

# Arizona Center for Disability Law

Protection and Advocacy System for Arizona

## How To Enforce Employment Rights Under the Americans with Disabilities Act

### A Self-Advocacy Guide

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Funding for this document is provided by the United States Department of Health and Human Services, Administration on Developmental Disabilities and Community Mental Health Services and the United States Department of Education, Rehabilitation Services Administration.

Federal and state law can change at any time. If there is any question about the continued validity of any information in the handbook, contact the Arizona Center for Disability Law or an attorney in your community.

The purpose of this guide is to provide general information to individuals regarding their rights and protections under the law. It is not intended as a substitute for legal advice. You may wish to contact the Arizona Center for Disability Law or consult with a lawyer in your community if you require further information.

' This guide is available in alternative formats upon request.

# HOW TO ENFORCE EMPLOYMENT RIGHTS UNDER THE AMERICANS WITH DISABILITIES ACT

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## **A. Introduction to the Americans with Disabilities Act (ADA) and this Guide**

### **1. Overview**

Oftentimes, people with disabilities do not have an equal opportunity to work or advance in their employment. People with disabilities are often restricted in employment opportunities by many different kinds of barriers. Some face physical obstacles that either make it difficult or impossible to get into and around a workplace or to use equipment. Some are excluded because they communicate differently than their co-workers. Still others are excluded because of rigid work schedules that do not permit flexibility for people with special needs because of a disability.

In other cases, people are denied opportunities, not because of actual barriers, but because of prejudice. These are the barriers in other people's minds: fears, stereotypes, presumptions, and misconceptions about job performance, safety, absenteeism, costs, or lack of acceptance by co-workers and customers.

On July 26, 1990, Congress passed the Americans with Disabilities Act (ADA), which provides major civil rights protections to individuals with disabilities. The intent of this federal law is to reduce barriers to people with disabilities and provide equal opportunities in employment, public accommodations, public services, transportation, and telecommunications. The various titles of the ADA affect many aspects of the lives of people with disabilities.

- Title I makes it unlawful to discriminate in employment against qualified people with disabilities.
- Title II makes it unlawful for state and local governments and their agencies to discriminate on the basis of disability in programs and services, including public transportation.
- Title III prohibits discrimination on the basis of disability in access and enjoyment of public accommodations and commercial facilities, such as hotels, motels, restaurants, professional offices, convention centers, stores, banks, museums, parks, schools, and recreational facilities.
- Title IV requires accessibility of telecommunication services to hearing impaired persons and other individuals with disabilities.

There are limits to the types of lawsuits an individual can file under the ADA. For example, the U.S. Supreme Court has ruled that private individuals may not sue state employers for money damages under the ADA. Individuals may still file charges of discrimination with the Equal Employment Opportunity Commission (EEOC) against their state employer for other relief, such as court orders to stop discrimination. The U.S. Government can still file lawsuits against states for violating the ADA.

## **2. How the Arizona Center for Disability Law Assists People with Disabilities**

If you believe you have been discriminated against on the basis of a disability in employment or access to public services, public accommodations, public transportation, or telecommunication services, staff at the Arizona Center for Disability Law (ACDL) can provide you with information about the ADA and enforcing your rights. The ACDL is a non-profit, public interest law firm providing free advocacy, information and referral services, legal research, community legal education, and, in selected cases, legal representation to individuals with disabilities. The ACDL is the designated protection and advocacy system for Arizonans with a wide range of physical and mental disabilities. Assistance is provided for disability-related issues in established priority areas.

Information about the eligibility requirements and priorities is available from the ACDL on request. Assistance is provided according to program eligibility requirements, priorities, and staff availability. This guide will provide the reader with information about how to file a charge of discrimination and remedies available for violations of the employment provisions of the ADA. Other guides available through the ACDL on employment include:

- An Overview of the Employment Protections of the ADA
- The ADA and the Job Applicant: Recruitment, Applications, and Interviews
- The ADA and Reasonable Accommodations
- Drug and Alcohol Testing under the Americans with Disabilities Act (ADA)
- The ADA and Medical Examinations
- The ADA and Confidentiality of Medical Records
- The ADA and Disability-Related Harassment

These guides are not substitutes for legal advice, but are meant to provide people with disabilities with information and examples about the employment protections under the ADA. The ACDL recommends that persons obtain professional legal advice to resolve a legal dispute regarding discrimination on the basis of a disability.

### **3. When the Employment Protections of the ADA Apply**

The ADA does not cover every employment situation between an applicant or employee and an employer. For the ADA to apply to an employment situation, each of the following has to be true:

- \$ the employer is a *covered employer*;
- \$ the employee or applicant has a *disability* according to the ADA;
- \$ the employee or applicant is *qualified* to perform the job; and
- \$ the employer *discriminates* against an applicant or employee *on the basis of disability*.

The terms "covered employer" and "disability" are discussed below.

#### **a. Employers Covered by the Employment Protections of the ADA**

The ADA applies to private employers with 15 or more employees and includes

- \$ employment agencies and labor unions.
- \$ a location or facility of a business with fewer than 15 employees whose total number of employees for the company in all locations and facilities combined equals 15 or more.

Other state and local laws may apply to persons with disabilities who are employed by smaller businesses. For more information, contact the ACDL or a private attorney.

The ADA applies to state and local governments and includes:

- \$ agencies, departments, and entities regardless of their size or number of employees, such as public schools, universities, libraries, museums, parks, and recreation facilities; police and fire departments; and social welfare offices
- \$ states, although employees (and applicants) cannot sue state employers in court for money damages. Individuals can still file charges of discrimination with the EEOC against their state employer. Individuals

can also still sue to require state employers to take action or to stop discriminatory action. The U.S. government can still file lawsuits against state employers under the ADA. In addition, individuals can sue local governmental agencies, such as cities and counties, for money damages.

The ADA does NOT apply to the federal government, but it does apply to employees of the U.S. Senate. However, generally if a person with a disability works or applies for a job with the federal government, a federal agency, or a fully owned U.S. governmental corporation, there still might be protection. The Rehabilitation Act of 1973—another anti-discrimination law that offers employment protections for people with disabilities—might apply to jobs with the federal government, a federal agency, or a fully owned U.S. governmental corporation. For example, employees and applicants of the U.S. Department of Labor and civilian employees of the U.S. Department of Army are covered by the Rehabilitation Act. For more information about the Rehabilitation Act, contact the ACDL, an Equal Employment Opportunity Counselor for the federal agency, or a private attorney.

Title I (Employment) of the ADA does NOT apply to Indian Tribes. However, tribes may have their own affirmative action or anti-discrimination laws that address discrimination on the basis of disability. Some tribes have adopted laws or entered into agreements to abide by federal discrimination laws similar to the ADA. Contact a tribal legal office for more information about the tribal laws or agreements that may apply.

#### **b. Applicants or Employees with a Disability**

The ADA protects qualified individuals with a disability. Disability is defined under the ADA as:

(1) a physical or mental impairment that substantially limits an individual in the ability to perform major life activities, such as:

- \$ seeing
- \$ hearing
- \$ walking
- \$ working
- \$ learning
- \$ thinking
- \$ reading
- \$ lifting
- \$ concentrating
- \$ reproducing
- \$ interacting with others
- \$ sleeping
- \$ performing manual tasks in certain situations
- \$ engaging in sexual relations

- (2) a history of a substantially limiting impairment, or
- (3) being regarded as having a substantially limiting impairment.

