



**PROTECTION & ADVOCACY**  
FOR PEOPLE WITH DISABILITIES, INC.

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## **PROTECTION & ADVOCACY INFORMATION PACKET**

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### **EMPLOYMENT DISCRIMINATION & YOUR RIGHTS AS AN EMPLOYEE WITH A DISABILITY**

There are several federal laws prohibiting employment discrimination against people with disabilities. These laws apply to all state and local government employers and to private employers with 15 or more employees. In South Carolina, employers are also subject to the South Carolina Human Affairs Law, which provides employees with disabilities the same protections as the federal laws.

Because both state and federal law prohibit employment discrimination based on disability you may file a complaint with either the South Carolina Human Affairs Commission (SCHAC) or the Equal Employment Opportunity Commission (EEOC) or both. The time limit for filing with SCHAC is **180** days from the date of the alleged discrimination. The time limit for filing with the EEOC is **300** days from the date of the alleged discrimination.

**You must exhaust administrative remedies before going to federal court on an employment discrimination claim under the ADA.** This means that you should first file your complaint with SCHAC, the EEOC, or both before filing a lawsuit under the ADA.

If you feel your employer has discriminated against you based on your disability, please contact the EEOC or SCHAC at the address listed on the next page. You may also wish to contact a private attorney. If you do not know of one you may contact the Lawyer Referral Service at 1-800-868-2284.

***If you need additional information  
about this process, contact:***

**SOUTHEAST DISABILITY & BUSINESS TECHNICAL ASSISTANCE CENTER**

490 Tenth Street  
Atlanta, GA 3018  
1-800-949-4234 (v/tty)  
404-385-0641 (fax)  
<http://www.sedbtac.org>  
[se-dbtac@mindspring.com](mailto:se-dbtac@mindspring.com)

**OR**

**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

1801 L Street, NW  
Washington, DC 20507  
1-800-669-4000 (voice)  
1-800-669-6820 (TDD)  
1-800-666-EEOC (publications)  
<http://www.eeoc.gov>

**GREENVILLE LOCAL OFFICE**

Wachovia Building  
15 South Main Street, Suite 530  
Greenville, SC 29601  
864-241-4000 (voice)  
864-241-4403 (TTY)

**OR**

**SOUTH CAROLINA HUMAN AFFAIRS COMMISSION**

PO Box 4490  
2611 Forrest Drive, Suite 200  
Columbia, SC 29204  
1-800-521-0725 (voice)  
803-737-7800  
803-253-4125 (TDD)  
[http://www.state.sc.us/schac/  
information@schac.state.sc.us](http://www.state.sc.us/schac/information@schac.state.sc.us)



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This packet is designed to provide basic information about employment discrimination against employees with physical or mental disabilities. It contains the following:

- **HOW TO FILE AN EMPLOYMENT DISCRIMINATION COMPLAINT**  
**(SOUTH CAROLINA HUMAN AFFAIRS COMMISSION)**
- **FILING A CHARGE**  
**(EQUAL EMPLOYMENT OPPORTUNITY COMMISSION)**
- **WHAT TO EXPECT WHEN FILING A CHARGE OF EMPLOYMENT DISCRIMINATION**  
**(DISABILITY & BUSINESS TECHNICAL ASSISTANCE CENTER)**

**This information packet has been prepared based on the law at the time it was written. Future changes in the law may make some information incorrect. Please feel free to contact P&A for updates. This fact sheet is not intended to be legal advice. P&A does not discriminate on the basis of disability, race, gender, or national origin in the provision of its programs or services. Pete Cantrell is P&A's designated coordinator for Sec. 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act. NOVEMBER 2002 PR-12**

## **You are welcomed to contact the South Carolina Human Affairs Commission. Visitors are received by appointment or as walk-ins.**

### 1. When should I file a complaint?

If you feel that you have been discriminated against based on race, religion, age (40 and above), sex, national origin, or **disability**; that you are being sexually harassed on your job; or that your employer is treating you unfairly because of your pregnancy, you should file a claim.

### 2. Is there a time limit?

Yes. You have up to 180 days from the date the discriminatory act took place to file with the South Carolina Human Affairs Commission (SCHAC). If more than 180 days but less than 300 days have passed, you may still file. In that case, your complaint will be sent to the U.S. Equal Employment Opportunity Commission (EEOC) for processing.

### 3. How do I file a claim?

The first thing you should do is call, write, or visit SCHAC and talk with an Intake Investigator who will explain what we do and help to determine if you have a basis for filing a complaint. You will be given forms to complete and return.

### 4. What happens next?

Your written complaint will be reviewed to determine if you have a basis for filing a discrimination complaint under the SC Human Affairs Law or the U.S. Civil Rights Act, Age Discrimination in Employment Act, or the Americans With Disabilities Act.

If a basis exists, a formal Charge of Discrimination will be prepared for you to sign and have notarized. Your complaint will then be assigned a charge number, dually filed with EEOC, and served on the party you are filing against. Your Charge of Discrimination will be assigned for mediation or investigation by SCHAC or transferred to EEOC.

