

## EEOC Investigations – What Employers Need to Know

### *What is EEOC?*

1. The Equal Employment Opportunity Commission (EEOC) is an independent federal agency created by Congress in 1964 to eradicate discrimination in employment. The various statutes enforced by the Commission prohibit employment discrimination on the basis of race, color, sex, national origin, religion, retaliation, age and disability.
2. The EEOC has authority to receive, initiate and investigate charges of discrimination filed against employers who have a statutory minimum number of employees.
3. The EEOC's role in an investigation is to fairly and accurately evaluate allegations in light of all the evidence obtained.

### *What happens when a charge has been filed against me?*

1. You will always be notified that a charge of discrimination has been filed and you will be provided with the name and contact information for the investigator assigned to your case. A charge does not constitute a finding that your company engaged in discrimination. The EEOC has a responsibility to investigate and determine whether there is a reasonable cause to believe discrimination occurred.
2. In many cases, you may opt to resolve a charge early in the process

through mediation or settlement. At the start of an investigation, EEOC will advise you if your charge is eligible for mediation, but feel free to ask the investigator about the settlement option. Mediation and settlement are voluntary resolutions.

3. During the investigation, you and the charging party will be asked to provide information. Your investigator will evaluate the information submitted to determine whether

- Permit an **on-site visit**. While you may view such a visit as being disruptive to your operations, such visits tend to greatly expedite the fact-finding process and may help achieve quicker resolutions. In some cases, an on-site visit may be an alternative to an RFI if requested documents are made available for viewing or photocopying.
- Provide employee contact

**The EEOC is responsible for eradicating discrimination in employment, and has the authority to receive, initiate and investigate charges of discrimination filed against employers. You should familiarize yourself with the procedures and terminology associated with EEOC investigations to prepare your company in case a charge is filed against you.**

unlawful discrimination has taken place. You may be asked to:

- Submit a **statement of position**. This is your opportunity to tell your side of the story and you should take advantage of it.
- Respond to a **Request for Information (RFI)**. The RFI may ask you to submit copies of personnel policies, Charging Party's personnel files, the personnel files of other individuals and other relevant information.

information or have employees available for **witness interviews**. You may be present during interviews with management personnel, but an investigator is allowed to conduct interviews of non-management level employees without your presence or permission.

4. If the charge was not dismissed by the EEOC when it was received, that means there was some basis for proceeding with further investigation. There are many cases where it is



unclear whether discrimination may have occurred and an investigation is necessary. You are encouraged to present any facts that you believe show the allegations are incorrect or do not amount to a violation of the law. An employer's input and cooperation will assist the EEOC in promptly and thoroughly investigating a charge.

- Work with the investigator to identify the most efficient and least burdensome way to gather relevant evidence.
- You should submit a prompt response to the EEOC and provide the information requested, even if you believe the charge is frivolous.
  - If there are extenuating circumstances preventing a timely response from you, contact your investigator to work out a new due date for the information.
- Provide complete and accurate information in response to requests from your investigator.
- The average time it takes to process an EEOC investigation is about 182 days.
  - Undue delay in responding to requests for information often extends the time it takes to complete an investigation.
- If you have concerns regarding the scope of the information being sought, speak with the investigator. Although the EEOC is entitled to all information relevant to the allegations contained in the charge and has the authority to subpoena such information, in some instances the information request may be modified.

Keep relevant documents. If you are unsure whether a document is needed, ask your investigator. By law, you are required to keep certain documents for a set period of time.

5. Your investigator will:
  - Be available to answer most questions you have about the process.
  - Keep you informed about the charge process, including the rights and responsibilities of the parties at the conclusion of the investigation.
  - Conduct an appropriate, thorough and timely investigation.
  - Allow you to respond to the allegations.
  - Inform you of the outcome of the investigation.
6. Once the investigator has completed the investigation, the EEOC will make a determination on the merits of the charge.
  - If the EEOC determines that there is no reasonable cause to believe that discrimination occurred, the charging party will be issued a letter called a **Dismissal and Notice of Rights** that tells the charging party that he or she has the right to file a lawsuit in federal court within 90 days from the date of receipt of the letter. The employer will also receive a copy of this document.