However, persons who are currently illegally using drugs are generally not considered disabled because of their drug use. A person is qualified under the ADA if s/he has all of the skills, education, and experience required for the position and is able to perform the essential functions of the job with or without reasonable accommodations. For more information about what these special terms mean, see the Center's guide, *An Overview of the Employment Protections of the ADA*.

## **B. The Equal Employment Opportunity Commission**

### **1. Introduction to the EEOC**

The EEOC is a federal agency with the responsibility to enforce the employment provisions of the ADA (Title I).<sup>1</sup> This responsibility includes taking charges (or complaints of discrimination) from people who believe that they have been discriminated against in employment on the basis of a disability, investigating those complaints, making a determination of whether there is reasonable cause to believe that discrimination occurred, and issuing Notices of Right to Sue (also called "right to sue" letters).

The EEOC will also attempt to work out an agreement - sometimes called a "settlement" - between the parties to resolve the claim of discrimination if that is possible. Once a finding of discrimination has been issued, the settlement is called a "conciliation" agreement. The EEOC will bring lawsuits against employers in selected cases for violations of the employment provisions of the ADA. However, in most cases, the EEOC will only issue a "right to sue" letter that allows the individual to bring a private lawsuit under Title I of the ADA to enforce his/her own rights.

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<sup>1</sup>The ADA prohibits discrimination in areas other than employment. For example, discrimination in public accommodations such as restaurants and movie theaters is prohibited. Other agencies are charged with enforcing the non-employment provisions of the ADA. For example, the Department of Justice investigates complaints of discrimination in public accommodations. For more information about complaint procedures for violations of other provisions of the ADA, contact the staff at the ACDL.

Arizona also has the Arizona Civil Rights Act (ACRA), a **state law** that prohibits discrimination in employment on the basis of a **physical or mental disability**. The Arizona Civil Rights Division (ACRD)—the state equivalent of the EEOC—enforces the ACRA.

## **2. Other Anti-Discrimination Laws**

The EEOC enforces other laws that prohibit discrimination in employment, such as **Title VII of the Civil Rights Act of 1964** (Title VII). Title VII prohibits employment discrimination on the basis of **race, color, religion, national origin, and gender**, by employers with 15 or more employees. Included in the Title VII prohibitions of discrimination are such claims as **sexual harassment** and **pregnancy discrimination**.

The EEOC also enforces the following statutes: the **Age Discrimination in Employment Act (ADEA)**, which prohibits job discrimination against persons **age 40** and over by employers with 20 or more employees and the **Equal Pay Act (EPA)**, which prohibits an employer from paying men and women different wages for the same or similar work because of their gender, is also enforced by the EEOC.

Because the ACDL is the protection and advocacy agency for people with disabilities, the Center is restricted by its grants from accepting cases that involve discrimination on the basis of another protected status, such as gender, race, national origin, and age. For more information about these other laws, contact the EEOC or a private attorney specializing in employment law. This guide does not address information about these other laws.

## **3. Other Employment Claims**

This guide is not intended to provide a comprehensive discussion of the procedures for pursuing all employment-related claims. For example, an individual may have a claim for breach of contract, wrongful discharge in violation of a public policy, or retaliatory discharge. These claims may not be covered by a charge of discrimination filed with the EEOC. However, these claims do have a statute of limitations which is the time period in which a claim must be filed in court. The statute of limitations for many of these other employment claims may be as short as one year. Public employees and employees under a collective bargaining agreement may also have other rights and procedures available in addition to the ADA. You may also be

able to file a complaint and/or lawsuit under Section 504 of the Rehabilitation Act if your employer receives federal financial assistance. See Appendix, Discrimination by Recipients of Federal Financial Assistance. For more information about these claims, you should contact a private attorney specializing in employment law.

Do not wait until the EEOC makes a decision on your charge to discuss other possible claims with an attorney because the statute of limitations may expire. *A referral list of attorneys who handle employment discrimination claims may be obtained from the ACDL*

## **C. Who Can File A Charge Of Discrimination**

### **1. What is a Charge?**

A *charge* is a term that is used for the document that is completed by the EEOC or other enforcement agencies to initiate a complaint of disability discrimination against an employer.<sup>2</sup> The charge is simply a form that summarizes the complaint of discrimination. See the appendix of this guide for a sample of the EEOC's charge form.

### **2. Who can File a Charge?**

An **applicant** or **employee** with a disability who feels that s/he has been discriminated against in employment on the basis of disability can file a charge with the EEOC. This includes people who have an **actual** disability<sup>3</sup>; a **record** of this type of impairment; or **are regarded as** having this type of impairment.

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<sup>2</sup>A charge is also prepared when a person believes s/he was discriminated against because of age, gender, race, national origin, and religion. If a person tells EEOC staff s/he was subjected to discrimination because of more than one factor, the agency would include all charges of discrimination in one charge form.

<sup>3</sup>A disability for purposes of the ADA is a physical or mental impairment that substantially limits at least one major life activity. See the ACDL's guide, *An Overview of the Employment Protections of the ADA*.

*Example of filing a charge because of discrimination on the basis of an actual disability.*

Judy is working for an office supply company as a salesperson. She has rheumatoid arthritis which limits her ability to carry items over 20 pounds and walk distances. Her condition is painful. Judy is protected as an individual with a physical impairment that substantially limits her ability to walk, stand, and lift. She asks her employer for a cart to carry her supply and sample cases and a disabled parking space near the back entrance of the warehouse. If her employer refuses to provide these simple accommodations, Judy may file a charge of discrimination with the EEOC.

*Example of filing a charge because of discrimination on the basis of a history of a disability.*

Arthur works for a landscaping firm as a foreman. He tells a co-worker that about 5 years ago he used to be addicted to cocaine before he went into a drug rehabilitation program. The co-worker tells Alice, the owner of the landscape company. Alice fires Arthur because she believes "once a drug addict, always a drug addict." If Alice's company has at least 15 employees, Arthur would be protected by the ADA even though he is no longer disabled by a drug addiction.

*Example of filing a charge based on discrimination on the basis of a perception of disability.*

Stephen works for a homebuilder as a carpenter. His co-workers know that he is gay. When Allen, his supervisor, discovers that Stephen is gay, he has the company fire him. Allen believes that if Stephen is gay, he is likely to be either HIV-positive or have AIDS. Stephen may file a charge of discrimination on the basis of his employer's perception that he has HIV or AIDS even if he does not. He was fired because his employer mistakenly thought he had a disability. Note that neither the ADA nor other federal law prohibits the employer from discriminating against Stephen on the basis of his sexual orientation.

Not only may charges be filed by people with an actual disability, a history of a disability, or perceived disability who believe that they have been discriminated against because of a disability, but charges may also be filed in the following situations: (1) a person who is discriminated against in employment because of his/her **association with a person with a disability** may have a claim for

disability discrimination; the association can be with a child, spouse, parent, brother, sister, friend, or business associate with a disability and (2) a charge can be filed by a **person who experiences retaliation** for opposing an act or practice of an employer that violates the ADA, made a charge of discrimination under the ADA, or testified, assisted, or participated in an investigation, proceeding, or hearing about discrimination under the ADA. A person who has exercised his/her rights under the ADA or has encouraged another person to exercise his/her rights under the ADA cannot lawfully be intimidated, threatened, or coerced by the employer. A person who is subjected to this type of intimidation may file a charge of retaliation.

