



Employee's Rights/Eeoc

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Background

Claims of employee rights and [DISCRIMINATION](#) have become almost commonplace over the course of the last 30 years. Since the passage of the main civil right legislation in the 1960s—the Equal Pay Act, the **CIVIL RIGHTS** Act of 1964, and the Age Discrimination Employment Act (ADEA)—federal law has explicitly protected the rights of employees. The 1973 Rehabilitation Act and the 1990 Americans with Disabilities Act (ADA) added the disabled to the list of protected employees, and the 1991 Civil Rights Act expanded relief possibilities for all groups.

During the course of the last 40 years of employee rights law, the federal Equal Employment Opportunity Commission has come to play a primary role in the enforcement of federal civil rights statutes. The **EEOC** was created in 1964, as part of Title VII of the Civil Rights Act. Virtually all discrimination complaints against employers at the federal level must go through the EEOC first before a lawsuit may be filed. Thus the agency is of paramount importance to both employers and employees.

Considering this, it is important for both employees and employers to know how the EEOC works, what kind of complaints the commission handles, and what is needed to bring a complaint before the EEOC.

Employee-Employer Relationships

At [COMMON LAW](#), employee-employer relationships that were not controlled by a formal contract were considered at-will relationships. Employees could be dismissed for any reason at all, whether the reason was discriminatory or not.

Today, the at-will relationship between employee and employer is still a common one with employees not working under a union contract or some other form of agreement. However, the at-will term has become somewhat misleading, since a host of federal laws and rules now govern the employee-employer relationship. Perhaps the most important in terms of protecting employees against arbitrary [DISMISSAL](#) by employers are the civil rights laws.

When arguably the most important of these laws—the Civil Rights Act of 1964— was drawn up, many advocates of the law felt a gatekeeper was needed to prevent the courts from being clogged with employee lawsuits under the new law. This led to the creation of the EEOC, which was given primary responsibility for the enforcement of these laws. Subsequently, the EEOC was entrusted with the enforcement of practically all

civil rights laws, with the exception of federal employees, who are protected under the 1978 Civil Service Reform Act. Enforcement of that act is entrusted with the Office of Special COUNSEL and the Merit Systems Protection Board.

The size of the employer determines if it falls under EEOC authority. Employers of 15 or more employees are covered under both Title VII of the Civil Rights Act and the Americans With Disabilities Act (ADA). Employers of 20 or more are covered under the Age Discrimination Employment Act (ADEA), and the Equal Pay Act has no limit in terms of the size of employers it covers.

Types of Employment Discrimination

There are many types of discrimination covered by the civil rights laws the EEOC is charged to enforce. Some of them include:

- Discrimination on the basis of race or color: Title VII of the Civil Rights Act prohibits race discrimination.
- Discrimination on the basis of sex: Title VII of the Civil Rights Act prohibits discrimination on the basis of sex. Title VII prohibitions against [SEX DISCRIMINATION](#) also prohibit [SEXUAL HARASSMENT](#) (practices ranging from direct requests for sexual favors to workplace conditions that create a hostile environment for persons of either gender, including same sex harassment). In addition, the federal Equal Pay Act, which the EEOC also enforces, prohibits discrimination on the basis of sex in the payment of wages or benefits, where men and women perform work of similar skill, effort, and responsibility for the same employer under similar working conditions.
- Discrimination on the basis of pregnancy: Pregnancy, childbirth, and related medical conditions must be treated in the same way as other temporary illnesses or conditions.
- Discrimination on the basis of national origin: Title VII of the Civil Right Act makes it illegal to discriminate against an individual because of birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group. For example, a rule requiring that employees speak only English on the job may violate Title VII unless an employer shows that the requirement is necessary for conducting business.
- Discrimination on the basis of religion: Title VII prohibits religious discrimination. An employer is required to reasonably accommodate the religious belief of an employee or prospective employee, unless doing so would impose an undue hardship.
- Discrimination on the basis of age: The ADEA prohibits any discrimination in regards to age. Among the acts covered by the ADEA are: statements or specifications in job notices or advertisements of age preference and limitations; discrimination on the basis of age by apprenticeship programs, including joint labor-management apprenticeship programs; and denial of benefits to older employees.
- Discrimination on the basis of [DISABILITY](#): The ADA prohibits discrimination on the basis of disability in all employment practices. An individual with a disability under the ADA is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. The employer is required to make reasonable accommodations for such an employee, unless the employer can prove such accommodation would impose undue hardship on the operation of the employers business. Reasonable accommodation may include, but is not limited to, making existing facilities used by employees readily accessible to and usable by persons with disabilities; job restructuring; modifying of work schedules; providing additional unpaid leave; reassigning to a vacant position; acquiring or modifying equipment or devices; adjusting or modifying examinations, training materials, or policies; and providing qualified readers or interpreters. An employer may not ask job applicants about the existence, nature, or severity of a disability, though applicants may be asked about their ability to

perform job functions.

