

Discrimination and the EEOC

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Of course, I must point out to you that what I'm about to tell you is very generalized and each point has many variations and possibilities. You should not take anything written here as a substitute for individual, confidential legal advice regarding your unique circumstances, whether that advice comes from me or another attorney.

The Equal Employment Opportunity Commission (EEOC) is a federal agency charged with investigating complaints of discrimination in the workplace based on:

- ◆ Race
- ◆ Color
- ◆ Sex
- ◆ Religion
- ◆ National Origin
- ◆ Retaliation
- ◆ Age (over 40)
- ◆ Disability
- ◆ GINA (Genetic Information)

What does this mean to you? It means that if you are subjected to discrimination based on your membership in any of these "protected classes," you should call or visit the EEOC office closest to you. Many government employers have EEO offices on-site, but private employers do not. If your workplace has an on-site EEO office, start there, otherwise go to www.EEOC.gov to look for a local office. In any event, you should visit the office during intake hours (8 – 4:30 generally). If there is no office within 50 miles, you can call the EEOC and someone will call you back for interview. In your conversation with an investigator, tell them what has happened to you, and have them help you fill out a charge form if one is warranted. In Tennessee, you have 300 days from the date of the discriminatory action to file a charge with the EEOC.¹

An attorney cannot be of much help to you until the EEOC has had its opportunity to investigate your charge. In the legal world, this is known as "exhausting your administrative

¹ In Tennessee, the deadline is longer than the 180 days applicable in most states. This is due to the existence of a Tennessee agency known as the Tennessee Human Rights Commission (THRC), which provides many of the same services as the federal EEOC. This article does not attempt to explain the function of the THRC or its relationship to the EEOC.

remedies.” You cannot file a lawsuit against your employer until this step has been taken. The EEOC has 180 days from the time your charge is filed to complete an investigation. If your case is mediated, the mediation process stops the 180-day clock. The EEOC process is provided by the federal government at no cost to you. Here is a basic outline of what happens when you file an EEOC charge.

First, when your charge is filed (often at that same meeting), the EEOC will ask you if you are willing to participate in a process called mediation. Mediation means that an experienced EEOC mediator will bring you and your employer (or former employer) together and attempt to negotiate a resolution that is acceptable to both parties. Both parties must agree to mediation, and some employers are more willing than others to participate. The biggest advantage to mediation is that it can provide a speedy resolution at very little cost (you will have to pay your attorney). If you agree to mediation, and your employer agrees as well, I strongly recommend you secure the services of an attorney to represent you at mediation. If mediation is not successful, or if either party declines to participate, the charge will be assigned to an investigator.

Once your charge is assigned to an investigator, that investigator should contact you to let you know that your case is in their hands. But do not expect to hear from the investigator right away. The EEOC offices are frequently burdened by far more charges than they have investigators to handle them. If you feel that you should have heard from an investigator, call the EEOC office and ask if they can tell you the status of your charge and the name and telephone number of the investigator, if one has been assigned.

The investigator will contact your employer (or former employer) and ask for a “position statement.” That is, the employer will be asked to review the charge and explain their conduct. The investigator is looking to see if the employer can provide a non-discriminatory reason for their actions. If the employer fails to provide a non-discriminatory reason, the investigator will conduct a more comprehensive investigation into your charge. If the employer *does* provide evidence of a non-discriminatory (and believable) reason, the investigator is likely to close the file and issue a Dismissal and Notice of Rights, commonly known as a “right to sue” letter. This letter tells you that the EEOC has failed to find enough evidence to make a good cause finding of discrimination, and gives you notice that you may now proceed with a lawsuit in federal court. *You have only 90 days from your receipt of this Notice of Rights to file suit.* This is an inflexible deadline, and if you miss it you will have forfeited your right to sue. If you have not yet contacted an attorney to help you decide if you should proceed with a lawsuit, you should do so immediately upon receipt of your right to sue letter. If you let 60 of the 90 days pass before finding an attorney, you may have difficulty finding an attorney who is willing to take the case with such a short deadline.

Remember that your obligation is to give the EEOC 180 days (6 months) to complete their investigation. Once the 180 days have passed from the date you filed your charge, you may contact the EEOC and request your right to sue. It is best to talk with your investigator first, though, to determine where they are in their investigation. It might be wise to allow

them to complete their investigation, even if your 180 days have passed. There are also times when the EEOC will issue the right to sue prior to the expiration of the 180 days if they believe there is little chance that they will make substantial progress on your case within that time frame.

The primary purpose of this article is to advise you that:

- a) You must “exhaust your administrative remedies” by filing a charge with the EEOC *before* you can file a lawsuit in federal court for discrimination based on the categories listed above.
- b) You should retain an attorney to represent you at an EEOC mediation.
- c) You can file a lawsuit only upon receipt of your Dismissal and Notice of Rights (right to sue) from the EEOC, and you must do so within 90 days of your receipt of the Notice.

This article is not intended to take the place of confidential legal advice based on your individual circumstances.

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