*Example of a charge filed by a person based on associational discrimination.* Erin is an applicant for a position as a nurse at a hospital clinic. When asked what shift she prefers, she asks for the night shift so she can be at home during the day to supervise her young son who has a mental illness. Thomas, the personnel director for the hospital, withdraws the job offer, because he fears that Erin's son will need costly psychiatric care that will be a drain on the hospital's self-insurance program. Erin may file a charge of discrimination with the EEOC for discrimination in this hiring decision, even though she does not have a disability. She would file as an individual who has been discriminated against because of her association with her son, who has a disability.

*Example of filing a charge because of retaliation.* Brad is a person who has mild mental retardation. When he applies to be a server at a cafeteria, he overhears the manager tell Sandra, the cashier, not to give him an application because he does not want to hire "people like that." Brad files a charge of discrimination with the EEOC. Brad tells the investigator about the comment that was made to the cashier. The investigator interviews Sandra and she tells the investigator what her supervisor said to her. The manager fires Sandra for cooperating with the investigation. Even though she is not disabled, Sandra may file a charge of retaliation with the EEOC because she was fired for cooperating with the investigation of an ADA complaint.

In some cases, the EEOC may file a "Commissioner's Charge" based on information provided to it by the public. This type of charge is filed when the EEOC has information of a larger discrimination issue and no one has filed a charge. Also, an individual, group, or

organization can file a charge on behalf of another person. Sometimes a person or organization becomes aware that an employer is discriminating against someone on the basis of a disability. However, there is not an individual who is willing to come forward and file a charge of discrimination. In this case, the EEOC will allow a group or individual to file on behalf of another for the discrimination by the employer. This type of charge is called a **"Third Party Charge."**

*Example of a Third Party Charge.* Elisabeth is a job developer. She works for a non-profit agency that helps people with disabilities find jobs in the community. To help develop possible job sources, she collects applications from different employers in the community. As she is reviewing the applications to help her clients apply for jobs, she discovers that the application has an illegal question about disability. If none of her clients wishes to file a charge, Elisabeth may file a *Third Party Charge* of discrimination with the EEOC.

### **3. Who are the Parties in the Charge Process?**

The individual, group, or organization that files a charge is called the **"charging party"**. The private employer, state or local government, employment agency, labor union, or joint labor management committee whom the charge is against is called the **"respondent"**. The EEOC is also a party in the charge process as the **"enforcement agency"**. For more information about who is protected by the ADA, see the Center's guide, *An Overview of the Employment Protections of the Americans with Disabilities Act*.

### **4. Why is a Charge Filed?**

Filing a charge of disability discrimination is a necessary step if an individual wants to later file a private lawsuit under Title I of the ADA. The following are examples of discrimination where charges could be filed:

- an employer refuses to provide an accommodation to an employee that is **not** too expensive or disruptive to the business;
- an employer asks illegal, disability-related questions on an application;
- an employer reveals confidential, medical information about an employee to co-workers;

- an employer decides not to hire a qualified individual because she will need an accommodation;
- an employer fires an employee who was performing satisfactorily because the employer learns the employee has a mental illness;
- an employer has an insurance plan that puts caps on treatment for people diagnosed with AIDS;
- an employer only requires entry medical examinations for people with obvious disabilities;
- an employer pays people with disabilities less than other co-workers doing the same work.

These are examples of some discriminatory actions. There are many other actions by an employer that may violate Title I of the ADA.

## **D. How To File a Charge of Discrimination**

### **1. Accommodations by the Enforcement Agencies**

Under Section 504 of the Rehabilitation Act, EEOC must make its programs accessible to and usable by people with disabilities. Under Title II of the ADA, the ACRD must do the same. Both agencies must provide effective accommodations to people with disabilities. Accommodations should be determined on a case-by-case basis based on the needs of each individual.

Albert is deaf. He calls on Arizona Relay (a service for deaf telephone callers) to make an appointment for his charge to be filed. He requests a sign language interpreter for the interview because he uses American Sign Language and does not understand English. He has been deaf since birth and does not read lips very well. The ACRD/EEOC must provide the accommodation so that he can be effectively interviewed about his case.

Jodie has mild mental retardation. She does not understand the information requested on the form. An intake officer may need to explain in simpler terms what information is needed.

## **2. Where to Go to File a Charge**

If an individual believes that s/he has been discriminated against in employment because of a disability, then s/he may file a charge of discrimination with the EEOC. There is no fee or cost for filing a charge of discrimination with the EEOC. It is not necessary to have an attorney file the charge on your behalf. An individual may contact the EEOC on his or her own behalf to request that a charge be filed. However, an individual may prefer to consult with an attorney for advice or assistance in the charge process.

The EEOC will take charges of discrimination under the ADA from anyone who believes s/he has been subjected to employment discrimination.<sup>4</sup> An individual may start the process by going to the EEOC office or calling the office. Its address and telephone number are:

United States Equal Employment Opportunity Commission  
3300 North Central Avenue  
Suite 690  
Phoenix, AZ 85012  
(602) 640-5000 (Voice)  
(602) 640-5072 (TTY)  
(800) 669-4000 (voice for people living outside Phoenix)  
(800) 877-8339 (TTY for people living outside Phoenix)

For the convenience of people living in Tucson or Southern Arizona, the EEOC has entered into an agreement with the ACRD for that office to accept charges under the ADA. The address and telephone number of the ACRD are:

Arizona Attorney General's Office  
Civil Rights Division  
400 West Congress  
Suite 215  
Tucson, Arizona 85701  
(520) 628-6500 (voice) - (520) 628-6872 (TTY)

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<sup>4</sup>Some charges filed directly with the EEOC by a person from Tucson or Southern Arizona may be transferred to the Tucson ACRD for investigation.

### **3. Deadlines for Filing a Charge**

Under Title I of the ADA an individual who believes s/he has been discriminated against on the basis of a disability must file **within 300 days** of the date s/he knew of the discriminatory conduct

### **4. Filing under the Arizona Civil Rights Act**

Arizona also has the Arizona Civil Rights Act, a **state law** that prohibits discrimination in employment on the basis of a **physical or mental disability**. Charges of discrimination under this state law must be **filed within 180 days** of the date the individual knew or should have known about the discriminatory conduct. Therefore, if an individual believes s/he has been discriminated against on the basis of a physical or mental disability, s/he may file a charge with the ACRD. The Arizona Civil Rights Division has two offices in the State:

Arizona Attorney General's Office

Civil Rights Division

400 West Congress, Suite 215

Tucson, AZ 85701

(520) 628-6500 (Voice)

(520) 628-6872 (TTY)

and

1275 West Washington

Phoenix, AZ 85007

(602) 542-5263 (Voice or TTY)

When an individual files a charge of discrimination with the state agency, the ACRD will also automatically file the charge under the federal ADA.

### **5. Procedures for Completing the Charge Form**

A charge can be filed in person at the EEOC office, by telephone, or by mail. If an individual goes to the EEOC office to have the charge form prepared, the intake hours are 8:00 a.m. to 3:00 p.m. People should come in at least by 2:00 p.m. to avoid having to come back the next day. After an intake officer prepares the charge, the individual will be presented with the

form to read and sign.

