

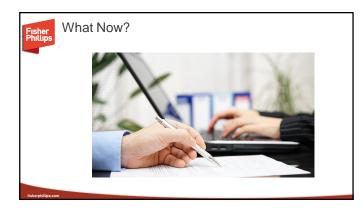






| - | CHARGE OF DISCRIMINATION | Charge Present | ed to: Agen | cy(les) Charge No(s) |
|--|---|--|---|---|
| | Budeneed and other internation before completing the form. | X. BEOC | | |
| | | | _and EEOC | |
| Name Inc. | Bate or local A Bate or local A | | rea Codel | Date of Einth |
| Colette W Street Ad | | 555-555-555 P Code | | 1-1-1958 |
| Named is The Lind | the Employer, Lobor Organization, Employment Agency, A ieve Discriminated Against Me or Others. If more than text | prenticeship Convertice, Intractor EMITICAL MIZ | or State or Loss Teritor 1 | i Government Agency |
| Name Company | | o. Employees, Members | Phone No. | (Include Area Code) |
| Company Street Ad | dress City, State and 20 | P Code | | |
| Name | | o. Employees, Members | There has | Include Area Codel |
| | | | P10358 ND. | (Incluse Area (1006) |
| Ritmat deb | | | | |
| | INATION BASED ON (Check appropriate bought)] OOLORSEXRELIGIONNATIONAL ORI | | arbest. | NATION TOOK PLACE Lotest 5-01-2016 |
| PETAI | LATION & AGE & DISABILITYOTHER (Seen's being | | CONTINUND A | |
| I have I | ITICULARS ARE (Padditional paper is readed, after been employed with the Company for 10 ye | hed extra sheef(s)) ars in the position | of Team Le | sd. Thave always |
| I have be perform boss. C 2000 2000. 2000. I box cancer work or not the benotic | TTOULDED ATTE (2 existing upper in reaction after been employed with the Comparison (or 10 years what my bob above expectations and have ner works, skatel our densing derogatery communal provery Team. Lead trived has been fresh out is my understanding that Todd (UAU), who solarly at the end of my Toyreat forum. In solarly at the end of my Toyreat forum. In lowest of the group. David constantly made lowest of the group. Back constantly made lowest of the groups who need to back time a | hed whe shart[3]: ars in the position elved only positive about my age. Ex- used to be in the of college. I was s under 40, was hi waround Novemb us to necessary th umbers continued comments about 1 iff due to filness. | of Team Las- performance in at my le dark ages, replaced by ed with a st r 2014, I w atments, I i o meet expl ow I was al | ad. I have always evaluations. My mination meeting, Over the last few aring salary equal as diagnosed with was forced to miss sciations and were ways out sick. He |
| I have i perform boss, D David e years, I I o my e cancer, work be to th | HTTGL/ARTE (21 exhibition dysets is needed with the Comparisy for 10 years and my bob above expectations and have needed with the Comparisy for 10 years, singled making derogatory comments said that it wasn't as young and smart as i taken the dyset of the second of | hed exha sheef(s)): ars in the position elved only positive about my age. It used to be in the of college. I was s under 40, was hi or around Novemb tae to necessary th umbers continued comments about 1 if due to liness. my age (58) in violi | of Team Las- serformance in at my le dark ages. replaced by ed with a st r 2014, I w atments, I i o meet expe ow I was al tion of the | ed, I have always e evaluations. My ministion meeting, Over the last few a man in his late arting salary equi- a diagnosed with was forced to miss collations and were ways out sick. He Age Discrimination |
| I have perform borse, E 2005, I 2005, II 10 my t conner, work or not not senter. I boriev in Employ | 11TOULARIS ATTE (If entitional values in newlow after beam employed with the Comparison for 10 yeared my bob above expectations and have me saved, started making derogativey comments saved that I waven't as young and smart as I waven't take under the take beam take origination of the saved sector and the saved of the end of my 10-year tensors. In 160d the company about my disposis. I cone a week. Despite that, my seles team's lowerd of the group. David concellarity made alternati of employees who need to take time o I have been discriminated against due to the I have been discriminated against due to. | hed exhe shee(h)): ars in the position elived only positive about my age. Ex- used to be in the of college. I was s under 40, was hi ar around Novemb umbers continued use to necessary to umbers continued to due to illness. my age (58) in vkb ion of the American on No 1627 - War | of Team Les- performanco en at my les dark ages, replaced by ed with a st of with a st atments, l's o meet expe ow I was al son of the a s with Disal | ed, I have always e evaluations. My ministion meeting, Over the last few a man in his late arting salary equi- a diagnosed with was forced to miss collations and were ways out sick. He Age Discrimination |
| I have be perform basis. C Down be 20%. II to may te canoor work or to may te canoor work or to may te canoor to may te canoor to may te canoor to may te canoor to to may te canoor to to may te canoor to t | The CLUARS AND () and the current of the second se | had upbe stretely) arises in thermostion news only positive about my age. Ex- used to be in the of college. I was a under 40, was hi w around Novemb- us to necessary the umbers continued in comments about mbers continued in ord the American on of the American new, NOTARY - when the | of Team Les performance in at my le fark ages, replaced by ed with a st rr 2014, I w vatments, I to to meet expro- ow I was all don of the r s with Disat cecessery for 5 | ad, I have always e evaluations. My ministion meeting, Over the last few a man in his late arting salary equal of the salary equal as diagnosed with was forced to miss ad lagnosed with was forced to miss clations and were ways out sick. He Age Discrimination nittles Act. |
| I have a participant of the part | The Links of the particular states of the second state in the state of the links of the states of the links | Inderster strengting ansk in his position neved only positive about my age. Ex used to be in the of college. I was a under 40, was hi use to necessary the around Novemb us to necessary the or around Novemb us to necessary the or around Novemb the full to be interest of the strength of the strength of the strength of the stoket nume or dimi- tent stoke in scoket nume or dimi- | of Team Les performances in at my le dark ages, replaced by ed with a st my 2014, Iw atments, I to o meet experi- ow I was all son of the s s with Disal peccessory for 5 peccessory for 5 pecces | Ad. I have always, a watatans. My mination meeting, Over the last few arms in his late of the last few and the last few and the last of the statement of the schelarons and wares ways out sick. He ge Obscrimination attities Ad. beer and Last Apency he above charge and watege intercelate and |





