A top-down view of a desk with a laptop, glasses, and a pen. The laptop is on the left, the glasses are at the top right, and the pen is on the right side. The background is a light, neutral color.

Work**Smarts** Half-Day Seminar

# Responding to Charges of Discrimination before the EEOC and State Agencies

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Choose Your own  
Adventure:

Your Choices  
Matter

# Ground Rules

## When does the EEOC get involved?

- Title VII
- Americans with Disabilities Act
- Age Discrimination Act (can file lawsuit in court after 60 days)
- Genetic Information Nondiscrimination Act
- Equal Pay Act (does not require exhaustion of administrative remedies)

## State and Local Agencies

- Referred to as Fair Employment Practices Agencies (FEPAs)
- Many of the state and local agencies have worksharing agreements with the EEOC (around 90 nationwide)
  - meaning they dual file with one another
- If the state or local agency has a contract with the EEOC, a Charging Party may request that the EEOC review the determination of the FEPA within 15 days.



## STOP ONE: CHARGE FILED

- Notification within 10 days of the charge being filed
- Notification will include information regarding access to the EEOC Portal
- Charge ≠ Finding
- Check for Employment Practices Liability Insurance (EPLI)



## STOP TWO: ASSESS CHARGE

- Check timeliness
- Conduct initial discussion regarding allegations
- If current employee:
  - Analyze any potential interim action
  - Advise manager/supervisor on how to engage with employee



## NEXT STOP:

- Prepare and distribute legal hold notices
- Conduct further review of allegations as needed
- Document review
  - If employee charge:
    - Personnel file
    - Employment history
    - Internal complaint files
    - Personnel file of accused/witnesses
    - Employer policies



 **STOP FOUR:**  
**Mediation Decision**





## EARLY MEDIATION:



- Mediation is a voluntary resolution
- Charges ineligible for mediation:
  - Class and systemic charges
  - Charges filed under the Genetic Information Non-Discrimination Act
  - Charges filed solely under the Equal Pay Act
- Benefits of mediation
- Prepare for and conduct mediation
- If mediation resolves, prepare settlement agreement and require withdrawal of the charge.
- If mediation does not resolve, back to the map.





## NO EARLY MEDIATION:

- Prepare and submit position statement and interrogatory responses
- Generally have 30 days to do so
- Position statement:
  - Focus on facts relevant to charge
  - Identify specific documents in support of position



