

TEN TIPS FOR DEALING WITH THE EEOC

The EEOC enforces the United States' federal employment discrimination laws. These laws protect employees who face discrimination because of their age, race, color, national origin, gender, sexual harassment, religion, disability, or pregnancy. The EEOC also protects employees from companies that retaliate when an employee has complained of discrimination or cooperated with the EEOC.

Every year, the EEOC secures hundreds of millions of dollars in relief for victims of employment discrimination. The EEOC also obtains injunctive relief, such as reasonable accommodations for the disabled, reinstatement for the wrongfully fired, and consent decrees requiring education and monitoring.

Unfortunately, the EEOC is overworked and underfunded. In particular, the Bush administration drastically reduced the EEOC's budget – causing reductions in resources and staff. The National Employment Lawyers Association (NELA) issued a report on April 27, 2007 titled “Workers Rights in Jeopardy” identifying problems at 47 EEOC offices regarding complaint intake and processing. The investigation showed that ***victims of discrimination are far more likely to be successful if they draft and file their own complaint of discrimination***, rather than relying on EEOC staff. In fact, the investigation showed that intake personnel were often more interested in dismissing a complaint than passing it on to the EEOC's attorneys. The report is located at http://www.nela.org/temp/ts_E5A337AD-BDB9-50CE-F05FFF7FFF40FDE3E5A337BD-BDB9-50CE-FBB2F98A9D63D8E0/WorkersRightsInJeopardyFINAL050207.pdf.

This article is intended to help victims of employment discrimination in dealing with the EEOC. This article is not legal advice or advice specific to your particular situation. These tips are merely general advice based on past experience. Every person's situation is different and you should consult a licensed, qualified attorney who can advise you regarding your particular situation.

1. The first impression is the most important.

They say you never get a second chance to make a first impression. This is definitely true with the EEOC. It's not fair, but the EEOC makes one of its most important decisions about your case before they have even started an investigation.

When your complaint of discrimination is filed with the EEOC, it is assigned an A, B, or C rating. “A” cases are fast-tracked to be given the most scrutiny and the most resources. “C” means the complaint is presumed not to have validity. These cases are given an immediate or nearly immediate dismissal. “B” cases are duly processed, however, the resources devoted to these cases depends on availability and the discretion of the EEOC.

To make the best first impression, mail in a signed, notarized charge of discrimination using the EEOC official charge form. This form is available for free at www.eeocomplaint.com. You can also purchase sample complaints that will help you file your charge. Nothing will do more to maximize your chance of getting an “A” rating than to use a professional form.

Fair or not, the reality is that the initial filing often means the difference between cursory review and a thorough evaluation of the merits of a case.

2. Show me the money: mediation, mediation, mediation.

What do you want from the EEOC? Resolution! Compensation! Money! A severance package! A raise! A recommendation! Your job back! A promotion! Justice!

Victims are most likely to get this relief through mediation than any other remedy the EEOC offers. With mediation, the EEOC provides a federal or privately contracted mediator who attempts to settle your case. On the day of mediation, you meet with the other side and the mediator. Both sides present their case. Then the parties are separated into different rooms and the mediator goes back and forth between rooms attempting to negotiate a settlement.

Mediation can be an extremely effective tool for resolving cases and obtaining monetary relief for employees. Even if you can't afford to pay an attorney by the hour for your entire case, you may be able to afford an attorney for one day of mediation.

Tell the EEOC: "I want mediation!" When you are talking with your investigator or anyone else at the EEOC, do not hesitate to remind them that you want a finding of discrimination and/or mediation. If you ask for something, you are more likely to get it. If you don't ask for something, you may not get it at all.

3. Know your deadlines and file on time.

One of the most common mistakes employees make is missing their deadlines. In employment law, employees have a very short time to file a charge of discrimination with the EEOC and their state and local agencies. The deadline to file with the EEOC depends on what state you are in. **The deadline may be as short as 180 days** and is not usually longer than 300 days.

Importantly, 180 days is not the same as six months. Because many months have 31 days, by waiting six months to file some employees have missed their deadlines by one or two days.

The filing deadline could be interpreted as the date the charge is received, not the date it is mailed. So make sure you mail any charge in plenty of time to be received by the EEOC.

The 300 day deadline applies in states where the EEOC has a work share agreement with the state fair employment practices agency. Most states have an agency with such an agreement. (However, to be safe, it is always best to file within the 180 day period.)

4. File everywhere you can.

The EEOC and state agencies are funded by your tax dollars – so make sure and get your money's worth. File everywhere you can. State laws often differ from federal laws. Some states have laws that make it easier for employees to prove discrimination, allow for larger awards, and are easier to enforce. Some states may also protect more classes of employees from discrimination, such as gays and lesbians.

I routinely have my clients file with the EEOC, the state agency, and any local agency. Even though the EEOC has the power of the federal government behind it, I have had situations where it was a state or local agency's hard work that made the employer want to settle. **A list of state agencies can be found at www.eecoffice.com.**

Although the EEOC does not require federal complaints to be notarized, many state laws do have this requirement. So make sure to have your complaint notarized.

The deadline to file with a state or local agency may vary. Most states have a 180 day deadline. Some local agencies may have deadlines of 90 days or less.

