

RISK COMMUNIQUÉ

Equal Employment Opportunity Commission (EEOC) Overview – Management Liability / Employment Practices Risk Management

This Communiqué provides an overview of the United States Equal Employment Opportunity Commission (EEOC) and the employment and civil rights laws enforced by the EEOC. This Communiqué gives insight as to what can be expected should an EEOC charge be lodged against your emergency services organization (ESO).

Overview of Federal Laws Prohibiting Job Discrimination

EEOC is responsible for coordinating, enforcing, and overseeing all federal equal employment opportunity regulations, practices, and policies. ESO leaders and administrators should be aware of the federal laws prohibiting job discrimination. Some of the most pertinent laws are described briefly below.

- ***Title VII of the Civil Rights Act of 1964 (Title VII)*** prohibits employment discrimination based on race, color, religion, sex, or national origin with respect to hiring, discharge, compensation, promotion, classification, training, apprenticeship, referral for employment, or other terms, conditions, and privileges of employment. Title VII applies to employers with 15 or more employees.
- ***Age Discrimination in Employment Act of 1967 (ADEA)*** protects workers who are 40 years of age or older. The ADEA applies to those entities with over 20 employees.
- ***Americans with Disabilities Act of 1990 (ADA)*** prohibits employment discrimination against qualified individuals with disabilities and applies to employers with over 15 employees.
- ***Civil Rights Act of 1991*** provides monetary damages in cases of intentional employment discrimination.
- ***Equal Pay Act of 1963 (EPA)*** protects men and women who perform substantially equal work in the same organization from sex-based wage discrimination. The EPA applies to most employers with one or more employees.

When an EEOC Charge of Work-Related Discrimination is Filed

A member of an ESO who believes that his or her employment rights have been violated because of race, color, sex / gender, religion, national origin, age, disability or because of retaliation may file a charge of discrimination with the EEOC. It is the EEOC's job to investigate the charge to determine whether there is reasonable cause to believe that discrimination occurred.

Time restrictions for filing an EEOC charge – In most geographic areas, a charge must be filed with the EEOC within 300 days from the date of the alleged discrimination or violation. In a limited number of areas where a state or local employment discrimination law does not apply, a charge must be filed within 180 days.

Notice of Charge filed with the EEOC – An employer is notified by the EEOC within 10 days of receiving a charge. Notification typically includes a copy of the charge that identifies the charging party, date(s) of the alleged discrimination, and the basis of the charge. An explanation of the EEOC charge process is generally included, as well as reference to the employer's obligation to retain records pertaining to the allegation. Moreover, the notification reminds the employer of the non-retaliation provisions of EEOC laws.

This is a sample guideline furnished to you by VFIS. Your organization should review this guideline and make the necessary modifications to meet your organization's needs. The intent of this guideline is to assist you in reducing exposure to the risk of injury, harm, or damage to personnel, property, and the general public. For additional information on this topic, contact your VFIS Risk Control Representative at (800) 233-1957.

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Inform the ESO's legal counsel – Once put on notice of the EEOC charge filing, immediately inform the ESO's retained labor and employment attorney. It is pertinent to follow all procedural steps and requirements when processing an EEOC charge. In addition, be aware of the ESO's reporting obligations to VFIS regarding Management Liability / Employment Practices claims.

Non-retaliation measures – Take steps to ensure management and non-management personnel don't retaliate against the complaining party or those participating in the investigation. Clearly communicate to the person(s) filing charges that their working relationship and conditions will not be affected and provide them with multiple avenues of complaint in the event of retaliation.

Expectations once an EEOC charge has been filed – After a charge is filed, your ESO may be asked to provide a position statement responding to the allegations. At this stage, the ESO may also be asked to provide documents and other information related to the subject of the EEOC's investigation. The EEOC may utilize a variety of resolution methods in addressing a discrimination charge:

- **Mediation** - EEOC can seek to settle a charge at any stage of the investigation if the charging party and the employer willingly participate in a confidential mediation process. If mediation and settlement efforts are unsuccessful, EEOC generally continues its investigation. EEOC will notify your ESO if the charge filed is eligible for mediation.
- **Investigation** – EEOC may make written requests for information, review documentation, conduct interviews, and visit the facilities where the alleged discrimination occurred. When the investigation is complete, EEOC will discuss the evidence with the charging party and employer, as appropriate.

EEOC may dismiss the discrimination charge – At any time in the process, EEOC may dismiss the charge if it determines that further investigation will not establish a violation of law. When a charge is dismissed, EEOC notifies the charging party who is then given 90 days to file a lawsuit on his or her own behalf.

EEOC may determine there is reasonable cause to believe discrimination occurred – If the EEOC investigation results in reasonable cause to believe discrimination has occurred, the ESO and charging party are informed in a letter of determination. The EEOC then typically attempts conciliation with the ESO to establish a remedy. Successful conciliation, mediation, or settlement of an EEOC complaint bars the charging party and EEOC from going to court, unless the conciliation, mediation, or settlement agreement is not honored.

If the EEOC is unable to conciliate the case, the agency may sue in federal court. For the common cases when the EEOC decides not to sue, the agency issues a notice closing the case and gives the charging party 90 days in which to file a lawsuit on his or her own behalf. This written correspondence is often referred to as a "right to sue" letter.