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Representing Yourself in the EEOC Process: A Guide for *Pro Se* Claimants

by the Washington Employment Lawyers Association

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Who is this Guide for?

This Guide is for people who want to file a complaint (or, a “Charge of Discrimination”) with the EEOC against their employer without help from an attorney. Representing yourself is sometimes called being “pro se” – in Latin, this means, “for oneself.”

What does this Guide cover?

The purpose of this Guide is to give you tips and pointers about how to present your case effectively to the EEOC – whether you have a complaint about discrimination, harassment, or retaliation. But you shouldn’t rely solely on this Guide. There are important deadlines and procedures the EEOC requires you to follow; make sure you read about them before you start. An overview of the process is available here: <http://www.eeoc.gov/employees/index.cfm>. You can also find out more by going to a local EEOC office.

Do I have to file an EEOC Charge to make a complaint about discrimination?

The EEOC is a federal government agency that enforces federal laws that prohibit unfair treatment based on race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability or genetic information; harassment; failure to provide reasonable accommodation for religious beliefs or disability; and retaliation for complaining about workplace discrimination. You can find more about the EEOC’s powers (jurisdiction) here: <https://www.eeoc.gov/employees/index.cfm>.

If you want to preserve claims protected by these federal laws, you must file a complaint (a “Charge of Discrimination”) with the EEOC before you can file a lawsuit in court. There are strict time limits for filing a Charge of Discrimination: 180 days from the date of discrimination in some states; and 300 days in other states, including the State of Washington.

State and local laws also protect against workplace discrimination. You do not need to file a complaint with the EEOC to preserve your rights under these other laws.

Should I hire an attorney?

You don't need a lawyer to file a complaint with the EEOC; however, understanding employment law and navigating the EEOC process can be complicated and time-consuming. Advice or representation by an attorney with experience in the area of employment discrimination can make a big difference. If you cannot find someone to represent you, consider hiring an attorney on a limited basis – even paying for just an hour of advice can get you started on the right foot. Depending on where you live, some free legal resources may be available, but those resources are often very limited. Consider checking with your state or county Bar Association for information about *pro bono* (free) services.

Note: if you do conduct internet legal research, make sure the source is trustworthy; the EEOC and other government-sponsored websites are a good start. Your local law library (e.g., at a law school or courthouse) is another place to research federal anti-discrimination laws.

I want to file a complaint with the EEOC, what should I do first?

Before you start filling out any EEOC paperwork, put together a timeline of events. A timeline will help keep you stay organized and, as time passes and your memory fades, it can help you keep track of important details and the basic sequence of events.

To make a timeline, start by gathering all of the documents (papers and electronic files) that might be relevant. Examples include: offer letters, employment manuals, emails, performance reviews, W-2s, paystubs, discipline notices. Put them all together in a folder or thumb drive so they are all in one place. While you're at it, turn off any "auto delete" functions on your phone or other electronic devices so you don't accidentally delete something.

Begin with your hire date, and then go through each major event that happened at work that is related to your complaint. For each event, write a short description of what happened; the date and location where it happened; and who said what. The documents you have gathered will help you piece this together and refresh your memory. Even if you don't know the precise date of an event or exactly who said what, narrow it down the best you can and include whatever detail you do remember. The best timeline is no more than a few pages long and sticks to just the facts.

Note: just because you don't have a document that "proves" an important fact, doesn't mean that it didn't happen; your own truthful testimony about an event is evidence enough.

How do I start the EEOC process?

After you put together a timeline and gather your documents, the next step in the process is to (a) submit an online "inquiry" with the EEOC and (b) schedule an appointment to speak with an EEOC Investigator. Both of these things can be done online via the EEOC's Public Portal:

<https://publicportal.eeoc.gov/Portal/Login.aspx>. If you do not have internet access, you can get the process started over the phone: 1-800-669-4000.

Note: Submitting an inquiry and meeting with an Investigator is just the first step in the EEOC process; no action will take place on your case until you have filed a formal “Charge of Discrimination.” Continue reading to learn about submitting a Charge. And remember that there are strict time limits for doing so. If you have fewer than 60 days left to submit a timely Charge, let the EEOC know so that they can help you through the intake process more quickly.

The EEOC investigates lots of types of discrimination; should I just check all the boxes that might apply to me?