Fisher Phillips

Fisher Phillips

If You Ignore It, It Will Not Go Away

- Stone-walling is not an effective tactic. The EEOC can issue subpoenas.
- Notify Management/Legal Counsel
- Ensure Litigation Hold Is Sent



Document And Computer Evidence Retention

Litigation Holds: Once a charge is filed, a company has an obligation to preserve tangible and electronic records that relate to the employee's claims. The scope of records may include e-mails, personnel file and other records for the employee and comparable employees. Inadvertent destruction of records, even pursuant to a policy, can have grave consequences to an employer's defense including court sanctions, prohibitions on presenting a defense, and jury instruction allowing an adverse inference to be drawn from the absence of the record.

EEOC Charge Process In A Nutshell

- Charge within 300 days from discriminatory event
- EEOC sends "Notice of Charge of Discrimination"
- Option to mediate
- Requests statement of position/information request
- Position statement to EEOC



EEOC Charge Process In A Nutshell

- EEOC may conduct on-site investigation:
 - Presence of counsel for management interviews
 - Not for non-management interviews
- Notice of Right to Sue 90 days to file suit from receipt of letter

| In the design of the set of the design of the | 18: | - | - |
|--|-------|--------------|---------------------------------|
| California Department 27% at 210 | ponet | . Naming | 4100 |
| An owned in the local database | 1 | 40.58.05 | 0.2.10 |
| Bellen Romania Anna, (an Ingelin, CA. 1000) | - | | |
| And in part of herein building and the second state | | | lights for these |
| | | | 101/05-001 |
| TELected Bod, Lockspin, (4.992 | | | |
| 100 | | A PORTO BALL | Apr. 4, 1998 10-10 |
| holder A M.A.P | | | |
| | | 100 | |
| Contraction Contraction | | 100 | - |
| Face reaction the law logistic (initial lines) Set (211), reac district the lower ranges was face when their adult framework in 211-11 and their sets for a set of the setter in 211-11. | | | |
| Lass internet in order from Anal News, Printer Innane genreging in van Syld on is schule om anternetiske lass die ing (Rod, Nathrig Innan Benland) | | | |
| Testera factori della degla destructura degres facilitati matanti agresche Greg a prestanti SEC, degla Opportunitati è finanziamenta al 1921, a antes | | Sec. 1 | al proving allow of the sign |
| | | | |
| Televise and ratio for a period of a | | | - been all he is to |
| man Soral Junley = | | | |
| 10 100-100 | | | |

Fisher FCRA Complaint

- Dual filing
- 365 days to file
- Automatic right to sue after 180 days
- Four-year statute of limitations, if "no cause" determination is not issued within 180 days of filing of complaint

General Themes

Fisher Phillips

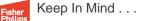
- Regard the administrative proceeding as a useful opportunity, prior to commencement of formal litigation, to gather facts and prepare defenses while memories are fresh and employee-witnesses are available.
- Respond with a view toward litigation in court.
- · Respond specifically to the allegations.

