

STATE DISCRIMINATION LAWS: HUMAN RIGHTS COMMISSIONS

This memorandum discusses, on a state-by-state basis, the various agencies that have been established to address and enforce each state's antidiscrimination laws. The states included in this memorandum are Arizona, Colorado, Idaho, Minnesota, Montana, Oklahoma, South Dakota, Washington, and Wyoming.

ARIZONA

The Arizona Civil Rights Act established the Arizona Civil Rights Division. The division is charged with the responsibility of administering the Act. The division includes a Civil Rights Advisory Board that is composed of seven members who are appointed by the Governor.

While the division is entitled to seek preliminary injunctive relief and file civil actions under the Act in state court, Arizona law does not provide an administrative forum for final and binding adversary hearings on charges of discrimination.

Claims of discrimination are initiated by the filing of a charge of discrimination with the division. After the charge is filed, the division is responsible for the investigation of that charge. If, after its investigation, the division determines that there is not reasonable cause to believe the charge of discrimination is true, it enters an order dismissing the charge. If the division determines there is reasonable cause to believe that an unlawful employment practice has occurred, it then attempts to eliminate the alleged unlawful practice by informal methods of conference, conciliation, and persuasion. If within 30 days after a determination of reasonable cause has been made and no conciliation agreement is reached, the division may bring a civil action in state court against the alleged discriminator.

A charging party has a right to maintain a civil action for legal and equitable relief in state court.

COLORADO

The Colorado Anti-Discrimination Act established the Colorado Civil Rights Division and the Colorado Civil Rights Commission. The commission is an administrative agency vested with investigative, prosecutorial, and adjudicatory functions. The commission consists of seven members who are appointed by the Governor for four-year terms.

After a charge is filed with the commission, the division, through its staff, begins an investigation

into the allegation contained in the charge. If the director of the division determines that the charge lacks probable cause, the charge will be dismissed and written notification of this action will be given to the charging party. If the director determines that probable cause exists for crediting the allegations of the charge, efforts are then made to eliminate the discrimination by conference, conciliation, and persuasion.

If, after a determination of probable cause, the director concludes that conciliation efforts are futile, the director reports this conclusion to the commission. If the circumstances warrant, the commission issues and serves a complaint of discrimination, requiring the respondent to answer the charges at a formal hearing. At the adjudicatory hearing, the commission may either dismiss the complaint if no violation is found. If the respondent is found to have engaged in unfair employment practices, however, an order granting appropriate relief is entered.

The commission has the exclusive right to commence enforcement actions in district court. Final orders of the commission may be appealed by filing a petition with the court of appeals.

IDAHO

The Idaho Commission on Human Rights administers the state's discrimination laws. The commission, a division of the Governor's office, is composed of nine members who are appointed by the Governor for three-year terms. The state's discrimination laws grant all aggrieved individuals the right to file a civil action in the district court. Filing a complaint with the commission is not a prerequisite to a civil action.

Victims of discrimination may file complaints alleging unlawful employment practices with the commission. Upon receipt of a complaint, the commission investigates the claim to determine if reasonable cause exists to believe an unlawful practice has occurred. If no probable cause is found, the complaint is dismissed. If reasonable cause is found, the commission attempts to eliminate the discrimination by conciliation.

If the conciliation fails, the commission is empowered to file a civil action in district court in its name for the person aggrieved by the violations of the law. The commission must file this action within one year after the complaint is filed with the commission.

MINNESOTA

The Minnesota Human Rights Act prohibits unfair discriminatory practices. The Act is administered by the Minnesota Department of Human Rights, which is headed by a human rights commissioner appointed by the Governor.

Any person aggrieved by a violation of the Act may file a charge with the department or a civil action in district court within one year of the discriminatory act. After a charge is filed at the department, an immediate inquiry is made to segregate charges that are frivolous or without merit. Such charges are dismissed.

On all other charges, a determination is made as to whether probable cause exists to credit the allegation of unfair discriminatory practices. In cases where probable cause is found, the department attempts to eliminate the unfair discriminatory practice through education, conference, conciliation, and persuasion. When conciliation is unsuccessful or unproductive, an adjudicatory hearing takes place before a hearing examiner. The hearing examiner enters a final order, binding on all parties, containing findings of fact and conclusions of law. Final orders of the department are enforced by petition to the district court.

Aggrieved individuals have a private right of action in district court which is independent of the administrative process at the department.

