



Ch-Ch-Changes At The EEOC

Insights

3.01.16

Agency Revises Discrimination Charge Practices

Starting January 1, 2016, the Equal Employment Opportunity Commission (EEOC) implemented significant changes to its case-handling process. As a result, all employers who draft and submit position statements in response to Charges of Discrimination will want to consider altering your practices to adapt to these changes.

Your Information Will Be Shared

The most noteworthy change is how the EEOC handles the information contained in position statements received from employers. For all position statements requested by the EEOC after January 1, 2016, the EEOC now will share a copy of your position statement with Charging Parties or their legal counsel upon request. Previously, this decision was left to the discretion of the EEOC's field offices. Now, the EEOC has determined that it will provide uniform access to position statements at all locations.

There may be some instances when the strength of the information in your position statement discourages a Charging Party from proceeding. However, the more likely result is that the information obtained by Charging Parties and their counsel will be used to adjust a Charging Party's story or subsequent litigation strategy. Unfortunately, the EEOC will not provide employers with any responses or rebuttal information submitted by a Charging Party until the file is closed.

The EEOC has indicated that it will not provide Charging Parties with "Confidential Information" submitted by an employer. Therefore, if you need to include confidential information (such as identification of witnesses, information about comparators, SSNs, medical records, confidential commercial, financial, or trade secret information, or other personally identifiable information) as part of your position statement, you should include it on a separate attachment specifically labeled as "Confidential."

Even in such situations, sensitive information will be left in the hands of busy EEOC investigators. The risks attendant to this process are considerable for employers even when separate attachments are used. Therefore, you should give significant thought to the manner in which you submit confidential information and to potential implications of such submissions under the Freedom of Information Act.

The EEOC Is Going Electronic

The EEOC launched what is now known as the Digital Charge System in May 2015, and by the beginning of 2016 it has been implemented nationwide (read more [here](#)). The EEOC will now notify employers of new Charges almost entirely via email notices, which will provide instructions for logging onto an online portal where the employer can access the Charge of Discrimination. The agency will also use the online system for all further communications relating to the Charge.

The EEOC intends to use prior contact points with the EEOC to send the email notices, raising a real risk that your organization may not receive the notice if that person no longer works for your company or is not the appropriate contact. As a result, you should consider designating an email address for each local EEOC office where you do business to which the EEOC should send all notices of Charges. You should also identify legal representation information either through the portal system or via letter of representation for all Charges, which will result in any critical notice being sent to that contact as well.

In addition to verifying contact information and designating legal representation, the Digital Charge Portal also will allow you to view invitations to mediate and respond to them, submit position statements and attachments, respond to Requests for Information, and otherwise communicate with the EEOC about the Charge.

After you have registered for each Charge through the digital portal, you should ensure that your company representative and/or your legal representative checks the Digital Charge System portal regularly, although the EEOC will furnish subsequent notices of postings in the Digital Charge System for your review.

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