If the **individual lives outside of Phoenix** or it is not convenient to go to the Phoenix office, then s/he may call the office. The EEOC will either send a questionnaire for the individual to complete or do a telephone interview. A copy of the EEOC questionnaire is in the Appendix of this guide. The EEOC staff will prepare a charge form and send to the individual to sign and return to the EEOC office.

If the **individual lives in Tucson or Southern Arizona**, s/he may make an appointment by calling the Tucson office of the ACRD. Although there is not a toll-free number for people living outside of Tucson, the receptionist will take their telephone number and have the intake officer return the call and set up an appointment. Appointments are usually made from about 4 to 8 weeks following the initial call because of the number of complaints that the agency must handle. An appointment will be provided sooner if the deadline for filing is about to expire. In those cases, if the individual comes to the office, the intake officer of the day will take the charge on the same day.

Keep in mind that these two offices have different intake procedures. If an individual shows up at the ACRD, s/he will usually be given an appointment and sent home unless the deadline is less than a week away, in which case the charge will be taken the same day. However, the Phoenix office of the EEOC does prepare charges on a walk-in, no appointment basis, although persons who come in after 2:00 p.m. will risk not being helped on the same day.

## **6. Necessary Information for the Charge**

Whether a questionnaire is sent by mail to be completed or an intake officer interviews an individual about the problem, the individual filing the charge will need to provide the following information to the agency:

- √ the charging party's name, address, and telephone number;
- √ the employer's name, address, telephone number, and number of employees;
- √ the type of discrimination (e.g., disability, race, color, religion, sex, national origin, age, retaliation);
- √ the discriminatory acts of the employer (e.g., hiring, promotion, wages, terms and

conditions of employment, discharge);

- √ the nature of the charging party's disability or if because of association or retaliation for assisting another, the nature of the other person's disability;
- √ the reasons the person thinks s/he was discriminated against;
- √ details of what happened;
- √ any documents concerning the discrimination; and
- √ the names and addresses of witnesses who may know about the discrimination.

## **7. Which Agency Will Investigate the Charge**

Usually, the agency where you file a charge will investigate it. If an individual files a charge of discrimination that the ACRD would be able to investigate under its authority to enforce the state employment discrimination law, then ACRD will investigate the charge. The ACRD investigates claims of discrimination on the basis of a physical or mental disability that are filed within 180 days of the date of the discrimination. The ACRD office in Tucson takes charges filed after 180 days, but forwards these charges for EEOC to investigate.

## **E. Investigation Process**

This section of the guide focuses on what an individual can expect when his/her charge is being investigated by the ACRD or EEOC. These agencies are understaffed for the number of complaints they are required to accept and investigate. Therefore, an individual can expect an investigation to move slowly, sometimes taking more than a year.<sup>5</sup>

However, the following generally occurs in each investigation:

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<sup>5</sup>A charging party may choose not to wait for the EEOC to reach a conclusion. The charging party may request a right to sue letter at any time. If 180 days have passed since the party filed the charge of discrimination or if 180 days have not passed and the EEOC determines that it will not be able to process the charge within 180 days, the EEOC will issue a right to sue letter. However, when a right to sue letter is issued, the charging party only has 90 days from the receipt of the right to sue letter to file a lawsuit under Title I.

## **1. Assignment of an Investigator**

An investigator, who is assigned to handle the case, is the contact person for both the employee/applicant who filed the charge and the employer. Generally, any letters that come from the agency will be sent by the investigator. The investigator is in charge of gathering the facts to determine whether there is reasonable cause to believe—in other words, whether it is more likely than not—that discrimination has occurred. Investigators will also help the parties explore whether the charge can be settled. If the matter can be settled before the investigation concludes, the parties will enter into a No-Fault Settlement Agreement. A "No-Fault Settlement Agreement" is an agreement in which the employer agrees to provide certain relief to the complaining party if s/he will withdraw the charge and not take any further legal action against the employer. Do not expect to work directly with an attorney from the agency or receive legal advice on whether to settle.

## **2. Notification to Respondent**

Within 10 days after receipt of a charge, the agency must serve the employer with a copy. The agency asks the employer to send a response to the agency about the charges of discrimination, called a "position statement." Employers are usually given 30 days from the date they receive the charge to respond. The agency will almost always grant an extension of time if an employer asks for one.

## **3. Information Review**

The EEOC and ACRD begin their investigations by reviewing information received from the charging party during the intake or additional information provided later. The investigator compares that information to the employer's response. The investigator will usually give both sides an opportunity to give additional information to prove that its position is correct.

## **4. Information Request**

EEOC or ACRD may also request information from either the charging party or the employer. The investigator has the authority to request additional information from the employer.

For example, the investigator may ask the employer to answer a series of written questions or provide copies of records, such as:

- specific information on the issues raised in the charge;
- the names, addresses, and telephone numbers of witnesses who can provide evidence about issues on the charge;
- information about the business operation, hiring procedures, policies, and practices; and
- personnel and payroll records.

The agency can issue a subpoena to get the information if the employer does not voluntarily provide it. If the employee or applicant does not provide the investigator with information that is requested, the agency can dismiss the charge for lack of cooperation.

## **5. Witness Interviews**

The EEOC and ACRD have the authority to interview witnesses who have knowledge of acts of which the employee/applicant has complained. The EEOC and ACRD may interview managers, co-workers, and witnesses to the events. The agencies have the authority to subpoena a witness to give testimony if the witness will not cooperate.

## **6. Additional Evidence**

An employer or employee/applicant may also submit additional oral or written evidence on its own behalf. Both the employer and the employee/applicant may be asked to attend a conference to review the allegations, obtain additional evidence, or seek to resolve a charge through settlement.

## **7. Dismissal of Charge**

The EEOC and ACRD may dismiss a charge during the course of the investigation for various reasons, including that the charge is not timely filed or if it finds that the employer is not covered by the ADA (because, for example, the employer has fewer than 15 employees). The charge may also be dismissed if, after preliminary review, the EEOC determines that further investigation would not necessarily result in any finding of discrimination. Upon dismissal of the charge, the EEOC sends the charging party a notice of right to sue.

## **8. Preliminary Findings**

Although the EEOC and ACRD dismiss many cases based on their limited resources, they sometimes inform the charging party and the respondent of the preliminary findings of the investigation, whether there is cause to believe that discrimination has occurred, and the type of relief that may be necessary. In that case, both parties will be provided an opportunity to give further information to the agency, or if possible, reach a settlement.

## **F. Agency Decision**

### **1. Discrimination Finding**

If the investigation shows that there **is reasonable cause** to believe that discrimination occurred, the EEOC and ACRD will send an official “Letter of Determination” to the charging party and the respondent, stating that it has found “reasonable cause”. The agency then will try to settle the issue and get relief for the charging party, such as reinstatement, back wages, or training.

### **2. Insufficient Evidence of Discrimination**

If, through the investigation, the EEOC is not able to find sufficient evidence to issue a cause finding, a “Dismissal and Notice of Rights” will be issued. The EEOC will issue a “right to sue” letter to the charging party, who may then file a private suit. If the ACRD finds there was no discrimination, it will issue a “no cause finding” and a “right to sue” notice to the charging party.

### **3. Conciliation**

If the EEOC or ACRD finds that there is reasonable cause to believe discrimination occurred, the agency will attempt to "conciliate" the matter. “Conciliation” means getting an agreement from the employer to provide relief to the employee/applicant to correct the discrimination.

