

CHECKLIST | RESPONDING TO AN EEOC CHARGE OF DISCRIMINATION

Presented by Employco USA, Inc.

The U.S. Equal Employment Opportunity Commission (EEOC) is a federal agency responsible for enforcing federal employment discrimination laws. It has the authority to investigate and resolve discrimination complaints filed by individuals against employers covered by the laws it enforces. Responding to an EEOC charge of discrimination can be complex and time-consuming, requiring employers to expend valuable resources even when they haven’t violated the law. Given the challenges and risks involved, it’s vital that employers understand how to respond to an EEOC charge effectively.

Employers can use this checklist as a guide to respond to an EEOC charge of discrimination. By understanding how to navigate the EEOC investigation process and respond to an EEOC charge of discrimination, they can develop effective strategies and practices to cooperate with an investigation and even prevent workplace discrimination from occurring in the first place. However, employers are encouraged to consult with local legal counsel to address specific issues and concerns due to the potential legal risks involved in an EEOC investigation.

Receiving a Charge of Discrimination	Completed
<p>Review the Notice of Charge of Discrimination and charge of discrimination carefully and note any relevant deadlines.</p> <p>The Notice of Charge of Discrimination informs an employer that a complaint (“charge of discrimination”) has been filed against them. A charge is a complaint of discrimination, not a determination that discrimination has occurred.</p>	<input type="checkbox"/>
<p>Check that the charge of discrimination is timely.</p> <p>There are strict time limits for filing a charge of discrimination with the EEOC. Individuals have 180 days from the date of the alleged discriminatory act to file a charge with the agency unless their claims are also covered by state or local discrimination laws. In instances where an individual’s claims are also covered by state and local discrimination laws, the individual has 300 days to file a charge of discrimination with the EEOC.</p>	<input type="checkbox"/>
<p>Determine whether the laws the EEOC enforces apply to the charge of discrimination.</p> <p>The EEOC is responsible for enforcing the following federal discrimination laws:</p> <ul style="list-style-type: none"> • Title VII of the Civil Rights Act of 1964 • Title I of the Americans with Disabilities Act of 1990 • The Equal Pay Act of 1963 • The Age Discrimination in Employment Act of 1967 • The Pregnancy Discrimination Act of 1978 • The Genetic Information Nondiscrimination Act of 2008 • Sections 501 and 505 of the Rehabilitation Act of 1973 • Sections 102 and 103 of the Civil Rights Act of 1991 • The Pregnant Workers Fairness Act of 2022 	<input type="checkbox"/>

This checklist is merely a guideline. It is neither meant to be exhaustive nor meant to be construed as legal advice. It does not address all potential compliance issues with federal, provincial or local standards. Consult your licensed representative at Employco USA, Inc. or legal counsel to address possible compliance requirements. © 2024 Zywave, Inc. All rights reserved.

Become familiar with the EEOC complaint and investigation process.	<input type="checkbox"/>
Consider consulting with experienced legal counsel to understand the implications of the complaint and develop an appropriate response strategy. Employers are not required to hire a lawyer to help draft a position statement or otherwise respond to a charge of discrimination. However, at any point in the EEOC charge process, employers may hire legal counsel if they would like.	<input type="checkbox"/>
Follow the directions on the Notice of Charge of Discrimination. For example, the notice may ask an employer to respond to the charge of discrimination (called a position statement).	<input type="checkbox"/>
Preserve all relevant documents. This may require an organization to suspend any routine practices that would destroy records, such as emails, voicemails and internet usage records.	<input type="checkbox"/>
Promptly inform the organization’s insurer about the charge of discrimination.	<input type="checkbox"/>
Protect against retaliation claims by reminding managers, supervisors and any other involved party about the organization’s antiretaliation policy.	<input type="checkbox"/>
Maintain confidentiality, such as information about the charge of discrimination, especially if the complainant is still employed.	<input type="checkbox"/>
Contact the EEOC investigator regarding any questions about the Notice of Charge of Discrimination or the investigation process.	<input type="checkbox"/>

Employers must take prompt and strategic action to navigate the complexity of an EEOC investigation successfully. They should consider the following when preparing for an EEOC investigation:

Preparing for an EEOC Investigation	Completed
Conduct an internal investigation to understand the facts and circumstances surrounding the charge of discrimination and gauge the organization’s potential exposure. This may include: <ul style="list-style-type: none"> • Interviewing all relevant witnesses • Interviewing supervisors, managers and HR staff • Gathering any relevant documents • Reviewing relevant policies, procedures and signed acknowledgment forms or employment agreements 	<input type="checkbox"/>
Collect any internal grievances, complaints and information about other investigations involving the complainant.	<input type="checkbox"/>

<p>Prepare and submit a position statement.</p> <p>A position statement should focus on facts and information relevant to the charge of discrimination. It should also identify specific documents and evidence that support an employer’s position. According to the EEOC, a position statement should include the following:</p> <ul style="list-style-type: none"> • A list of each alleged discriminatory act and the organization’s position or response • A description of the organization, including the legal name, address and telephone number • Any practices, policies or procedures that apply to the allegations in the charge • The identities of any individuals apart from the charging party who have been impacted by the applicable practices, policies or procedures • An explanation of why any individuals who were in a similar situation as the charging party were not similarly affected • Specific dates, locations and actions relating to the charge of discrimination • A summary of internal investigations • An explanation of whether the case is or has been resolved and the proposal for resolution 	<input type="checkbox"/>
<p>If the position contains confidential information, separate the confidential information into separately marked attachments. The following are examples of confidential information:</p> <ul style="list-style-type: none"> • Sensitive medical information • Social Security numbers • Trade secrets • Nonrelevant personally identifiable information of witnesses and other third parties • References to other charges filed against the employer by other charging parties 	<input type="checkbox"/>
<p>Verify the information in the position statement is accurate.</p>	<input type="checkbox"/>
<p>Respond promptly to all requests for additional information from the EEOC.</p> <p>An EEOC investigator may request documents, interviews, a conference or an on-site inspection as part of the investigation. This request is known as a Request for Information (RFI). If an employer fails to respond to an RFI, the EEOC can subpoena it. Responding promptly, accurately and thoroughly from the start of the investigation can help set the tone for the entire investigation and make a difference in the outcome.</p>	<input type="checkbox"/>
<p>Regularly review the status of the EEOC investigation for any changes, including any amendments to the charge of discrimination.</p>	<input type="checkbox"/>
<p>Consider participating in an EEOC mediation to resolve the charge of discrimination quickly and confidentially.</p>	<input type="checkbox"/>

Following an investigation, the EEOC will decide on the validity of the charging party’s complaint. During this phase, employers can evaluate their available options and determine appropriate next steps. The following may help ensure the necessary actions are taken after an investigation:

Taking Action Following an EEOC Investigation	Completed
Consider any invitation to engage in conciliation. If the EEOC determines there is reasonable cause to believe discrimination has occurred, the agency may invite the parties to resolve the charge through an informal process known as conciliation.	<input type="checkbox"/>
Determine whether the EEOC has issued the charging party with a notice of right to sue.	<input type="checkbox"/>
Establish whether the case has been referred to EEOC legal staff, indicating the agency intends to use its authority to enforce statute violations in court.	<input type="checkbox"/>
Consider a voluntary settlement with the charging party to resolve the charge of discrimination.	<input type="checkbox"/>
Take steps to help ensure future EEOC investigations are avoided.	<input type="checkbox"/>

Use this checklist to respond to an EEOC charge of discrimination more effectively. For more workplace resources, contact Employco USA, Inc. today.