New Procedures at Connecticut Commission on Human Rights and Opportunities

By **James F. Shea** and **Anna Matsuo**

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For the second time in five years, the Connecticut Commission on Human Rights and Opportunities (CHRO) will implement significant changes to its procedures for processing discrimination complaints, under Public Acts 15-249 and 15-5. These changes, including the availability of quick dispute resolution, take effect October 1, 2015.

Pre-Answer Conciliation

Employers now have the ability to engage in Pre-Answer Conciliation. This procedure tracks existing practice at the U.S. Equal Employment Opportunity Commission, allowing for early mediation of complaints, thus giving employers an opportunity to seek an early resolution of charges and save the time and expense of preparing an answer. An employer can request Pre-Answer Conciliation within 10 days of receiving a complaint. The CHRO then has 30 days to hold the conciliation conference. If conciliation is unsuccessful, the employer has the normal 30 days, or 45 days with an extension, to respond to the complaint. This change is significant in that it provides the parties an opportunity to resolve a matter before positions may have become hardened by time-consuming and costly administrative proceedings and litigation.

Merit Assessment Review

Another significant change is the elimination or alteration of the so-called Merit Assessment Review, now recast as a "Case Assessment Review." This is more than a mere name change. For instance, the new rules shorten the timeframe within which the CHRO must conduct the Case Assessment Review from 90 days to 60 days from the date of the employer's answer. The shorter deadline may move cases along more quickly, but may reduce the effectiveness of the CHRO's pre-investigation screening process also, resulting in even more cases being retained for investigation. The new rules also affect cases that are dismissed through Case Assessment Review. The CHRO is required to issue a Release of Jurisdiction automatically for these cases. Previously, the complainant had to make a request. How these changes may affect the disposition of complaints will have to await a retrospective look after the CHRO has some experience under its belt.

Mandatory Mediation

Other changes affect the CHRO's Mandatory Mediation process. Parties who hold a Pre-Answer Conciliation conference are not obligated to engage in mediation prior to a Commission investigation, although they are free to do so if they wish. Significantly, the CHRO representative who conducts the mediation can no longer be assigned to investigate the complaint. This change was intended to separate the mediation and investigation functions of the CHRO case handling process and to address concerns over having the same individual oversee both the mediation and the investigation of a complaint.

Others

The following minor changes also went into effect:

- The CHRO now has 15 days (instead of 20) after the complaint is filed to provide an employer with a copy of the complaint and notice of procedural rights.
- A complaint sent by first class mail is considered received by the employer two days after it was mailed, unless the employer can prove otherwise.

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- The parties or the CHRO can request Early Legal Intervention at any time after the mandatory mediation conference.
- If Early Legal Intervention is requested, CHRO legal counsel, instead of the Executive Director or his or her designee, will determine whether cases should proceed or be released from CHRO jurisdiction. This determination must be made no later than 90 days after the date of the request for Early Legal Intervention.
- Assignment of the complaint to an investigator for fact finding must be made no later than 15 days after a failed Mediation Conference or an Early Legal Intervention decision to investigate a complaint, rather than 15 days after the Mediation Conference only.
- The Mediation Conference cannot be held on the same date as the fact finding conference.
- Parties no longer have the option of requesting additional mediation conferences if the first one failed to resolve the complaint.
- CHRO legal counsel, instead of the Executive Director or the Executive Director's designee, has the authority to grant or reject a complainant's request for reconsideration. The timeframe within which to do this remains the same, no later than 90 days.
- When investigating complaints, CHRO legal counsel, instead of the "Commission," can issue subpoenas requiring production of records and other documents or compelling attendance of witnesses.
- Employers can apply to the Executive Director to vacate a default ordered against them. The Executive Director can decide whether to vacate the default.

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Overall, while several of these changes were implemented to codify what had been practice at a number of CHRO regional offices, the more significant changes are designed to track current procedures at the EEOC and allow for more efficiency and better case management at the CHRO. Time will tell whether these changes are effective in meeting these objectives.

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