#### **4. Review of the Findings**

If the ACRD processes a charge also filed under the ADA, the EEOC generally accepts the findings and action of the ACRD. However, if a charging party is adversely affected by the ACRD's decision, such as his/her charge is dismissed or there is a no cause finding, s/he can ask for the EEOC to review the ACRD's decision. A party must request a review in writing within 15 days of the agency's action. A party may also request a review from the ACRD about its own finding under the Arizona Civil Rights Act. The request must be made to the Chief Counsel of the ACRD within 20 days of receipt of its written determination. The request must be in writing and under oath.

#### **5. Litigation**

If the EEOC or ACRD has found cause to believe that discrimination occurred, but cannot resolve the issue through conciliation, the agency will consider whether to sue the employer. If the EEOC sues the employer, it does so in its own name (e.g., EEOC v. ABC Company, not Jane Doe v. ABC Company). However, the employee or applicant can ask the court to be included in the lawsuit. If the EEOC decides not to litigate, it will send the charging party a "right to sue" letter. If conciliation fails on an ADA charge against a state or local government, the EEOC will refer the case to the United States Department of Justice to consider whether it will file a lawsuit. If it does not, it will issue a "right to sue" letter.

**The charging party must file a lawsuit within 90 days of receipt of the right to sue letter.** If the lawsuit is not filed within this deadline, the employee/applicant will lose the right to bring a lawsuit under Title I of the ADA.

Keep in mind that there is a difference in the state and federal laws regarding when to file a lawsuit. If the ACRD investigates a claim of discrimination and the investigation is not completed within about 9 months, the ACRD will send the charging party a right to sue letter. Under the **state employment discrimination law** a person must file a lawsuit **within one year of filing the charge**. The individual can file the lawsuit and the ACRD will keep the file open until it has completed the investigation. Under the federal **ADA**, the right to sue letter comes at the end of the investigation, or at the request of the charging party. A private lawsuit must be filed **within 90 days of receiving the federal right to sue letter**.

## 6. Reconsideration

A charging party may request that the EEOC reconsider a "no cause" finding. It is the EEOC's decision whether to reconsider the matter. See Section H for more information about requesting reconsideration.

## G. Remedies

An employee or an applicant who is filing a charge of discrimination will have to consider what relief s/he wants from the employer, because the employer may make a settlement offer or the agency may ask the employee what relief s/he wants. To make a decision about the relief that might be acceptable to settle the claim or to evaluate whether to file a lawsuit, the employee/applicant should know what kind of relief the ADA provides for the person who successfully sues an employer. The purpose of the relief is to make the individual "whole," by placing the person in the place s/he would have been in had the discrimination not occurred. Injunctive relief—one of the remedies that the ADA provides—is a court order requiring an employer to take some kind of action or to stop discriminatory behavior.

### Examples of injunctive relief:

- hire an individual who was not selected solely because of his/her disability
- provide a reasonable accommodation for a person to do his/her job
- reinstate a person who was fired because the employer did not want to provide an accommodation
- make an exception to a policy as an accommodation to a person with a disability
- transfer a supervisor who is harassing an employee with a disability
- remove discriminatory records from a personnel file
- restore benefits and seniority
- provide an accommodation for an applicant to apply or take an employment test
- require a training for supervisors and managers on the ADA

Another form of relief is monetary damages, which include back pay and compensatory and punitive damages.

**Back pay damages** encompass lost wages, benefits, and interest. If you want back pay, it is very important that you keep accurate records of your attempts to find work. Be sure to keep a list of: (1) employers you called and with whom you spoke; (2) applications you filed and where; (3) interviews you attended, including the date of the interview and the person(s) who interviewed you; and (4) any other activities you engaged in during your effort to find employment (e.g., job skills training or listing your name with an employment agency or other job-service agencies you visited).

**Compensatory damages** are available to compensate the individual for emotional pain, suffering, mental anguish, inconvenience, loss of enjoyment of life, and humiliation as a result of the discrimination. In some cases when the employee seeks reinstatement, but it is no longer practical, front pay may be awarded. Front pay represents future salaries and benefits the individual would have earned if the employer had not discriminated against him/her.

**Punitive damages** are awarded to punish an employer for intentional discrimination and may be available if an employer intentionally discriminated with malice or reckless indifference to the rights of the employee or applicant. An employee or applicant does not have to show that the employer's conduct was *egregious* or outrageous. However, showing outrageous conduct may help prove that the employer engaged in intentional discrimination. The amount of punitive damages is based on the employer's income and assets, not on the worth of the employee/applicant's loss and damages. An employer is not liable for punitive damages if the discriminatory actions taken by its employees are contrary to the employer's good faith efforts to prevent discrimination in the workplace. Employees should use the employer's chain of command to request ADA accommodations or complain about disability discrimination.

Similarly, when a person claims that the employer did not accommodate him/her, damages for emotional distress and punitive damages are not available if the employer can show it made good faith efforts to work with the employee to find an effective accommodation. The law is not intended to punish an employer who is actually trying to accommodate an individual.

The total amount of damages awarded to each employee for pain, inconvenience, humiliation, etc. from discrimination and punitive damages awarded under Title I of the ADA is limited, based on the size of the employer.

NUMBER OF EMPLOYEES	DAMAGES LIMIT PER PERSON
15 - 100	\$ 50,000
101 - 200	100,000
201 - 500	200,000
500 and more	300,000

**Reasonable attorney's fees and costs of litigation** may also be awarded to the plaintiff who proves an ADA claim of discrimination.

Olivia applied for, and was offered, a position as an accountant. When she asked for a telephone amplification device as an accommodation, the job offer was withdrawn. Olivia filed a dual charge of discrimination with the ACRD and EEOC on the basis of state and federal law. The EEOC issued a cause finding that Olivia was discriminated against. Full relief might be hiring her for the next available position (opening in one month); wages from the time that the job offer was withdrawn until she begins working; provision of the phone amplification device; and reimbursement of attorney's fees and costs Olivia spent to get the relief.

## H. Strategies for the EEOC/ACRD Process

If you are considering filing a charge of discrimination under the ADA or state employment discrimination law, consider the following suggestions.

### 1. Negotiating with the Employer

If you have not done so before filing a charge, consider making one final attempt to work the problem out with the employer. Some employers will end discussions when a charge is filed, letting the charge process run its course. If the matter cannot be worked out, you then can file a charge. However, do not miss your deadlines for filing charges trying to work out the problem.

### 2. Filing a Charge

When you come to the ACRD or EEOC, bring all of the information necessary to complete the charge form, such as the address, telephone number of the employer, and the names, addresses, and telephone numbers of people who might be witnesses. It makes the

interview go faster and allows you to make one trip to the office. If you are going to the EEOC office, go as early as possible, but no later than 2:00 p.m. if you want to be seen the same day.

If at all possible, do not wait until near the end of the deadline to file a charge. The sooner the charge is completed, the sooner an investigation may begin. Facts generally are easier to remember and verify closer to the actual events. As time passes, employees who were witnesses may leave the company. If you are filing with the ACRD and have less than one week to file, you should go to the ACRD office in person rather than calling for an appointment.

If you have missed any of the deadlines for filing a charge as outlined in this guide, call the ACRD or EEOC anyway. There may be grounds for accepting your complaint beyond the deadline.