Objectives

Fisher Phillip

- Obtaining a "No Cause" determination
- Dissuading employee from filing suit
 - When told that they don't have a case by an independent third party, many employees will drop the matter
- · Preserving facts and defenses if suit is filed





- You're stuck with what you submit (or you will suffer the consequences)
- Lying in a position statement not a good thing to do



How Much Information Do I Provide?

Two General Theories

Theory # 1: Act as if you have the right to remain silent – tell the EEOC you did not discriminate and provide no additional information

- Disadvantages:
 - More likely to have an on-site investigation
- More likely to have a reasonable cause finding
- More likely to irritate the EEOC toward your company
- More likely to have the EEOC file suit on the employee's behalf
- Advantages:

Fisher Phillip:

- Less likely to provide an inconsistent position that can be used against you later



How Much Information Do I Provide?

Theory # 2 - Provide a detailed statement of position

- Disadvantages
- Increased likelihood of inconsistent positions during litigation
- Educating plaintiff's counsel
- Unintentionally making admissions that you violated the law
- Advantages
- Increased likelihood of dismissal of charge
- Increased likelihood that neither the EEOC nor the employee will file suit



Fisher Phillip:

How Much Information Do I Provide?

Only submit those documents or portions of files necessary to respond to specific issues

- Personnel Files
- Handbooks

Analyze The Issues

Current Employee

- Prompt Remedial Action
- Retaliation
- Former Employee
- Systemic/Class Allegations
- Work Product





Use The Investigation

Fisher Phillips

- To determine potential employer liability and exposure.
- To respond to the Charge by gathering relevant evidence to defend a potential lawsuit.
- To discover pertinent facts to support/rebut the allegations of discrimination, harassment or retaliation.
- To determine whether the Charging Party and other similarly- situated employees who have engaged in comparable misconduct or violations of work rules have been treated in a consistent manner.
- To determine whether settlement or mediation of the claim is a possibility.
- To document the employer's prompt corrective action.

Mediation • Advantages • Fact-finding • Confidential • Forum for voicing complaint • Possible early, inexpensive resolution • Alternative resolutions • Avoid position statement • No public record if settles • Invited or Can Request

• EEOC Will Not Mediate Certain Claims



Position Statement

U.S. Equal Employment Opportunity Commission Miami District Office 100 SE 2nd Street Suite 1500 Miami, Florida 33131 RE: Colette Wolf v. Company EEOC Charge No.: 510-2016-00009

Dear Mr. Investigator:

Fisher Phillips

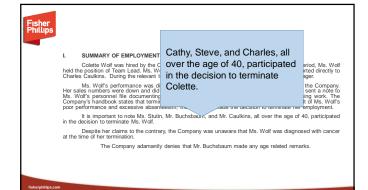
Fisher Phillips This letter is intended as the statement of position of the Company in connection with the charge of discrimination filed by Colette Wolf. Ms. Wolf claims that the Company discriminated against her because of her age (age 58) and alleged disability. The Company adamantly denies that it discriminated against Ms. Wolf. As is more fully set forth below, all employment actions taken with respect to Ms. Wolf were based on legitimate, non-discriminatory business reasons, and were in no way based upon her age or disability.

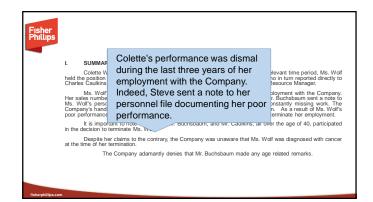
Position Statement

- Three people who participated in decision to terminate were all over 40.
- Unaware of cancer diagnosis at the time of her termination.
- Poor performance; note to personnel file.
- Denial of age-related remarks.
- Handbook provides for termination after excessive absences.

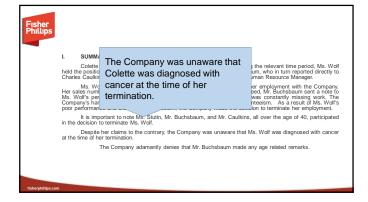
A Year Goes By, Then . . .

