

THOMAS W. RIECK
trieck@rieckcrotty.com
JEROME F. CROTTY
jcrotty@rieckcrotty.com
RONALD P. DUPLACK
rduplack@rieckcrotty.com
DOUGLAS C. CONOVER
dconover@rieckcrotty.com
KEVIN P. BROWN
kbrown@rieckcrotty.com
AMY E. COLLINS
acollins@rieckcrotty.com

RIECK AND CROTTY

ATTORNEYS AT LAW

A PROFESSIONAL CORPORATION

55 WEST MONROE STREET, SUITE 3390

CHICAGO, ILLINOIS 60603-5062

CHICAGO'S BUSINESS LAWYERS

TELEPHONE
(312) 726-4646

TELECOPIER
(312) 726-0647

FIRM WEB SITE:
<http://www.rieckcrotty.com>

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THE COURTHOUSE PERSONNEL DEPARTMENT

AMENDMENT TO ILLINOIS HUMAN RIGHTS ACT

PROVIDES ACCESS TO STATE COURTS AND JURY TRIALS

A recent amendment to the Illinois Human Rights Act (the "Act") introduces the Illinois courts as a new venue for the resolution of charges of discrimination brought under the Act. Presently, when a charge of discrimination is filed, the charge is investigated by the Illinois Department of Human Rights (the "Department"). If the charge has merit or the investigation is not completed within a year of its filing, a complaint is filed by the Department with the Illinois Human Rights Commission (the "Commission") and the case is heard by an administrative law judge.

Beginning January 1, 2008, complainants may bypass the Commission and elect to file in state court where a jury trial may be requested. Pursuant to the amended Act, a complainant may file a complaint in state court under the following rules:

- (1) If the Department dismisses the charge of discrimination for lack of substantial evidence, the complainant will have 90 days to file suit in state court.
- (2) If the Department finds substantial evidence of discrimination, the complainant has 14 days to ask the Department to file a complaint on his or her behalf before the Commission or, if no such request is made, the complainant has 90 days to file suit in state court.
- (3) If the Department has not completed its investigation and issued a report within 365 days after a charge is filed, the complainant will have 90 days to either file suit in state court or file a complaint with the Commission.

Since many employment attorneys believe the current administrative trial procedure is cumbersome and ineffective, employers should expect that many complainants will elect to have their complaints decided by state court juries. While proceeding in state court will provide employers with discovery not available in administrative trials before the Commission, the potential cost of a jury trial and the possibility of large jury verdicts make it even more important for employers to implement policies and procedures to avoid discrimination claims. Please telephone a member of the firm if you would like to discuss implementing policies and procedures which may prevent discrimination claims.

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Rieck and Crotty, P.C. publishes *THE COURTHOUSE PERSONNEL DEPARTMENT* bi-monthly to keep employers and employees advised of current issues and decisions throughout the United States relating to employment law matters which may impact our readers. If you desire additional information concerning any of the articles, please telephone a member of the firm.

WHAT IS AN EMPLOYER'S OBLIGATION REGARDING THE PROTECTION OF AN EMPLOYEE'S PERSONAL INFORMATION?

We all recall the recent incident in which an analyst for the United States Department of Veteran's Affairs took home a laptop computer and disks containing personal and confidential information of nearly all active duty military personnel and virtually every person discharged from the United States military since 1975. The computer and disks were subsequently stolen. Such an incident raises the question of what employers must do when such a breach occurs.

The Illinois Personal Information Protection Act (the "Act") specifies the type of notice an employer must provide if there has been a breach of a computer system containing confidential employee information. The Act applies to a "Data Collector;" that is, "government agencies, public and private universities, privately and publicly held corporations, financial institutions, retail operators, and any other entity that, for any purpose, handles, collects, disseminates, or otherwise deals with nonpublic personal information."

The Act defines "Personal information" as "an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted or redacted: (1) Social Security number; (2) driver's license number or State identification card number; (3) account number or credit or debit card number, or an account number or credit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account. "Personal information" does not include, "publicly available information that is lawfully made available to the general public from federal, state, or local government records."

A "breach of a security system" occurs when there is an unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of Personal information maintained by the Data Collector.

Once a breach occurs, the Data Collector must notify any Illinois resident, at no charge, of the breach by: (1) written notice; (2) electronic notice; or (3) substitute notice, such as e-mail, posting or publication in state wide media if the cost of providing notice would exceed \$250,000 or if notice must be given to more than 500,000 residents. The failure to give notice constitutes an unlawful practice under the Illinois Consumer Fraud and Deceptive Business Practices Act.

A person damaged as a result of a violation of the Act may file suit against the party who committed such a violation. Upon a finding of liability, the court may award the actual monetary losses incurred as a result of the violation and any other relief which the court deems proper.

If you have a question about the Act, please telephone the member of the firm with whom you regularly work.

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Be sure to visit our website at www.riECKcrotty.com to read prior issues of *The Courthouse Personnel Department* and *A Potpourri*.