### **3. Accommodations in the Charge Process**

Request in writing any accommodation you need for the charge process, investigation, or conciliation efforts and send the request to the intake officer or investigator assigned to the case.

Date the request and keep a copy for your records. The law does not require the request to be in writing, but a written request will be proof that you provided notice about your needs. If the request is denied, contact a supervisor at the EEOC or ACRD and make the request. If that fails, contact the ADA Coordinator for the ACRD or the Section 504 Coordinator for EEOC to request a review of the denial not to provide the accommodation. If all these steps fail, contact the staff at the ACDL for more information.

### **4. Contacts with Agency**

The case will be assigned a charge number at the beginning of the process. Keep a record of that number and use the number when calling the ACRD or EEOC for information about your charge.

Respond promptly to requests for information from either the investigator or the intake officer. Do not ignore requests for information from the ACRD or EEOC or the agency may dismiss the case without further investigation. If you have difficulty getting the information in the time given to you, ask for an extension. Make your request in writing. Date the request and keep a copy for your records.

Keep the EEOC or ACRD office informed of any changes in your address or telephone

number so that there is no difficulty keeping in touch with you.

## **5. Acceptance of Charge**

**You have a right to file a charge of employment discrimination under the ADA.** The ACRD and EEOC have different procedures for accepting charges. The EEOC accepts most charges but dismisses charges early if the agency does not believe the facts support that the employer violated the ADA. The ACRD screens charges more closely than the EEOC does and refuses to accept the charge if the staff does not believe the individual has stated enough facts that, if proven, would be a violation of the ADA. It is important to file a charge because if the agency does not take your charge, you will not get a right to sue letter. Without a right to sue letter, you cannot later file a private lawsuit based on Title I of the ADA (or for the ACRD, the Arizona Civil Rights Act). **You must file a charge to protect your right to file with the court.**

To avoid a misunderstanding, be sure to provide enough information to show that

- you have a disability;
- you were qualified for the position;
- the employer discriminated against you, failed to accommodate you, or took other action prohibited by the ADA because of your disability; and
- the employer is covered by the ADA.

If the intake officer refuses to take your charge, you can ask a supervisor to review the decision. If you still are not permitted to file a charge, contact the ACDL's office to complain. If the ACRD refuses to accept your charge under the state law, you may ask them to prepare it and send it to the EEOC for investigation under the federal law. If ACRD refuses, contact the EEOC directly to file the charge.

## **6. Information for the Investigator**

The EEOC and ACRD are understaffed. If you can assist the investigation by providing useful information to the investigator, it will help move the charge along faster. For example, you should take steps to assist the investigator in understanding the situation. One important tool to provide to the investigator is a chronology or timeline that gives the dates and events that have occurred. See the Appendix for a sample chronology.

**a. Witnesses**

Other information to provide is a list of possible witnesses. The list should include full names, addresses, and telephone numbers. It is better if you can provide home telephone numbers. If you know, you should indicate whether any of the witnesses are management.

The charging party should list the most important witnesses first. In most cases, the EEOC or ACRD cannot and will not interview 25 or more witnesses. It is more likely that 3 - 15 witnesses might be interviewed depending upon the circumstances. In your list, indicate who are the most important witnesses and what information each may provide.

**b. Documents**

If you have copies of documents or other paperwork that might be useful, provide them to the investigator. Examples of documents may be copies of company policies related to the claim, such as accommodation procedures.

If there is information that is in the control of the employer that is not available to the employee or applicant, you may wish to make a list of documents that you want the investigator to request. Employees should not take or copy employee records that would not otherwise be available to them for purposes of the investigation because it may give an employer legitimate grounds for discharging the employee.

**7. Mediation or Alternative Dispute Resolution**

**a. Advantages/disadvantages**

Both the ACRD and EEOC offer mediation as a method to attempt resolving employment disputes. Mediation is a free, informal conference in which the employer and employee/applicant attempt to reach a settlement. A trained mediator meets with the parties to facilitate an agreement. Participation in the mediation is voluntary. The advantages to attempting to mediate are that:

- it is quicker,
- it involves no cost to the parties, and
- the parties learn about the other party's position.

The disadvantage is that in some cases, employees or applicants feel intimidated and

agree to settle for less than might be fair.

**b. Attorneys at Mediation**

One way to minimize this disadvantage for employees or applicants is to ask to bring an attorney to assist you at the mediation or to have the proposed settlement agreement reviewed by an attorney before you sign it. At the ACRD, if an attorney does come to the mediation, s/he may be expected to play a limited part in the actual proceeding because the mediators expect the parties to talk to each other. The attorney is there to review the mediation agreement and to give advice to the charging party. Attorneys can attend the EEOC mediation and their role is not limited.

**c. Legal Advice Before Signing an Agreement**

A charging party who chooses to mediate may consult an attorney about his/her rights before the mediation. The party can also consult an attorney after the mediation but before signing any agreement. Often, agreements are signed the day of mediation. If you intend to have the agreement reviewed by an attorney before you sign, let the staff of the ACRD or EEOC know your plan before the mediation.

**8. Requesting a Right to Sue Letter**

If you are considering requesting a right to sue letter before the EEOC concludes its investigation, it is better if you have found an attorney who has agreed to represent you. Then the attorney and you can decide when is the best time to request the letter. If you request a right to sue letter before you have an attorney, it is possible that you might not be able to find an attorney or afford an attorney to represent you within the 90-day time period you have to file a lawsuit. If you request a right to sue letter, the EEOC usually will close your case and stop the investigation. Thus, if you are unable to get an attorney, you have closed the door on further efforts by the EEOC.

**9. Review of the Findings**

Keep in mind that if you filed a charge under the ADA and the state law and the ACRD does the investigation, you may ask the EEOC to review an adverse decision. You must do so in writing within 15 days of the ACRD's decision.

## 10. Requesting Reconsideration

If you are dissatisfied with the agency's finding, you may request reconsideration. If you request reconsideration of the ACRD's final decision, do so within the deadlines in Part F, Section 4. If you request reconsideration of the EEOC's finding, do so as soon as possible. Most cases are not accepted for reconsideration. The EEOC has the discretion to reconsider claims. In your request for reconsideration, you should explain why you believe the decision was wrong, such as:

- new information has become available that would prove discrimination;
- important witnesses were not interviewed who could be interviewed now;  
or
- the department misinterpreted the applicable law.

If possible, you should seek legal advice about the agency's finding and help requesting reconsideration.

**Filing a reconsideration request does not stop the 90-day period to file a lawsuit.**

Therefore, you should continue to prepare to sue within the 90 days of receipt of the right to sue letter from the EEOC because you may not get a decision about the reconsideration before the 90-day period expires.