- Notice of Right to Sue
- Lawsuit
- Discovery:
- And now Cathy the HR Manager gets deposed (and it's going to be painful).



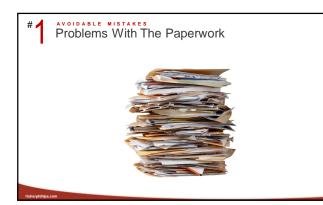


| Fisher Phillips | |
|--|---|
| I. SUMMARY OF EM | /PLC |
| excessive absenteeism. | a post the company of half book of actor a Buchsbaum, a Buchsbaum, cathy that termination will occur after excessive absenteeism. |
| It is important to r participated in the decision | note Ms. Stutin, Mr. Buchsbaum, and Mr. Caulkins, all over the age of 40, on to terminate Ms. Wolf. |
| Despite her claims with cancer at the time of | s to the contrary, the Company was unaware that Ms. Wolf was diagnosed her termination. |
| The Compa | ny adamantly denies that Mr. Buchsbaum made any age related remarks. |
| | |









No Documentation

Fisher Phillips

• If it was important, why didn't you write it down?



Poor Notes From Critical Meetings or Events

Illegible

- Don't identify note taker
- Don't include a date
- · Waste of time and expense for attorney and those assisting
- Presents an even bigger problem where the notes have independent legal significance

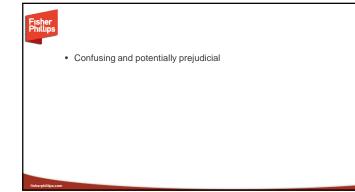


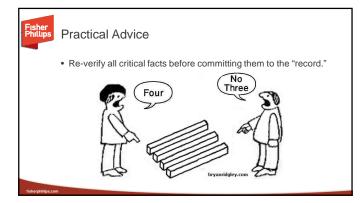
Date notes

Fisher Phillips

- Identify note taker
- Type the notes









Fisher Phillips • Do not take actions that contradict your company's established policies.

- Review policies at issue
- Keep copies of the policies out when completing corrective action documents



Fisher Phillips

- Anyone who signs a termination form:
 - needs to know the facts
 - should expect to be deposed

- Establish a procedure where the manager presenting the termination:
 - · fully documents the facts in writing
 - · meets personally with those signing off



Fisher Phillips • Errant comments can turn a good case into a bad case.

Practical Advice

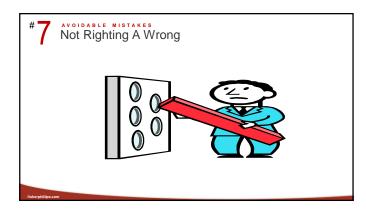
 Zero tolerance -- no room in the work place for these types of comments



Fisher Phillips

- Considered "company" files
- Must disclose to attorney
- Failure to disclose:
 - · embarrassing at a deposition
 - · could subject company to court sanctions

- When a document request comes in:
 - request all managers, group leaders, etc. to disclose all files
 - not just "official" files



Fisher Phillips •After acquired evidence exonerates a team member

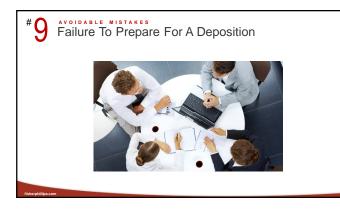
- But, manager refuses to remedy situation
- •No one wants to take someone back

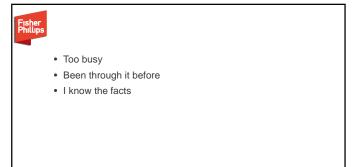
- When you see a mistake has been made, do the right thing.
- Don't cover it up or attempt to explain the mistake away.

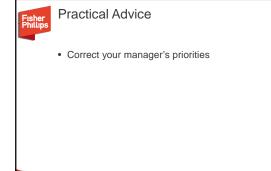


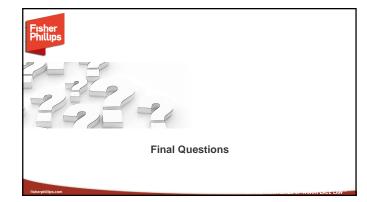
Fisher Phillips • Not all facts are in your favor.

- Concede bad facts when necessary.
- Don't attempt to argue them away.









2016 Copyright Fisher & Phillips LLP