### 5. How long does this process take?

That really depends on the complexity of the complaint, the availability and cooperation of the parties, and the caseload of the investigator. The average processing time ranges from 90 to 180 days (3 to 6 months).

## **Filing a Charge**

If you believe you have been discriminated against by an employer, labor union or employment agency when applying for a job or while on the job because of your **race, color, sex, religion, national origin, age, or disability**, or believe that you have been discriminated against because of opposing a prohibited practice or participating in an equal employment opportunity matter, you may file a charge of discrimination with the U.S. Equal Employment Opportunity Commission (EEOC).

Charges may be filed in person, by mail or by telephone by contacting the nearest EEOC office. If there is not an EEOC office in the immediate area, call toll free 800-669-4000 or 800-669-6820 (TDD) for more information. To avoid delay, call or write beforehand if you need special assistance, such as an interpreter, to file a charge.

There are strict time frames in which charges of employment discrimination must be filed. To preserve the ability of EEOC to act on your behalf and to protect your right to file a private lawsuit, should you ultimately need to, adhere to the following guidelines when filing a charge.

**Title VII of the Civil Rights Act (Title VII)** charges must be filed with EEOC within 180 days of the alleged discriminatory act. However, in states or localities where there is an antidiscrimination law and an agency authorized to grant or seek relief, a charge must be presented to that state or local agency. Furthermore, in such jurisdictions, you may file charges with EEOC within 300 days of the discriminatory act, or 30 days after receiving notice that the state or local agency has terminated its processing of the charge, whichever is earlier. It is best to contact EEOC promptly when discrimination is suspected. When charges or complaints are filed beyond these time frames, you may not be able to obtain any remedy.

**Americans with Disabilities Act (ADA)** - The time requirements for filing a charge are the same as those for Title VII charges.

**Age Discrimination in Employment Act (ADEA)** - The time requirements for filing a charge are the same as those for Title VII and the ADA.

**Equal Pay Act (EPA)** - Individuals are not required to file an EPA charge with EEOC before filing a private lawsuit. However, charges may be filed with EEOC and some cases of wage discrimination also may be violations of Title VII. If an EPA charge is filed with EEOC, the procedure for filing is the same as for charges brought under Title VII. However, the time limits for filing in court are different under the EPA, thus, it is advisable to file a charge as soon as you become aware the EPA may have been violated.

**For more detailed information, please contact the EEOC office nearest to you.**

# WHAT TO EXPECT WHEN FILING A CHARGE OF EMPLOYMENT DISCRIMINATION

by James A. Passamano©

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Many employees are aware of the legal prohibition against employment discrimination. Yet when discrimination in the workplace occurs, many are unsure about how to file a charge of discrimination and what to expect when they do so.

## **Filing a Charge Is a Necessary Prerequisite to a Suit in Court.**

Under the Americans with Disabilities Act and the Civil Rights Act of 1964, a person complaining of employment discrimination is not permitted to go directly to court. The law requires that the aggrieved employee exhaust administrative remedies before filing a civil action in court. This means that an employee's first step in challenging an unlawful employment practice is filing a charge of discrimination with the United States Equal Employment Opportunity Commission or with a State or local fair employment practices agency (FEP).

## **When to File a Charge.**

Generally, a person must file a charge with the EEOC within 180 days after the last act of discrimination. In some states, such as Texas, where the EEOC has a work sharing agreement with the state agency, the EEOC's limitation period is extended to 300 days after the last act of employment discrimination.

## **How to File a Charge.**

You can file a charge in several ways. You may visit the EEOC office personally or send the charge by mail or facsimile. You may make a charge over the telephone, however, telephone charges are not preferred. Visiting the EEOC is the surest way to file a charge. To contact the EEOC office nearest you, look in the business white pages of the telephone directory or the government blue pages under U.S. Government. If the EEOC does not have an office in your town, call the EEOC office in Washington, D.C. at 202-663-4900 (Voice) or 800-800-3302 (TDD) for information on reaching the nearest field office.

Before visiting the EEOC office it is best to call for some general information. Most offices take charges on a first-come-first-served basis, which means that you may have to wait hours before meeting with an investigator to take your charge. Other offices take charges by appointment only, unless of course your limitation period is going to expire that day. Also, the federal government observes holidays that many others do not, such as Columbus Day. Call in advance to make sure that you can file your charge on the day you plan to visit the EEOC.

You may also want to call ahead to find out where is the nearest accessible parking area, whether a qualified interpreter or auxiliary aids are available, or ask about any other concern you may have. This will avoid unexpected delays and will enable you and the intake officer to focus your attention on your charge of employment discrimination.

