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GUIDE

TO FILING A CLAIM WITH THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

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**A GUIDE TO FILING A CLAIM WITH THE
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
(EEOC)**

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I. WHAT IS THE EEOC?

The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. It also protects from discrimination because a person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. Most employers with at least 15 employees are covered by EEOC laws (20 employees in age discrimination cases). Most labor unions and employment agencies are also covered. The laws apply to all types of work situations, including hiring, firing, promotions, harassment, training, wages, and benefits.

A. OVERVIEW OF PURPOSE

The EEOC's purpose is to ensure a "strong and prosperous nation secured through a fair and inclusive workplace."¹ In pursuit of this purpose, the EEOC actively promotes equality of opportunity in the workplace by enforcing federal laws prohibiting employment discrimination.

B. AUTHORITY OF LAW

The EEOC has the legal authority to investigate charges of discrimination against employers who are covered by the law. Its role in an investigation is to fairly and accurately assess the allegations in the charge and then make a finding. If the EEOC finds that discrimination has occurred, it will try to settle the charge.² If those attempts aren't successful, it then has the authority to file a lawsuit to protect the rights of individuals and the interests of the public. The EEOC does not, however, file lawsuits in all cases where it finds discrimination.³

The EEOC pursues action against discriminatory employees under the following federal laws.

1. TITLE VII OF THE CIVIL RIGHTS ACT OF 1964⁴

This law (Title VII) makes it illegal to discriminate against someone on the basis of race, color, religion, national origin, or sex. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate applicants' and employees' sincerely held religious practices, unless doing so would impose an undue hardship on the operation of the employer's business.

2. THE PREGNANCY DISCRIMINATION ACT⁵

This law (PDA) amended Title VII to make it illegal to discriminate against a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

3. THE EQUAL PAY ACT OF 1963⁶

This law (EPA) makes it illegal to pay different wages to men and women if they perform equal work in the same workplace. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

4. THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967⁷

This law (ADEA) protects people who are 40 or older from discrimination because of age. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

5. THE AMERICANS WITH DISABILITIES ACT OF 1990⁸

Title I of this law (ADA) makes it illegal to discriminate against a qualified person with a disability in the private sector and in state and local governments. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless doing so would impose an undue hardship on the operation of the employer's business.

6. CIVIL RIGHTS ACT OF 1991⁹

Among other things, sections 102 and 103 of this law (CRA) amends Title VII and the ADA to permit jury trials and compensatory and punitive damage awards in intentional discrimination cases.

7. THE REHABILITATION ACT OF 1973¹⁰

Sections 501 and 505 of this law (RA) makes it illegal to discriminate against a qualified person with a disability in the federal government. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law further requires that employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless doing so would impose an undue hardship on the operation of the employer's business.

8. THE GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008¹¹

This law (GINA) makes it illegal to discriminate against employees or applicants because of genetic information. Genetic information includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder or condition of an individual's family members (i.e. an individual's family medical history). The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

C. ROLE PLAYED IN DISCRIMINATION CASES

The EEOC provides leadership and guidance to federal agencies on all aspects of the federal government's equal employment opportunity program. EEOC assures federal agency and department compliance with EEOC regulations, provides technical assistance to federal agencies concerning EEO complaint adjudication, monitors and evaluates federal agencies' affirmative

employment programs, develops and distributes federal sector educational materials and conducts training for stakeholders, provides guidance and assistance to its Administrative Judges who conduct hearings on EEO complaints, and adjudicates appeals from administrative decisions made by federal agencies on EEO complaints.¹²

II. WHAT TYPES OF ACTIONS CAN THE EEOC HEAR?

The EEOC protects employees and job applicants from employment discrimination by employers. This includes unfair treatment because of a protected class under the law that you may qualify for. This also includes harassment by managers, co-workers, or others in your workplace, because of your membership in a protected class, denial of a reasonable workplace accommodation that you need because of your religious beliefs or disability, and retaliation because you complained about job discrimination, or assisted with a job discrimination investigation or lawsuit.

A. CLASSES OF PERSONS PROTECTED BY THE EEOC

The EEOC protects persons from being discriminated against in the contexts listed above, on the basis of their race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.¹³

B. CLASSES OF PERSONS NOT PROTECTED BY THE EEOC

The EEOC does not enforce laws that prohibit discrimination and harassment based on sexual orientation, status as a parent, marital status, and political affiliation.¹⁴ However, other federal agencies and many states and municipalities do, such as the U.S. Office of Personnel Management (OPM), so you should consult those agencies for more information.

III. WHAT ARE THE KINDS OF PRACTICES AND POLICIES THAT ARE PROHIBITED BY LAW?

A. OVERVIEW OF GENERAL STANDARD

As mentioned above, the law essentially forbids discrimination in every aspect of employment. The laws enforced by EEOC prohibit an employer or other covered entity from using neutral employment policies and practices that have a disproportionately negative effect on applicants or employees of a particular race, color, religion, sex (including pregnancy), or national origin, or on an individual with a disability or class of individuals with disabilities, if the policies or practices at issue are not job-related and necessary to the operation of the business. The laws enforced by EEOC also prohibit an employer from using neutral employment policies and practices that have a disproportionately negative impact on applicants or employees age 40 or older, if the policies or practices at issue are not based on a reasonable factor other than age.

B. SPECIFIC EXAMPLES

Examples of common practices and policies that are prohibited under the law are provided below.¹⁵

1. JOB ADVERTISEMENTS

It is illegal for an employer to publish a job advertisement that shows a preference for or discourages someone from applying for a job because of his or her race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

For example, a help-wanted ad that seeks "females" or "recent college graduates" may discourage men and people over 40 from applying and may violate the law.¹⁶

2. RECRUITMENT

It is also illegal for an employer to recruit new employees in a way that discriminates against them because of their race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. For example, an employer's reliance on word-of-mouth recruitment by its mostly Hispanic work force may violate the law if the result is that almost all new hires are Hispanic.¹⁷

3. APPLICATION & HIRING

It is illegal for an employer to discriminate against a job applicant because of his or her race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. For example, an employer may not refuse to give employment applications to people of a certain race.¹⁸

An employer may also not base hiring decisions on stereotypes and assumptions about a person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

If an employer requires job applicants to take a test, the test must be necessary and related to the job and the employer may not exclude people of a particular race, color, religion, sex (including pregnancy), national origin, or individuals with disabilities. In addition, the employer may not use a test that excludes applicants age 40 or older if the test is not based on a reasonable factor other than age.¹⁹

If a job applicant with a disability needs an accommodation (such as a sign language interpreter) to apply for a job, the employer is required to provide the accommodation, so long as the accommodation does not cause the employer significant difficulty or expense.²⁰

4. JOB REFERRALS

It is illegal for an employer, employment agency or union to take into account a person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information when making decisions about job referrals.

