



Understanding the EEOC/OCRC  
Administrative Charge Process

Presented by:  
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## EEOC – The Basics

- Independent Federal Agency created by Congress in 1964 to enforce Title VII.
- Responsible for enforcing federal laws that make it illegal to discriminate.
  - Age; Disability; Equal Pay; Genetic Information; Harassment; National Origin; Pregnancy; Race; Color; Religion; Retaliation; Sex; Sexual Harassment.
- Bipartisan Commission comprise of 5 presidentially appointed Commissioners and General Counsel.




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## EEOC – District offices

15 Districts



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## OCRC- The Basics

- Established by Ohio Civil Rights Act of 1959 as the Ohio's Fair Employment Practice Commission.
- 1961 Agency Changed name to OCRC.
- Responsible for education and enforcement Ohio's Anti-discrimination Laws.
- Five Commissioners appointed by the Governor.




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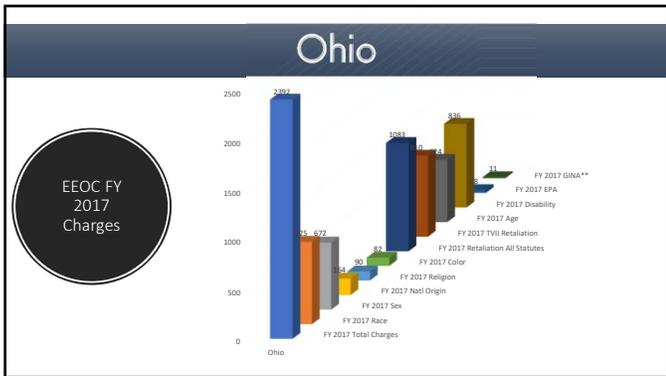
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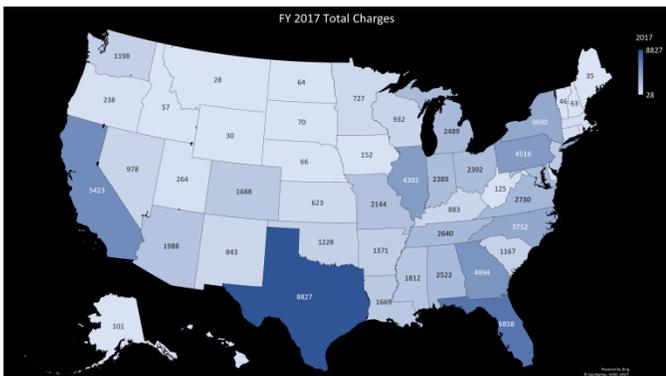
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EEOC's  
2017-2021  
Strategic  
Enforcement  
Plan

Eliminating	Protecting	Addressing	Ensuring	Preserving	Preventing
Eliminating Barriers in Recruitment and Hiring	Protecting Vulnerable Workers, Including Immigrant and Migrant Workers, and Underserved Communities from Discrimination	Addressing Selected Emerging and Developing Issues i.e. ADAAA, Sexual Orientation, Transgender	Ensuring Equal Pay Protections for all Workers	Preserving Access to the Legal System	Preventing Systemic Harassment

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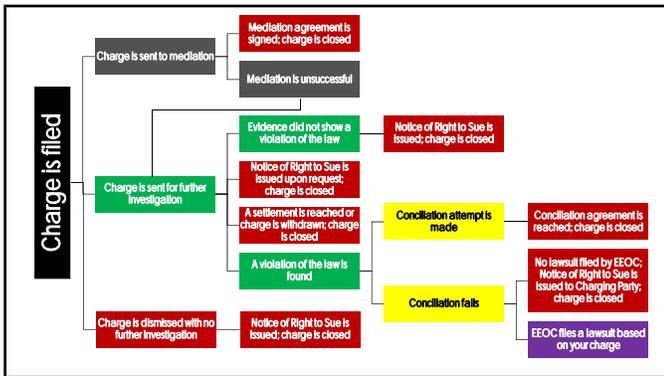
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Charge is filed

- Charge does not constitute a finding that your organization engaged in discrimination.
- EEOC will notify the organization within **10 days** of Charge being filed.
- Log into the EEOC's Respondent Portal and download the Charge.
- Understand the action required.
- Request an extension when necessary.
- Take note of the investigator assigned to the Charge.

