

PRACTICE BEFORE THE EQUAL
EMPLOYMENT OPPORTUNITY
COMMISSION (EEOC) & THE
PENNSYLVANIA HUMAN
RELATIONS COMMISSION (PHRC)

Christopher A. Tinari, Esquire

Margolis Edelstein

August 24, 2010

LEGAL AUTHORITY

■ EEOC

- Title VII of 1964 – Applies to employers with 15 or more employees
- Race, color, religion, sex, national origin, and retaliation – EPA, ADEA, ADA, Rehab Act, Genetic Info. Act
- Power to investigate, bring court actions, cooperate with state agencies



■ PHRC

- Pennsylvania Human Relations Act (PHRA) – Applies to employers with 4 or more employees
- Race, color, religious creed, ancestry, age, sex, national origin, handicap or disability, use of guide or support animals and retaliation – Fair Education Opportunities Act
Agreements with the EEOC to investigate claims filed with the EEOC

EEOC Structure

- Five Commissioners and General Counsel
- Appointed by President & Confirmed by Senate
- General Counsel Litigates in Court
- 15 Districts & 53 Offices in U.S.
- Philadelphia District Office Handles :
Eastern PA, DE, W. Va., South Jersey

PHRC Structure

- Eleven Commissioners
- Appointed by the Governor & Confirmed by State Senate
- Three District Offices : Philadelphia, Harrisburg and Pittsburgh



Filing A Charge - EEOC

- Must be filed within 300 days of discriminatory act if dual filed with the state agency
- Complainant will need to complete questionnaires and advise Investigator of details of discrimination
- Investigator will draft the charge / complaint based upon the questionnaire and information from the Complainant
- U.S. Supreme Court has held that, in some cases, a signed questionnaire in lieu of filing a complaint satisfies the statutory 300 day deadline of filing



Filing A Charge - PHRC

- Must be filed within 180 days of discriminatory act
- Any claim must be signed and verified
- Complainant will complete questionnaires and Investigator will assist in the drafting of the complaint
- If Complainant is represented by counsel, counsel may draft the complaint
- Not clear from case law, if completing questionnaires only, tolls the 180 day limitations period



Notification to Employer - EEOC

- Law requires that employers are notified within 10 days of the date of the charge
- Often deadline is not met but no penalty
- Employer will receive a notice of charge, a copy of the charge, notice about settlement, information requiring a position statement and document production
- Employer may also receive an invitation to mediate the charge



Notification To Employer - PHRC

- Law requires that employers are notified of a filed claim within 30 days of the docketed complaint
- As with the EEOC, deadline is often not met and penalties do not exist
- Employer will receive a complaint, a notice to defend, an invitation to a no-fault - predetermination settlement, a notice of appearance form, requests for documents - including standard requests for information concerning state contracts - collective bargaining agreements – employee handbooks
- Employer will also receive a notice of a scheduled Fact Finding Conference
- If the matter is cross-filed with the EEOC, it may also send the EEOC a notice of the complaint



Answer to Complaint - PHRC

- Unlike the EEOC, the employer must file a verified answer to the complaint within 30 days of service
- Unlike the EEOC, the answer must be served on the complainant
- Time to answer can only be extended for an additional 30 days
- If employer does not answer within 60 days, the PHRC may petition the PHRC motions commissioner for an order to show cause for failure to file an answer
- Penalties may result including entry of judgment for the complainant



Mediation - EEOC



- Both parties must agree
- Separate EEOC division for mediation
- Mediators are employed and staffed by the EEOC
- EEOC has own mediation settlement agreement but may supplement with own agreement and release
- Parties sign documents that indicate that the mediation is confidential and that the mediators will not be called as witnesses to subsequent proceedings
- Mediators usually advise parties that their mediation notes would be destroyed after the session



Investigation - EEOC

- If mediation is unsuccessful or parties agree not to mediate – matter referred to the investigation unit
- Most of the time, investigations are conducted solely on the papers – position statement – document responses – affidavits of witnesses
- EEOC takes the position that the document responses and position statement of to the employer is not confidential
- EEOC often provides documents and the position statement to the complainant for rebuttal
- On occasion, EEOC may request a Fact Finding Conference or an on-site visit to the employer's place of business



Investigation - PHRC

- Like the EEOC, PHRC has various tools in the investigative process including power to subpoena documents – responses to document requests – position statements – affidavits of witnesses
- PHRC does not have a formal mediation process
- PHRC generally makes greater use than the EEOC of the Fact Finding Conference as an investigative tool
- The Fact Finding Conference is voluntary on both sides
 - Not a hearing
 - Testimony is not transcribed
 - No right to cross examine witnesses
 - Testimony is not given under oath
 - Attorneys may not direct questions to witnesses
 - Investigator asks questions and for the parties to present their side of the dispute



Findings - EEOC

- Cause or No Cause
- No Cause – Based on completed investigation or on a request from the complainant, after 60 days, for a Right to Sue Letter
 - Right to Sue Letter will be issued giving the complainant 90 days from receipt of the letter to file a claim in federal court
 - 90 day period is not jurisdictional and is subject to equitable tolling
- Cause – Based on completed investigation
 - Conciliation
 - Not resolved – Decision to prosecute or issue a Right to Sue Letter allowing complainant to sue, individually, in federal court
 - Decision not to sue based on factors such as a matter that is a part of a “pattern or practice” & whether the issue is one of particular importance to the EEOC



Findings - PHRC



- Probable Cause or No Probable Cause
- No Probable Cause – Based on completed investigation
 - Close file and notify parties
 - Complainant can request a preliminary hearing in the PHRC – not a matter of right – must be based on after acquired evidence or new evidence – very difficult to succeed
 - If hearing granted, testimony, under oath, and the issuance of a finding or to refer back for additional investigation
- Cause – Based on completed investigation
 - Conciliation
 - Complainant may choose to bring claims at public hearing before PHRC or file in state court

Conciliation – EEOC & PHRC

- Face to face meetings or telephone conferences
- EEOC & PHRC will develop a conciliation agreement – comprehensive and cover issues regarding training of employees, on-going monitoring, internal controls on employer, and reporting responsibilities
- Employer will agree to abide by anti-discrimination laws
- Conciliation agreements are enforceable for a number of years
- Generally, EEOC & PHRC are not willing to negotiate major changes to the agreement
- Publicity is important to the Commissions and can be very damaging to the employer – newspaper submissions and website display by the Commissions



Public Hearing - PHRC

- Conciliation fails
- New complaint served on employer
- Takes place in county where discrimination took place
- PHRA establishes rules for pleadings and discovery
- Subpoenas must be submitted to Motions Commissioner
- Permanent hearing examiner will preside over hearing
- All testimony is under oath and transcribed
- Under PHRA, PHRC is not bound by strict rules of evidence
- PHRC will issue findings of facts
- Probable Cause – Issue cease & desist order, damages, civil penalties, attorneys fees and costs



Court Issues



- 42 U.S.C. 2000e-5 – Complainant must exhaust administrative remedies before filing in court
- Requires Complainant to file a timely charge and wait until receipt of a Right to Sue Letter
- Lawsuit can be no broader than the scope of the charge
- Defendant must be named in the charge – caption or the body of the charge
- Under R. Evid. 403, relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading cumulative evidence”
- Commission’s letter of determination evidence introduction is at the discretion of the trial court

THANK YOU & QUESTIONS