5. JOB ASSIGNMENTS & PROMOTIONS

It is illegal for an employer to make decisions about job assignments and promotions based on an employee's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. For example, an employer may not give preference to employees of a certain race when making shift assignments and may not segregate employees of a particular national origin from other employees or from customers.²¹

An employer may not base assignment and promotion decisions on stereotypes and assumptions about a person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

If an employer requires employees to take a test before making decisions about assignments or promotions, the test may not exclude people of a particular race, color, religion, sex (including pregnancy), or national origin, or individuals with disabilities, unless the employer can show that the test is necessary and related to the job. In addition, the employer may not use a test that excludes employees age 40 or older if the test is not based on a reasonable factor other than age.²²

6. PAY & BENEFITS

It is illegal for an employer to discriminate against an employee in the payment of wages or employee benefits on the bases of race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. Employee benefits include sick and vacation leave, insurance, access to overtime as well as overtime pay, and retirement programs. For example, an employer may not pay Hispanic workers less than African-American workers because of their national origin, and men and women in the same workplace must be given equal pay for equal work.²³

In some situations, an employer may be allowed to reduce some employee benefits for older workers, but only if the cost of providing the reduced benefits is the same as the cost of providing benefits to younger workers.

7. DISCIPLINE & DISCHARGE

An employer may not take into account a person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information when making decisions about discipline or discharge. For example, if two employees commit a similar offense, an employer may not discipline them differently because of their race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.²⁴

When deciding which employees will be laid off, an employer may not choose the oldest workers because of their age. Employers also may not discriminate when deciding which workers to recall after a layoff.

8. EMPLOYMENT REFERENCES

It is illegal for an employer to give a negative or false employment reference (or refuse to give a reference) because of a person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

9. REASONABLE ACCOMMODATION & DISABILITY

The law requires that an employer provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the employer. A reasonable accommodation is any change in the workplace (or in the ways things are usually done) to help a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits and privileges of employment. Reasonable accommodation might include, for example, providing a ramp for a wheelchair user or providing a reader or interpreter for a blind or deaf employee or applicant.²⁵

10. REASONABLE ACCOMMODATION & RELIGION

The law requires an employer to reasonably accommodate an employee's religious beliefs or practices, unless doing so would cause difficulty or expense for the employer. This means an employer may have to make reasonable adjustments at work that will allow the employee to practice his or her religion, such as allowing an employee to voluntarily swap shifts with a co-worker so that he or she can attend religious services.²⁶

11. TRAINING & APPRENTICESHIP PROGRAMS

It is illegal for a training or apprenticeship program to discriminate on the bases of race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. For example, an employer may not deny training opportunities to African-American employees because of their race.²⁷ In some situations, an employer may be allowed to set age limits for participation in an apprenticeship program.

12. HARASSMENT

It is illegal to harass an employee because of race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. It is also illegal to harass someone because they have complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

Harassment is unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.²⁸

Harassment can take the form of slurs, graffiti, offensive or derogatory comments, or other verbal or physical conduct.²⁹ Sexual harassment (including unwelcome sexual advances, requests for sexual favors, and other conduct of a sexual nature) is also unlawful. Although the law does not prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal if it is so frequent or severe that it creates a hostile or offensive

work environment or if it results in an adverse employment decision (such as the victim being fired or demoted).³⁰

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer. Harassment outside of the workplace may also be illegal if there is a link with the workplace. For example, if a supervisor harasses an employee while driving the employee to a meeting.³¹

The employer is automatically liable for harassment by a supervisor that results in a negative employment action such as termination, failure to promote or hire, and loss of wages.³² If the supervisor's harassment results in a hostile work environment, the employer can avoid liability only if it can prove that: 1) it reasonably tried to prevent and promptly correct the harassing behavior; and 2) the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer.³³

The employer will be liable for harassment by non-supervisory employees or non-employees over whom it has control (e.g., independent contractors or customers on the premises), if it knew, or should have known about the harassment and failed to take prompt and appropriate corrective action.³⁴ When investigating allegations of harassment, the EEOC looks at the entire record: including the nature of the conduct, and the context in which the alleged incidents occurred. A determination of whether harassment is severe or pervasive enough to be illegal is made on a case-by-case basis.

13. TERMS & CONDITIONS OF EMPLOYMENT

The law makes it illegal for an employer to make any employment decision because of a person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. That means an employer may not discriminate when it comes to such things as hiring, firing, promotions, and pay. It also means an employer may not discriminate, for example, when granting breaks, approving leave, assigning work stations, or setting any other term or condition of employment - however small.³⁵

14. PRE-EMPLOYMENT INQUIRIES

As a general rule, the information obtained and requested through the pre-employment process should be limited to those essential for determining if a person is qualified for the job; whereas, information regarding race, sex, national origin, age, and religion are irrelevant in such determinations. Employers are explicitly prohibited from making pre-employment inquiries about disability.³⁶

Although state and federal equal opportunity laws do not clearly forbid employers from making pre-employment inquiries that relate to, or disproportionately screen out members based on race, color, sex, national origin, religion, or age, such inquiries may be used as evidence of an employer's intent to discriminate unless the questions asked can be justified by some business purpose.³⁷ Therefore, inquiries about organizations, clubs, societies, and lodges of which an applicant may be a member or any other questions, which may indicate the applicant's race, sex, national origin, disability status, age, religion, color or ancestry if answered, should generally be avoided.³⁸ Similarly, employers should not ask for a photograph of an applicant. If needed for

identification purposes, a photograph may be obtained after an offer of employment is made and accepted.

Questions about an applicant's sex, (unless it is a bona fide occupational qualification (BFOQ) and is essential to a particular position or occupation), marital status, pregnancy, medical history of pregnancy, future child bearing plans, number and/or ages of children or dependents, provisions for child care, abortions, birth control, ability to reproduce, and name or address of spouse or children are generally viewed as non job-related and problematic under Title VII. Any pre-employment inquiry in connection with prospective employment expressing or implying limitations or special treatment because of sex (unless based upon BFOQ) or any inquiry made of members of one sex and not the other, is similarly troublesome.³⁹

If the employer requires all other applicants to undergo background checks before being offered a position, the employer may require members of religious or ethnic groups to undergo the same pre-employment investigations. Of course, as with its other employment practices, the employer may not subject only particular religious or ethnic groups, such as Muslims or Arabs, to heightened security checks.⁴⁰ Some employers, such as defense contractors, may require a security clearance for certain jobs pursuant to a federal statute or Executive Order.

Clearance determinations must generally be processed and made without regard to race, religion, or national origin. However, security clearance determinations for positions subject to national security requirements under a federal statute or an Executive Order are not generally subject to review under the equal employment opportunity statutes.⁴¹

15. DRESS CODE

In general, an employer may establish a dress code which applies to all employees or employees within certain job categories. However, there are a few possible exceptions. While an employer may require all workers to follow a uniform dress code even if the dress code conflicts with some workers' ethnic beliefs or practices, a dress code must not treat some employees less favorably because of their national origin. For example, a dress code that prohibits certain kinds of ethnic dress, such as traditional African or East Indian attire, but otherwise permits casual dress would treat some employees less favorably because of their national origin.⁴²

Moreover, if the dress code conflicts with an employee's religious practices and the employee requests an accommodation, the employer must modify the dress code or permit an exception to the dress code unless doing so would result in undue hardship.

