

Ask the Lawyer: How Do I Proceed With Discrimination Complaint?

By Mathew Tully

Question:

My employer discriminated against me. How do I know whether I should file a complaint with the U.S. Equal Employment Opportunity Commission or the New York State Division of Human Rights?

Response:

Both federal and state laws protect employees from discrimination in the workplace, but these two levels of government have different interpretations as to what qualifies as unlawful discrimination. Deciding whether to file a complaint with the EEOC or Division of Human Rights depends on the nature of the claim and when the claim occurred, among other things.

Generally, if the employee has been subjected to a type of discrimination covered by a federal law, such as Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Age Discrimination Employment Act (ADEA), or the Genetic Information Nondiscrimination Act (GINA), an attorney may steer him or her toward the EEOC.

These laws cover discrimination on the basis of race, color, sex, gender, national origin, religion, disability, age and genetic information. Generally speaking, the federal laws have additional remedies, such as the possibility of attorney fees, that are not always available to state law claims.

That is not to say workers who have experienced any one of these types of discrimination cannot file a Human Rights complaint. New York's Human Rights law covers these types of discrimination — and more. This state law features additional prohibitions against types of discrimination not covered by federal law, such as sexual orientation, domestic violence victim status, familial status, arrest or conviction record and marital status.

The Human Rights Law also provides protections against discrimination on the basis of military status, similar to the federal Uniformed Services Employment and Re-employment Rights Act (USERRA).

Another consideration to keep in mind is that some claims, such as disability discrimination, are better filed with the Division. Even though the ADA prohibits disability discrimination, a disabled worker with a mental impairment may be better off taking the Division of Human Rights route instead of the EEOC path.

Generally, the burden for meeting the criteria for a mental impairment are less stringent under state law than federal law. However, recent amendments to the ADA have narrowed the differences between these laws in regard to mental impairments.

Another consideration is that New York state law also has a broader interpretation of what qualifies as an employer. For an employee to file an EEO complaint alleging discrimination in violation of Title VII, the ADA, or GINA, the employer must have 15 or more employees. For the ADEA, the minimum employee threshold is 20. In contrast, employees can file a Human Rights complaint so long as the employer does not have fewer than four employees.

One more advantage that state law has over federal law when it comes to discrimination is that employees are afforded more time to file complaints. Under New York's Human Rights Law, employees have one year to file a complaint after the discrimination occurred, whereas under the federal anti-discrimination laws, a complainant in New York has 300 days to file.

It is crucial for anyone who has been subjected to unlawful discrimination to consult with an employment law attorney. Given the vast number of complaints filed every year, it may be difficult for a complainant to avoid dismissal without an attorney's advice. A lawyer may be able to flush out the evidence that can improve the complainant's chances of receiving a favorable decision or settlement from the EEOC.