

HR COMPLIANCE BULLETIN



EEOC Issues Guidance on Agency-Led Charges and Investigations

On June 5, 2020, the U.S. Equal Employment Opportunity Commission (EEOC) launched a [new webpage](#) that explains two processes the agency may use to enforce federal fair employment laws even when no individual has filed a charge against an employer.

These two processes—known as **commissioner charges** and **directed investigations**—are in addition to the more common procedure of EEOC field offices receiving discrimination charges from individual employees or job applicants and then evaluating and investigating those charges.

Specifically, a member of the EEOC may independently file discrimination charges (“commissioner charges”) alleging that an employer violated one of the following laws, after which an EEOC field office must conduct an investigation on the employer:

- Title VII of the Civil Rights Act;
- The Americans with Disabilities Act (ADA); and
- The Genetic Information Nondiscrimination Act (GINA).

In addition, EEOC field offices may independently initiate “directed investigations” of employers for possible violations of the following:

- The Age Discrimination in Employment Act (ADEA); and
- The Equal Pay Act (EPA).

The EEOC’s new webpage explains how these two processes work. This HR Compliance Bulletin provides an abbreviated version of the guidance.

Action Steps

Employers subject to federal fair employment laws should become familiar with the EEOC’s new guidance.

Highlights

EEOC Enforcement

The EEOC may enforce federal fair employment laws against an employer even if no employee or applicant has filed a charge under those laws.

Commissioner Charges

EEOC members may file charges against an employer for alleged violations of Title VII, the ADA and GINA.

Directed Investigations

EEOC field offices may launch investigations for possible employer violations of the ADEA and EPA.

New EEOC Guidance

The EEOC’s new guidance explains how the agency handles these two enforcement processes.

Important Date

June 5, 2020

The EEOC launched a new webpage to explain commissioner charges and directed investigations.



JP Griffin Group



Q1. How do commissioner charges and directed investigations come about?

They generally come about in one of three ways:

- 1) A field office learns about possible discrimination in a workplace where no individual has filed a charge. This information could come through direct observation, from local community leaders or advocacy groups or via information sharing between the EEOC and other federal agencies.
- 2) A field office learns about one or more new allegations of discrimination while investigating an existing charge and is not able to expand that charge to address the new allegations. For example, an EEOC office investigating allegations in one geographic location of a multistate employer might learn of a companywide policy that could be better investigated through a commissioner charge or directed investigation filed by another EEOC office.
- 3) A commissioner learns about discrimination in a workplace and asks a field office to investigate the allegations.

Q2. How does a commissioner charge get filed?

To initiate the approval of a commissioner charge, a field office submits a proposed charge to the EEOC's Executive Secretariat along with a memorandum explaining the factual and legal basis for the proposed investigation and any supporting documentation. The Executive Secretariat then circulates the proposal to each commissioner, on a rotating basis, to allow them the opportunity to sign. If no commissioner signs the proposed charge, the charge is not filed or investigated. In addition, an individual commissioner may initiate a commissioner charge by preparing and signing a charge document that complies with the requirements in the EEOC's regulations.

Q3. What happens when a commissioner signs a charge?

The signed commissioner charge is sent to the EEOC field office that is responsible for investigating the charge, and the investigation follows the same path as an individually filed charge of discrimination. The first step in the investigation is serving the charge on the employer and asking it to submit a position statement and other relevant documents to the investigating office.

Q4. Can a respondent employer request mediation of a commissioner charge or directed investigation in lieu of an investigation?

No. EEOC policy excludes commissioner charges and directed investigations from the EEOC's mediation program. If these were eligible for mediation, the entities negotiating in the role of the charging party would, themselves, be EEOC officials, which would conflict with the EEOC's "neutral" role during mediation. Nonetheless, once an investigating EEOC office has sufficient information to determine the nature and scope of any violation, that office may work with the employer to develop a voluntary resolution. Thus, commissioner charges and directed investigations may be settled during the administrative process, either before or after a determination.

Q5. Does a directed investigation or a commissioner charge mean that the EEOC has already concluded that the respondent employer violated the law?

No. It only means there are indications or allegations warranting investigation. Once the EEOC field office completes its investigation, it will review the evidence and issue a Letter of Determination indicating whether the EEOC found, or did not find, reasonable cause to believe the employer violated a law that the EEOC enforces. If the field office finds reasonable cause to believe discrimination occurred, it is required to offer the employer an opportunity to resolve the matter voluntarily, through what the EEOC calls "conciliation."



Q6. If a commissioner does not participate in the investigation, settlement discussions, determination or conciliation of a commissioner charge or directed investigation, does that mean that he or she will not know the outcome?

No. The commissioner who signed the charge receives formal notice of the determination. If the determination is a finding of reasonable cause, conciliation is conducted, and the commissioner who signed the charge is notified of the results of those conciliation efforts.

Q7. Does the EEOC conduct the conciliation differently for a commissioner charge than for other EEOC charges?

No. However, most commissioner charges address claims of systemic or companywide discrimination. If an investigating office found reasonable cause to believe that discrimination occurred on a companywide or classwide basis, the conciliation would be conducted like conciliations of other charges with systemic, class or companywide findings of discrimination.

Q8. What if conciliation fails?

If the charge is against a private employer, the charge and investigation results are referred to the district office's legal unit to be assessed for possible EEOC litigation. If the charge is against a state or local government or governmental entity, it is referred to the attorney general for possible litigation by the U.S. Department of Justice.

Q9. If the EEOC decides not to file a lawsuit, is that the end of it?

No. The final step is the issuance of a right-to-sue notice to the affected individuals. EEOC regulations require that for a commissioner charge, the notice must be sent "to any member of the class named in the charge," as identified either by the commissioner in a third-party certificate or by the EEOC as a member of the class.

Q10. How often does the EEOC use commissioner charges and directed investigations?

From fiscal years 2015 through 2019, the EEOC initiated an average of 13 new commissioner charges per year, and an average of 138 new directed investigations per year. This represents a very small proportion (less than 1%) of the EEOC's annual charge volume.

Q11. How often does a commissioner charge or a directed investigation result in an EEOC lawsuit?

From fiscal years 2015 through 2019, the EEOC filed a total of nine lawsuits based on a commissioner charge or directed investigation. This is an average of about two lawsuits per year.

Source: U.S. Equal Employment Opportunity Commission