Similarly, if an employee requests an accommodation to the dress code because of his disability, the employer must modify the dress code or permit an exception to the dress code, unless doing so would result in undue hardship.

16. CONSTRUCTIVE DISCHARGE/FORCED TO RESIGN

Discriminatory practices under the laws EEOC enforces also include constructive discharge or forcing an employee to resign by making the work environment so intolerable a reasonable person would not be able to stay.

IV. DO I HAVE A CLAIM THAT CAN BE FILED WITH THE EEOC?

If you believe that you have been discriminated against at work, you can file a "Charge of Discrimination" (discussed in detail below) with the EEOC to begin your claim. All of the laws enforced by EEOC, except for the Equal Pay Act, require you to file a Charge of Discrimination

before you can file a job discrimination lawsuit against your employer. In addition, an individual, organization, or agency may file a charge on behalf of another person in order to protect the aggrieved person's identity.⁴³

Not all employers are covered by the laws EEOC enforces, and not all employees are protected. This can vary depending on the type of employer, the number of employees it has, and the type of discrimination alleged. Also, there are strict time limits for filing a charge that you should be aware of. Because of this, we strongly urge you to read the following information to help determine your rights and what action you need to take.

A. OVERVIEW OF EEOC ENFORCEMENT PROCEDURES

Through its administrative enforcement process, the EEOC receives, investigates, and resolves charges of employment discrimination filed against private sector employers, employment agencies, labor unions, and state and local governments, including charges of systemic discrimination. Where the EEOC does not resolve these charges through conciliation or other informal methods, it may also engage in litigation against private sector employers, employment agencies and labor unions (and against state and local governments in cases alleging age discrimination or equal pay violations).⁴⁴

1. PRIVATE SECTOR EMPLOYEES

In FY 2009, the EEOC received 93,277 private sector charges of discrimination.⁴⁵ The EEOC also received 2,728 charges through net transfers from state and local Fair Employment Practices Agencies (FEPAs).⁴⁶ It achieved 85,980 resolutions, with a merit factor resolution rate of 20.3%. Through the EEOC's administrative enforcement activities, it also secured more than \$294.2

million in monetary benefits for employees.⁴⁷ Overall, the EEOC secured both monetary and non-monetary benefits for more than 17,491 people.⁴⁸

2. FEDERAL SECTOR EMPLOYEES

In its federal sector enforcement role, the EEOC is responsible for providing hearings and appeals after the initial processing of the complaints by each individual federal agency. Unlike its responsibilities in the private sector, the EEOC does not process complaints of discrimination for federal employees. In the federal sector, individuals file complaints with their own federal agencies and those agencies conduct a full and appropriate investigation of the claims raised in the complaints. Complainants can then request a hearing before an EEOC administrative judge. In FY 2009, the EEOC received a total of 7,277 requests for hearings.⁴⁹ Additionally, it resolved a total of 6,779 complaints and secured more than \$44.5 million in relief for parties in these complaints.⁵⁰ The EEOC also adjudicates appeals of federal agency actions on discrimination complaints and ensures agency compliance with decisions issued on those appeals. During FY 2009, the EEOC received 4,745 requests for appeals of final agency actions in the federal sector.⁵¹

3. MEDIATION

In FY 2009, the EEOC's National Mediation Program secured 8,498 resolutions for private sector employees, and obtained more than \$121.6 million in monetary benefits for complainants from mediation resolutions.⁵² Private sector employee confidence in the program is high, with FY

2009 figures reflecting that 96% of all participants would return to EEOC's Mediation Program in the future.⁵³

The EEOC uses Alternative Dispute Resolution (ADR) techniques to resolve workplace disputes throughout the federal government between federal sector employees and their employing agencies. Data submitted by federal agencies at the close of FY 2008, the most recent data available, indicate that there were 38,898 instances of pre-complaint EEO counseling across the federal government.⁵⁴ Of that number, the parties participated in ADR in 19,267 cases, or 49.5% of the time.⁵⁵

4. ONLINE ASSESSMENT SYSTEM

For your convenience, the EEOC has established an online assessment system, available on its website (<http://www.eeoc.gov/>) to help you decide if EEOC is the correct agency to assist you in your claim. You can then complete an Intake Questionnaire that you may print and either bring or mail to the appropriate EEOC field office (discussed in detail below) to begin the process of filing a charge. The Online Assessment System is located at the following address:

<https://egov.eeoc.gov/eas/> .

V. PRIVATE SECTOR EMPLOYMENT

In order to advance your claim, in the EEOC, of discrimination by a private sector employer, there are several preliminary requirements that must be met. These include actual proof of employment discrimination, qualifying for protected class status under the laws of the EEOC, proving that the EEOC has jurisdiction over your employer, and filing your claim within the statutory time limit and in the proper format.

A. WERE YOU DISCRIMINATED AGAINST BY YOUR EMPLOYER?

In order to prove a successful claim, you must present evidence to the EEOC that your employer discriminated against you on the basis of your status in a protected class. Below are examples of common discriminatory action suffered by individuals in protected classes, and the relevant federal law.

1. AGE

Age discrimination involves treating someone (an applicant or employee) less favorably because of his age. The Age Discrimination in Employment Act (ADEA) only forbids age discrimination against people who are age 40 or older.⁵⁶ It does not protect workers under the age of 40, although some states do have laws that protect younger workers from age discrimination.⁵⁷ It is not illegal for an employer or other covered entity to favor an older worker over a younger one, even if both workers are age 40 or older.⁵⁸ Discrimination can occur when the victim and the person who inflicted the discrimination are both over 40.⁵⁹

The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment. An employment policy or practice that applies to everyone, regardless of age, can be illegal if it has a negative impact on applicants or employees age 40 or older and is not based on a reasonable factor other than age.⁶⁰

2. DISABILITY

Disability discrimination occurs when an employer or other entity covered by the Americans with Disabilities Act or the Rehabilitation Act treats a qualified individual with a disability who

is an employee or applicant unfavorably because she has a disability.⁶¹ Not everyone with a medical condition is protected by the law.⁶² In order to be protected, a person must be qualified for the job and have a disability as defined by the law. A person can show that he or she has a disability in one of three ways:

- I. A person may be disabled if he or she has a physical or mental condition that substantially limits a major life activity (such as walking, talking, seeing, hearing, or learning).
- II. A person may be disabled if he or she has a history of a disability (such as cancer that is in remission).
- III. A person may be disabled if he is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he does not have such an impairment).⁶³

Disability discrimination also occurs when a covered employer or other entity treats an applicant or employee less favorably because she has a history of a disability (such as cancer that is controlled or in remission) or because she is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if she does not have such an impairment).⁶⁴

The law also requires an employer to provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the employer ("undue hardship").⁶⁵ The law also protects people from discrimination based on their relationship with a person with a disability (even if they do not themselves have a disability). For example, it is illegal to discriminate against an employee because her husband has a disability.⁶⁶

3. EQUAL PAY & COMPENSATION

The Equal Pay Act requires that men and women in the same workplace be given equal pay for equal work.⁶⁷ The jobs need not be identical, but they must be substantially equal. Job content (not job titles) determines whether jobs are substantially equal.⁶⁸ All forms of pay are covered by this law, including salary, overtime pay, bonuses, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and benefits. If there is an inequality in wages between men and women, employers may not reduce the wages of either sex to equalize their pay.⁶⁹ Title VII also makes it illegal to discriminate based on sex in pay and benefits.⁷⁰ Therefore, someone who has an Equal Pay Act claim may also have a claim under Title VII. An individual alleging a violation of the EPA may go directly to court and is not required to file an EEOC charge beforehand.⁷¹ The time limit for filing an EPA charge with the EEOC and the time limit for going to court are discussed below.

