

## **Amendment to Illinois Human Rights Act Authorizes Attorney General To File Pattern and Practice Class Actions**

**September 1, 2004**

On August 24, 2004, Illinois Governor Rod Blagojevich signed into law S.B. 2878 (now Public Act 093-1017), which authorizes the Illinois Attorney General to commence civil actions in state court against employers accused of engaging in a pattern or practice of employment discrimination in violation of the Illinois Human Rights Act. Prior to this amendment, the Attorney General was required, like private litigants, to proceed through the standard charge resolution mechanisms of the Illinois Department of Human Rights (IDHR) and the Human Rights Commission.

Now the Attorney General may bypass these state agencies and proceed directly with his or her own independent investigation of civil rights violations and file suit, in the name of the state, whenever he or she “has reasonable cause to believe that any person or group of persons is engaged in a pattern and practice of discrimination prohibited by the Act.”

Key elements of the new law include:

- Two-year statute of limitations for Attorney General to file suit (four times the period allowed for individuals to file charges of discrimination with the IDHR);
- Requirement that the Attorney General conduct probable cause preliminary investigations and attempt to conciliate prior to filing suit; and
- Broad investigatory powers invested in the Attorney General, including authority to: (i) require individuals and entities to file reports or statements, *under oath*, containing any information the Attorney General considers necessary; (ii) conduct examinations *under oath* (e.g., take depositions); and (iii) issue subpoenas and conduct hearings in aid of investigation.

Attorney General lawsuits in state court are best viewed as a supplement to, not a replacement for, individual actions before the IDHR. Under the new amendment, the Attorney General has authority to seek broad equitable relief (including preliminary and permanent injunctions) to prevent violation of the Human Rights Act and to request civil penalties of up to \$50,000 for repeat violators “to vindicate the public interest.” However, any penalties obtained are not paid to aggrieved individuals—they are required to be deposited into a special account of the state treasury to be used, subject to appropriation, to fund the Attorney General’s enforcement activities and to conduct public education. The amendment specifically requires aggrieved individuals seeking actual damages to follow the standard charge-filing procedures currently provided for under state law.

The inability to seek actual damages on behalf of aggrieved individuals makes the Attorney General’s role in filing pattern and practice lawsuits in state court markedly different than the Equal Employment

Opportunity Commission's (EEOC's) role in filing similar suits in federal court. The EEOC's equitable authority includes the right to seek individual relief, including damages, and, indeed, EEOC action generally prevents individuals from proceeding on their own behalf with lawsuits commenced after the EEOC has filed suit.

By contrast, Attorney General action has no effect on an individual's right to commence proceedings before the IDHR to obtain individual relief. In fact, individual action may prevent Attorney General enforcement if conducted expeditiously. Because of the shorter statute of limitations for filing charges of discrimination with the department (180 days), individual action is likely to be filed before the Attorney General files suit. Should proceedings before the department result in a conciliation, settlement agreement or assurance of voluntary compliance with respect to the employment practice that forms the basis of the Attorney General's complaint, the Attorney General is barred from filing his or her own lawsuit. In practice, however, it is expected that the Attorney General and the department will work cooperatively, with all charges alleging pattern and practice violations channeled through the Attorney General's office.

The amendment takes effect immediately. The text of Public Act 093-1017 can be reviewed by clicking:

<http://www.legis.state.il.us/legislation/publicacts/fulltext.asp?name=093-1017>

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