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## Step 1: Investigate the allegation(s)



**Understand the allegations**



**Gather all documents (even if not requested)**

Charging Party's Personnel file, including: performance evaluation, attendance records, medical slips, pay information, signed handbook acknowledgement, etc.  
Witness Statements  
Documents from similarly situated employees  
Handbooks and employment policies



**Talk to the individuals who were involved or have information**

Charging Party's supervisor  
HR  
People named in the Charge  
Co-workers or those similarly situated

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## Step 2: Create an Action Plan



**Roundtable with HR, legal, and upper management**

Review the facts and law(s)  
Risk assessment



**Determine a response that best suits your organization needs**

Mediation v. Investigation

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## Overview of a Position Statement

- BE CLEAR, CONCISE, THOROUGH, AND RESPONSIVE
- A well drafted position statement can help the EEOC accelerate their investigation and limit requests for additional info
- First impressions matter
- Take this seriously and respond no matter how frivolous you think it is
- Be cognitive of your tone & the audience
- Include specific and factual response to every allegation of the Charge
- Provide documentary evidence to support your position
- Avoid legal arguments - just lay out the facts
- Be punctual



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## Drafting an effective Position Statement

Make it easy for the investigator to read & follow

**Introduction:**  
Organization's receipt and understanding of the Charge and short explanation

**Background**  
information about the Organization

**Charging Party's Employment History**  
Background information (job duties, department, hours, etc.)  
Performance issues, attendance issues, trainings attended, etc.

**Investigation**  
Lay out the investigation and all of the facts learned

**Decision**  
Decision to terminate/ employment action

**Conclusion**

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## Investigative Process- Request for Documents

  
 EEOC may request specific documents

  
 If request is overbroad, work with the Investigator to see if it can be narrowed down

  
 Don't ignore request

  
 EEOC has Subpoena Power under 29 C.F.R. § 1601.16.  
*McLane v. EEOC*

  
 EEOC can compel the attendance and testimony of witnesses, the production of documents, or the examination of other evidence

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## Objecting to an EEOC Subpoena

29 C.F.R. § 1601.16(b)(1)



Organization must object within 5-business-days from being served with a subpoena.  
Failure to timely object results in waiver



Must separately identify each portion of the subpoena with which the employer intends to not comply and state the reason why.



The EEOC must make its determination within 8-calendar-days or as soon as practicable.

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## Investigative Process – Interviews



EEOC may conduct interviews in person or through the phone.



Be aware of what information your employee's know and what they will say



Have an attorney present for interviews of upper management

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Prepare each employee for an interview

- Be truthful
- Answer the question asked
- Don't guess or predict
- If you do not understand the question, ask for it to be repeated
- It is okay to not remember
- Don't over coach employee's testimony
- Review policies and procedure
- EEOC may interview line-level employees without attorneys present

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## Investigatory Process- On-site investigation

Along with interviews, the EEOC may examine your workplace	Indicates a heightened interest in the Charge	Typically last around a day	Work with the investigator to schedule the onsite visit consistent with your organization needs
Clarify with the EEOC what information, documents, witnesses, and workspaces they would like to examine beforehand	Review the Charge, your response, supporting documents and all other employment practices beforehand	Have an action plan for the onsite investigation	Afterwards provide follow-up communication to the EEOC investigator that highlights the main points the organization wanted to make at the visit, plus any additional documentation.

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### Alternative Outcomes

- Charge is withdrawn
- Charge is settled
- Charging Party request a Notice of Right to Sue from the EEOC office investigating the Charge
  - If more than 180 days into an investigation Charging Party has right to Letter
  - If less than 180 days, Charging Party will only get Letter if EEOC is unable to investigate the Charge within 180 days.

