

# Appendix E

## EEO ENFORCEMENT

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Enforcement of EEO laws and regulations in the United States must be seen as a work in progress that is inconsistent and confusing at times. The court system is left to resolve the disputes and interpret the laws. Often the lower courts have issued conflicting rulings and interpretations. The ultimate interpretation often has rested on decisions by the U.S. Supreme Court, although those rulings also have been interpreted differently.

### EEO Enforcement Agencies

Government agencies at several levels can investigate illegal discriminatory practices. At the federal level, the two most prominent agencies are the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Programs (OFCCP).

**Equal Employment Opportunity Commission** The EEOC has enforcement authority for charges brought under a number of federal laws. Further, the EEOC issues policy guidelines on many topics influencing the EEO. Although the policy statements are not “law,” they are “persuasive authority” in most cases.

**Office of Federal Contract Compliance Programs** While the EEOC is an independent agency, the OFCCP is part of the U.S. Department of Labor and ensures that federal contractors and subcontractors use nondiscriminatory practices. A major thrust of OFCCP efforts is to require that covered employers take affirmative action to counter prior discriminatory practices.

**State and Local Agencies** In addition to federal laws and orders, many states and municipalities have passed their own laws prohibiting discrimination on a variety of bases, and state and local enforcement bodies have been established. Compared with federal laws, state and local laws sometimes provide greater remedies, require different actions, or prohibit discrimination in more areas.

### EEO Compliance

Employers must comply with a variety of EEO regulations and guidelines. To do so, it is crucial that all employers have a written EEO policy statement. They should widely communicate this policy by posting it on bulletin boards, printing it in employee handbooks, reproducing it in organizational newsletters, and reinforcing it in training programs. The contents of the policy should clearly state the organizational commitment to equal employment and incorporate a listing of the appropriate protected classes.

Additionally, employers with 15 or more employees may be required to keep certain records that can be requested by the EEOC, the OFCCP, or numerous other state and local enforcement agencies. Under various laws, employers are also required to post an “officially approved notice” in a prominent place for employees. This notice states that the employer is an equal opportunity employer and does not discriminate.

**EEO Records Retention** All employment records must be maintained as required by the EEOC. Such records include application forms and documents concerning hiring, promotion, demotion, transfer, layoff, termination, rates of pay or other terms of compensation, and selection for training and apprenticeship. Even application forms or test papers completed by unsuccessful applicants may be requested. The length of time documents must be kept varies, but generally 3 years is recommended as a minimum. Complete records are necessary to enable an employer to respond should a charge of discrimination be made.

## EEOC Reporting Forms

Many private-sector employers must file a basic report annually with the EEOC. Slightly different reports must be filed biennially by state/local governments, local unions, and school districts. The following private-sector employers must file the EEO-1 report annually:

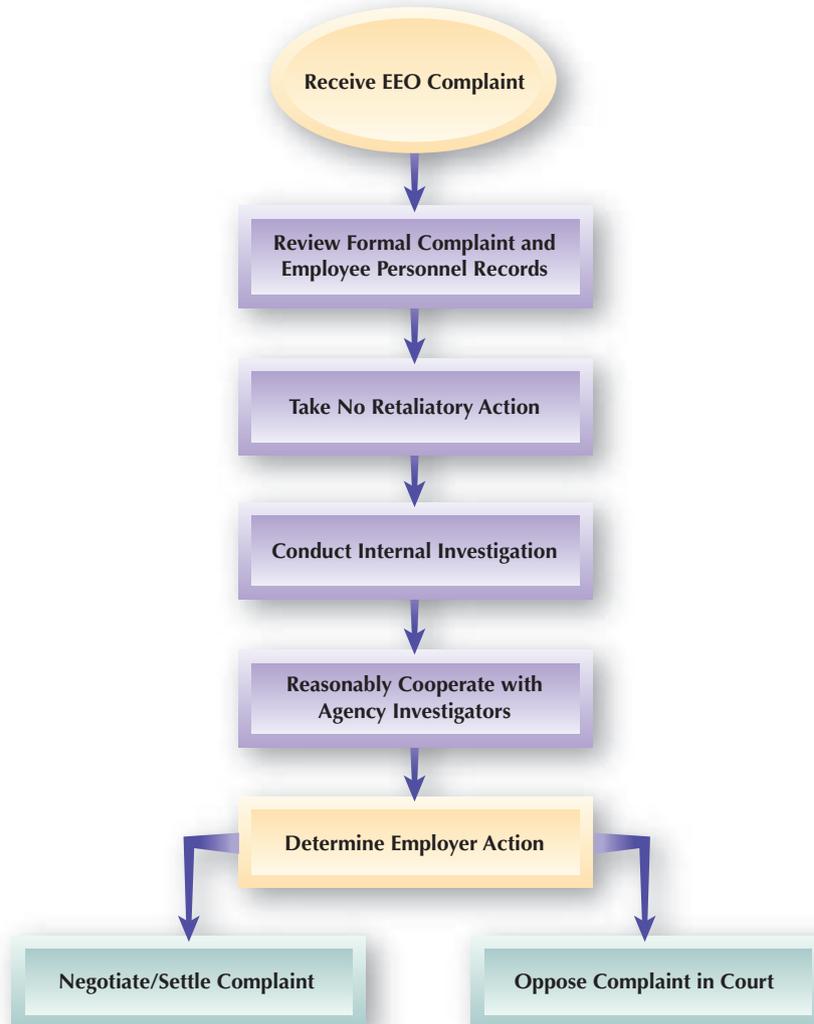
- All employers with 100 or more employees, except state and local governments
- Subsidiaries of other companies if the total number of all combined employees equals 100 or more
- Federal contractors with at least 50 employees and contracts of \$50,000 or more
- Financial institutions with at least 50 employees, in which government funds are held or saving bonds are issued

