

## **Alan Banov and Associates**

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### **Client Information: Private Sector Discrimination Cases**

#### **DC Office of Human Rights**

- Violations of DC Human Rights Act and D.C. Family and Medical Leave Act
- Broad subject matter jurisdiction (same as EEOC, but also sexual orientation, marital status, personal appearance, family responsibilities, and political affiliation)
- One year limitation period for private sector employees to file complaint
- Absent settlement in conciliation conducted by OHR, probable cause cases are tried before the DC Commission on Human Rights, which operates like an informal court.
- Cases do not go to court unless they are withdrawn before a probable cause determination, and filed timely in court. Filing with OHR can toll the time to file a court complaint, so that the complainant may be able to file a court complaint more than one year after the alleged discrimination or retaliation occurred. (We will explain this on request.)

#### **Montgomery County Human Relations Commission**

- Jurisdiction over employers operating in Montgomery County
- Fairly broad jurisdiction over various forms of discrimination (almost as broad as DC Human Rights Act)
- Complaint must be filed within one year of the discriminatory or retaliatory act
- Hearing before Commission if probable cause found
- 45 days after filing, cases can be taken to court

#### **Prince George's County Human Relations Commission**

- Jurisdiction over employers in Prince George's County
- Fairly broad jurisdiction over various forms of discrimination (similar to Montgomery County)  
Complaint must be filed within 180 days of the discriminatory or retaliatory act
- Hearings before Commission if probable cause found
- After 45 days, cases can be taken to court

#### **Maryland Commission on Human Relations**

- Jurisdiction over employers in Maryland
- Fairly broad jurisdiction over various forms of discrimination
- Complaint must be filed within 6 months of the discriminatory act
- Hearings before Commission if probable cause found
- After 45 days, cases can be taken to court

All of these laws prohibit retaliation against people for filing complaints with these agencies or even for opposing discrimination on the job.

Details about other agencies can be provided upon request.

## Procedures

Complaint of charge is drafted and filed

- Contains skeleton of allegations or claims
- Should just tell basics of discrimination or reprisal
- Completed by agencies, but we prefer doing it ourselves
- Should be notarized

Affidavit of charging party/complainant

- Puts flesh on case
- Gives details
- Often refers to documents used as exhibits
- Often drafted by the agency, but we prefer to write it

Additional support

- From documents, statements by witnesses
- Briefs to agency
- Rebuttal of employer arguments
- Suggest questions which agency can send to employer

Mediation

- A confidential, private process to facilitate settlements, with a neutral person serving as mediator
- Often suggested by commissions
- Generally it is in the complainant's best interests to settle early, to obtain some sort of relief (monetary or non-monetary) and to keep at a minimum the fees and expenses
- Mediators are generally private attorneys who volunteer their services.
- The mediator meets with the parties and their attorneys, hears the basic facts of the case, and will try to promote a compromise settlement or, possibly, discourage the complainant from pursuing her case (depending on how candid the mediator is).
- Can give the complainant a good idea of the strength of her case

Fact finding conference (Maryland Commission has these)

- Supposed to help investigator learn facts
- Some use as settlement conference
- Hardly ever used by EEOC any more
- Sometimes held by MD, County Commissions

Probable cause determination

- Decision that claim probably has merit or not
- May promote settlement
- EEOC may take over a year, or even two years, to issue; others take a few months to a over a year
- May lead to complaint filed in court by EEOC against the employer
- Other agencies - leads to hearing before commissions

- Assuming case is cross-filed with EEOC, maybe reviewed by EEOC upon request ("substantial weight review")

#### Right-to-sue letter by EEOC

- Gives right to sue in Federal or State Court
- Deadline to file court complaint - 90 days from receipt of notice (this is absolute)
- You should mark down, preferably on the notice itself, the date of receipt
- The time runs even if review/reconsideration is sought
- Can be provided by EEOC upon request after 180 days