

A LOOK INSIDE

THE BLACK BOX

How the EEOC Handles a Complaint

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The Equal Employment Opportunity Commission (“EEOC”) is the federal agency charged with enforcing the following nondiscrimination statutes that prohibit employers from discriminating against employees and applicants on the basis of race, color, national origin, sex/gender, religion, age, disability and genetic information, respectively:

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| • Title VII of the Civil Rights Act of 1964 (Title VII) | • Equal Pay Act of 1963 |
| • Age Discrimination in Employment Act of 1967 (ADEA) | • Sections 501 and 505 of the Rehabilitation Act of 1973 (federal employees only) |
| • Americans with Disabilities Act of 1990 (ADA) | • Genetic Information Nondiscrimination Act of 2008 (GINA) |
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Included in each of these statutes is a non-retaliation clause prohibiting employers from retaliating against a person who complains about discrimination or participates in an EEOC proceeding (e.g., discrimination investigation or lawsuit). Most employers, especially small business owners are particularly daunted by the EEOC process when faced with an EEOC charge of discrimination. Engaging an experienced employment attorney and understanding how the EEOC handles a complaint will make the process easier to maneuver. This article is written to give employers a glimpse into how the EEOC handles a person’s charge of discrimination.

HANDLING A EEOC CHARGE

THE BASICS. A person who feels he or she has been discriminated against by an employer may file a Charge of Discrimination (“Charge”) with the EEOC. A Charge must be filed within 180 calendar days from the day the alleged discrimination took place. For states or local governments with similar laws, a person has 300 days. The person filing a Charge

(current or former employee, applicant, temporary employee, or undocumented worker) is called a Charging Party and the employer is referred to as the Respondent.

NOTIFICATION OF A CHARGE. When a charge is filed against an Employer, the EEOC will notify the employer generally within 10 days of receiving the charge. The notification provides a URL for the Respondent to log into the EEOC's Respondent Portal to access the charge and receive messages about the investigation.

REQUEST FOR POSITION STATEMENT & REQUEST FOR INFORMATION. The EEOC will request that employers submit a position statement to respond to each allegation set forth in the Charge of Discrimination, typically within thirty (30) days of receiving the notification of the charge. The position statement explains in detail the employer's version of the facts. Employers must present a well-thought out position accompanied with documents that supporting their statement. This is an extremely important document that should be drafted by a HR professional or an experienced employment attorney because it may be the only opportunity for the employer to tell its side of the story. The EEOC may also request information in addition to a position statement, such as personnel policies and records.

If an Employer fails to submit a position statement or respond to EEOC's requests for information, the EEOC may proceed directly to a determination on the merits of the charge based on the information before it or subpoena specific information related to the allegations in the charge.

The EEOC will provide the charging party with a copy of the employer's position statement and allow the charging party the opportunity to respond to the employer's position.

VOLUNTARY MEDIATION. Prior to a full investigation and usually after the employer files its position statement, the EEOC will offer voluntary mediation to the parties, if the case is eligible. An employer may also request mediation any time prior to the resolution of the case.

Mediation is an informal process in which a trained mediator assists parties in reaching a negotiated resolution of the charge of discrimination. If a charge is resolved by mediation, the case is closed. If the charge is not resolved during the mediation process, it is returned to an investigative unit, and is processed just like any other charge. Additionally, if either party declines to participate in mediation, the charge will continue in the investigative process.

INVESTIGATION. During the investigation process, the EEOC may conduct an on-site visit and employee interviews. Employers may attend interviews with management-level employees, but are not permitted to sit in interviews with non-supervisory, non-managerial employees.

At the conclusion of the investigation, EEOC will determine on the merits of the charge. If EEOC is unable to conclude there is reasonable cause to believe that discrimination occurred,

EEOC will issue a notice called a *Dismissal and Notice of Rights*. This notice informs charging parties that they have the right to file a lawsuit in federal court within 90 days from the date of its receipt.

On the other hand, if the EEOC determines there is reasonable cause to believe discrimination has occurred, both parties will be issued a *Letter of Determination* stating that there is reason to believe that discrimination occurred. The EEOC will then invite the parties to join it in seeking to resolve the charge through an informal process known as conciliation. If conciliation is unsuccessful, the EEOC has the authority to enforce violations by filing a lawsuit in federal court. If the EEOC decides not to litigate, the charging party will receive a *Notice of Right to Sue* and may file a lawsuit in federal court within 90 days.

EEOC DISMISSAL OF CHARGES. The EEOC will dismiss a Charge of Discrimination for several reasons, including cases in which the charging party failed to file the complaint within the period required by statute (See The Basics, above); the facts do not support a discrimination claim; or for abuse of process. When the EEOC dismisses a charge, it closes the case and sends charging parties and employers a *Dismissal and Notice of Rights* informing them of EEOC's decision to dismiss the charge and of their right to file, on their own, a lawsuit in federal court within 90 days of receiving the notice.

STATISTICS: WHAT DO THE NUMBERS LOOK LIKE IN 2016?

1. Number of charges filed with the EEOC in the State of Georgia: 5,273
2. Highest number of charges: Retaliation. 2,577 charges, Race: 2,165 and Sex 1,684

CONCLUSION: WHAT TO DO IF YOU GET HIT WITH AN EEOC CHARGE.

Employers should take an EEOC charge of discrimination seriously, even if it believes the claim to be frivolous or without merit. It is important that employers understand their role and responsibilities in the EEOC process. Consult with an employment attorney who has a proven record assisting employers with navigating through the EEOC process.