***Provided by the Southwest Disability and Business Technical Assistance Center on the Americans with Disabilities Act***

### **Filing a Charge by Mail.**

You do not need to personally visit the EEOC to file a charge. If you are unable to visit the EEOC, ask the EEOC to send you a *Charge of Discrimination* form (known as EEOC Form 5). Technically, any signed written statement with enough information to describe the nature of the discrimination is sufficient to constitute a charge. However, the charge should be made on an EEOC charge form so that it will be easily recognized as a charge. You can complete the charge form and mail it to the EEOC or fax it to the EEOC. If you send it by mail, be sure to send it with a return receipt, so that you will have evidence of the date the EEOC received it. If you send it by facsimile, call and ask if it was received and ask the person who received it to send to you a file-stamped copy.

### **Information You Need to Provide to the EEOC.**

When you visit the EEOC to file your charge, you should be prepared with certain information. To initiate a charge, you must give your name and address and telephone number. Anonymous information can sometimes be useful, but does not constitute a charge. The charging party need not be the aggrieved person. A person may complain about discrimination directed at another person. For example, a person may file a charge of discrimination on behalf of co-workers or applicants who have suffered discrimination by the employer.

You should provide the EEOC with the full correct legal name, address and telephone number of the employer. If the employer has several business names, or is a subsidiary of a parent company, be sure to state the name on the charge form and the relationship to the employer (e.g. Mr. John Smith doing business as Mega-Tech Industries). The EEOC must give the employer notice of the charge within ten days. A correct name and address avoids unnecessary delays and will assure that the right employer is investigated.

Be prepared to provide the EEOC with the number of persons employed by your employer. Count not just the number in your office or location, but the total number employed. The ADA and other civil rights laws apply only to employers with 15 or more employees. The EEOC has no jurisdiction to investigate employers with less than 15 employees, no matter how severe the discrimination. Furthermore, the maximum amount of damages a claimant may recover is capped. -The amount of cap increases with the number of employees. This bit of information has a significant affect on your charge.

You must also indicate the basis for the discrimination. The charge form asks you to check a box indicating whether the discrimination you allege is based on race, sex, national origin, color, religion, age, disability, retaliation or other. The "other" category might be used for such things as discrimination based on a non-disabled person's association with a disabled person, or unlawful pre-employment inquires which are prohibited under the statutes that the EEOC enforces.

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Be prepared to inform the EEOC of the date or dates of the discrimination. If the discrimination has been on going, give the date it began and the last date it occurred or that the discrimination is continuing. The date is important to determine whether the 180 or 300 day limitation period has expired,

### **Stating the Reasons for Discrimination.**

Finally, you will be asked to give on the charge form a short plain statement of the act of employment discrimination. This does not require a statement of every fact that supports your claim.

You will later have the opportunity to prepare an affidavit or a complete statement of particulars. An affidavit statement is generally conducted as part of the investigation, but in many EEOC offices the affidavit of the charging party is taken as part of the intake interview. So when you visit the EEOC office to file a charge be prepared to give all of the particulars. If you have documents or other information regarding your claim, be sure to bring them with you. You should keep a photocopy of anything you give to the EEOC, because you may not get it back. If you have the names, addresses and telephone numbers of any witnesses to your claims, be sure to provide them to the EEOC. Also, indicating which witness has the best information will allow the investigator to work more quickly on your file.

### **Have Realistic Expectations of the EEOC.**

The EEOC investigators can be very knowledgeable, but the levels of training and experience vary greatly among investigators. Investigators are not lawyers and, except in rare instances, have no formal training in the law. Therefore, you should certainly accept and consider any counseling offered by the EEOC investigator, but you should not give it the same weight nor rely on it in the same way that you would rely on the advice of a lawyer. If you feel you need legal advice, contact a lawyer.

The EEOC is a government bureaucracy with limited resources and staffing. It is dealing with a national backlog of nearly 100,000 cases. The amount of time it can spend on your charge is limited. You should expect the investigation to take a long time, sometimes more than two years. The amount of evidence collected in that amount of time is too often surprisingly little. The EEOC will often achieve favorable results, but cannot work miracles.

### **Taking Your Case from the EEOC to Court.**

You can request a right to sue letter from the EEOC 60 days after you file your charge. This will end the EEOC investigation and requires you to sue in court within 90 days after you receive the notice of your right to sue. If you do not initiate a civil action in court within 90 days, claims based on that charge are forever barred.

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**Conciliation.**

When the EEOC completes its investigation, it makes a determination that either reasonable cause exists that discrimination occurred or a determination that no cause exists. If the EEOC finds that no cause exists, it issues a right to sue letter to you and ends its investigation. If the EEOC finds that reasonable cause does exist, it will initiate conciliation proceedings to try to reach a settlement with the employer that resolves the dispute. If no conciliation is reached, the EEOC will issue a right to sue and end its handling of the case. In some cases, the EEOC will sue the employer itself to seek relief on your behalf. However, the EEOC is highly selective about the cases it chooses to litigate.

Unfortunately employers discriminate, but remedies and procedures exist to vindicate a violation of civil rights. The most valuable tool in enforcing civil rights laws is the knowledge of how and when to initiate a charge of discrimination.

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