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Updated Guidance for Employers on the Illinois Workplace Transparency Act's Disclosure Mandate: Adverse Judgment Reports Due by October 31

Nearly one year after Governor JB Pritzker signed the [Illinois Workplace Transparency Act](#) (WTA), the Illinois Department of Human Rights (IDHR) issued much-needed guidance on one of the WTA's most arduous requirements—the employer adverse judgment disclosure requirements. After postponing the initial disclosure deadline of July 1, 2020, indefinitely, the IDHR recently published answers to frequently asked questions (FAQs) clarifying a number of details regarding this new reporting requirement, as well as providing Form IDHR 2-108 that employers must complete and submit physically to the IDHR or via email to IDHR.Webmail@Illinois.gov.

Adverse Judgment Disclosures Are Now Due October 31, 2020

Most importantly, the FAQs indicate that employer disclosures for the 2019 calendar year are due by October 31, 2020. However, for subsequent calendar years, the deadline will be July 1. As part of the mandate, employers are required to annually disclose the total number of adverse judgments and/or administrative rulings entered against them during the preceding year and whether any equitable relief was ordered. Employers must refrain from disclosing the name of the victim, and instead simply provide how many adverse judgments or rulings fall within each of the specified categories that are outlined in Section 2-108(B) of the Illinois Human Rights Act (IHRA).

What Are "Adverse Judgments or Administrative Rulings," and "Equitable Relief"?

An "adverse judgment or administrative ruling" means any final and non-appealable judgment issued in the employee's favor and against an employer. Examples of administrative rulings include final orders issued by the Illinois Human Rights Commission, the Cook County Commission on Human Rights, or the Chicago Commission on Human Relations, while examples of non-appealable judgments include those issued by state circuit courts and federal courts. Notably, the IDHR states that "[d]ecisions in unemployment insurance proceedings are not considered adverse judgments or administrative rulings, and need not be included." "Equitable relief" is a nonmonetary award. Examples of equitable relief include a reinstatement of employment or an order to provide accommodation.

Employers also must report rulings and judgments entered in favor of nonemployee contractors and consultants on claims of harassment. Additionally, Illinois employers are required to report adverse judgments and administrative rulings entered in jurisdictions outside of Illinois.

Are Employers Required to Report Settlements?

The FAQs make clear that employers are not required to report settlements as part of their annual disclosure report. However, the IDHR has the right to request information regarding the number of settlements from "the preceding five years or less" as part of an investigation of pending charges of discrimination filed under the IHRA.

What if an Employer Has Nothing to Report?

If an employer has not had any adverse judgments or administrative rulings, as those terms are defined above, it does not have to file a report with the IDHR.

What if Employers Fail to Comply?

Financial penalties may be imposed for noncompliance based on the employer's size ranging from \$500 to \$5,000 per offense.

What Should Employers Do to Prepare for the New Reporting Mandate?

Employers should remain attentive when keeping records of any matters filed under the IHRA, particularly in cases involving a variety of claims, since accurate records will be important to ensure compliance with the WTA's disclosure requirements.

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