

Employer Considerations As Ill. Ends Mandatory Fact-Finding

By **Kimberly Ross** (October 8, 2025)

On Aug. 15, Illinois Gov. J.B. Pritzker signed S.B. 2487 into law, which makes a significant change to the Illinois Human Rights Act by eliminating mandatory fact-finding conferences.

Before this, the Illinois Department of Human Rights, or IDHR, was required to conduct a fact-finding conference, or FFC, for all filed charges.

With the change, effective Aug. 15 and applicable to all claims pending on or after that date, the IDHR is no longer required to conduct FFCs in each charge filed.



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Instead, FFCs will mostly be voluntary and will be conducted if both sides opt in to having the FFC within 90 days after the date on which the charge was filed. The IDHR can also still require an FFC regardless of what the parties decide. Going forward, parties will want to consider the potential benefits and risks of voluntarily attending an FFC.

Although fact-finding conferences occur in all types of cases covered by the Illinois Human Rights Act, e.g., housing, public accommodation, employment, etc., this article will only focus on the pros and cons in employment cases. However, much of the analysis is relevant to other cases that are investigated by the IDHR and similar agencies in other states.

Explaining Fact-Finding Conferences

FFCs are designed to assist investigators in learning facts and details that are not contained in the initiating charge of discrimination, the respondent's position statement, or responses to the IDHR's questionnaire, which is basically a combination of interrogatories and a production request.

An FFC is generally a two-hour semi-informal proceeding with the complainant, the respondent, including one or more witnesses, and the investigator. Witnesses are not put under oath; instead, they are simply asked to provide truthful answers.

The investigators typically ask the parties and witnesses questions back and forth until they are satisfied that they have received the required information. At some point in the process, investigators will usually also ask the parties whether they wish to discuss settlement.

Delays in the IDHR Charge Process

Due to a backlog in processing IDHR charges, there is often a delay of a year or more for respondents to be made aware of the charge. With this delay, respondents may not be informed of a charge for potentially three or more years after a particular employment situation arose, i.e., the two-year statute of limitations plus however much time the IDHR takes to process the charge.

Often, charges are an employer's first notice of any allegations of discrimination. Such delays can cause

evidence to be unwittingly destroyed — such as surveillance videos, emails and texts that may be deleted in the normal course of business — memories to fade, and witnesses to no longer be employed or otherwise available to testify, among other problems.

Pros and Cons of Voluntarily Engaging in Fact-Finding Conferences

Going forward, parties, particularly respondent employers, will want to consider the potential benefits and risks of voluntarily attending an FFC. At first glance, most respondents might immediately reject the notion of an FFC.

Indeed, since the time that the Illinois Human Rights Act was amended to allow, but not require, respondents to file verified sworn responses to charges of discrimination in 2017, only about 5% of respondents have chosen to do so.

While there is no obvious benefit to filing a verified response to a charge when it is not required, there are potential benefits to engaging in an FFC that make it worthwhile to at least consider doing so.

Potential Benefits of Mediation

If a respondent chooses to engage in an FFC, it must still comply with the timing and requirements of responding to an IDHR complaint, which must be within 60 days after receiving notice of the perfected charge.

However, engaging in voluntary and free mediation by an IDHR mediator is an option offered in nearly all cases, and it also postpones the need for a position statement and response to the questionnaire.

Many of the same benefits and goals that can be achieved during an FFC can also be achieved in mediation, including learning more facts, getting the perspectives of each side, and enabling the respondents to evaluate the complainants and their attorneys if they have one, and vice versa.

It is also a useful exercise for the parties to see how the clients interact with their attorneys and helps determine who is in control of the process, and although this is more challenging in a virtual mediation, which most now are, it can still be observed to a certain extent.

In addition, mediations also sometimes provide an opportunity to clear up misunderstandings, including clarifying reasons for certain employment actions or explaining the steps that the employer may have taken regarding a complaint that the employee may not have been aware of.

Mediations also often provide an opportunity to educate charging parties on the law, and why their claims do not, or may not, have legal merit. Therefore, if a respondent would consider participating in settlement discussions in good faith, mediation would typically be the best place for that to occur.

If mediation isn't appropriate, such as when a respondent is not amenable to settlement discussions, there may be some reasons to consider an FFC.

Reasons to Consider Fact-Finding Conferences

Many of the pros and cons of engaging in a fact-finding conference apply equally to respondents and complainants, though sometimes with different motivations. Many of the pros and cons also depend on whether the parties, particularly complainants, have counsel.

Finding Out More Facts

For many respondents, the charge of discrimination is their first notice of any alleged complaint of discrimination or harassment, and employers have no information other than what is in the charge.

Position statements in those cases would be fairly generic, providing company policies against harassment and discrimination, and a general denial of any harassing or discriminatory conduct or complaints.

Complainants at an FFC are required to state their case and answer the specific factual questions posed by the investigator. Anecdotally, it can also be more difficult for a complainant to lie about something when they are face-to-face, even virtually, with the person they are accusing.

