



The Nuts and Bolts of an EEOC Claim¹

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I. Equal Employment Opportunity Commission ("EEOC") Basics

- No Illegal Reasons - Unless they are employed under some form of contract, employees in Illinois are generally employed "at-will." This means they may be terminated for any reason except an illegal reason.
- Protected Classifications - An employer may not discriminate on the basis of an employee's age, race, disability, national origin, religion, gender, or engage or allow sexual harassment or the creation of a hostile work environment or engage in unlawful retaliation or violate provisions related to equal pay.
- Federal Anti-Discrimination Laws - The EEOC is charged with the enforcement of *federal* laws prohibiting discrimination in employment. These laws include: Title VII of the Civil Rights Act of 1964 and its amendments, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Rehabilitation Act, and the Equal Pay Act.
- Employers Subject to Federal Laws - The federal anti-discrimination laws apply only to employers of a certain size (e.g., employers with 15 or more employees under Title VII and the ADA).
- State & Local Laws - Illinois and some local governments have their own laws prohibiting discrimination in employment, as well as other areas (e.g., housing and financial credit). The Illinois Human Rights Act ("IHRA") also protects more groups from discrimination (e.g., sexual orientation and marital status) and may apply to employers with fewer employees (e.g., employers with 1 or more employee for handicap discrimination).
- Dual Jurisdiction - Per agreement, the EEOC has dual jurisdiction over certain claims with its Illinois counterpart, the Illinois Department of Human Rights ("IDHR"). Thus, filing a charge with the EEOC is considered to be a filing

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with the IDHR, and vice-versa. *Garcia v. Village of Mt. Prospect*, 360 F.3d 630, 642 n. 13 (7th Cir. 2004).

- Exhaust Administrative Remedies – employees who believe they have suffered discrimination from their employer *must* exhaust administrative remedies (i.e., file a Charge with the EEOC or Illinois Department of Human Rights (“IDHR”) and receive a Notice of Right to Sue before filing a lawsuit in federal or state court).
- Time Limits – employees must file their Charge within 180 or 300 days of the date of the alleged violation (unless it is an ongoing violation per *National Railroad Passenger Corporation v. Morgan*, 536 U.S. 101 (2002)).
- Early Right to Sue Letters – Courts have allowed charging parties to request an early right to sue within weeks of filing a charge of discrimination.

II. EEOC Procedures & Investigation

- Charge of Discrimination – The Charge initiates the claim. Often a Charge is filed with an Attachment describing in more depth the claims. See Examples of an Attachment to Charge courtesy of the IDHR found at www.state.il.us/dhr/Forms/Atty_packet.PDF.
- Employer’s Position Statement – The employer must respond to each allegation set forth in the Charge and the Attachment. The employer is usually given about two weeks to submit this response.
- Mediation – The employer may request mediation at the outset to resolve the claims.
- Investigation – The Charge is assigned to an Investigator who conducts an investigation into the claims. This may involve a Request for Information (e.g., copies of the employee’s personnel file), an On-Site Visit to the employer, and a Fact-Finding Conference with the charging party and/or the employer’s representative(s).
- Completion of Investigation – At the end of the investigation, the Investigator may either: (1) make a No Reasonable Cause finding and issue a Dismissal and Notice of Rights letter; or (2) find Reasonable Cause and issue a Letter of Determination and inviting the parties to Conciliation.

- Conciliation – If conciliation fails, the EEOC may take on the charging party’s case and file a lawsuit in federal court. Or, the EEOC may decide not to take on the case and will issue a Notice of Right to Sue.
- Notice of Right to Sue – The charging party has 90 days within which to file a lawsuit after receipt of the Notice of Right to Sue.

III. EEOC Procedures for Federal Sector Employees

- Employees of Federal Government – The EEOC procedures applicable to employees of the federal government are different from employees in the private sector
- Complaint Filed with Agency’s EEO Office - The EEO office of the federal agency for whom the employee works or worked will accept the Charge and issue a letter either accepting or dismissing all or part of the claims.
- EEOC Investigation – After conducting fact-finding conferences, the EEOC Investigator will prepare a Report of Investigation (“ROI”).
- Right to Request a Hearing – Most federal employees have the right to request a hearing in front of an EEOC Administrative Judge after the ROI is issued. The employee may also seek a decision without a hearing at any time.
- Hearing Process – If the employee requests a hearing, the Administrative Judge will issue an Acknowledgement and Scheduling Order, which sets the deadlines for key parts of the process. Discovery is usually allowed.
- Summary Decision and Prehearing Submissions
- Hearing – ROI is allowed as evidence regardless of evidentiary objections. Other documents allowed by the AJ submitted with the Prehearing Submissions are also allowed. Rules of evidence do not strictly apply.
- Decision – If the decision is adverse to the employee, s/he may appeal to the EEOC Commission in D.C. or request a Notice of Right to Sue.

IV. Paralegal’s Role

- Wearing Different Hats - The paralegal may assist the attorney in the representation of an employee who charges his or her employer with unlawful employment practices. Or, the paralegal may also assist the attorney in representing the employer, who must defend its employment policies.