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Employment Discrimination under the Pennsylvania Human Relations Act Q&A for Employees

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This quick reference guide on the Pennsylvania Human Relations Act (PHRA) is written for employees seeking basic information about employment discrimination under Pennsylvania state law. While a good source for key concepts and explanation, this Q&A resource is not a substitute for legal advice. In addition to possible state law claims, a person can have federal law claims as well as state tort claims, e.g. defamation. All these actions have varying remedies and deadlines that an employee will want to consider if the employee believes or surmises that she or he has been discriminated against by his or her employer. Readers with questions on how the law applies to their situation are strongly encouraged to contact Deem & López Law Offices @ 717-892-3900.

What types of employment discrimination are covered under the PHRA?

Pennsylvania's employment anti-discrimination law is known as the Pennsylvania Human Relations Act (PHRA). The PHRA makes it unlawful for employers to take or fail to take certain employment actions based on specified discriminatory reasons. Lawyers often refer to this as an employer taking an "adverse employment action" against a person in a "protected class." An example is where an employer fires an employee because of her race or color and/or sex.

Unlawful Employment Actions under the PHRA:	Protected Classes or Bases for Discriminatory Claims under the PHRA:
<ul style="list-style-type: none">• Refusal to Hire• Termination, Firing or Discharge• Discriminatory Terms or Conditions of Employment• Retaliation for filing for or seeking remedies under the PHRA• Retaliation for participating in or providing information to the PHRC (Pennsylvania Human Relations Commission)• Retaliation for objecting to discrimination	<ul style="list-style-type: none">• Race• Color• Possession of a diploma based on passing a general education development (GED) test• Ancestry• Age (40 and above)• Sex• National Origin• Non-job related disability or known association with a disabled individual• Retaliation• Religion• Willingness or refusal to participate in abortion or sterilization

What kinds of employers are subject to the PHRA?

The PHRA covers a large number of employers including state and local governments, school districts, and any person employing four (4) or more people within PA. Employment agencies and labor organizations are also subject to PHRA provisions. Religious and non-profit charitable organizations and associations employing more than four (4) people are subject to the PHRA with respect to discriminatory practices based on race, color, age, national origin or non-job related disability. Exceptions are made, however, to this number requirement for circumstances where there is a broader public policy goal.

What can I do if I believe I am being discriminated against because of my sexual orientation?

Discriminatory acts based on gender stereotypes are covered by the PHRA, e.g. a man treated unlawfully by his employer because the employee is perceived as not acting according to a male stereotype. *The PHRA, however, does not currently cover discriminatory actions by employers due to sexual orientation per se.* Some local PA communities have filled this gap by passing local ordinances protecting sexual orientation and these laws have been upheld as consistent with the PHRA. *See Hartman v. City of Allentown*, 880 A.2d 737, 2005 Pa. Commw. LEXIS 452 (Pa. Commw. Ct. 2005)(Local anti-discrimination ordinances held valid even when the PHRA generally covers the issue).

What is the Pennsylvania Human Relations Commission (PHRC)?

The PHRC, or Commission, is a state agency that administers and enforces two anti-discrimination laws, the PHRA and the Fair Educational Opportunities Act. These laws focus PHRC work to the areas of employment, housing and commercial property, public accommodation, education, and the monitoring of community tension situations. The Commission is responsible for investigating and resolving anti-discrimination complaints as well as issuing regulations and guidelines for PHRA compliance. In many respects the Commission acts on a state level just as the Equal Employment Opportunity Commission (EEOC) operates on a federal level with federal employment anti-discrimination laws.

What can I do if I believe I have been discriminated against at work?

If you believe that your employer (or potential employer) has taken an unlawful employment action against you based upon your being in at least one protected class (see table above), you should contact the PHRC. Their staff will assist you with questions and with the basics of filling out the necessary paperwork involved in filing a complaint. **You must file your complaint with the PHRC within 180 days of the alleged unlawful discrimination. This is a strict deadline and failure to file within the time period will affect the possible remedies that you may receive.** It is also a good idea to contact an employment attorney as soon as possible for advice and guidance on how you can maximize your options.

What PHRC office should I contact to file my complaint?

The PHRC has offices in Pittsburgh, Harrisburg, and Philadelphia. Each of these offices provides regional services to the public. The office that you should contact is the one that covers the county where the alleged discrimination took place. This may be different than the place where you live. For example, if you live in Chester County but work in Lancaster County, you will need

to contact the regional office that covers Lancaster County. You can find contact information and a listing of which office covers what geographic area on the website of the PHRC – www.phrc.com.

What remedies can the PHRC help me obtain?