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## Letter of Determination – No Probable Cause

EEOC concludes that the information obtained in the investigation **does not** establish a violation of the law

- Dismissal and Notice of Rights Letter
- Charging Party has **90-days** from receipt of the letter to file suit (Title VII) or **2-years (3 for willful)** equal pay violations
- If Charge Dual filed with OCRC, Charging Party has **15-days** to file review from EEOC
- Charges filed with OCRC has **30-days** from mailing order date for Judicial Review

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## Reasonable Cause & Conciliation

EEOC is statutorily required to attempt to resolve findings of discrimination through "informal methods of conference, conciliation, and persuasion." See 42 U.S.C. 2000e-5.

Conciliation is a voluntary process.

Conciliation discussions are negotiations and counter-offers may be presented.

Conciliation offers the parties a final opportunity to resolve the charge informally - - after an investigation has been conducted, but before a litigation decision has been reached.

Conciliation agreements remove the uncertainty, cost and animosity surrounding litigation.

Conciliation is an efficient, effective, and inexpensive method of resolving employment discrimination charges.

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## Conciliation

If conciliation fails, the EEOC must decide whether to sue the employer in court.



EEOC considers several factors, including the seriousness of the violation, the type of legal issues in the case, the wider impact the lawsuit could have on the agency's efforts to combat workplace discrimination, and the resources available to litigate the case effectively.

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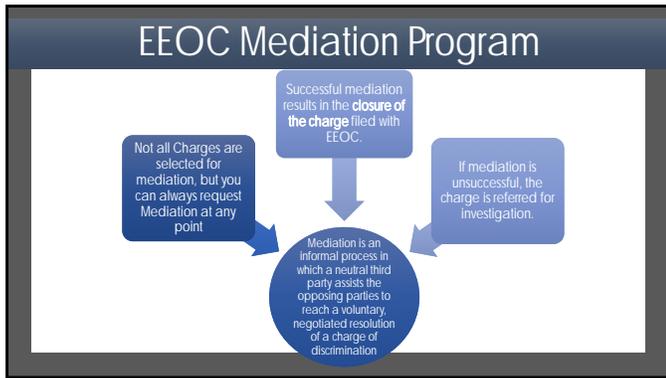
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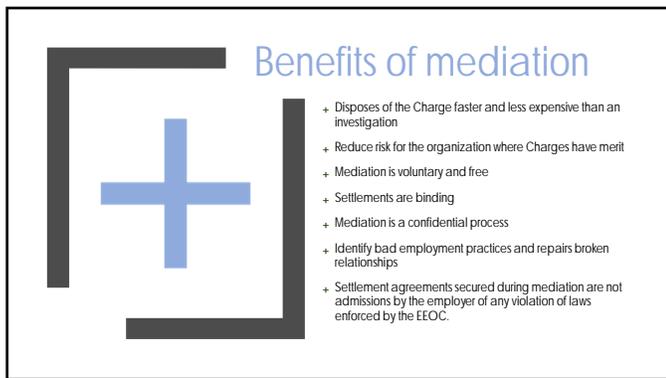
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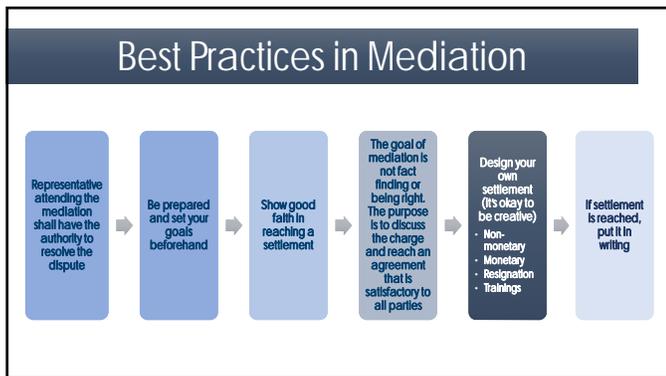
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## Aftermath of an EEOC investigation



- Review anti-retaliation policies with all individuals that participated in the investigation, including the Charging Party (if still employed).
- Identify any employment practices that need refresher trainings
- Review policies and procedures that need updated
- Recognize cultural issues that need to be addressed before turning into a lawsuit

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## Questions?