4. GENETIC INFORMATION

Under Title II of GINA, it is illegal to discriminate against employees or applicants because of genetic information.⁷² Genetic information includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about the manifestation of a disease or disorder in an individual's family members (i.e. family medical history).⁷³ Family medical history is included in the definition of genetic information because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future. Genetic information also includes an individual's request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the

individual or a family member of the individual, and the genetic information of a fetus carried by and individual or by a pregnant woman who is a family member of the individual and the genetic information of any embryo legally held by the individual or family member using an assisted reproductive technology.⁷⁴

The law forbids discrimination on the basis of genetic information when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, fringe benefits, or any other term or condition of employment. An employer may never use genetic information to make an employment decision because genetic information doesn't tell the employer anything about someone's current ability to work. It is also unlawful for a covered entity to disclose genetic information about applicants, employees or members. Covered entities must keep genetic information confidential and in a separate medical file.⁷⁵

5. NATIONAL ORIGIN

It is unlawful to harass a person because of his or her national origin.⁷⁶ Harassment can include, for example, offensive or derogatory remarks about a person's national origin, accent or ethnicity.⁷⁷ Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted). The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

National origin discrimination also can involve treating people unfavorably because they are married to (or associated with) a person of a certain national origin or because of their connection with an ethnic organization or group. Discrimination can occur when the victim and the person who inflicted the discrimination are the same national origin. Finally, the law prohibits employers from hiring only U.S. citizens or lawful permanent residents unless required to do so by law, regulation or government contract.⁷⁸

6. PREGNANCY

It is unlawful to harass a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.⁷⁹ The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, such as leave and health insurance, and any other term or condition of employment. If a woman is temporarily unable to perform her job due to a medical condition related to pregnancy or childbirth, the employer or other covered entity must treat her the same as any other temporarily disabled employee. For example, the employer may have to provide modified tasks, alternative assignments, disability leave or unpaid leave.⁸⁰

7. RACE/COLOR

It is unlawful to discriminate against a person because of that person's race or color.⁸¹ Race discrimination involves treating someone (an applicant or employee) unfavorably because he/she is of a certain race or because of personal characteristics associated with race (such as hair

texture, skin color, or certain facial features).⁸² Color discrimination involves treating someone unfavorably because of skin color complexion. Race/color discrimination also can involve treating someone unfavorably because the person is married to (or associated with) a person of a certain race or color or because of a person's connection with a race-based organization or group, or an organization or group that is generally associated with people of a certain color.

Discrimination can occur when the victim and the person who inflicted the discrimination are the same race or color. The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.⁸³

8. RELIGION

It is unlawful to discriminate against a person because of that person's religion.⁸⁴ The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs.⁸⁵ Religious discrimination can also involve treating someone differently because that person is married to (or associated with) an individual of a particular religion or because of his or her connection with a religious organization or group. It is also illegal to harass a person because of his or her religion.

The law requires an employer or other covered entity to reasonably accommodate an employee's religious beliefs or practices, unless doing so would cause more than a minimal burden on the operations of the employer's business.⁸⁶ This means an employer may be required to make reasonable adjustments to the work environment that will allow an employee to practice his or

her religion. Examples of some common religious accommodations include flexible scheduling, voluntary shift substitutions or swaps, job reassignments, and modifications to workplace policies or practices.⁸⁷

Unless it would be an undue hardship on the employer's operation of its business, an employer must reasonably accommodate an employee's religious beliefs or practices. This applies not only to schedule changes or leave for religious observances, but also to such things as dress or grooming practices that an employee has for religious reasons.⁸⁸ These might include, for example, wearing particular head coverings or other religious dress (such as a Jewish yarmulke or a Muslim headscarf), or wearing certain hairstyles or facial hair (such as Rastafarian dreadlocks or Sikh uncut hair and beard).⁸⁹ It also includes an employee's observance of a religious prohibition against wearing certain garments (such as pants or miniskirts).⁹⁰

When an employee or applicant needs a dress or grooming accommodation for religious reasons, he should notify the employer that he needs such an accommodation for religious reasons. If the employer reasonably needs more information, the employer and the employee should engage in an interactive process to discuss the request. If it would not pose an undue hardship, the employer must grant the accommodation.⁹¹

9. RETALIATION

All of the laws the EEOC enforces make it illegal to fire, demote, harass, or otherwise “retaliate” against people (applicants or employees) because they filed a charge of discrimination, because they complained to their employer or other covered entity about discrimination on the job, or because they participated in an employment discrimination proceeding (such as an investigation

or lawsuit).⁹² For example, it is illegal for an employer to refuse to promote an employee because she filed a charge of discrimination with the EEOC, even if EEOC later determined no discrimination occurred.⁹³

10. GENDER

It is unlawful to discriminate against someone because of that person's sex.⁹⁴ Sex discrimination also can involve treating someone less favorably because of his or her connection with an organization or group that is generally associated with people of a certain sex. An employment policy or practice that applies to everyone, regardless of sex, can be illegal if it has a negative impact on the employment of people of a certain sex and is not job-related or necessary to the operation of the business.⁹⁵

It is unlawful to harass a person because of that person's sex. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general.⁹⁶ Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.⁹⁷

Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).⁹⁸ The harasser can be the victim's supervisor, a supervisor in

another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.⁹⁹

11. SEXUAL HARASSMENT

Please see V(A)(10) above for information on sexual harassment.

B. ARE YOU PROTECTED BY THE EEOC?

You may bring a claim to the EEOC alleging discrimination by your employer if you fall into a protected class of individuals. This is called the “protected groups.”

1. PROTECTED GROUPS

You are protected by the EEOC’s anti-discrimination laws if you are an employee, a job applicant, a former employee, or an applicant or participant in a training or apprenticeship program.¹⁰⁰ American workers employed by U.S. companies overseas enjoy the same broad protections as workers in the U.S. That means protection under the anti-discrimination laws travels with the employee, so long as the employee is a U.S. citizen working for a U.S. company.¹⁰¹

2. UNPROTECTED GROUPS

Independent contractors are not covered by anti-discrimination laws of the EEOC.¹⁰² Please pay attention to this exception as figuring out whether you are employee of an agency or company or an independent contractor can be tricky.

C. IS YOUR EMPLOYER UNDER EEOC JURISDICTION?

Once you have figured out whether you fall in a protected group within the EEOC laws and if your employer has indeed discriminated against you in the workplace, you must assess whether

your employer is under the jurisdiction of the EEOC. This is done by following statutory guidelines.

