

## Employment and Labor

### Discrimination and EEO

Equal Employment Opportunity (EEO) laws protect employees from discrimination, sexual harassment, retaliation, and other illegal actions by employers. The conduct of employers is regulated by the Civil Rights Act of 1964, the Age Discrimination and Employment Act (ADEA), the Rehabilitation Act of 1973, Pregnancy Discrimination Act and many other state and local laws. Different laws and procedures will apply to EEO complaints depending on the type of employer involved (e.g., federal government, state government, the District of Columbia government, or private sector).

One common thread for all employees and job applicants, regardless of their type of employment, is that they are protected by laws against illegal discrimination and/or harassment in the workplace. In addition, the U.S. Equal Employment Opportunity Commission (EEOC) is an independent federal agency responsible for enforcing federal laws against workplace discrimination and investigating discrimination complaints based on the following:

- Age Discrimination
- Disability Discrimination
- Equal Pay/Compensation Discrimination
- Ethnic Discrimination
- Gender (Sex) Discrimination
- Genetic Discrimination
- Hostile Work Environment
- National Origin Discrimination
- Pregnancy Discrimination
- Race/Color Discrimination
- Religious Discrimination
- Retaliation
- Sexual Harassment
- Sexual Orientation Discrimination

Often times, state and local EEO organizations provide similar and even additional protections for employees from other forms of discrimination or unfair treatment by employers, so it is important to consult with an attorney as early as possible to discuss the facts involved in your particular situation, the specific laws that would apply if you decide to file an EEO complaint against your employer, and the appropriate EEO complaint process for your case.

### Federal Employees

Federal employees have certain specific rights when filing a complaint of discrimination, harassment, or retaliation. Generally, federal employees often have a short period of time, typically 45 days, in which to notify their Agency's EEO Counseling Department about their

potential complaints of discrimination, harassment, or retaliation.

In cases involving federal employees, once the EEO complaint process commences, the issues involved are referred to an EEO investigator and are eventually investigated by the Agency. In some federal agencies, prior to filing a formal EEO complaint, an opportunity to mediate or resolve a federal employee's particular issues is sometimes available. These efforts are usually part of an Agency's Alternative Dispute Resolution (ADR) program. If mediation is not available or unsuccessful, the investigation of the formal EEO complaint proceeds.

Once an EEO investigator is assigned, he or she will normally interview individuals, obtain affidavits or other sworn statements, in addition to other potential evidence in order for the Agency to make a determination on the individual's formal EEO complaint. Following these investigations, which often take 180 days or longer, and barring early settlement or resolution of the case, the EEO investigator completes his or her final Report of Investigation (usually referred to as the ROI) and presents it to the Agency and the Complainant for review.

If the Agency does not resolve the issues in the formal EEO complaint, the employee then has the right to elect a hearing before an administrative law judge employed by the EEOC or to seek a Final Agency Decision (FAD) from his or her Agency based on the formal EEO complaint. The procedures and timelines associated with filing an EEO Complaint can involve complex legal issues, so federal employees are urged to obtain counsel early in the EEO complaint process.

### **Private Company Employees**

Employees of private firms and companies are protected by many of the same rights as federal employees (e.g. the Civil Rights Act, ADEA, etc.) and sometimes state laws that can even provide greater protection. With private sector employees, an attorney will need to evaluate whether to initiate the EEO process with the local or state organizations (e.g., D.C. Office of Human Rights, the Virginia Division of Human Rights under the Virginia Human Rights Act) that enforce the employee protection laws or procedures, or to possibly request an investigation by filing a complaint with the EEOC for discrimination, harassment, and retaliation.

Once the proper forum for investigation is determined, an EEO complaint is filed and an investigation is usually requested by an attorney on behalf of the employee either at the EEOC or at the state or local organization in which the complaint has been filed. The EEOC or local EEO organization then investigates the complaint to determine whether it should take action against the employer. If action is not taken by the EEOC or the state or local EEO organization where the complaint has been filed, then a Right-to-Sue Letter is typically issued (more typically with the EEOC, given different local and state procedures) and the employee may then pursue his or her case in court or through other administrative courts.

### **Public Sector Employees**

Public sector employees are individuals employed by city (e.g. District of Columbia) or state (e.g. Maryland, Virginia) agencies and often have rights covered by state laws that are unique to their jurisdiction. Typically, each state or locality has its own timeline and procedures for filing

complaints of discrimination. Often times there are short timeframes in which to notify public agencies about an employee's claims and to request internal counseling. Our attorneys are versed in the different areas of law that protect public sector employees from illegal discrimination, harassment, and retaliation. Each jurisdiction is different in its handling of public employees' issues; therefore, our firm can determine the best forum in which to file a public sector employee's complaint of discrimination, harassment, or retaliation.

## Relevant Articles

[How to Prove a Hostile Work Environment](#)

## We Can Help

Please [contact Berry & Berry, PLLC](#) to schedule a consultation with an attorney to discuss your matter. Our firm represents employees in the federal, public, and private sectors involving complaints of discrimination, harassment, or retaliation before administrative law judges or in court. Throughout the process, our attorneys evaluate the potential of a client's case for resolution or settlement. We represent employees at the initial complaint stage, during investigations, before EEOC administrative law judges, and in court. In addition, we attempt to determine the best course of action for our clients to enable them to make an informed decision about how they should proceed in their EEO case.