

Oklahoma Human Rights Commission ceases operations as of June 30

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By Sam Fulkerson

In 1963 the Oklahoma Legislature created the **Oklahoma Human Rights Commission (OHRC)** to implement the Legislature's mandate of "removing friction, eliminating discrimination, and promoting unity and understanding among all the people of Oklahoma." The legislation was part of the national civil rights movement, including the 1963 March on Washington, culminating in Martin Luther King, Jr.'s "I Have a Dream" speech, and the debate and passage of the **Civil Rights Act of 1964** and its now familiar **Title VII**, banning employment discrimination.



Effective June 30, 2012, after almost 50 years of existence, the OHRC will close its doors.

Over time the perception had developed that the OHRC was doing little to enforce the Oklahoma Anti-Discrimination Act, at least with regard to private-sector employment. The level of activity was in part due to a "work-sharing" agreement with the local EEOC office, whereby claims filed at either agency are automatically deemed filed with both the OHRC and the EEOC. The work-sharing agreement also allowed the OHRC to defer investigation of complaints to the EEOC, which it routinely did for several reasons, to include the EEOC's greater resources and for the sake of efficiency. The net effect, however, was that the level of OHRC activity declined significantly, ultimately making the agency irrelevant.

Because of the OHRC's inactivity, plus a mix of ideological and budgetary reasons, the Legislature passed a little-noticed bill (**Senate Bill 763**) in May 2011 merging the OHRC into the **Oklahoma Attorney General's (AG) office**, and requiring that "all duties and responsibilities of the OHRC" were to be assumed by the AG no later than July 1,

2012. The bill called for the creation of a new Office of Civil Rights Enforcement in the AG's office, and henceforth the AG was to protect and defend civil rights under Oklahoma law. The legislation was intended to effectively eliminate the OHRC as an independent state agency as of June 30, 2012. Thereafter, civil rights enforcement, including receipt of



charges, investigation of charges, conciliation efforts, and filing lawsuits against private-sector employers, is to be done exclusively by the AG.

What practical changes that will mean remains to be seen, but the best guess is that there will be increased enforcement activities and more aggressive enforcement, including an increase in the number of actual lawsuits filed by the State against private-sector employers. This conclusion is based on statements to that effect by the AG's office. It also stands to reason that if Oklahoma's chief law enforcement office, staffed by a team of capable legal counsel, is in charge of civil rights enforcement (i.e., investigating charges of discrimination), the enforcement will become stricter and more contentious than it has developed over time with the moribund OHRC and the EEOC's non-lawyer investigators. Also, because of some negative publicity over the OHRC's closure, the AG may choose to conduct a handful of high profile investigations to send a message that it is serious about civil rights enforcement.

Another development that bears watching – because it will have a huge impact on the administrative process – is whether once the AG's civil rights office is up and running it will renew the work-sharing agreement the OHRC routinely enters into with the EEOC. The AG's stated intention is that it will not renew it because of a prevailing attitude in state government that anything having to do with the federal government necessarily is a bad thing. If there is no work-sharing agreement between the state and federal agencies, it means an employee must file separate claims with both agencies in order to preserve both Oklahoma and federal discrimination claims, and that both agencies can pursue independent, simultaneous investigations. This could leave an employer fighting a battle on two fronts. Although a worst-case scenario, it would be possible for an employer to face a lawsuit brought against it by Oklahoma's AG in state court alleging violations of Oklahoma law, and to simultaneously face a federal court lawsuit brought by the EEOC alleging violations of federal law. Although the claims would be parallel in most respects, it would involve state versus federal law, and state versus federal enforcement.

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