The PHRC has a number of remedies that may help to compensate an employee for an unlawful discriminatory practice. The remedies include:

- Hiring, reinstatement, or upgrading an employee
- Back pay
- Monetary compensation for the loss of work involved with the hiring, reinstatement or upgrading of an employee
- Reasonable accommodation for a non-job related disability
- Reimbursement for verifiable and reasonable out-of-pocket expenses, including travel expenses

The PHRC can also order an employer to stop an unlawful discriminatory practice. Some remedies may not be available under the PHRA. Contact Deem & López Law Offices for an assessment of the relief you need.

What steps are involved when I file a complaint with PHRC?

You will need to complete some standard forms for your complaint that are available from the PHRC. This information needs to be accurate and you will have to verify that it is true and correct to the best of your knowledge. There are penalties for false complaints. **Your complaint is served** (sent) to the person who you have filed the complaint against. They have up to 60 days to respond and must provide you with a copy of the response. **A Commission investigator** who may obtain more information by interviews and follow-up questions as well as through gathering documentation **then investigates your complaint. The next step is called a fact-finding conference.** A fact-finding conference is not required and does not happen in every case. It is a procedure to assist in the investigation where deemed necessary and may also be used to attempt settlement of your complaint. **A completed investigation** usually results in either a finding that there is or is not “probable cause” to your complaint. **When the Commission finds “probable cause” they act through conciliation** to address the discrimination by requesting that your employer take measures to address the discriminatory act or practice and provide certain compensation. **If conciliation does not resolve the probable cause finding, a public hearing may be held.** This is a formal hearing with testimony under oath and can result in a legally enforceable order. Many PHRA complaints do not proceed to this stage of the PHRA process.

When can I take my employment discrimination case to Court?

An employment discrimination case may not be brought to court until an employee has “exhausted administrative remedies.” This means that you must file a complaint with the PHRC and proceed through that process for a certain period of time before you can proceed to Court.

You can bring your case in state court if:

- The Commission has not resolved your complaint within one year from filing; or
- The Commission dismisses your complaint

You can bring your case in federal court if you have a “Right to Sue” letter from the Equal Employment Opportunity Commission or EEOC. (For more on this see dual-filing with the EEOC below).

What deadlines are involved with employment discrimination cases?

It is extremely important to pay attention to the deadlines involved in employment discrimination cases. As mentioned above, a claim under the PHRA or PA anti-discrimination employment law must be made within 180 days of the adverse employment action taken against you. When you cross-file your PHRC complaint (see-below) with the EEOC, you also protect your rights under federal employment anti-discrimination laws, as these types of claims must be brought to the EEOC in Pennsylvania within 300 days of the adverse employment action taken against you. Note that if you’ve missed the PHRA 180 day deadline, you may be able to file with the EEOC as long as filing occurs within the 300 day deadline. When you receive a “Right to Sue” letter from the EEOC you have 90 days to file your case in court.

What is dual-filing with the Equal Employment Opportunity Commission (EEOC) and why does it matter?

When you file a claim with the PHRC you are offered the option of “cross-filing” with the Equal Employment Opportunity Commission (EEOC). You must cross-file with the EEOC to maximize your options and remedies to address your alleged employment discrimination. While only one investigation will occur, it is necessary to cross-file with the EEOC so that you can later receive a “Right to Sue” letter from them. This EEOC “Right to Sue” letter allows you to proceed to federal court if you are not satisfied with the result of the PHRC investigation.

Do I need an attorney?

The PHRC process is designed to be a do it yourself process and you are not required to have an attorney represent you. You do, however, have the right to be represented before the Commission by a private attorney. Employment discrimination claims can involve both state and federal claims and a mixture of possible remedies depending upon when and where a cause of action (legal case) gets filed. An attorney can usually best help a client with an employment matter the earlier a client consults with the attorney. For this reason, while you don’t technically need an attorney with the PHRC process, it is a good idea to at least consult with an attorney for guidance and advice early in the process. Call Deem & López Law Offices @ 717-892-3900 for help.

Where can I go for more information and assistance?

For web resources about the PHRA, go to the PA Human Relations Commission web site at: www.phrc.com. On this site you can find reports and statistics, complaint forms and procedures, PHRC contact information and office locations, and additional information about the PHRA.

Contact Deem & López Law Offices for a consultation on your case.

At Deem & López Law Offices we encourage clients to contact us as soon as possible for a consultation and case assessment. When we get involved early in the process we can help employees sort through and prioritize the many options that may be available to them. We help clients to problem-solve the outcome that each particular client believes is best for them. At Deem & López Law Offices we understand that it is not always possible to contact an attorney right away and not everyone will do so. We welcome new clients contacting us wherever their employment discrimination claim may be in the process. **We are dedicated to justice and will work to be responsive to you.**

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