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WHAT TO DO WHEN YOU RECEIVE A COMPLAINT FROM THE NEW YORK STATE DIVISION OF HUMAN RIGHTS

AND

THE NEW YORK CITY COMMISSION ON HUMAN RIGHTS

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I. Introduction

Many litigators are used to receiving complaints that are filed in court and when for the first time faced with a complaint filed against their client with the New York State Division of Human Rights (“NYSDHR”) or with The New York City Commission on Human Rights (“NYCCHR”) they ask themselves now what? This outline provides an overview of the steps to take when first receiving the complaint and a guide to the process before both agencies.

II. Receipt of Complaint

A. Contact agency regarding time to answer and submit position statements

B. Conduct your own Internal Investigation

1. File a Notice of Appearance with the agency and contact the agency regarding time to answer
2. Call Client find out facts
3. Gather all applicable documents: may include similar complaints, warnings or grievances, employee files, notes of meetings, internal memoranda
4. Speak with any witnesses or persons with information

C. Prepare Position Statement

Unlike a typical answer filed in response to a complaint in court a position statement is much more detailed. Generally, the statement sets out the employer's side of the story and should set forth the following:

1. Employer's version of the facts
2. Employer's explanation for claims made by the complainant
3. Statistics in support of employer, for example if the claim is for age discrimination and the employer has a number of employees within a protected class of age, the employer should present statistics demonstrating this
4. Brief recitation of a few cases and facts from cases that support your position. However, be mindful that this is not a brief and lengthy discussions on cases are unnecessary.
5. Attach any documents or exhibits supportive of the employer's position.
6. Include appropriate employer policies

D. Investigation by the Agency

After the NYSDHR or NYCCHR receives your position statement and any documents in support of your position the agencies may:

1. Request additional documents and/or information
2. Visit your client's offices in order to speak with any persons with information
 - a) This may vary based upon the investigator or the office. For instance, we have found that the NYCCHR likes to conduct interviews and sets up a time for counsel to appear at their office along with the interested parties or witnesses so that the investigator may ask questions. With the NYSDHR we have seen more on-site investigations where the investigator appears at the employer's site. However, we have also seen instances where the investigator only requests documentary evidence. Be prepared for variances from case to case and investigator to investigator.
3. Hold a Fact Finding Conference
 - a) More likely to see this before the NYSDHR. Each side can basically present its version of the facts.
4. Settlement/Conciliation
 - a) It is likely that the investigator will seek to facilitate some kind of settlement prior to making any determination on probable cause. There are even instances before any investigation has occurred where the investigator will seek to have the matter settled.

E. Determination by the Agency

1. At the conclusion of the investigation the investigator will make a recommendation to the agencies director as to whether there should be a finding of probable cause or no probable cause.
2. If there is a finding of probable cause there will likely be additional efforts by the agencies to reach a settlement.
3. You should serve a FOIL request for a copy of the agencies' file regarding the investigation.

F. Hearing

1. Basically a mini-trial with relaxed rules of evidence before an Administrative Law Judge.
2. After the hearing an order will be issued containing findings of fact.
3. Appeals can be made to the New York State Supreme Court within 60 days under a special Article 78 proceeding.