1. CRITERIA IS NUMBER OF EMPLOYEES

An employer must have a certain number of employees to be covered by EEOC laws.¹⁰³ This number varies depending on the type of employer (for example, whether the employer is a private company, a state or local government agency, a federal agency, an employment agency, or a labor union) and the kind of discrimination alleged (for example, discrimination based on a person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information).

2. CATEGORIES OF EMPLOYERS

It is important to note that if your complaint involves Age Discrimination, the business is covered by EEOC laws only if it has 20 or more employees who worked for the company for at least twenty calendar weeks (in this year or last).¹⁰⁴ On the other hand, virtually all employers are covered by the Equal Pay Act (EPA), which makes it illegal to pay different wages to men and women if they perform substantially equal work in the same workplace.¹⁰⁵

i. BUSINESSES/PRIVATE EMPLOYERS

If you have a complaint against a business (or some other private employer) that involves race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information, the business is covered by the EEOC if it has 15 or more employees who worked for the employer for at least twenty calendar weeks (in this year or last).¹⁰⁶

ii. STATE OR LOCAL GOVERNMENTS

If you have a complaint against a state or local government agency that involves race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information, the agency is covered by the EEOC if it has 15 or more employees who worked for the agency for at least twenty calendar weeks (in this year or last).¹⁰⁷

iii. EMPLOYMENT AGENCIES

An employment agency, such as a temporary staffing agency or a recruitment company, is covered by the EEOC if the agency regularly refers employees to employers.¹⁰⁸ This is true even if the employment agency doesn't receive payment for this service, and the agency is covered no matter how many employees it has.¹⁰⁹

iv. LABOR UNIONS OR APPRENTICESHIP COMMITTEES

The laws prohibiting race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information discrimination apply to all labor organizations that either operate a hiring hall or have at least 15 members.¹¹⁰ The law also covers any joint labor-management committee controlling apprenticeship or other training or retraining programs, including an on-the-job training program.¹¹¹ It is unlawful for such a committee to discriminate against any individual because of his race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information, in admission to, or employment in, any program established to provide apprenticeship or other training.

3. MEASURING THE NUMBER OF EMPLOYEES

Usually, a worker can be counted as an "employee" if s/he has worked for the employer for at least twenty calendar weeks (in this year or last).¹¹² That means some part-time workers can be

covered as employees to show the employer is covered by EEOC laws. People who are not employed by the employer, such as independent contractors, are not covered.

In some cases, if the employer has more than one worksite, employees at each of the worksites can be counted together. For example, if an employer operates four different restaurants, it may be possible to count employees at all of the restaurants together.¹¹³

D. HOW LONG DO YOU HAVE TO FILE A CLAIM?

1. GENERAL OVERVIEW

The anti-discrimination laws give you a limited amount of time to file a charge of discrimination. In general, you need to file a charge within 180 calendar days from the day the discrimination took place.¹¹⁴ The 180 calendar day filing deadline is extended to 300 calendar days if a state or local agency enforces a law that prohibits employment discrimination on the same basis.¹¹⁵

2. VARIATION IN TIME LIMITS

i. AGE DISCRIMINATION CLAIMS

For 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 or authority enforcing that law.¹¹⁶ The deadline is not extended if only a local law prohibits age discrimination.

ii. ONGOING DISCRIMINATION

In harassment cases, you must file your charge within 180 or 300 days of the last incident of harassment, although the EEOC will look at all incidents of harassment when investigating your charge, even if the earlier incidents happened more than 180/300 days earlier.¹¹⁷

iii. MORE THAN ONE DISCRIMINATORY EVENT

Also, if more than one discriminatory event took place, the deadline usually applies to each event. For example, let's say you were demoted and then fired a year later. You believe the employer based its decision to demote and fire you on your race, and you file a charge the day after your discharge. In this case, only your claim of discriminatory discharge is timely. In other words, you must have filed a charge challenging the demotion within 180/300 days from the day you were demoted.¹¹⁸ If you didn't, the EEOC would only investigate your discharge. There is one exception to this general rule and that is if you are alleging ongoing harassment (see above).

iv. EQUAL PAY ACT

If you plan to file a charge alleging a violation of the Equal Pay Act (which prohibits sex discrimination in wages and benefits), different deadlines apply. Under the Equal Pay Act, you don't need to file a charge of discrimination with EEOC. Instead, you are allowed to go directly to court and file a lawsuit.¹¹⁹ The deadline for filing a charge or lawsuit under the EPA is two years from the day you received the last discriminatory paycheck (this is extended to three years in the case of willful discrimination).¹²⁰

E. WHAT IS THE PROCESS OF FILING YOUR CLAIM?

If you believe that you have been discriminated against at work because of your race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic

information, you can file a “Charge of Discrimination.”¹²¹ All of the laws enforced by EEOC, except for the Equal Pay Act, require you to file a Charge of Discrimination with us before you can file a job discrimination lawsuit against your employer. In addition, an individual, organization, or agency may file a charge on behalf of another person in order to protect the aggrieved person's identity.¹²²

1. FILING LOCATIONS

The EEOC carries out its work through the headquarters offices in Washington, D.C. and through 53 field offices serving every part of the nation. You should file your claim with your local office. Please consult <http://www.eeoc.gov/field/index.cfm> for a list of EEOC offices.

2. FILING METHODS

The EEOC does not accept claims submitted electronically. Therefore, please submit your claim in person at the local office or by mail.¹²³

3. REQUIRED DOCUMENTATION

Make sure to include the following information in your claim:

- ❖ Your name, address, and telephone number;
- ❖ The name, address and telephone number of the employer (or employment agency or union) you want to file your charge against;
- ❖ The number of employees employed there (if known);
- ❖ A short description of the events you believe were discriminatory (for example, you were fired, demoted, harassed);
- ❖ When the events took place;

- ❖ Why you believe you were discriminated against (for example, because of your race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information);
- ❖ Your signature.¹²⁴

4. DUAL-FILING WITH LOCAL FAIR EMPLOYMENT PRACTICES AGENCY (FEPA)

Many states, counties, cities, and towns have their own laws prohibiting discrimination, as well as agencies responsible for enforcing those laws, called "Fair Employment Practices Agencies" (FEPAs). Usually the laws enforced by these agencies are similar to those enforced by EEOC. In some cases, these agencies enforce laws that offer greater protection to workers, such as protection from discrimination because you are married or unmarried, have children or because of your sexual orientation. There also may be different deadlines for filing a charge, different standards for determining whether you are protected by these laws, and different types of relief available to victims of discrimination.

You can file your charge with either the EEOC or with a Fair Employment Practices Agency. When an individual initially files with a FEPA that has a worksharing agreement with the EEOC, and the allegation is covered by a law enforced by the EEOC, the FEPA will dual file the charge with EEOC (meaning EEOC will receive a copy of the charge), but will usually retain the charge for processing.¹²⁵ If the charge is initially filed with EEOC and the charge is also covered by state or local law, EEOC dual files the charge with the state or local FEPA (meaning the FEPA will receive a copy of the charge), but ordinarily retains the charge for processing.¹²⁶

To determine if there is a FEPA in your area, please see the information for your nearest EEOC field office, which lists the FEPAs in its jurisdictional area.