Under all the major civil rights laws, it is illegal to discriminate in any aspects of employment. The EEOC lists the following as examples of functions in which it is illegal to discriminate:

- Hiring and firing
- Compensation, assignment, or classification of employees
- Transfer, promotion, layoff, or recall
- Job advertisements
- Recruitment
- Testing
- Use of company facilities
- Training and apprenticeship programs
- Fringe benefits
- Pay, retirement plans, and disability leave
- Other terms and conditions of employment
- Harassment on the basis of race, color, religion, sex, national origin, disability, or age
- Retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices
- Employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain sex, race, age, religion, or ethnic group, or individuals with disabilities
- Denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, religion, national origin, or an individual with a disability. Title VII also prohibits discrimination because of participation in schools or places of worship associated with a particular racial, ethnic, or religious group

All employers within the United States are required to post notices advising workers of their rights under the EEOC, and the notices are required to be accessible and posted so all workers can see them.

The EEOC

Once employees determine they have been the victim of illegal discrimination by the employer, they must go about filing a complaint with the EEOC in order to state a federal civil rights claim. The EEOC then follows procedures to make a determination about the validity of the claim and what actions it should take to resolve the claim.

Make-Up of the EEOC

The EEOC is composed of five commissioners and a general counsel appointed by the president and confirmed by the Senate. Commissioners are appointed for five-year staggered terms; the general counsel's term is four years. The president designates a chair and a vice-chair. The chair is the chief executive officer of the commission. The commission has authority to establish equal employment policy and to approve [LITIGATION](#). The general counsel is responsible for conducting litigation. The EEOC also has 50 field offices located across the nation.

Filing a Charge

A discrimination complaint with the EEOC should be filed with the nearest EEOC office to the complainant. The EEOC lists its offices on its website at <http://www.eeoc.gov/teledir.html>. Complaints may be filed by

mail, telephone, or in person. A toll free number, 800-699-4000, may be used to find this information.

Federal civil rights laws contain time frames when discrimination complaints must be filed. To preserve the ability of the EEOC to act, these time frames must be met. If they are not met, the complainant will lose any right to a federal civil rights claim. Under Title VII, the ADA, or ADEA, a complaint must be filed with the EEOC within 180 days of the alleged discriminatory act.

In states or localities where there is an antidiscrimination law and an agency authorized to grant or seek relief, a complaint must be presented to that state or local agency. In such jurisdictions, the complainants may file charges with EEOC within 300 days of the discriminatory act, or 30 days after receiving notice that the state or local agency has terminated its processing of the charge, whichever is earlier.

For a complaint under the Equal Pay Act, individuals are not required to file a complaint with the EEOC before filing a private lawsuit, so the time limits do not apply. Individuals with an Equal Pay Act claim must decide whether they would be better off filing a complaint with the EEOC or going directly to court.

Procedures

After the complaint is filed with the EEOC, the employer is notified of the complaint. At that point, the EEOC can handle the complaint in a number of ways. According to the EEOC, the following are ways the complaint can be disposed of:

- A complaint may be assigned for priority investigation if the initial facts appear to support a violation of law. When the [EVIDENCE](#) is less strong, the complaint may be assigned for follow up investigation to determine whether it is likely that a violation has occurred.
- The EEOC can seek to settle a complaint at any stage of the investigation if the charging party and the employer express an interest in doing so. If [SETTLEMENT](#) efforts are not successful, the investigation continues.
- In investigating a complaint, the EEOC may make written requests for information, interview people, review documents, and, as needed, visit the facility where the alleged discrimination occurred. When the investigation is complete, the EEOC will discuss the evidence with the charging party or employer, as appropriate.
- The complaint may be selected for the EEOC's [MEDIATION](#) program if both the charging party and the employer express an interest in this option. Mediation is offered as an alternative to a lengthy investigation. Participation in the mediation program is confidential, voluntary, and requires consent from both charging party and employer. If mediation is unsuccessful, the complaint is returned for investigation.
- A complaint may be dismissed at any point if, in the agency's best judgment, further investigation will not establish a violation of the law. A complaint may be dismissed at the time it is filed, if an initial in-depth interview does not produce evidence to support the claim. When a complaint is dismissed, a notice is issued in accordance with the law which gives the charging party 90 days in which to file a lawsuit on his or her own behalf. This notice is known as a "right to sue." Under Title VII and the ADA, a charging party also can request a notice of right to sue from the EEOC 180 days after the charge was first filed with the Commission, and may then bring suit within 90 days after receiving this notice. Under the ADEA, a suit may be filed at any time 60 days after filing a charge with the EEOC and no right to sue notice is required.