## NEXT INTERSECTION:

**EEOC ASKS FOR  
MORE INFORMATION**

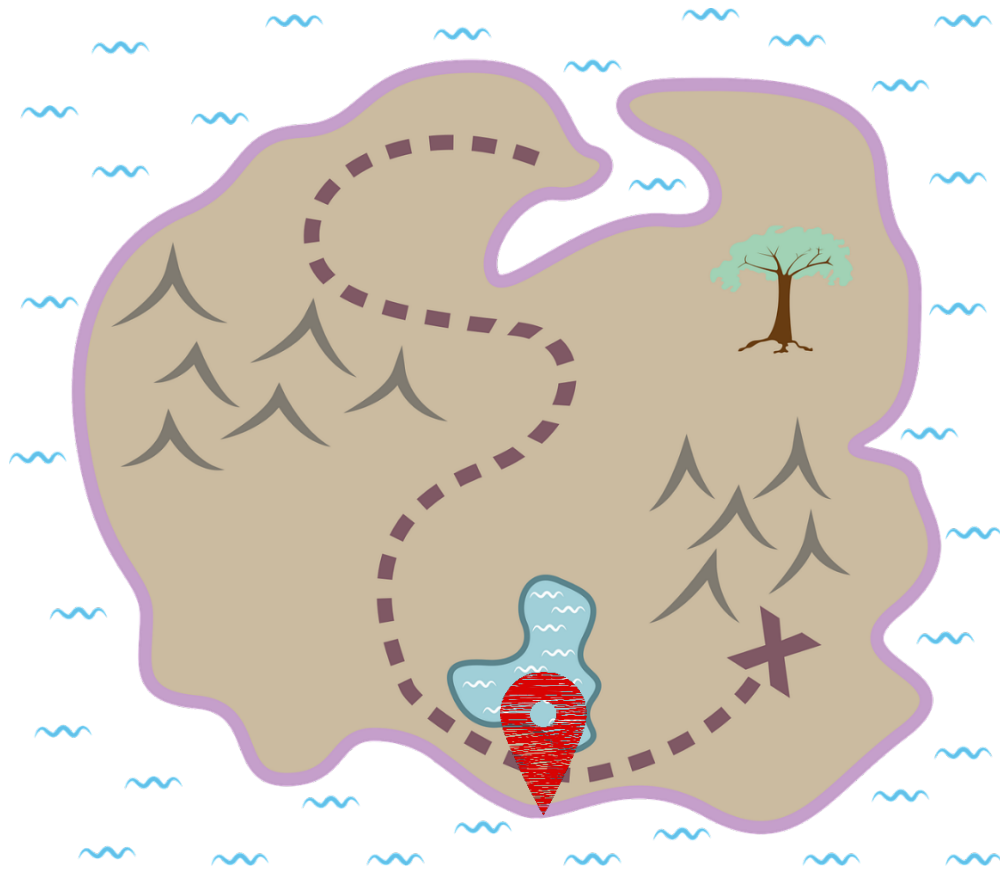
**EEOC Makes a  
Determination**



## EEOC ASKS FOR ADDITIONAL INFORMATION:

- EEOC may ask for additional documents, information, or interviews
- EEOC asks for employee interviews
  - This is permitted and employer must provide contact information
  - Prepare employees for concept of the interview
  - Do not coach employees on substance of interview
  - Company representative may be present during management interviews
  - If non-management, employee can ask for a company representative to be present but not required.
- EEOC asks for on-site visit
  - Required to allow if requested
  - Prepare company representatives for this





## NEXT STOP: EEOC Determination

**EEOC Dismissal and  
Notice of Rights**

**EEOC Letter of  
Determination**



## EEOC Issues Dismissal and Notice of Rights:

- If the EEOC cannot conclude that there is reasonable cause to believe that discrimination occurred, the charging party will be issued dismissal and notice of rights.
- EEOC notifies the charging party that they have 90 days to file suit in federal court.
- Employee can request a Notice of Rights prior to completion of investigation.







## EEOC Letter of Determination:



- If the EEOC concludes that there is reasonable cause to believe discrimination occurred, both parties will be issued a Letter of Determination.
- Invites the parties to participate in conciliation.



## EEOC Conciliation:

- Conciliation is the process by which the EEOC settles a charge for discrimination when it finds reasonable cause to believe a violation has occurred.
- If conciliation unsuccessful, EEOC may bring suit (not as common) *or* issue a Notice of Right to Sue.
- EEOC conciliation agreements often:
  - Require payment of monetary settlement and provide training
  - Allow the EEOC to oversee compliance with conciliation agreement





## Conclusion of Process Summary:

- EEOC issues Notice of Right to Sue to employee
  - Can be issued prior to conclusion of investigation at request of employee
  - Can be issued when no violation find
  - Can be issued when EEOC finds that a violation occurred but decides not to bring suit
  - Notice of right to sue required for most actions (other than age discrimination and equal pay)
- EEOC brings suit (124 in 2021)





# WorkSmarts

Top Tips

## Employers, Come on Down: Responding to Charges of Discrimination Before the EEOC and State Agencies

- Involve employment counsel upon receipt of the Charge
- Report the Charge to EPLI (if applicable)
- Prepare and distribute legal hold notices at the Charge stage
- Draft a clear, concise, and consistent position statement
- Evaluate the benefits of early mediation
- Create a strategy around on-site EEOC visits
- Cooperate with investigators to the extent possible
- Seek employment counsel's advice prior to the conciliation process to understand the potential impacts

# Thank You



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