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TESTIMONY REGARDING THE PA HUMAN RELATIONS COMMISSION

Dear Chairman Folmer and Committee –

Thank you for accepting this testimony in regards to the impact of the PA Human Relations Commission on the employers in our fine state of Pennsylvania. As to my credentials, I hold an undergraduate degree from Lebanon Valley College in Business Administration and Psychology which is where I chose to pursue a career in Personnel. My Master of Arts in Human Resource Management/Industrial Relations was earned from St. Francis College. Professionally, I am certified as a Senior Professional in Human Resources (SPHR) from the HR Certification Institute and the Society for Human Resource Management (SHRM-SCP.) I have advanced within my profession for the 30+ years. I have led HR Resolutions for the past 11 years supporting small businesses who do not have an HR professional on staff. And I wrote “Stop Knocking on My Door: Drama Free HR to Help Grow Your Business” which was published in 2015. In the span of my career, I have had professional experience in front of both the EEOC and the PHRC. These experiences, particularly with the PHRC, have been fraught with various frustrations but specifically:

1. Failure to notify employers in a timely manner
2. Failure to respond to the employer once a charge has been “opened”
3. Treating even nuisance claims no differently than valid claims

Item 1: Timely Notification

The PHRA has specific regulatory deadlines with regards to timelines. The very first of which is the requirement to notify the employer of a charge within 30 days of the filing of the charge. The employer then has 30 days to answer the notice (but is generally granted an additional 30 days when requested – thank you!)

Smaller employers are not aware of this so they are not aware that this is being violated regularly. In just the past 18 months, I have learned of four (4) charges which have been filed with the PHRC for various clients. How am I aware of these? Communication from a plaintiff's attorney for two of them – one actually including the claimants copy of the claim with the letter; testimony in an Unemployment Hearing Appeal (within the last 30 days) for another; and direct confirmation from an aggrieved employee (within the last 30 days.)

The investigation, potential mediation and ultimate decision process is long and involved, often taking up to two (2) years for a final "right to sue" letter to be issued. Add to this the Agency's "administrative delays" for internal processing of claims with their internal legal team (which is my understanding of why charges are not issued in this 30 day window.) Employers are only given their 30 (or 60) day window to move the charge through their internal processes and legal counsel. Memories fade, management and witnesses change jobs, any number of normal business disruptions can occur. Documentation is a challenge on a good day! When an employer can begin to conduct an investigation in a significantly timelier manner, actual participants, witnesses and data would be more readily accessible and accurate enabling *everyone* to make a better decision regarding the circumstances surrounding the charge.

Being unaware of a charge in a prompt manner causes employers to be unable to properly prepare to defend and protect their business resulting in a cost benefit analysis that points to "settling the claim" instead of presenting current, factual, supported information that clearly demonstrates the employer acted in the best interests of the business and without regard to any protected status of the employee.

Furthermore, if the employer WAS in the wrong, more timely resolution would prevent them from being able to continue to act improperly.

Item 2: Responding to the Employer

Respectful of the time constraints with charges, employers are bound to respond within 30 (or 60 days) with an abundance of documentation. The Commission encourages mediation to quickly resolve situations before even conducting an investigation. One such example in which I was personally involved:

a) The representative was actually SHOCKED when called with a desire to quickly resolve the issue. (FYI, the employee had already been returned to work and "made whole" by this time.)
b) Phone calls and electronic communications were not responded to in a timely manner.
c) No notice was provided that the representative was out of the office for an extended time.
d) No alternative contact was provided in the event of an extended absence.
e) Calls/emails were only responded to more promptly once the Company chose to have the attorney enter their representation – which prompted a call stating "I guess I can't talk to you about settling this now."

This is entirely contradictory to the expressed desire to quickly resolve the issue.

Item 3: Nuisance Claims

As stated above, an abundance of information must be submitted with an initial response *regardless* of the accuracy of the assertions. This takes time, effort and energy on everyone's part in assembling the documentation and data. The same amount of time, effort and energy must be extended regardless of the merit of the charge. There is absolutely NO sense of "innocent until proven guilty" when it comes to a PHRC charge – you are automatically treated as though you did exactly what the individual claims you have done regardless of the truth of the matter.

Employers spend this inordinate amount of time having to defend solid business decisions, often times, because the employee is personally dissatisfied with the decision and chooses to not accept that unfortunate business decisions are made every day or that they had any culpability in their own termination or failure to be hired. Just because the aggrieved individual is angry, disappointed, discouraged, mad at a former supervisor or unable to accept that they were not performing the job, they merely need to speak with a representative of the PHRC and – voila, the employer is having to defend their perfectly legitimate decision. You are automatically encouraged to mediate to resolve the issue. If the employee was not a fit or was properly terminated, what is there to mediate or resolve?

Lastly, Companies then become hostage to the pending charge and/or decision. They fear taking any action against an employee who is blatantly in violation of company rules for fear of a retaliation charge being added onto the claim all while waiting for a decision that takes too long because the process and system is bogged down (with more nuisance claims than real, true discrimination and harassment.)

Discrimination and unlawful harassment are absolutely unacceptable. In my 30+ years in the profession, I can honestly say I have seen less than a handful of situations where an employee was mistreated as a result of their protected class. In EACH situation, the employer, upon completion of their own, internal investigation, made things right for the individual. Supervisor terminations occurred when/where appropriate, disciplinary action in line with the violation was taken and settlement agreements were reached privately.

If the focus of the agency was on timely notification, quicker response times to employers and an ability to QUICKLY determine which charges have merit and which are nuisances by an aggrieved, angry individual, the system and process would return to supporting the mission of the agency and the law – PREVENT unlawful harassment.

Respectfully submitted,
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