MONTANA

The Montana Human Rights Act prohibits certain unlawful discriminatory practices. The Act is administered by the Montana Human Rights Commission which is a division of the Department of Labor and Industry. The commission consists of five members appointed by the Governor and approved by the Senate.

Persons aggrieved by violations of the Act may file a complaint with the commission within 180 days of the discriminatory act. All complaints are investigated and, if a complaint is determined to be supported by substantial evidence, efforts are made to eliminate the discriminatory practice by conference, conciliation, and persuasion. An adjudicatory hearing is held before the commission on complaints not resolved by conciliation.

The prevailing party in a hearing before the commission may file an action in district court for attorneys' fees. The commission enforces its final orders by petition to the district court.

In certain circumstances, aggrieved individuals can file a private action in the district court. After a complaint is filed with the commission, the

commission will issue a letter entitling the complainant to file an action in district court if (1) an adjudicatory hearing has not been held; and (2) 12 months have lapsed since the complaint was filed. The complainant must file an action in district court within 90 days after receipt of the letter issued by the commission or the claim will be barred.

OKLAHOMA

The Oklahoma Anti-Discrimination Act is administered by the Oklahoma Human Rights Commission.

A person aggrieved by a violation of the Act can file a complaint with the commission within 180 days after the alleged discrimination act occurs. If within 60 days after the complaint is filed the commission determines no reasonable cause exists to believe a discriminatory practice has occurred, the commission dismisses the complaint. The commission attempts to resolve complaints found to have reasonable cause by settlement, conciliation, and persuasion. Complaints not dismissed or resolved by settlement are set for hearing before a member of the commission or a hearing examiner. After a hearing on the merits, the commission makes findings and fact and conclusions of law. In cases where a discriminatory practice has been found, a member of the commission or its staff attempts to eliminate the discrimination by conference, conciliation, and persuasion. If the discrimination is not eliminated by a conciliation agreement, the commission enters an order containing all appropriate relief.

Orders of the commission are enforced by the district court. The proceeding for enforcement consists of a review of the record unless the commission, the complainant, or the respondent requests the proceedings to be de novo.

SOUTH DAKOTA

The South Dakota Human Relations Act prohibits certain unfair and discriminatory practices. The Act is administered by the South Dakota State Commission of Human Rights, which is under the direction and supervision of the Division of Human Rights. The commission consists of five members appointed by the Governor and approved by the Senate. Each member serves a four-year term.

Upon the filing of a charge of discrimination with the commission, the charge is investigated. If probable cause exists to support the allegations in the charge, an attempt is made to eliminate the discrimination by conference and conciliation. If

a charge is not resolved by conference and conciliation and the commission determines that circumstances warrant, an adjudicatory hearing is conducted by the commission, a commissioner, or a hearing examiner. After consideration of all the evidence at a hearing, the commission makes findings of fact and issues an appropriate order. Final orders of the commission are subject to judicial review in circuit court. The commission enforces its final orders by proceedings in circuit court.

WASHINGTON

The Washington Law Against Discrimination is administered by the Washington State Human Rights Commission. The commission is composed of five members appointed by the Governor with the advice and consent of the Senate. The members serve five-year terms. The commission is required to make a biennial report to the Governor describing the investigation, proceedings, and hearings it has conducted and their outcome, the decisions it has rendered, and the recommendations it has issued.

Upon the filing of a complaint by a person aggrieved by a violation of the state's discrimination statutes, the commission conducts an investigation and issues a written finding determining whether reasonable cause exists for believing that an unfair practice has been committed. If reasonable cause is found, the commission attempts to eliminate the unfair practice by conference,

conciliation, and persuasion. Complaints not resolved by conciliation are set for an adjudicatory hearing before an administrative law judge. After hearing all the evidence, the administrative law judge issues findings of fact and a final order either dismissing the complaint or granting appropriate affirmative relief. Final orders of the commission are subject to judicial review by filing a petition in state court within 30 days. The commission enforces its order by a petition for enforcement in state court.

WYOMING

The Wyoming Department of Employment, the successor agency to the Fair Employment Practices Commission, administers the Wyoming Fair Employment Practices Act.

Persons aggrieved by violation of the Act may file complaints with the department within 90 days of the alleged discrimination. If the department determines that circumstances warrant, an adjudicatory hearing is scheduled. After consideration of all evidence presented at the hearing, the department makes findings of fact and issues an order either dismissing the complaint or granting appropriate relief.

Persons aggrieved by a final order of the department may seek judicial review in district court within 30 days after service of the department's order. The department enforces its final order by obtaining a decree of enforcement in district court.