

RESPONDING TO EEOC COMPLAINTS

Texas City Attorneys Association
2016 Fall Conference

Ronald D. Stutes
Potter Minton
A Professional Corporation
Tyler, TX

STEP ONE:

NOTICE OF CHARGE



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Dallas District Office

207 S. Houston Street, 3rd Floor
Dallas, TX 75202-4726
Toll Free: 866-408-9073
Potential Charge Inquiries: 800-669-4000
TTY (214) 253-3710
FAX (214) 253-2720
<http://www.eeoc.gov>

Dallas District Office
San Antonio Field Office
El Paso Area Office

July 19, 2016

Re: EEOC Charge No. [REDACTED]

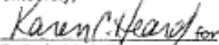
Dear [REDACTED]:

The above-captioned Charging Party has filed a charge of employment discrimination against your organization which, as a result of administrative limitations affecting our operations, could not be timely served. Although we were unable to timely notify you of the cited charge, we intend to conduct an investigation of the charge, inasmuch as the charge service delay occurred through no fault of the Charging Party. The laws we enforce have been interpreted by the courts to allow for such administrative action without disadvantage to the Charging Party in these circumstances.

As part of our notification, enclosed please find a copy of the Notice of Charge of Discrimination. You will be receiving the formal charge of discrimination within the next 60 days.

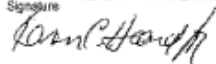
We regret any inconvenience to the parties. If you have any questions, please do not hesitate to contact Investigator Karen C. Heard at (214) 253-2873 or Intake Supervisor Juan Munoz of our staff. Supervisor Munoz can be reached at (214) 253-2774.

Sincerely,


Belinda McCallister
Acting District Director

Enclosures

U.S. Equal Employment Opportunity Commission

<div style="border: 1px solid black; width: 100px; height: 100px; margin: 0 auto;"></div>		PERSON FILING CHARGE
		THIS PERSON (check one or both) <input checked="" type="checkbox"/> Claims To Be Aggrieved <input type="checkbox"/> Is Filing on Behalf of Other(s)
		EEOC CHARGE NO.
NOTICE OF CHARGE OF DISCRIMINATION <small>(See the enclosed for additional information)</small>		
This is notice that a charge of employment discrimination has been filed against your organization under: <input checked="" type="checkbox"/> Title VII of the Civil Rights Act (Title VII) <input type="checkbox"/> The Equal Pay Act (EPA) <input type="checkbox"/> The Americans with Disabilities Act (ADA) <input type="checkbox"/> The Age Discrimination in Employment Act (ADEA) <input type="checkbox"/> The Genetic Information Nondiscrimination Act (GINA)		
The boxes checked below apply to our handling of this charge: 1. <input checked="" type="checkbox"/> No action is required by you at this time. 2. <input type="checkbox"/> Please call the EEOC Representative listed below concerning the further handling of this charge. 3. <input type="checkbox"/> Please provide by a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation. 4. <input type="checkbox"/> Please respond fully by to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation. 5. <input type="checkbox"/> EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate, please say so on the enclosed form and respond by to if you DO NOT wish to try Mediation, you must respond to any request(s) made above by the date(s) specified there.		
For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:		
Karen C. Heard, Investigator EEOC Representative Telephone: (214) 253-2873		Dallas District Office 207 S. Houston St. 3rd Floor Dallas, TX 75202 Fax: (214) 253-2720
Enclosure(s): <input type="checkbox"/> Copy of Charge		
CIRCUMSTANCES OF ALLEGED DISCRIMINATION <input type="checkbox"/> Race <input type="checkbox"/> Color <input checked="" type="checkbox"/> Sex <input type="checkbox"/> Religion <input type="checkbox"/> National Origin <input type="checkbox"/> Age <input type="checkbox"/> Disability <input checked="" type="checkbox"/> Retaliation <input type="checkbox"/> Genetic Information <input type="checkbox"/> Other		
ISSUES: Terms/Conditions DATE(S) (on or about): EARLIEST: 04-14-2016 LATEST: 04-19-2016		
A perfected charge (EEOC Form 5) will be mailed to you once it has been received from the Charging Party.		
Date	Name / Title of Authorized Official	Signature
July 19, 2016	Belinda F. McCallister, Acting District Director	

STEP ONE: NOTICE OF CHARGE

- ❖ Bare bones
- ❖ In this instance, the charge was not included

STEP ONE: NOTICE OF CHARGE

- ❖ Copy of charge provided
- ❖ Unperfected – not signed

DISMISSAL WITHOUT RESPONSE REQUIRED

- ❖ no violation of statute in allegation;
- ❖ not a “disability” under ADA;
- ❖ the employer is not covered by the statutes (e.g., not enough employees);
- ❖ the charge was not timely filed (within 300 days)

RESPONSE TO NOTICE

- ❖ Litigation hold
- ❖ Basic fact-finding
- ❖ Notify insurer
(e.g., TMLIRP)

THE POSITION STATEMENT

- ❖ First chance to argue to the decision-maker
- ❖ clear, concise, complete, and responsive
- ❖ not overly argumentative – more like opening than closing

THE POSITION STATEMENT

- ❖ Dispute the facts
 - it didn't happen that way
(fact dispute unless documented)
- ❖ the assumed facts are erroneous
(document pay of cohorts, etc.)

THE POSITION STATEMENT

- ❖ Dispute legal adequacy of charge
 - ❖ e.g., complainant does not allege the different treatment than another person of a difference class

THE POSITION STATEMENT

- ❖ Assert Defense
 - Usually – documented proven non-discriminatory basis for decision

THE INVESTIGATION

❖ Document Production

MEDIATION

RIGHT TO SUE LETTER

- ❖ Outcome of the majority of the charges
- ❖ Necessary before complainant can sue
- ❖ If *pro se*, usually the end of the case

FINDING OF REASONABLE CAUSE

- ❖ Conciliation – EEOC is required to try to reach resolution
- ❖ Unlike mediation, EEOC may well try to extract corrective measures

EEOC LAWSUIT

- ❖ Rare – about 8% of *failed* conciliations
- ❖ When EEOC suspects organizational issues, serious violations, maybe a precedent setting case

FINAL NOTES

- ❖ ADEA and Equal pay – different rules
- ❖ EEOC Staff
- ❖ Salvaging unhappy employees