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## EEOC Online Charge Status System Tip Sheet

Find out about the status of your charge of discrimination any time, day or night, using the EEOC Online Charge Status System. The system is available for charges that were filed on or after September 2, 2015.

- Access the Online Charge Status System via this link <https://publicportal.eeoc.gov/portal/> or select the "How to Check the Status of a Charge" link on [www.eeoc.gov](http://www.eeoc.gov).
- Enter your assigned charge number (found in the upper right hand corner on your discrimination charge form) and your zip code (as it appears on your discrimination charge form) to sign in. (If you have provided a new address and zip code to EEOC, use the new zip code.) You will be asked to enter a security code displayed in a box on the sign-in screen that is provided to assure additional security for the system.
- After you have signed into the Online Charge Status System, you will see the screen display pictured below. The numbers on the screen shot refer to the features explained beneath it.\*

The screenshot shows the EEOC Online Charge Status System Public Portal. At the top is the EEOC logo and the text "U.S. Equal Employment Opportunity Commission Public Portal". Below this is the "Online Charge Status System" heading and a brief instruction: "Below is the current status and information about the charge you have filed with the EEOC. Placing your cursor over any of the status boxes or the individual listed entries, will provide additional information about each item that will display in a text box. Additionally, for an overview of the charge process, select the 'Show Full Process' button below." The main content is divided into three columns: "Status of the charge is" (containing a box labeled "INVESTIGATION"), "Contact Information" (listing "Joe Investigator" and "joe.investigator@eeoc.gov"), and "Office Information" (listing "EEOC Charlotte District Office", "129 W. Trade Street", "Charlotte, NC", and "28202"). Below these columns is a process flow section with three tabs: "INTAKE", "INVESTIGATION" (which is highlighted in blue), and "NEXT STEP". Under "INTAKE", there are four numbered entries: [1] 11/20/2015 Charge is filed; [2] 11/20/2015 Your charge has been transferred to the investigation division; [3] 11/20/2015 Your charge has been assigned to an investigator; [4] 01/18/2016 EEOC is collecting evidence about your charge. Under "NEXT STEP", there is a text box listing possible next steps: "Possible next steps on your charge may include the following: -Determination of no reasonable cause may be issued; -Notice of Right to Sue may be issued upon request and charge may be closed; -Determination of reasonable cause may be issued; -Charge may be withdrawn with benefits secured independent of EEOC and charge may be closed." At the bottom of the page are two buttons: "Show Full Process" and "Logout". A copyright notice "Copyright © 2013-2014 Ains Inc. All rights reserved" is at the very bottom.

1. **Status of the charge is** - A quick view of the stage in the process at which your charge is currently.
2. **Contact Information** - The name and contact information of the EEOC staff member assigned to your charge or a note that your charge is pending assignment.
3. **Office Information** - The EEOC office (and its address) that is handling your charge.
4. **Intake** - The specific actions the EEOC has taken on your charge, numbered sequentially, and the date of each action. (hold cursor over each action to read further details about the task).
5. **Investigation** - The general steps in the process, with additional explanations that display when you hold your cursor over a colored box.
6. **Next Step** - The range of next steps possible in the investigative process, which pops up when the cursor is held over this box.
7. **Show Full Process** - The flow of the overall investigative process, which comes up when you click on this box.

8. **Logout** - Ends your session on the Online Charge Status System.

*\*Not every stage of the enforcement process will display for every charge, as each charge follows the process most appropriate to the facts in the charge and the stages of the investigation.*

Keep in mind that the EEOC process takes time, so there will be gaps between entries about your charge in the Online Charge Status System. Even when you do not see any change in the status of your charge, EEOC staff are hard at work.

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