

2.9: EEO Complaints

Learning Objectives

1. Explain the process for filing an EEO complaint
2. Explain how EEO complaints are pursued

If an employee believes they were or are being discriminated against at work based on a protected category, the person can file a complaint with the EEOC or a state or local agency. For example, in California, a discrimination claim can be filed either with the state's administrative agency, the California Department of Fair Employment and Housing (DFEH), or the EEOC. Workplacefairness.org notes that the "California anti-discrimination statute covers some smaller employers not covered by federal law. Therefore, if your workplace has between 5 and 14 employees (or one or more employees for harassment claims), you should file with the DFEH." California law also addresses language discrimination—for example, "English-only" policies. In brief, "an employer cannot limit or prohibit employees from using any language in the workplace unless there is a business necessity for the restriction." This section discusses private-sector EEO complaints and enforcement. Federal job applicants and employees follow a different process, linked [here](#).

Who Should File

If federal EEO law applies your workplace and you believe you were discriminated against at work because of your race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability, or genetic information, you can file a charge of discrimination with the EEOC.

Filing a charge of discrimination involves submitting a signed statement asserting that an employer, union, or labor organization engaged in employment discrimination. The claim serves as a request for the EEOC to take remedial action. Note that an individual, organization, or agency is allowed to file a charge on behalf of another person in order to protect that person's identity. A person (or authorized representative) is required to file a Charge of Discrimination with the EEOC prior to filing a job discrimination lawsuit based on EEO laws with the exception of the Equal Pay Act. Under the Equal Pay Act, you are allowed to file a lawsuit and go directly to court.

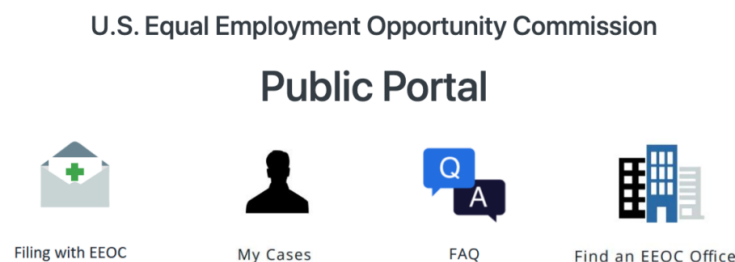


Figure 2.9.1: The EEOC's Public Portal

How to File

To start the process, you can use the [EEOC's Public Portal](#) to submit an inquiry or schedule an "intake" interview. The Public Portal landing page also has a FAQ section and Knowledge Base and allows you to find a local office and track your case. The two most frequently accessed articles are linked below:

- [What happens during an EEOC intake interview?](#)
- [If I submit an online inquiry, does that mean I filed a charge of discrimination?](#)

The second step in the process is to participate in the interview process. The interview allows you to discuss your employment discrimination situation with an EEOC staff member and determine whether filing a charge of discrimination is the appropriate next step for you. The decision of whether to file or not is yours.

The third step in the process, filing a Charge of Discrimination, can be completed through the Public Portal site.

When to File

The general rule is that a charge needs to be filed within 180 calendar days from the day the discrimination took place. Note that this time frame includes weekends and holidays, except for the final day. This time frame is extended to 300 calendar days if a state or local agency enforces a law that prohibits employment discrimination on the same basis. However, in cases of age discrimination, the filing deadline is only extended to 300 days if there is a state law prohibiting age discrimination in employment and a state agency authorized to enforce that law.

If more than one discriminatory event took place, the deadline usually applies to each event. The one exception to this rule is when the charge is ongoing harassment. In that case, the deadline to file is within 180 or 300 days of the last incident. In conducting its investigation, the agency will consider all incidents of harassment, including those that occurred more than 180/300 days earlier.

If you are alleging a violation of the Equal Pay Act, the deadline for filing a charge or lawsuit under the EPA is two years from the day you received the last discriminatory paycheck. This timeframe is extended to three years in the case of willful discrimination. Note that if you have an Equal Pay Act claim, you may want to pursue remedy under both Title VII and the Equal Pay Act. The EEOC recommends talking to field staff to discuss your options.