Once the EEOC investigation is finished, the commission makes a determination over how to proceed. The EEOC lists the following as actions it can take to resolve a discrimination complaint:

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- If the evidence obtained in an investigation does not establish that discrimination occurred, this will be explained to the charging party. A required notice is then issued, closing the case and giving the charging party 90 days in which to file a lawsuit on his or her own behalf.
- If the evidence establishes that discrimination has occurred, the employer and the charging party will be informed of this in a letter of determination that explains the finding. The EEOC will then attempt [CONCILIATION](#) with the employer to develop a remedy for the discrimination.
- If the case is successfully conciliated, or if a case has earlier been successfully mediated or settled, neither EEOC nor the charging party may go to court unless the conciliation, mediation, or settlement agreement is not honored

If the EEOC is unable to successfully conciliate the case, the agency will decide whether to bring suit in federal court. If the EEOC decides not to sue, it will issue a notice closing the case and issue a right to sue notice giving the charging party 90 days in which to file a lawsuit on his or her own behalf.

The EEOC is empowered to file a judicial action against non-governmental employers. The U. S. attorney general is authorized to sue state and local governments. The federal government cannot be sued. The EEOC actually files suit on only a small number of cases.

Enforcement and Relief

Relief the EEOC may seek against discrimination include: back pay, hiring, promotion, reinstatement, front pay, reasonable accommodation, or other actions that will make an individual "whole" (in the condition he or she would have been but for the discrimination). Relief also may include payment of attorneys' fees, expert witness fees, and court costs. In addition, an employer may be required to post notices to all employees addressing the violations of a specific charge and advising them of their rights under the laws the EEOC enforces and their right to be free from retaliation.

Under most EEOC-enforced laws, compensatory and [PUNITIVE DAMAGES](#) also may be available where intentional discrimination is found. Damages may be available to compensate for actual monetary losses, for future monetary losses, and for [MENTAL ANGUISH](#) and inconvenience. Punitive damages also may be available if an employer acted with [MALICE](#) or reckless indifference. Punitive damages are not available against state or local governments.

The employer also may be required to take corrective or preventive actions to cure the source of the identified discrimination and minimize the chance of its recurrence, as well as discontinue the specific discriminatory practices involved in the case.

Additional Resources

"Facts About Mediation" The Equal Employment Opportunity Commission, 2001. Available at <http://www.eeoc.gov>.

Federal Law of Employment Discrimination. Mack Player, Mack, St. Paul, West Group, 1989.

"Federal Laws Prohibiting Job Discrimination Question and Answers," The Equal Employment Opportunity Commission, 2001. Available at <http://www.eeoc.gov>., The Equal Employment Opportunity Commission, 2001.

"Filing A Charge," The Equal Employment Opportunity Commission, 2001. Available at

<http://www.eeoc.gov>., The Equal Employment Opportunity Commission, 2001.

Organizations

U. S. Department of Justice, Civil Rights Division

950 Pennsylvania Avenue, N.W.

Washington, DC 20530 USA Phone: (202) 514-4609

Fax: (202) 514-0293

URL: <http://www.usdoj.gov/crt/crt-home.html>

Primary Contact: Ralph Boyd, Assistant Attorney General

U. S. Department of Labor

200 Constitution Avenue, NW

Washington, DC 20210 USA

Phone: (866) 4-USA-DOL

URL: <http://www.dol.gov/>

Primary Contact: Elaine Chao, Secretary of Labor

U. S. Equal Employment Opportunity Commission (EEOC)

1801 L Street, NW

Washington, DC 20507 USA

Phone: (202) 663-4900

URL: <http://www.eeoc.gov/>

Primary Contact: Cari M. Dominguez, Chair

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