When you submit your online inquiry with the EEOC, you will be asked to identify the basis of alleged discrimination or retaliation. Were you treated unfairly on account of your sex? Your race? Your national origin? It might be all three, but the fact that you fit into more than one category does not mean you should just check every box that describes you. What the EEOC seeks – and what you will later have to prove if you go to court – is which of these categories motivated your employer to take action against you. For example, let’s say you think your company fired you on account of your disability. As evidence, you show that your supervisor laid off four other people with disabilities besides you – one woman and three men, of different races and religions. In that case, you would identify “Disability” as the basis of discrimination. You would not check the box next to “Religion” or “Race” even if you happen to fall into protected classes in these other categories. In fact, in this example, checking more than one box may weaken your claim of disability discrimination and undermine your credibility because the examples that support your case include people from a variety of backgrounds.

Note: if you made a complaint to your employer about discrimination (whether for yourself or another employee) and then your company took action against you (e.g., demoted you or fired you) and you believe the two are connected, then check the box for “retaliation,” which is a separate form of unfair treatment.

How should I describe what happened to me?

In your initial inquiry to the EEOC, you will be asked to describe what happened. This is where your timeline will come in handy. In as few words as possible – no more than two paragraphs – summarize what happened, when, and who was responsible. List these events in chronological order, just like you did when you created your timeline.

You might be tempted to squeeze in lots of detail about everything that’s happened to you and how you feel about it, but remember: the EEOC Investigator assigned to your case has hundreds of other complaints to review. The shorter and simpler you can make your Inquiry,

the easier it will be for the EEOC staff to understand the nature of your case and help you get to the next stage of the process.

What witnesses should I list when I fill out my EEOC inquiry?

Typically, a witness is someone who saw or heard something that supports your claim of discrimination or retaliation. This could be someone who heard your supervisor use derogatory language or an HR manager who ignored a complaint of sexual harassment. A witness is not just someone who likes you or who would stand up for you or has heard rumors that support your case. A witness is someone with personal or first-hand knowledge about some fact or event.

In addition to people who saw or heard something at work, you might consider listing a witness (or two or three) who have knowledge about your work performance and history with the company. Often, in response to a Charge of Discrimination, employers will attack an employee's performance and suggest that whatever action the company took was motivated by the quality of the work, and not because of the person's sex, race, religion, etc. If you have a positive work history with the company, it is helpful to show that so you can demonstrate that the company's defense is just an excuse and not the real reason for its decision-making.

What do I do if the EEOC Investigator asks me for an interview?

After the EEOC receives your online inquiry, the EEOC Investigator assigned to your case will likely want to interview you; these interviews usually occur over the phone. It is important that you cooperate with the Investigator in setting up the interview and in answering his/her/their questions. Below are some tips to help you present your case to the Investigator:

- Tell the truth. If you are not truthful – even about something irrelevant to your case – it can hurt your credibility on everything else.
- Don't exaggerate. Avoid using words like "always" or "never" (as in, "I never took a day off from work."). Exaggerating hurts your case and makes it more likely that the Investigator will not believe you. If you accidentally overstate something during your interview, stop and correct yourself.
- Be yourself and use your own words. You don't need to sound like a lawyer to tell the Investigator what happened and why you think it was unfair.
- Keep it simple and stick to the main points. The Investigator may only have a short amount of time to ask you questions so you want to focus on events that are central to your claim of discrimination.
- Be polite. Keep your tone professional and do not argue with the Investigator. You genuinely want the Investigator to understand what happened to you. If you disagree with something the Investigator says, you should politely point out why and then move on.

- Present the facts of your case in chronological order. Just like with any good story, people follow along better if you start at the beginning and work forward. Have your timeline in front of you to help stay organized.

Do I have to sign the Charge as is?

After interviewing you, the Investigator may draft a Charge of Discrimination for you to review, if you have not already filed one yourself. Carefully review what the Investigator wrote to ensure the facts are correctly stated. Politely explain to the Investigator if any part of the Charge is inaccurate or incomplete and offer ways to correct it.

Sign the Charge drafted by the Investigator after you are satisfied that the facts are stated accurately. Keep in mind the Investigator may have a good reason for leaving out some details. A summary of facts is okay, but critical events should be described in enough detail to understand your claim of discrimination or retaliation.

Once your Charge has been filed, the EEOC will notify your employer about it within 10 days. The notice will reveal your name and the basis of your complaint.

My employer filed a response to my Charge and I disagree with it, what do I do now?

