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Employment & Labor Law FLASHPOINTS January 2018

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Appellate Court Sheds Light on Complainant's Ability To File Discrimination Suit in Circuit Court

Background on Illinois Human Rights Act and 2007 Amendments

The Illinois Human Rights Act (IHRA), 775 ILCS 5/1-101, *et seq.*, prohibits discrimination in a variety of contexts, including real estate transactions, public accommodations and employment. Per the IHRA, individuals seeking redress for claims of employment discrimination must first file such claims with the Illinois Department of Human Rights (IDHR). The IDHR investigates each charge to determine whether there is substantial evidence to support the claims set forth in the charge. Upon concluding its investigation, the IDHR issues written notice of the results of the investigation, namely whether it found substantial evidence of the discriminatory acts alleged in the charge.

What occurs next changed in 2007. In particular, before 2007 Illinois courts did not recognize a private cause of action for discrimination under the IHRA. Accordingly, individuals seeking redress for their claims of employment discrimination had to proceed before the Illinois Human Rights Commission (IHRC), which is the state administrative agency that provides a neutral forum for adjudicating complaints of civil rights violations.

The above framework changed in 2007 when the General Assembly amended the IHRA to include a private cause of action for discrimination claims. Per the 2007 amendments, after a claim is investigated by the IDHR, complainants have the choice of proceeding before the IHRC or filing suit in state circuit court. In particular, the Act states that if the IDHR Director determines there is no substantial evidence of discrimination on a claim, the Director shall give the complainant notice of his or her right to seek review of the dismissal order before the IHRC or commence a civil action before the appropriate circuit court. A complainant's options are limited in that if the complainant chooses to file a request for review with the IHRC, he or she may not later commence a civil action in circuit court. 775 ILCS 5/7A-102(D)(3).

The Appellate Court's Decision in Metzler v. Bethea Hospital

These amendments and a complainant's right to file suit in circuit court were the focus of the appeal in *Metzler v. Katherine Shaw Bethea Hospital*, 2017 IL App (2d) 170001. In that case, Bret Metzler, who had been employed by defendant Katherine Shaw Bethea Hospital, filed a charge of sex

discrimination after his employment was terminated. In his charge, Metzler alleged that he had been harassed by a female superior, received a negative performance review, was suspended, and then dismissed because of his sex, male.

The procedural history of Metzler's charge is lengthy. Metzler filed his charge in 2013 and received his first notice from the IDHR's Director in August 2014. With that notice, the Director informed Metzler that the IDHR had found no substantial evidence of discrimination and had dismissed his charge. As required by the IHRA's 2007 amendments, the Director informed Metzler he could file a request for review of the decision before the IHRC or file a civil action in state court. Metzler took the first option and filed a request for review before the IHRC. After review, the IHRC vacated the IDHR's dismissal order and instructed the IDHR to conduct further investigation of Metzler's claim. The IDHR did so and then again dismissed Metzler's claim, for lack of substantial evidence of discrimination, in March 2015. The IDHR's second dismissal notice was substantively identical to its first notice. Metzler again sought review before the IHRC and the IHRC again vacated the dismissal order with instructions to the IDHR to conduct further investigation. The IDHR conducted this investigation and dismissed Metzler's claim, once again, in March 2016. This third and final dismissal notice was substantively identical to the first two notices. Metzler did not seek review of this decision before the IHRC but rather commenced civil suit in circuit court.

In defense of the suit, Bethea Hospital filed a motion to dismiss arguing that under the 2007 amendments to the IHRA, Metzler was barred from commencing suit in circuit court because he had already sought review before the IHRC on his charge of discrimination. The circuit court agreed with Bethea Hospital and dismissed Metzler's lawsuit.

Metzler appealed the circuit court's dismissal to the Second District Appellate Court which, after review of the record and legal arguments, reversed the circuit court's decision. The appellate court held that when reading the entire relevant section of the IHRA, it is clear that a complainant has the option of seeking IHRC review or filing a civil action on each dismissal order issued by the Director. The ability of a complainant to avail himself or herself of these options exists for each dismissal order, regardless of whether multiple orders have been entered on the same charge of discrimination. The Second District reasoned that Metzler was not precluded from filing suit on the third notice from the IDHR because the 2007 amendments were intended to prevent a complainant from obtaining an unfavorable decision from the IHRC then commencing an action in circuit court on the same dismissal order. The amendments do not prevent a complainant from filing civil suit merely because he or she sought IHRC review of an earlier dismissal order.

Takeaways from Metzler

As there are still relatively few judicial decisions interpreting the 2007 amendments to the IHRA, *Metzler* is significant for those lawyers litigating employment discrimination claims under the IHRA, particularly those in the Second Appellate District. The decision provides much-needed guidance for practitioners handling charges with similar procedural histories, which are common before the IDHR.



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