## Appendix

### Discrimination by Recipients of Federal Financial Assistance

**Section 504 of the Rehabilitation Act prohibits disability discrimination by employers who receive federal financial assistance. The Office for Civil Rights for each federal agency must investigate complaints of discrimination under § 504 of the Rehabilitation Act. An individual may file dual charges by filing with both the EEOC and the 504 agency. Generally, if a charge is filed with both the EEOC and the 504 agency, the EEOC will do the investigation. The 504 agency will not investigate while the EEOC is processing the charge. However, if a complaining party chooses to have the 504 agency process the complaint, s/he must send a written request to the 504 agency within 20 days of the date s/he receives notice from the 504 agency that it is not processing the complaint until the EEOC has taken action on it. Complaining parties generally have 180 days from the date of the alleged discrimination to file a complaint with the 504 agency or with the U.S. Department of Justice. However, an individual is not required to first file a complaint with a 504 agency before filing a private lawsuit based on § 504 of the Rehabilitation Act. Filing a lawsuit under § 504 must be done within the appropriate statute of limitations which may be as short as one year from the date of the alleged discrimination. This guide focuses on the EEOC charge process. For more information about filing a complaint or a private lawsuit under § 504, individuals should seek legal advice about the appropriate action and deadlines that may apply.**

# Sample EEOC Intake Questionnaire

## Title I - Charge of Discrimination - EEOC Form

### ALLEGATIONS OF EMPLOYMENT DISCRIMINATION

Please immediately complete the entire form and return it to the U. S. Equal Employment Opportunity Commission ("EEOC"). Answer all questions as completely as possible, and attach additional pages if needed to complete your response(s). Incomplete responses will delay further processing of your charge by EEOC. If you do not know the answer to a question, answer by stating "not known." If a question is not applicable, write "n/a." REMEMBER, a charge of employment discrimination must be filed within the time limits imposed by law, generally within 300 days of the alleged discrimination.

#### PERSONAL BACKGROUND INFORMATION:

Name: Mr./Ms. \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: (day) ( ) \_\_\_\_\_ (night) ( ) \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Soc. Sec. # \_\_\_\_\_ Race \_\_\_\_\_

#### RESPONDENT INFORMATION (Employer, union, employment agency against whom the charge is being filed)

Respondent Name \_\_\_\_\_

Address (If employer, location where you actually worked or sought employment - **If you worked out of your home, state that**, and give the full address of the company home office or headquarters; if union or employment agency, give address where you conducted business.)

\_\_\_\_\_

\_\_\_\_\_

City/State/Zip Code \_\_\_\_\_ /County \_\_\_\_\_

Approximate total number of employees \_\_\_\_\_

Type of business \_\_\_\_\_

**DATE OF HARM** (last date any harm which you consider discriminatory happened):

**TYPE OF HARM** (the kind of discrimination that happened to you, for example, discharge, denial of hire, harassment):

\_\_\_\_\_

**ALLEGATIONS OF DISCRIMINATION (p. 2)**

**BASIS** Check the basis for your complaint (the reason you believe the action was taken against you).

- race                       color                       religion                       sex  
 national origin       age                       disability                       retaliation

Identify yourself in terms of the basis or bases you checked, for example, "I am black" or "I am a disabled person."

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If you checked "retaliation," have you ever previously filed a charge with EEOC or another civil rights agency or complained to your employer about discrimination?  yes  no

If yes, please explain: \_\_\_\_\_

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If none of the above bases applies, describe the reason you believe the action was taken against you:

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**EMPLOYMENT HISTORY** (for example, date of hire, position hired into, title of each position held, dates in each position; or date employment sought and position applied for):

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### **ALLEGATIONS OF DISCRIMINATION (p. 3)**

**BRIEF EXPLANATION OF WHAT OCCURRED** Give a description of the events leading to the incidents of harm and describe in detail the harm that occurred: when did it happen, who did it, how did it happen, where did it happen? Be sure to give names and titles of persons involved, incidents and dates of each incident, and any details which support your complaint.

**ALLEGATIONS OF DISCRIMINATION (p. 4)**

**BRIEF EXPLANATION (continued)**

## **ALLEGATIONS OF DISCRIMINATION (p. 5)**

**COMPARATIVE DATA** Was anyone else in a situation similar to yours? If so, what happened to him, her, or them? Name all such similarly-situated individuals and describe their treatment, whether it was better or worse than or the same as yours. Identify all named individuals in terms of the basis you selected, that is, by race, sex, or whatever basis applies in your case.

**ALLEGATIONS OF DISCRIMINATION (p. 6)**

**RESPONDENT'S EXPLANATION** Was an explanation given by the company for what happened? If so, identify by name and title the person who provided the explanation and describe that explanation. Is there a policy and/or practice in the company regarding what happened? Explain.

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**MISCELLANEOUS INFORMATION:**

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**I declare under penalty of perjury that I have read the above statements and that they are true and correct.**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**



**ALLEGATIONS OF DISCRIMINATION (p. 8)**

**ADDITIONAL INFORMATION**

1. Choose one of the following:

- a)  I want to file a charge.
- b)  I DO NOT WANT to file a charge at this time.
- c)  I want to speak with an EEOC Representative before this is filed as a charge.

I can be contacted at (area code/telephone number) \_\_\_\_\_.

The best days and times to contact me are \_\_\_\_\_.

2. Indicate which of the following applies:

a)  I have not filed a charge with any other agency concerning these same matters:

b)  I have filed a charge with the agency/agencies named below concerning these matters:

Name of Agency \_\_\_\_\_

Date Filed \_\_\_\_\_

Agency docket number \_\_\_\_\_

c)  I am scheduled for an interview with the agency named below:

Name of Agency \_\_\_\_\_

Date of Scheduled Interview \_\_\_\_\_

Location of Interview \_\_\_\_\_

Name of interviewer \_\_\_\_\_

d)  I have received a Questionnaire to be completed from the agency named below:

Name of Agency \_\_\_\_\_

e)  I mailed the Questionnaire back to the agency named above on or about:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



## PRIVACY ACT STATEMENT

**(This form is covered by the Privacy Act of 1974, Public Law 93-579: Authority for requesting the personal data and the uses are given below.)**

1. FORM NUMBER/TITLE/DATE. EEOC Form 5, CHARGE OF DISCRIMINATION, March 1984.
2. AUTHORITY. 42 U.S.C. § 211, 29 U.S.C. § 626.
3. PRINCIPAL PURPOSE(S). The purpose of the charge, whether recorded initially on this form or in some other way reduced to writing and later recorded on this form, is to invoke the jurisdiction of the Commission.
4. ROUTINE USES. This form is used to determine the existence of facts which fall within the Commission's jurisdiction to investigate, determine, conciliate and litigate charges of unlawful employment practices. Information provided on this form will be used by Commission employees to guide the Commission's investigatory activities. This form may be disclosed to other State, local and federal agencies as may be appropriate or necessary to carrying out the Commission's functions. A copy of this charge will ordinarily be served upon the person against whom the charge is made.
5. WHETHER DISCLOSURE IS MANDATORY OR VOLUNTARY AND EFFECT ON INDIVIDUAL FOR NOT PROVIDING INFORMATION. Charges must be in writing and should identify the parties and action or policy complained of. Failure to have a charge which identifies the parties in writing may result in the Commission not accepting the charge. Charges under Title VII must be sworn to or affirmed. Charges under the ADEA should ordinarily be signed. Charges may be clarified or amplified later by amendment. It is not mandatory that this form be used to provide the requested information.
6.  Under section 706 of Title VII of the Civil Rights Act of 1964, as amended, this charge will be deferred to and will be processed by the State or local agency indicated. Upon completion of the agency's processing, you will be notified of its final resolution in your case. If you wish EEOC to give Substantial Weight Review of the agency's findings, you must send us a request to do so, in writing, within fifteen (15) days of your receipt of the agency's finding. Otherwise, we will adopt the agency's finding as EEOC's and close your case.

