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Bill could expand human rights act to small businesses

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SPRINGFIELD— For workers in companies with fewer than 15 employees, there could be an added course of action for discrimination at the workplace at a state level.

House Bill 252 would expand the Illinois Human Rights Act to cover employees that work at small businesses. Currently, at the state and federal level with the Equal Employment Opportunity Commission or the Illinois Department of Human Rights, aside from a sexual harassment or disability discrimination claim, employees who work at these small businesses have no course of action against their employer employer.

“I was shocked that you could face discrimination in most of the state in a totally legal way on the basis of gender, sexual orientation, religion, age — these things that I assumed were protected classes,” said Chicago Democrat Rep. Will Guzzardi, sponsor of HB 252. “It turns out they just weren’t. If your business was small enough, then you could legally discriminate and get no recourse.”

At the local level, municipalities have passed ordinances that protect workers at small businesses. Chicago’s Human Rights Ordinance allows workers to file discrimination complaints through the Chicago Commission on Human Relations. There is a similar course of action available through a Cook County ordinance.

Jim J. Convery, managing partner at Laner Muchin, whose practice represents employers, explained that workers would prefer to bring cases at the state level rather than a local one.

“More than likely, the process will move quicker at the state level,” he said. “In addition, employees have the ability to opt out of the state administrative proceeding and go directly to court.”

However, there are many parts of the state that do not have local ordinances available to pursue discrimination cases against employers with less than 15 employees. For those workers, there is currently no avenue in which they can pursue charges.

“There wouldn’t be a legal recourse in that case,” said Gail S. Eisenberg, an associate attorney at Stowell & Friedman Ltd., an employee civil rights firm. “Just because a person works for a

smaller employer does not mean that they don't deserve a workplace free from discrimination or harassment, retaliation."

Eisenberg explains that under current law for race discrimination specifically, employees who work at businesses with under 15 employees can attempt to use Section 1981 of the federal law. However, under Section 1981, there needs to be intentional discrimination while the civil rights act prohibits disparate impact discrimination.

Mark Denzler, president & CEO of the Illinois Manufacturer's Association opposes HB 252 because it increases the burden on small businesses.

"Oftentimes at a federal level or state level they exempt, small employers from different mandates," said Denzler. "It's oftentimes death by a thousand cuts, and for that small employer that they now have to pay \$15 an hour wages, and now maybe they get these regulations, and maybe there's a graduated income tax that impacts them, these things build up."

The state already faces a backlog of Illinois Human Rights Act cases. Since former Gov. Bruce Rauner's Executive Order 18-08 went into effect in June 2018, there has been a 44-percent reduction in pending cases, according to a January announcement from the Illinois Human Rights Commission.

"Thankfully, we're seeing those wait times decrease," said Eisenberg "They've hired a lot more attorneys and investigators, so we're hoping that backlog will be diminished."

Guzzardi acknowledged that HB 252 will create more cases for the IDHR but doesn't think that should be a deterring factor for passing the bill.

"Frankly, I would hope that in passing this bill, we will create more cases because I'm hoping that people who have been discriminated against today will finally have some recourse," he said. "I don't think the fact that this department is understaffed should mean that discrimination should just stay legal because it's too hard to prosecute."

HB 252 passed out of the House Wednesday 73-40. It has been referred to the Senate Assignments Committee.

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