Recent changes require that details on employees must be reported by gender, race/ethnic group, and job levels. The most significant change was adding the phrase “two or more races,” in order to reflect the multidiverse nature of a growing number of employees.

## Applicant-Flow Data

Under EEO laws and regulations, employers may be required to show that they do not discriminate in the recruiting and selection of members of protected classes. Because employers are not allowed to collect such data on application blanks and other preemployment records, the EEOC allows them to do so with a separate applicant-flow form that is not used in the selection process. The *applicant-flow form* is filled out voluntarily by the applicant, and the data must be maintained separately from other selection-related materials. With many applications being made via the Internet, employers must collect this data electronically to comply with regulations on who is an applicant. Analyses of the data collected in applicant-flow forms may help to show whether an employer has underutilized a protected class because of an inadequate flow of applicants from that class, in spite of special efforts to recruit them. Also, these data are reported as part of affirmative action plans that are filed with the OFCCP.

## Stages in the Employer's Response to an EEO Complaint



### EEOC Compliance Investigation Process

When a discrimination complaint is received by an employer, it must be processed whether it is made internally by a disgruntled employee or by an outside agency. The chart shows the steps required in an employer's response to an EEO complaint.

Notice that the employer should have a formal complaint process in place and should be sure that no retaliatory action occurs. Internal investigations can be conducted by HR staff, but HR staff often utilize outside legal counsel to provide expert guidance in dealing with agency investigations. Internal investigations should occur also when employees make complaints without filing them with outside agencies. Once the employer's investigation is completed, then the decision must be made within to negotiate and settle the complaint or oppose the complaint.

## EEOC Complaint Process

To handle a growing number of complaints, the EEOC and other agencies have instituted a system that puts complaints into three categories: *priority*, *needing further investigation*, and *immediate dismissal*. If the EEOC decides to pursue a complaint, it uses the process outlined here, and an employer must determine how to handle it.

In a typical situation, an EEO complaint goes through several stages before the compliance process is completed. First the charges are filed by an individual, a group of individuals, or a representative. A charge must be filed within 180 days of the alleged discriminatory action. Then the EEOC staff reviews the specifics of the charge to determine if it has *jurisdiction*, which means that the agency is authorized to investigate that type of charge. If the EEOC has jurisdiction, it must serve a notice of the charge on the employer within 10 days of the filing; then the employer is asked to respond. Following the charge notification, the major effort of the EEOC turns to investigating the complaint.

During the investigation, the EEOC may interview the complainants, other employees, company managers, and supervisors. Also, it can request additional records and documents from the employer. If sufficient cause is found to support charges that the alleged discrimination occurred, the next stage involves mediation efforts by the agency and the employer. *Mediation* is a dispute resolution process in which a third party helps negotiators reach a settlement. The EEOC has found that use of mediation has reduced its backlog of EEO complaints and has resulted in faster resolution of complaints.

If the employer agrees that discrimination has occurred and accepts the proposed settlement, then the employer posts a notice of relief within the company and takes the agreed-on actions. If the employer objects to the charge and rejects conciliation, the EEOC can file suit or issue a *right-to-sue letter* to the complainant. The letter notifies the complainant that he or she has 90 days to file a personal suit in federal court.

In the court litigation stage, a legal trial takes place in the appropriate state or federal court. At that point, both sides retain lawyers and rely on the court to render a decision. The Civil Rights Act of 1991 provides for jury trials in most EEO cases. If either party disagrees with the court ruling, either can file appeals with a higher court. The U.S. Supreme Court becomes the ultimate adjudication body.