5. CONFIDENTIALITY OF INFORMATION

Information obtained from individuals who contact EEOC is confidential and will not be revealed to the employer until the individual files a charge of discrimination. Once a charge is filed, the individual's name and basic information about the allegations of discrimination will be disclosed to the employer.¹²⁷ By law, the EEOC is required to send a copy of the charge to the employer within 10 days of the filing date.¹²⁸ During the course of the investigation, information about the charging party and the respondent will be kept confidential by EEOC and will not be disclosed to the public by the EEOC. Please keep in mind that your claim will be revealed to your employer with information that identifies you as the claimant.

F. WHAT ARE THE REMEDIES YOU CAN SEEK IN YOUR CLAIM?

Whenever discrimination is found, the goal of the law is to put the victim of discrimination in the same position (or nearly the same) that he or she would have been if the discrimination had never occurred. When you file your claim, make sure you clearly state the remedies you think you are entitled to under the law. If you are not specific enough, there is a chance that the EEOC may not grant you the relief you are entitled to.

1. GENERAL DAMAGES

The types of relief will depend upon the discriminatory action and the effect it had on the victim. For example, if someone is not selected for a job or a promotion because of discrimination, the remedy may include placement in the job and/or back pay and benefits the person would have received.¹²⁹ The employer also will be required to stop any discriminatory practices and take steps to prevent discrimination in the future. A victim of discrimination also may be able to recover attorney's fees, expert witness fees, and court costs.¹³⁰

2. COMPENSATORY & PUNITIVE DAMAGES

Compensatory and punitive damages may be awarded in cases involving intentional discrimination based on a person's race, color, national origin, sex (including pregnancy), religion, disability, or genetic information.¹³¹ Compensatory damages pay victims for out-of-pocket expenses caused by the discrimination (such as costs associated with a job search or medical expenses) and compensate them for any emotional harm suffered (such as mental anguish, inconvenience, or loss of enjoyment of life). Punitive damages may be awarded to punish an employer who has committed an especially malicious or reckless act of discrimination.¹³²

There are limits on the amount of compensatory and punitive damages a person can recover. These limits vary depending on the size of the employer:

- ❖ For employers with 15-100 employees, the limit is \$50,000.
- ❖ For employers with 101-200 employees, the limit is \$100,000.
- ❖ For employers with 201-500 employees, the limit is \$200,000.
- ❖ For employers with more than 500 employees, the limit is \$300,000.¹³³

3. AGE OR GENDER DISCRIMINATION AND LIQUIDATED DAMAGES

In cases involving intentional age discrimination, or in cases involving intentional sex-based wage discrimination under the Equal Pay Act, victims cannot recover either compensatory or punitive damages, but may be entitled to "liquidated damages."¹³⁴ Liquidated damages may be awarded to punish an especially malicious or reckless act of discrimination. The amount of liquidated damages that may be awarded is equal to the amount of back pay awarded the victim.¹³⁵

G. WHAT CAN THE EEOC DO AFTER THE CLAIM IS FILED?

1. NOTICE TO EMPLOYER

Within 10 days of your claim filing, the EEOC will also send a notice and a copy of the charge to the employer.¹³⁶

2. MEDIATION

In some cases, the EEOC will ask both you and the employer to take part in a mediation program.¹³⁷ If you and the employer agree to mediation, a mediator will try to help you both reach a voluntary settlement. Mediation allows you and the employer to talk about your concerns. If the case is not sent to mediation, or if mediation doesn't resolve the problem, the EEOC will usually ask the employer to give a written answer to your charge.¹³⁸ The employer may also be asked to answer questions about the claims in your charge.

3. DISMISSAL PRIOR TO INVESTIGATION

If a charge appears to have little chance of success, or if it is something which is not in EEOC's jurisdiction (e.g., workers compensation), the EEOC may dismiss the charge without doing an investigation.¹³⁹ It also do not offer mediation in such cases.

4. INVESTIGATION

What kind of investigation the EEOC needs to undertake depends on the nature of your claim. In some cases, EEOC officials visit the employer to hold interviews and gather documents. In other cases, they interview witnesses over the phone and ask for documents by mail. After the investigation is over, the EEOC will let you and the employer know the result. How long the investigation takes depends on a lot of different things, including the amount of information that needs to be gathered and analyzed. On average, it takes nearly 6 months to investigate a charge.¹⁴⁰

5. ACTION AFTER INVESTIGATION

If the EEOC has not found a violation of the law, it will send you a "Notice-of-Right-to-Sue."¹⁴¹ This notice gives you permission to file a lawsuit in a court of law. If the EEOC finds a violation, it will try to reach a voluntary settlement with the employer.¹⁴² If no settlement is reached, your case will be referred to EEOC's legal staff (or the Department of Justice in certain cases), who will decide whether or not the agency should file a lawsuit.¹⁴³ If the EEOC decides not to file a lawsuit, it will give you a "Notice-of-Right-to-Sue" so that you may sue the employer.¹⁴⁴

H. WHAT CAN YOU DO WHILE WAITING FOR A RESULT?

1. CHECKING THE STATUS OF YOUR CLAIM

You can find out the specific status of your charge by calling the EEOC field office where your charge is filed.¹⁴⁵

2. AMENDING YOUR CLAIM

If new events take place after you file your charge that you believe are discriminatory, you can add these new events to your charge and have the EEOC investigate them.¹⁴⁶ This is called “amending” a charge. If new events are added to your charge or a new charge is filed, the EEOC will send a copy of the new or amended charge to the employer and investigate the new events along with the rest.¹⁴⁷ Keep in mind that the strict deadlines for filing a charge also apply when you want to amend a charge. The fact that you filed an earlier charge may not extend the deadline. For this reason, you should contact your investigator immediately if you think other discriminatory events have taken place.

3. UPDATING YOUR INFORMATION

You can update your contact information by calling the EEOC field office where your charge is filed.¹⁴⁸

4. REQUESTING A NOTICE OF RIGHT TO SUE

You may request a Notice of Right To Sue by contacting the EEOC office handling your charge.¹⁴⁹ You should submit the request in writing. This will allow you to file a lawsuit directly against your employer.

VI. FEDERAL SECTOR EMPLOYMENT

While the law governing EEOC's authority to protect federal employees from workplace discrimination is identical to its protections for private sector employees, some of the procedures are different in the two contexts. It is important to familiarize yourself with the different requirements for federal agency employees. These listed below.

B. WERE YOU DISCRIMINATED AGAINST BY YOUR FEDERAL EMPLOYER?

Same principles apply as for private sector employees, as listed in section V(A) above.

C. ARE YOU PROTECTED BY THE EEOC?

Same principles apply as for private sector employees, as listed in section V(A) above.

D. IS YOUR FEDERAL EMPLOYER UNDER EEOC JURISDICTION?

Pursuant to federal law, all federal agencies are under the EEOC's jurisdiction.¹⁵⁰

E. HOW LONG DO YOU HAVE TO FILE A CLAIM?

You must contact an EEOC Counselor at the agency that discriminated against you within 45 days of the discriminatory action.¹⁵¹ This starts the claims process.

