force, was convicted of burglary. Back pay might be inappropriate for any period of time subsequent to separation during which the Complainant was unable to work due to illness or injury.