

The EEOC and Me: 10 Keys to a Better relationship



By: Luther Wright, Jr.

Today's Agenda

- **Review of the EEOC Process to make Sure we understand how it works**
- **Learning to avoid the most common mistakes at the EEOC level**

10. Understanding Why Employees File Charges

- **Manner in which employee was terminated**
- **Perceived unfair treatment**
- **Unhappy with employer response to concerns or complaints**
- **Attempt to over-rule employer decisions**
- **Provide added job protection and limit employer's ability to take legitimate action**
- **Pre-requisite to file a lawsuit**
- **Money**

Test Your Knowledge

How long does an employee have to file a charge of discrimination?

- a.90 days**
- b.180 days**
- c.300 days**
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9. Understanding the EEOC Strategic Enforcement Plan (2017-2021)

- Immigrant, migrant, and other vulnerable workers
- ADA qualification standards and leave policies
- Temporary workers, staffing agencies, independent contractors
- Gender-based pay discrimination
- Retaliatory practices
- Addressing selected emerging and developing issues
- Systemic harassment
- Access to legal system



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION INTAKE QUESTIONNAIRE

8. Understanding the Charge

Please read the following information carefully. The Equal Employment Opportunity Commission ("EEOC"). REMEMBER, a charge of employment discrimination must be filed within the time limits imposed by law, generally within 180 days or in some places 300 days of the alleged discrimination. Upon receipt, this form will be reviewed and processed. If you need more information, please call 1-800-649-3932. You may also request a copy of this form if needed. If you are unable to complete this form, you may request a copy of the form by stating "not known."

- **Intake Questionnaire** – form completed by employee that is signed under oath

1. Personal Information

- **Charge** – typically prepared by EEOC investigator based on information from questionnaire

- **Dual Filing**--Regardless of where the charge is filed, most charges are dual filed with the EEOC and a local agency due to Work-Sharing Agreements between the EEOC and the state or local agency

ii. What is your race or ethnicity? ☐ American Indian or Alaska Native ☐ Asian ☐ White ☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander

iii. What is your National Origin (country of origin or ancestry)? _____

Please Provide The Name Of A Person We Can Contact If We Are Unable To Reach You:

Name: _____ Relationship: _____

Address: _____ Phone: _____ E-mail: _____ Fax: _____

7. Mediation

- **EEOC/state agency will advise if mediation is available**
- **Voluntary process**



Mediation

- ***Advantages:***

- **Lower defense costs**
- **Collect information**
 - **Allegations**
 - **What does the employee want?**
- **Show strength of case**
- **Free**

Mediation

- ***Disadvantages:***

- **Employee can waste your time**
- **Possibly emboldens the employee**
- **Possibly encourages the employee to hire a lawyer**
- **Lawsuit may never be filed**

Potential Issues with Settlement at Mediation

- **No re-employment clause**
- **Global release**
- **Covenant not to file a claim or lawsuit**

M E D I A T I O N

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6. Employer's Investigation

- **Create a detailed chronology**
- **Interview relevant witnesses**
- **Obtain favorable statements**
- **Gather and preserve documents**
- **Obtain answers to hard questions:**
 - **Did we follow normal procedure? If not, why?**
 - **Did we treat the Charging Party the same as persons similarly situated? If not, why?**
 - **Do documents support our position?**
- **It is critical to be objective/honest in evaluating the Company's position**

5. Understanding the EEOC's Investigation Process

- **Position Statement**
- **Request for Documents and Information**
- **On-site Investigation**
- **Administrative Subpoena**

Preparing the Position Statement

- **Make it easy to read**
- **Make it persuasive because Charging Party WILL see it**
- **Provide key documentation**
- **Remember, it will be evidence in any later lawsuit**

4. Understanding Determinations

- **Passing of time**
- **Probable Cause**
- **No Probable Cause**
- **“Unable to conclude” that discrimination occurred**

Probable Cause Finding at EEOC

- **Conciliation – EEOC will try to reach settlement agreement**
 - **Will not allow to be confidential**
 - **Will allow individual settlement agreement**
 - **Will require follow up reporting, disclosures, etc. by employer**
- **If conciliation fails, EEOC will decide whether it intends to sue**
- **If EEOC decides not to file suit itself, it will issue a right to sue and refer case to private attorney**

Impact of Findings at State Agencies

- **State agencies typically have same three outcomes: probable cause, no probable cause, or no finding**
- **What happens after varies greatly from state to state**
 - **In some states, a RTS cannot be issued following a probable cause finding; claim must be adjudicated before an ALJ**
 - **In some states, a RTS cannot be issued following a no probable cause finding; the finding must be appealed to the commission**
 - **Some states do not even allow private lawsuits under their state statutes**

3. Commissioner Charges

- **If any issue arises during the investigation that catches the investigator's eye, it could lead to a side investigation.**
- **Typical issues that lead to side investigations**
 - **Problems with applications**
 - **Pre-employment medical testing**
 - **Screening tests and procedures**
- **Findings can lead to subpoenas and Commissioner Charges.**

2. Dealing with a Current Employee Who Filed a Charge

- If the Charging Party is a current employee, you need to address the employee's work situation and take steps to prevent possible retaliation.

1. Legal Update

- The DIGEST Of Equal Employment Opportunity Law
- ***Fort Bend County v. Davis***
- Extensions of time no longer automatic?
- #MeToo