### NOTICE OF NON-RETALIATION REQUIREMENTS

Section 704(a) of the Civil Rights Act of 1964, as amended, and Section 4(d) of the Age Discrimination in Employment Act of 1967, as amended, state:

It shall be unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed a practice made an unlawful employment practice by this title or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title.

The Equal Pay Act of 1963 contains similar provisions. Persons filing charges of discrimination are advised of these Non-Retaliation Requirements and are instructed to notify EEOC if any attempt at retaliation is made.

## Sample Notice of Right to Sue Letters (ACRD/EEOC)

### Title I - Notice of Right to Sue - Dismissal

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

**NOTICE OF RIGHT TO SUE - TITLE VII / ADA**

(Dismissal)

To:  On behalf of a person aggrieved whose identity  CONFIDENTIAL (29 C.F.R. 1601.7(a))	From: Equal Employment Opportunity Commission 865 Patrick V. McNamara Building 477 Michigan Avenue Detroit, MI 48226
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Charge Number 2	EEOC Representative	Telephone Number (313) 226-4602
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(See the additional information attached to this form)

**TO THE PERSON AGGRIEVED:** This is your NOTICE OF RIGHT TO SUE. It is issued because the Commission has dismissed your charge.

Your charge was dismissed for the following reason:

No jurisdiction for the following reason, and therefore the Commission has no authority to investigate your charge further.

The Commission has determined that you did not allege or otherwise demonstrate that you were directly affected by the practice described or effectively deterred from acting because of this practice.

Respondent employs less than the required number of employees.

Other (briefly state)

\_\_\_\_\_

Your charge was untimely filed with the Commission, i.e., you waited too long from the date of the action(s) of which you complained to file your charge and it was therefore outside the time prescribed by law. Therefore, the Commission cannot investigate the allegations) contained in your charge.

You failed to provide requested necessary information, failed or refused to appear or be available for necessary interviews/conferences, or otherwise refused to cooperate to the extent that the Commission has been unable to receive your charge. You have had more than 30 days in which to respond to our final written request.

The Commission has made reasonable efforts to locate you and has been unable to do so. You have had at least 30 days in which to respond to a notice sent to your last known address.

The respondent has made a written settlement offer which affords full relief for the harm you alleged. At least 30 days have expired since you received actual notice of this settlement offer.

The issuance of this NOTICE OF RIGHT TO SUE terminates the Commission's investigation of your charge. If you want to pursue your charge further, you have the right to sue the respondents) named in your charge in United States District Court. **IF YOU DECIDE TO SUE, YOU MUST DO SO WITHIN 90 DAYS FROM YOUR RECEIPT OF THIS NOTICE OF RIGHT TO SUE; OTHERWISE YOUR RIGHT TO SUE IS LOST.** I certify that this notice was mailed on the date set out below.

On Behalf of the Commission

\_\_\_\_\_  
(Date Mailed)

\_\_\_\_\_  
James R. Neely, Jr., District Director

Enclosures

Information Sheet

Copy of Charge

cc: Respondent(s)

**Title I - Notice of Right to Sue - Conciliation Failure**

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

**NOTICE OF RIGHT TO SUE**  
(Conciliation Failure)

TO:

FROM:

On behalf of a person aggrieved whose identity is CONFIDENTIAL (29 C.F.R. 1 601. 7 (a))

CHARGE NUMBER

TELEPHONE NUMBER

EEOC REPRESENTATIVE

(See Sections 706(f)(1) and (f)(3) of Title VII of the Civil Rights Act of 1964 on reverse of this form)

The Commission has found reasonable cause to believe that your charge of employment discrimination is true but has not entered into a conciliation agreement to which you are a party because attempts to achieve such a voluntary settlement with respondents have been unsuccessful.

The Commission has determined that it will not bring a civil action against the respondents and accordingly is issuing this Notice of Right To Sue. With the issuance of this Notice the Commission terminates its processing of your charge, except that the Commission may seek status as intervenor if you decide to sue on your own behalf as described below.

If you want to pursue your charge further, you have the right to sue the respondent(s) named in your charge in United States District Court. **IF YOU DECIDE TO SUE, YOU MUST FILE A COMPLAINT IN THE FEDERAL DISTRICT COURT WITHIN NINETY (90) DAYS FROM THE RECEIPT OF THIS NOTICE OF RIGHT TO SUE: OTHERWISE YOUR RIGHT TO SUE IS LOST. FILING THIS NOTICE IS NOT SUFFICIENT. A COURT COMPLAINT MUST CONTAIN A SHORT STATEMENT OF THE FACTS OF YOUR CASE WHICH SHOW THAT YOU ARE ENTITLED TO RELIEF.**

Your suit may include any allegation contained in your charge of employment discrimination or any matter which was or should have been discovered by the Commission during its investigation of your charge.

On Behalf of the Commission

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Typed Name and Title of EEOC Official)

Enclosures:

Cc:

EEOC FORM 161-A

Section 706(f) (1) and (f) (3) of the Civil Rights Act of 1964, was amended, states:

(f) (1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision, named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved, or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant or may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(f)(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this title. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 of the United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

An information copy of this Notice of Right to Sue has been sent to the respondent(s) as shown.

#### ATTORNEY REPRESENTATION:

If you cannot afford or have been unable to obtain a lawyer to represent you, you should be aware that the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-5(f) (1) provides that the U.S. District Court having jurisdiction in your case may, at its discretion, assist you in obtaining a lawyer to represent you. The court is not required to appoint counsel for you. If you plan to request appointment of a lawyer to represent you, you must make this request of the U.S. District Court in the form and manner it requires. Your request to the U.S. District Court should be made well in advance of the end of the 90-day period mentioned above.

You may contact the EEOC representative named if you have any questions about your legal rights including advice on which U.S. District Court has jurisdiction to hear your case if you would like to be referred to an attorney or if you need to inspect and copy information contained in the Commission's case file.

**DESTRUCTION OF FILE:**

Generally, EEOC's rules call for your charge file (Cause Determination) to be forwarded to the Federal Records Center 1 year after the date of the last action or for your file to be destroyed after 3 additional years unless you have notified us that you have filed suit in Federal District Court. If the Commission has been notified that you have filed suit, your file will be preserved for use in your litigation, which could be important to your suit.

If you file suit, you or your attorney should forward a copy of this form and your court complaint to this office within 10 days after you file suit. Receipt of this evidence that you have filed suit will cause your file to be preserved and allow the Commission to consider your suit when taking other actions.

**IF YOU FILE SUIT, YOU OR YOUR ATTORNEY SHOULD NOTIFY THIS OFFICE WHEN THE LAWSUIT IS RESOLVED.**

## Sample Chronology

Chronology  
Raul Chavez v. ABC Co.  
Charge No. 12345

July 1, 1996	Applied for position as Clerk I, turned in application
July 10, 1996	Co. called. Spoke to Melinda from the office. Provided appointment for interview on 7/14.
July 14, 1996	Went to interview, met with Manager Susan Will, and Assistant Manager Alan Park. Offered position at Broadway location. Told to take a drug test.
July 21, 1996	Went to XYZ Lab for a drug test.
July 24, 1996	Notified by employer that tested positive. Explained took prescription medication for seizures. Offered to provide a prescription from Dr. Ramona Mead.
July 25, 1996	Ms. Will called and withdrew job offer because no longer needed a clerk at the store.
July 27, 1996	Saw newspaper ad for clerks at the store.