- 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 and inviting the parties to join the agency in seeking to resolve the charge, through an informal process known as **conciliation**.
- Where conciliation fails, the EEOC has the authority to enforce violations of its statutes 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.

#### **How does a charge get resolved?**

The EEOC offers employers many opportunities to resolve charges of discrimination. Successfully resolving the case through one of these voluntary processes may save you time, effort and money. Methods of resolution include mediation, settlement and conciliation.

#### **Mediation**

The EEOC has greatly expanded its mediation program. The program is free, quick, voluntary and confidential. If mediation is successful, there is no investigation. If the charge filed against your company is eligible for mediation, you will be invited to take part in the mediation process. If mediation is unsuccessful, the charge is referred for investigation.



Advantages of mediation include:

1. The EEOC's mediation program is **free**.
2. Mediation is **efficient**. The process is initiated before an investigation begins and most mediations are completed in one session, which usually lasts for one to five hours.
3. The average processing time for mediation is **84 days**.
4. The mediation program is completely **voluntary**.
5. Successful mediation results in the **closure of the charge** filed with EEOC. If mediation is unsuccessful, the charge is referred for investigation.
6. Mediators are **neutral** third parties who have no interest in the outcome of the mediation.
7. Mediation is a **confidential** process. The sessions are not tape-recorded or transcribed. Mediator notes taken during the mediation are discarded. Information learned during the mediation can not be used during an EEOC investigation if the mediation is unsuccessful.
8. Mediation is an **informal** process. The goal of mediation is not fact finding. The purpose is to discuss the charge and reach an agreement that is satisfactory to all parties.
9. Settlement agreements secured during mediation **are not admissions by the employer** of any violation of laws enforced by the EEOC.
10. Mediation avoids **lengthy and unnecessary litigation**.
- 11.

Settlement agreements secured during mediation are **enforceable**.

12. The overwhelming majority of employers and charging parties participating in EEOC mediation program are **satisfied with the process and would use it again**.
13. Mediation can help the parties understand **why the employment relationship broke down**.
14. Mediation can help the parties identify ways to **repair an ongoing relationship**.

#### Settlement

Charges of discrimination may be settled at any time during the investigation. EEOC investigators are experienced in working with the parties to reach satisfactory settlements. You should contact the investigator if you are interested in resolving your charge through settlement.

Advantages of settlement:

1. **Voluntary** settlement efforts can be pursued at any time during the investigation, but settling a charge early may save you the time and effort associated with investigations.
2. Settlement is an **informal** process. The goal of settlement is to reach an agreement that is satisfactory to all parties.
3. There is no **admission of liability**.
4. If the parties, including EEOC, reach a voluntary agreement, the charge will be **dismissed**.

5. Settlement agreements are **enforceable**.
6. Settlement avoids **lengthy and unnecessary litigation**.

#### Conciliation

EEOC is statutorily required to attempt to resolve findings of discrimination through "informal methods of conference, conciliation and persuasion." After the parties have been informed by letter that the evidence gathered during the investigation establishes that there is "reasonable cause" to believe that discrimination has occurred, the parties will be invited to participate in conciliation discussions. During conciliation, your investigator will work with you and the Charging Party to develop an appropriate remedy for the discrimination. It is often wise to take advantage of this final opportunity to resolve the charge prior to EEOC considering the matter for litigation.

Advantages of Conciliation:

1. Conciliation is a **voluntary** process.
2. Conciliation discussions are negotiations and **counteroffers may be presented**.
3. Conciliation offers the parties a final **opportunity to resolve the charge informally**, after an investigation has been conducted but before a litigation decision has been reached.
4. Conciliation agreements **remove the uncertainty, cost and animosity surrounding litigation**.

For more information see [www.eeoc.gov](http://www.eeoc.gov).