F. WHAT IS THE PROCESS OF FILING YOUR CLAIM?

1. GENERAL OVERVIEW

If you are a federal employee or job applicant, the law protects you from discrimination because of your race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. The law also protects you from retaliation if you oppose employment discrimination, file a complaint of discrimination, or participate in the EEO complaint process (even if the complaint is not yours.).

2. CONTACTING AN EEOC COUNSELOR

The first step is to contact an EEO Counselor at the agency where you work or where you applied for a job. Generally, you must contact the EEO Counselor within 45 days from the day the discrimination occurred. In most cases the EEO Counselor will give you the choice of participating either in EEO counseling or in an alternative dispute resolution (ADR) program, such as a mediation program.¹⁵² If you do not settle the dispute during counseling or through ADR, you can file a formal discrimination complaint against the agency with the agency's EEO Office. You must file within 15 days from the day you receive notice from your EEO Counselor about how to file.¹⁵³

Usually, you must wait until the EEO Counselor has held a final interview with you before you can file a complaint. If, however, the counseling period ends and your EEO Counselor has not yet held the final interview, you have the right to file a formal complaint without having the interview.¹⁵⁴ When you submit your complaint, you should include a short letter telling the EEO Office that the EEO counseling period has ended (including any extensions), and you have not yet been given a final interview.

3. ALTERNATIVE DISPUTE RESOLUTION (ADR)

All federal agencies are required to have an alternative dispute resolution (ADR) program.¹⁵⁵

EEOC has certain requirements that all agencies must follow when developing ADR programs.

Most agencies use mediation in their ADR programs. Mediation is an informal meeting between the parties that is conducted by a neutral mediator. A mediator is trained to help people who have disagreements talk to each other. The mediator does not decide who is right or wrong or issue a decision. Instead, the mediator helps the parties work out their own solutions to their dispute. Rather than leaving the decision to a third party, such as an Administrative Judge, ADR gives you the opportunity to reach an agreement that works for both you and the agency.¹⁵⁶

F. HOW DO YOU FILE A FORMAL COMPLAINT?

1. TIME LIMITATIONS

If you decide to file a discrimination complaint, you must do so within 15 days from the day you received notice from your EEO Counselor about how to file a complaint.¹⁵⁷ This notice is sent to you after your final interview with the EEO Counselor. The 15-day deadline for filing a complaint is calculated in calendar days starting the day after you receive the notice.¹⁵⁸ If the 15th calendar day falls on a Saturday, Sunday, or federal holiday, then the last day of the deadline is the next business day.¹⁵⁹ The agency is required to give you a reasonable amount of time during work hours to prepare the complaint. If you feel that you have not been given a reasonable amount of time, contact the agency's EEO Director or EEOC's Office of Federal Operations.

2. REQUIRED DOCUMENTATION

Your discrimination complaint must contain the following:

- ❖ Your name, address, and telephone number;
- ❖ A short description of the events that you believe were discriminatory (for example, you were terminated, demoted, harassed);
- ❖ Why you believe you were discriminated against (for example, because of your race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, genetic information or retaliation);
- ❖ A short description of any injury you suffered; and
- ❖ Your signature (or your lawyer's signature).¹⁶⁰

3. FILING LOCATIONS

You must file your complaint at the same EEO Office where you received counseling.¹⁶¹

G. WHAT CAN THE AGENCY DO AFTER THE CLAIM IS FILED?

1. OVERVIEW

After your complaint is filed, the agency will send you a letter letting you know it received your complaint.¹⁶² The agency will also review the complaint and decide whether your case should be dismissed for a procedural reason (for example, your claim was filed too late).¹⁶³ If the agency doesn't dismiss your complaint, it will investigate it.

2. POSSIBLE DISMISSAL

If the agency does dismiss your complaint, you will receive information about how to appeal the dismissal. Should the agency dismiss your complaint without an investigation, you have 30 days

from the day you receive the agency's dismissal to appeal.¹⁶⁴ In some cases, an agency will dismiss only part of the complaint and continue processing the rest. In this situation, you must wait until the agency issues its final order on all the claims in your complaint before appealing the partial dismissal.¹⁶⁵

3. INVESTIGATION

The agency has 180 days from the day you filed your complaint to finish its investigation.¹⁶⁶

The investigation may be extended by another 180 days if new events are added to your complaint or if you file new complaints that must be added to your original complaint for investigation. You also have the right to agree to an extension of up to 90 days.¹⁶⁷ When the investigation is finished, the agency will give you two choices: either request a hearing before an EEOC Administrative Judge or ask the agency to issue a decision as to whether discrimination occurred.

If more than 180 days pass and the agency has not yet finished its investigation, you can wait for the agency to complete its investigation, ask for a hearing, or file a lawsuit in federal district court.¹⁶⁸ Once you ask for a hearing, the complaint will be handled by an EEOC Administrative Judge.

4. VOLUNTARY SETTLEMENT

At any time during the complaint process, the agency can offer to settle your complaint. You are not required to accept a settlement offer.¹⁶⁹ If you and the agency settle your complaint, it will be dismissed and no further action will be taken. Both you and the agency will be required to do what you promised to do in the agreement.

5. NON-COMPLIANCE WITH THE SETTLEMENT

If an agency does not comply in some way with the terms of your settlement agreement, notify the agency's EEO Director. You have 30 days from the day you first learned of the agency's failure to comply to give the EEO Director this notice.¹⁷⁰ The agency must respond to you in writing to try and settle the conflict. If the agency does not respond, or if you are not satisfied with the agency's response, you can appeal to EEOC's Office of Federal Operations for a decision about whether the agency has complied with the terms of the settlement agreement.¹⁷¹

You must file your appeal within 30 days from the day you receive the agency's response or, if the agency does not respond, after 35 days have passed from the day you notified the agency's EEO Director of the agency's failure to comply¹⁷². You must give the agency a copy of your appeal. The agency will then have 30 days to respond.¹⁷³

H. REQUESTING A HEARING FROM THE AGENCY

If you want to ask for a hearing, you must make your request in writing within 30 days from the day you receive the notice from the agency about your hearing rights.¹⁷⁴ If you request a hearing, an EEOC Administrative Judge will conduct the hearing, make a decision, and order relief if discrimination is found.

Once the agency receives the Administrative Judges decision, the agency will issue what is called a final order which will tell you whether the agency agrees with the Administrative Judge and if it will grant any relief the judge ordered. The agency will have 40 days to issue the final order. It will also contain information about your right to appeal to EEOC, your right to file a civil action in federal district court, and the deadline for filing both an appeal and a civil action.

1. TIME LIMITATIONS

If you want to ask for a hearing, you must make your request in writing within 30 days from the day you receive notice from the agency about your hearing rights.¹⁷⁵ The agency will send you this notice as soon as it has finished its investigation. If more than 180 days have passed since you filed your complaint and the agency still has not finished its investigation, you can ask for a hearing anytime.¹⁷⁶

2. FILING LOCATIONS

You should send your hearing request to the EEOC field office that has jurisdiction over your complaint.¹⁷⁷ The agency will tell you which EEOC office has jurisdiction when it sends you notice about your hearing rights or you can ask the agency's EEO Office to give you this information.¹⁷⁸ You must provide the agency's EEO Office with a copy of your hearing request.