Not infrequently, an FFC reveals that the complainant lacks sufficient facts to maintain the claim. Likewise, it is possible for respondents to learn new facts at an FFC that may make them more inclined to settle, reveal that they need to investigate further and possibly supplement their response to the IDHR, or help solidify their position that they did nothing wrong.

It is also beneficial for respondents to have the additional information that they learned at the FFC to prepare witnesses for interviews that may occur later. Thus, in situations in which respondents were unaware of any prior issues or complaints, an FFC could be of benefit.

Possibly Facilitating Settlement

Investigators typically ask the parties if they are interested in making any kind of settlement proposal. Therefore, it is possible for the case to settle at the FFC itself, or at least lay the groundwork for facilitating a subsequent settlement before the IDHR issues a determination.

If, however, an early settlement was desirable from the outset, mediation would be a much more effective way to reach an agreement, with a trained mediator who can devote adequate time to the discussions, rather than a usually untrained investigator who may only have a few extra minutes at the end of the FFC.

More Informal Than Deposition or Trial

Often, respondent representatives have not been through a process similar to an FFC, deposition, or any proceeding in court or with an administrative agency. Likewise, many have not had to speak in front of others or be put on the spot.

Therefore, it can be valuable for some individuals to go through the process of preparing for, and speaking, at the FFC to help them get used to being in the spotlight, while it is still a somewhat neutral and informal

process.

Showing Willingness to Fight

Voluntarily participating in an FFC can send a message to the complainant that the respondent company has nothing to hide and is not afraid to defend the case.

On the other hand, that same message can be conveyed by refusing to engage in mediation or outside settlement discussions, and simply allowing the investigative process to play out, even if it ends up in court.

Likely Increase in Investigation Interviews

Witness interviews that are conducted by phone outside the FFC process is a tool available to investigators, typically when the witness was not asked to be at the FFC or if a new potential witness is discovered.

It is fair to predict that the IDHR will seek to interview more witnesses on an individual basis if there is no FFC. In that regard, it could be more efficient and beneficial to present the witnesses together in one sitting, where they get to hear what others are saying, rather than doing individual phone interviews.

Reasons to Avoid Fact-Finding Conferences

Cost

The cost of an attorney preparing for the FFC, preparing client witnesses for the FFC, and then attending the FFC, can outweigh the potential benefit.

Now that there is a choice of whether to opt in to an FFC, respondents can decide not to spend the extra money if they do not expect to receive significant benefit.

For particularly contentious or baseless claims, it is most likely not worth the cost of trying the FFC.

Time and Inconvenience

It takes time for attendees to prepare and be prepared for the FFC, plus the time at the actual conference, which typically lasts two hours.

This factor is somewhat mitigated these days because FFCs are largely conducted over virtual platforms, which eliminates travel time to Chicago or Springfield.

Therefore, respondents will want to consider whether the potential benefits outweigh the cost and time that it will take to go through the process.

Potential to Bring Out Damaging Testimony

Particularly in cases in which the respondent's witnesses are not skilled or savvy in litigation or legal issues,

but also when the witnesses are difficult to control or if the facts are bad for the respondent, an FFC can result in disadvantageous admissions.

This can then cause an adverse finding against the respondent, which in turn makes it that much more likely that a complainant will be emboldened to file a complaint in court or at the Illinois Human Rights Commission.

The opposite cannot be said for a complainant providing damaging testimony, since even with an adverse finding at the IDHR, the complainant still has the right to pursue litigation.

Delay in Resolution at the IDHR

If the parties agree to engage in the FFC, they must sign a 120-day extension for the IDHR to complete its investigation. Due to the delay in the intake process, engaging in mediation will add more time to the investigation process.

Further, because charging parties also have the right to seek review of an adverse decision before deciding whether to file suit, respondents can easily find themselves beginning litigation four or more years after the alleged conduct — considering the two-year statute of limitations, delayed IDHR initial processing, 120-day extension of the 365-day investigation period, plus potential time for the complainant to seek review of an adverse decision, or file a complaint at the Human Rights Commission or in court.

The Bottom Line

Overall, even though there are some valid reasons to participate in an FFC, complainants may have more to gain from an FFC than respondents. Thus, the majority of those who objected to the bill eliminating mandatory fact-finding conferences were employee-side lawyers.

Complainants also stand to gain the most out of the process by causing the employer to be burdened by the time and cost of attending, possibly pressuring the employer to settle, as well as providing a forum in which the employer must listen to what the employee has to say.

In fact, while complainants have been given the opportunity to opt out of investigations for several years now, only about 8% have done so, with the vast majority wanting to go through the entire investigative process.

Just because complainants may benefit from the FFC process, however, does not mean that respondents should dismiss them out of hand without conducting a thorough analysis of the pros and cons, and the risks and benefits, which will vary from case to case.

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