5. Use your Charge of Discrimination to nail down the employer's story.

Of all the documents submitted, the most important is the standardized EEOC "Charge of Discrimination" form. Courts have sometimes not allowed employees to proceed with claims beyond those described in the official Charge of Discrimination form.

Importantly, the Charge of Discrimination form is shared with the employer and the employer will be asked to respond. The employer may be given only a few days to respond to the facts in the Charge. In a best case scenario, the company has not had time to fully investigate you claims, has not retained outside counsel, and files a lousy response. I have seen truly awful and amateurish responses filed with the EEOC by large companies that should have known better.

The company will likely be bound by their response to the EEOC. If nothing else, it will be difficult for the company to try and change their explanation of the events later. (Indeed, an important Supreme Court case called *Reeves v. Sanderson Plumbing Products, Inc.* held that a jury can consider the fact that an employer changed its story as evidence of unlawful discrimination.)

First, you want to **be thorough in describing the events that you want the company to respond to** in your Charge of Discrimination. Put the company in the position of having to admit or deny the details surrounding your discrimination. The company will probably never admit that discrimination happened, but it may admit to key facts supporting your case, such as you had high scores on your performance reviews, that you had qualifications a different candidate was lacking, that you complained about the harasser, that other employees engaged in the same actions you did but with a different response from the company, and other facts surrounding your case.

Second, **number each fact that you present in your complaint.** In their response, employers will usually respond to your numbered list of facts with an identically numbered list of their own. By numbering each fact separately, it is very difficult for an employer to gloss over a fact that they do not want to confront.

Does this sound complicated? It's not. You can purchase sample completed Charges of Discrimination at www.eeocomplaint.com that show how easily this can be done.

6. Get proof of mailing and keep a copy of all of your documents.

Sometimes documents sent to the EEOC get lost in the shuffle. **Always send documents via certified mail, return receipt requested.** Your local post office can easily show you how to do this. Remember to keep a copy of the documents that you send. Ninety-nine percent of the time, there is no problem. However, I have had instances where an agency has denied receiving information and I have had to resort to proving their receipt with the green return receipt card.

7. Respect your investigator.

Your investigator is overworked and probably underpaid. Your investigator has a pile of cases on his or her desk. You want your investigator to give your case the attention it deserves. So, by all means, treat your investigator with dignity and respect. Be as helpful as you can with your investigator.

Keep your investigator focused on your case with a pleasant phone call every week or two. Do not be demanding, such as requesting a status update. Rather, **offer your assistance** if there is any evidence or information that you can provide to help in the investigation of your case.

8. Gather witness statements and witness information.

Ultimately your case is about evidence. Some of the best evidence may be the testimony of your co-workers and other witnesses. Your co-workers may be extremely upset by the discrimination that you experienced and want to help you.

I believe in front-loading your complaint to the EEOC to enhance your chance of getting an “A” rating. Therefore, **you should provide as much evidence from witnesses as you can with your original complaint to the EEOC.** The best evidence is an affidavit from a witness attesting to the facts that occurred. The second best evidence is a letter or written statement from a witness in support of the facts that happened to you. If you cannot get something from the witness in writing, provide the EEOC with the witness’ name, phone number where he or she can be reached, and a brief description of what the witness will say. Of course, make sure beforehand that the witness will cooperate if called by an EEOC investigator.

If someone witnessed overt discrimination, such as the use of the N-word or acts of sexual harassment, that is extremely important to present to the EEOC. However, witness statements can be used to establish surrounding facts as well. For instance, a husband or friend’s statement that you came home in tears the day you claims you were sexually harassed would be an important witness statement. A statement by a coworker that you were more qualified or had higher performance reviews than a person promoted over you would also be an important witness statement.

9. Send supporting documents.

Submit any supporting documents to the EEOC. Here are some documents that employees routinely send to the EEOC to support their claim:

- A “smoking gun” such as an email or other statement made by the discriminator or harasser;
- A copy of any complaint you made to the company about discrimination;
- A copy of any policy that you believe to be discriminatory;
- A copy of your employment file;
- A copy of your resume;
- A copy of the documents at issue, such as your application for a promotion, your termination slip, or other documents;
- A copy of your most recent pay stub;
- A copy of a company organization chart;
- A copy of the relevant job descriptions;
- A copy of any other document that you believe would support your case.

Of course, do not steal any documents from your employer or violate company rules! If there is a document that you want the EEOC to see, but you cannot legally send it to the EEOC, ask the EEOC to request or subpoena the document.

If you claim disability discrimination, send relevant medical records or a note from your doctor describing your impairment.

Use post-it notes to flag those parts of documents that you believe are most relevant or to explain why a particular document is important. Do not mark on or deface documents.

10. Don't give up.

Congratulations on making the decision to stand up for your rights. Sometimes the hardest thing to do is also the right thing to do. Know that what you do makes a difference. It makes a difference for you, your fellow employees, future employees, and the company as a whole. And hopefully, in the end you will be financially rewarded.

Your fight against your company may seem like David versus Goliath – but remember who won that fight. I sincerely wish you good luck and hope that you obtain justice and significant compensation for the discrimination that you suffered.