3. PROCEDURE

The purpose of a hearing is to make a full and accurate record of the events you raised in your complaint. The EEOC Administrative Judge will then use this record to decide whether discrimination occurred. The Administrative Judge makes all decisions about how, when, and where the hearing will take place. Where the hearing is held will depend on where you live and where witnesses and records are located. Because the hearing is closed to the public, the Administrative Judge will only allow people who have knowledge of the events raised in your complaint to come to the hearing.¹⁷⁹

Both you and the agency will have the opportunity to offer evidence that the Administrative Judge will use to decide the case. Before the hearing, both you and the agency will be able to ask for information and documents.¹⁸⁰ If the Administrative Judge feels that evidence asked for by either party is not relevant, too difficult to provide, or has already been provided, he or she may deny the request or ask that the request be simplified. The Administrative Judge also may ask you or the agency to offer evidence that he or she feels is important to the case. This exchange of information before the hearing is to make sure the investigation of your complaint is complete.

At the hearing, you and other witnesses approved by the Administrative Judge will tell the Judge what happened.¹⁸¹ A court reporter will create a transcript of everything said at the hearing. You will be able to ask questions of the witnesses, and the Administrative Judge may also ask questions.¹⁸²

I. AGENCY DECISION (FINAL)

The agency will issue its own final decision once it has gathered the information and consulted the EEOC Counselor. If you ask the agency to issue a decision and no discrimination is found, or if you disagree with some part of the decision, you can appeal the decision to EEOC or challenge it in federal district court.¹⁸³

J. FILING AN APPEAL OF THE AGENCY'S FINAL ORDER

1. TIME LIMITATIONS

You have the right to appeal an agency's final order (including a final order dismissing your complaint) to EEOC's Office of Federal Operations.¹⁸⁴ You must file your appeal no later than 30 days after you receive the final order.¹⁸⁵ If you send your appeal by mail, the date postmarked by the U.S. Postal Service is the date used by the EEOC as the day your appeal was filed.¹⁸⁶

2. FILING LOCATIONS¹⁸⁷

You should mail your appeal or statement supporting or opposing an appeal to:

Equal Employment Opportunity Commission
Office of Federal Operations
P.O. Box 77960
Washington, D.C. 20013

If your appeal or statement is 10 pages or less, you can fax it to the Office of Federal Operations at (202) 663-7022.

You can also hand-deliver your appeal to:

Equal Employment Opportunity Commission
Office of Federal Operations
131 M Street, N.E.
Washington, D.C. 20507

You must give a copy of your appeal to the agency and certify how and when you delivered this copy to the agency.

3. PROCEDURE

You are not required to send a statement in support of (or opposition of) an appeal, but you can if you want to. If you do decide to send a statement, you must do so within 30 days of the day you

file your appeal or, if it is a statement opposing an appeal, within 30 days from the day you receive a statement in support of appeal from the other party to the case.¹⁸⁸ If you send your statement by mail, the date postmarked by the U.S. Postal Service is the date used as the day your statement was filed.¹⁸⁹

4. POSSIBLE OUTCOMES

EEOC lawyers review the entire file, including the agency's investigation, the decision of the Administrative Judge, the transcript of what was said at the hearing (if there was a hearing), and any appeal statements. If there was a hearing, the EEOC will usually assume that the facts decided by the Administrative Judge were correct, unless the record clearly shows that the Administrative Judge made a mistake.¹⁹⁰ The EEOC will decide the appeal by using the most current law.¹⁹¹ As a general rule, EEOC will not consider new evidence on appeal unless you can show that the evidence was not reasonably available when the decision was made.¹⁹²

In most cases, agencies must give you the relief awarded within the time frame ordered by EEOC in its decision on appeal.¹⁹³ If the agency fails to give relief within these time frames, you can either file a petition for enforcement with EEOC or file a lawsuit in court for enforcement of the award. If the agency fails to follow an EEOC appeal decision, you can send a petition for enforcement to:

Equal Employment Opportunity Commission
Office of Federal Operations
131 M Street, N.E.
Washington, D.C. 20507

There is one exception to this general rule. An agency does not have to provide the relief awarded by an Administrative Judge or EEOC on appeal while the agency's appeal of that award is being decided by EEOC.¹⁹⁴ In such cases, if the agency loses its appeal, the agency will generally have to pay you interest on any money you are entitled to as part of the award.¹⁹⁵

K. REQUEST FOR RECONSIDERATION OF THE APPEAL DECISION

If you do not agree with the EEOC's decision on your appeal, you can ask for a reconsideration of that decision. A request for reconsideration is only granted if you can show that the decision is based on a mistake about the facts of the case or the law applied to the facts.¹⁹⁶ The agency also has the right to request reconsideration.

You must ask for reconsideration no later than 30 days after you receive our decision on your appeal.¹⁹⁷ Send your request for reconsideration to:

Equal Employment Opportunity Commission
Office of Federal Operations
P.O. Box 77960
Washington, D.C. 20013

You should send with your request all supporting documents and any statement you would like to make in support of your request.¹⁹⁸ You must also give a copy of your request to the agency and include with your request proof that you have done this.¹⁹⁹ The agency will then have 20 days from the day it receives your request to send a statement opposing your request, and the agency is required to give you a copy of any statement they send.²⁰⁰

L. FILING A CIVIL LAWSUIT AGAINST THE EMPLOYER

Generally, the law requires that you first try to settle your discrimination complaint by going through the administrative complaint process before you file a lawsuit. In other words, you generally cannot go directly to court to sue an agency. Rather, you first need to try and resolve your complaint through the administrative complaint process set up by Congress.

There are two exceptions to this general rule.²⁰¹ If your complaint involves age discrimination, you can skip the administrative complaint process altogether and go directly to court (as long as you give EEOC at least 30 days written notice of your intent to go to court).²⁰² Also, if your claim involves gender-based pay discrimination and you wish to bring an action under the Equal Pay Act, you can skip the administrative complaint process and file a lawsuit anytime within two years of the day the discrimination occurred (three years if the discrimination is willful).²⁰³

Keep in mind, though, Title VII also makes it illegal to discriminate based on sex in the payment of wages and benefits. If you have an Equal Pay Act claim, there may be an advantage to also filing your claim under Title VII. Before you can pursue a Title VII claim in court, though, you must go through the administrative complaint process.²⁰⁴

For all other cases, you must go through the administrative complaint process before you can file a lawsuit. There are several different points during the process; however, when you will have the opportunity to quit the process and file a lawsuit in court, including:

- ❖ After 180 days have passed from the day you filed your complaint, if the agency has not issued a decision and no appeal has been filed;

- ❖ Within 90 days from the day you receive the agency's decision on your complaint, so long as no appeal has been filed;
- ❖ After the 180 days from the day you filed your appeal if the EEOC has not issued a decision; or
- ❖ Within 90 days from the day you receive the EEOC's decision on your appeal.²⁰⁵

If you file a lawsuit, the agency or EEOC will stop processing your complaint.

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