Key point: filing deadlines will generally not be extended to accommodate an alternative dispute resolution process—for example, following an internal or union grievance procedure, arbitration, or mediation. These resolution processes may be pursued concurrently with an EEOC complaint filing. The EEOC is required to notify the employer that a charge has been filed against it.

If you have 60 days or less to file a timely charge, refer to the EEOC Public Portal for special instructions or contact the EEOC office closest to you.

PRACTICE QUESTION

A friend of yours believes she's being discriminated against at work and is trying to decide whether to address the situation with her manager, talk to a union representative or file a claim. What advice should you give her?

- Avoid discussing the issue with the EEOC until you've decided since that conversation constitutes filing a claim.
- The filing deadline is extended while you pursue resolution internally—for example, with your manager and/or union.
- Be aware that the time frame for filing a claim is 180 workdays from the date of the incident.
- Be aware that the time frame for filing a claim is 180 calendar days from the date of the incident.

Answer

Be aware that the time frame for filing a claim is 180 calendar days from the date of the incident.

Claim Assessment

The EEOC is required to accept all claims related to discrimination. If the EEOC finds that the laws it enforces are not applicable to a claim, that a claim was not filed in a timely manner, or that it is unlikely to be able to establish that a violation occurred, the agency will close the investigation and notify the claimant.

Claim Notice

Within 10 days of a charge being filed, the EEOC will send the employer a notice of the charge.

Mediation

In some cases, the agency will ask both the claimant and employer to participate in mediation. In brief, the process involves a neutral mediator who assists the parties in resolving their employment disputes and reaching a voluntary, negotiated agreement. One of the upsides of mediation is that cases are generally resolved in less than three months—less than a third of the time it takes to reach a decision through investigation. For more perspective on mediation, visit the [EEOC's Mediation web page](#).

Investigation

If the charge is not sent to mediation, or if mediation doesn't resolve the charge, the EEOC will generally ask the employer to provide a written response to the charge, referred to as the "Respondent's Position Statement." The EEOC may also ask the employer to answer questions about the claims in the charge. The claimant will be able to log in to the Public Portal and view the position statement. The claimant has 20 days to respond to the employers position statement.

How the investigation proceeds depends on the facts of the case and information required. For example, the EEOC may conduct interviews and gather documents at the employer site or interview witnesses and request documentation. If additional instances of discriminatory behavior take place during the investigation process, the charge can be “amended” to include those charges or an EEOC agent may recommend filing a new charge of discrimination. If new events are added to the original charge or a new charge is filed, the new or amended charge will be sent to the employer and the new events will be investigated along with the prior events.

EEOC Decision

Once the investigation has been completed—on average, a ten-month process—the claimant and employer are notified of the result. If the EEOC determines the law may have been violated, the agency will attempt to reach a voluntary settlement with the employer. Barring that, the case will be referred to EEOC’s legal staff (or, in some cases, the Department of Justice), to determine whether the agency should file a lawsuit.

Right to Sue

If the EEOC decides not to file suit, the agency will give the claimant a Notice of Right to Sue, allowing the claimant to pursue the case in court. If the charge was filed under Title VII or the ADA, the claimant must have a Notice of Right to Sue from EEOC before filing a lawsuit in federal court. Generally, the EEOC must be allowed 180 days to resolve a charge. However, in some cases, the EEOC will issue a Notice of Right to Sue in less than 180 days.

PRACTICE QUESTION

Your friend is still leery about proceeding and asks you for additional perspective on how a claim would proceed or be pursued. Which of the following explanations should you provide?

- The EEOC may ask both the claimant and employer to participate in mediation.
- The EEOC will ask the claimant to conduct interviews and collect documents to support the claim.
- The EEOC can require a claimant and employer to participate in mediation.
- If the EEOC does not litigate the case, there is no other course of action.

Answer

The EEOC may ask both the claimant and employer to participate in mediation.

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