

Discrimination Claims Now Heard in State Court

By Anique Gonzalez

The battle between employers and employees has been a long and arduous one, and thanks to changes in several state laws, the battle is once again heating up. With the recent additions of Maryland and Illinois, 40 states have now passed legislation that will allow employees to sue their employers for discrimination with the case being heard in state court.

On October 1, Maryland's amended anti-discrimination law went into effect. The law, which prohibits discrimination based on sexual orientation, marital status, race, color, religion, ancestry, national origin, and age, will enable plaintiffs to sue their employers in state court. Before the change, the only courses of legal action involved either filing a claim with a state agency — for example, the Equal Employment Opportunity Commission (EEOC) — or proceeding with a trial in federal court. The State of Illinois has also made similar modifications to its laws, namely the state's Human Rights Act, allowing plaintiffs to sue in state court as well. The Illinois law, however, will not go into effect until January 1, 2008.

Both states' laws will now offer three ways in which plaintiffs can proceed if they feel they have been discriminated against. In Maryland, for instance, plaintiffs can still file a claim with a state agency, and if the agency determines the claim is valid, it will be heard by an administrative law judge, who can confer injunctive relief, back pay, reinstatement, and compensatory damages. If the state agency finds that the plaintiff was discriminated against but cannot determine proper restitution, the plaintiff also has the option of taking the case to state court and requesting a jury trial. "Third, a complainant may bring a civil action if 180 days have passed since filing an administrative charge or complaint under federal, state, or local law."

As a result of these recent legal changes, management-side attorneys have argued that the shift from federal- to state-based lawsuits will lead to an increased number of suits as well as large monetary verdicts, especially since many states are now giving plaintiffs the option of having jury trials. Moreover, these attorneys fear the outcomes of such cases since they will be heard by judges who are unfamiliar with discrimination and harassment issues instead of those who focus solely on such matters.

Unsurprisingly, management-side attorneys have already attempted to devise ways to get around these new laws, including attempting to get the cases immediately moved from state to federal court.

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Of course, every state law differs, and each can present unique challenges. In Pennsylvania, for instance, employees must first file a claim with the Human Rights Commission, which has up to one year to consider it. After that time, the plaintiff is free to proceed with legal action in state court. In New Jersey, plaintiffs do not have to go through an agency and can file their suits immediately in state court.

Many argue that submitting claims to a state's administrative agency first helps to prevent ludicrous claims from going to court. On the other hand, plaintiff's attorneys argue that the merits of a case should not be determined by a third party and instead should be determined by a judge or jury during a trial.

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U.S. Equal Employment Opportunity Commission

www.eeoc.gov