In response to your Charge, the EEOC will invite your employer to tell its side of the story. It can take two months, or sometimes longer, after your Charge is filed before your employer responds to the EEOC. You are entitled to a copy of the response and the EEOC will notify you via email when the statement is available for you to review.

Review the employer's statement carefully and identify anything that you think is untrue or misleading. Also take note of what is missing from the employer's account of events. For example, if you said "x happened" in your Charge of Discrimination and the company doesn't mention "x," you should point out in your written response or rebuttal that the company didn't dispute that it happened.

You have the opportunity to file a "rebuttal" to the employer's statement. If you don't, you should assume the EEOC Investigator will have the impression you have nothing to add or that you agree with the employer's version of events.

A good rebuttal is short and to the point. You should identify statements made by the employer that are untrue or overstated by using facts of your own. You don't need to attack every statement made by the employer; identify the most important points that need to be corrected.

What is mediation and should I agree to it?

Before the EEOC receives your employer's response to your Charge, it may offer mediation.

Mediation is a process where the “parties” (you and your employer) try to resolve your differences through back-and-forth negotiations. To assist, the EEOC assigns a professional mediator (a neutral). The mediator does not decide who is right and who is wrong; and the mediator does not give out legal advice. Instead, the mediator’s job is to relay messages between you and your employer to facilitate a settlement.

A typical mediation lasts one day and occurs at an EEOC office. You will meet face to face with the mediator; but you do not have to meet the employer’s representative if you don’t want to. You can go through mediation without a lawyer, but the employer is free to bring its own attorney even if you do not have one.

When the EEOC offers mediation, it does not mean the EEOC believes you should “win” or that your employer has done something illegal. Likewise, your employer’s agreement to attend mediation does not mean the company admits to any wrongdoing.

Typically, a settlement involves your employer paying some amount of money to you in exchange for you dismissing your Charge of Discrimination and agreeing not to sue your employer. The decision whether to settle your claims is entirely up to you. If you reach a settlement at the mediation, your employer will want you to sign a settlement agreement – a binding contract. Read it carefully and consider hiring an attorney to review the fine print.

There are pros and cons to settlement through the EEOC process. A settlement gives you certainty and control over the outcome of your case; a lawsuit does not. In settlement negotiations, you participate directly in achieving a resolution; going to court means a judge or jury will decide the case for you. In settlement negotiations, you can ask for remedies that a court cannot order, like a positive letter of reference or an agreement that your employer won’t disparage you to others. A settlement also saves you the time, expense, and stress of a lawsuit. On the other hand, negotiating a settlement requires compromise; you will be asked to consider your employer’s perspective, even if you strongly disagree with the position the company is taking. And settling your claims means you will be giving up your right to file a lawsuit, even if you later discover evidence that would have helped you prove your case in court.

What are the possible outcomes of the EEOC Investigation?

It can take a long time for the EEOC to finish its investigation, sometimes a year or more. At the end of the investigation, the EEOC will send you a letter that includes its determination on the merits of your Charge of Discrimination.

Most of the time, the EEOC will issue a “Dismissal and Notice of Rights” letter. A “dismissal” does not mean that your Charge has no merit or that you will lose if you decide to file a lawsuit; it just means the Investigator did not find enough support to conclude that you were treated

illegally. Remember, EEOC Investigators often lack the resources or time to look into every possible issue or fact of the many cases they investigate. When you get the Dismissal letter, you have only 90 days to file a lawsuit based on claims under federal laws.

If the EEOC finds that your Charge has merit, the EEOC will start a confidential “conciliation” process that is similar to mediation (described above). During conciliation, the EEOC Investigator will try and negotiate a settlement between you and your employer. The decision to accept a settlement is entirely up to you. A settlement could include your employer paying you money, mandatory workplace training, or other terms. If the EEOC is unable to settle the case, the EEOC will decide if it wants to file a lawsuit on your behalf. If it decides not to represent you, you will have the option of suing your employer on your own.

Disclaimer:

This guide is not legal advice; and it's not a substitute for legal advice. It is general in nature and not specific to any particular client's situation.

The Washington Employment Lawyers Association (“WELA”) is a chapter of the National Employment Lawyers Association. WELA is comprised of more than 200 attorneys who practice law in the State of Washington. WELA advocates in favor of employee rights in recognition that employment with fairness and dignity is fundamental to the quality of life. WELA’s website contains a directory of its members who represent employees in a variety of workplace issues: <https://welalaw.org/>