

Navigating Through the EEOC Process

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Seattle, Washington

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Changes under Bush Administration

- ▶ **Budget Cuts and Hiring Freeze**
 - ▶ 25% decrease in workforce nationwide
 - ▶ In 2000, 19 investigators in Seattle
 - ▶ In 2007, only 9 investigators
- ▶ **EEOC Reorganized/Downsized**
 - ▶ Seattle Field Office of SF District Office
 - ▶ Loss of Presence, Autonomy
 - ▶ MT added to region (WA, OR, ID, AK)
 - ▶ No district director, regional attorney, enforcement manager



Statutory Enforcement Authority

- ▶ Title VII of the Civil Rights Act of 1964 -
 - Race
 - Color
 - National Origin
 - Sex (includes pregnancy-related conditions)
 - Religion
 - Retaliation
- ▶ Age Discrimination in Employment Act –
 - Age
- ▶ Americans With Disabilities Act –
 - Disability
- ▶ Equal Pay Act



CHARGE STATISTICS

	Seattle FY-07	Nationwide FY-06
▶ Race	30%	36
▶ Gender	30	31
▶ Retaliation	29	30
▶ Age	25	22
▶ Disability	26	21
▶ Nat'l Origin	16	11
▶ Religion	6	4



Discriminatory Practices

▶ Discrimination prohibited regarding

(% of all charges received in Seattle office in FY 07)

- ▶ Hiring (16%)
- ▶ Discharge (43%)
- ▶ Disparate treatment on terms and conditions (22%)
 - ▶ Wages
 - ▶ Job assignments
 - ▶ Fringe benefits
 - ▶ Promotions
- ▶ Sexual harassment (10%)



Charge Processing

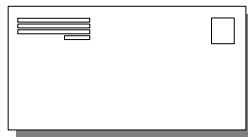
The Big Picture ...

- ▶ **Intake**
- ▶ **Service of Charge to Respondent**
- ▶ **Batching** – A, B or C
- ▶ **Mediation** – Offered to all B cases
- ▶ If no resolution, **Investigation**
- ▶ **Litigation**



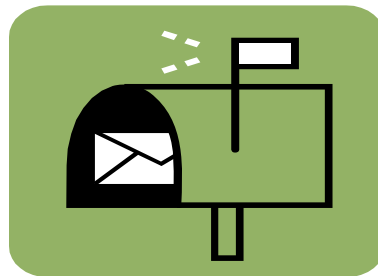
Charge Intake

- ▶ Telephone screening
- ▶ Mail intake questionnaire
 - ▶ Return date is key
- ▶ Schedule and conduct intake interview
- ▶ Formalize charge



Notice to the Respondent

- ▶ Charge of discrimination
- ▶ Notice of charge of discrimination
- ▶ Request for position statement
- ▶ Request for information
- ▶ Invitation to mediate for most charges



Batching

- ▶ **“A” charge** – reasonable cause findings are thought likely. Sent directly to investigation unit.
- ▶ **“B” charge** – further evidence is needed in order to reach a determination. Offered the option of mediation.
- ▶ **“C” charge** – Little or no additional information is needed before a dismissal. Sent directly to investigation unit for rapid closure.

- ▶ *This is a rough cut only. Re-designations are common.*

Investigation

- **Submit Position Statement and RFI**
 - Deadline extensions freely given
 - Who should respond?
 - Internal investigation necessary?
 - Check procedural issues (timeliness, # of employees, independent contractor issues)
- **Waiting Period for Assignment**
- **Establish a Positive Relationship**
 - Make investigator's job easy
 - Avoid forcing EEOC to use subpoena power

Further Investigative Steps

- ▶ Onsite
- ▶ Offsite and phone interviews
- ▶ Follow up requests for information



Pre-determination Interview

- ▶ Last chance to influence investigator's conclusion prior to final determination
- ▶ Charging party has option to stop investigation and request a Notice of Right to Sue (NRTS) at any point.
 - ▶ 10% of all charges

Possible Outcomes of Investigation

- ▶ **“No cause” determination**
 - ▶ Dismissal after investigation and NRTS issued
 - ▶ 51% of all charges
- ▶ **Cause determination**
 - ▶ 6% of all charges in FY 07
 - ▶ Possible EEOC litigation vehicle
- ▶ **Conciliation**
 - ▶ If process accepted by both sides and successful outcome – case settled and closed.
 - ▶ If no conciliation held (parties do not agree to process) – NRTS issued.
 - ▶ If conciliation held, unsuccessful – NRTS issued. (1%)



EEOC's Litigation Program

- ▶ 15-25 cases filed each year by Seattle office
- ▶ Important considerations include
 - ▶ Traditionally underserved areas
 - Geographic
 - Workforce
 - ▶ Agency enforcement priority
 - ▶ Systemic cases involving underlying policies and practices with potential for far-reaching impact
 - ▶ Economic damages not paramount



Current EEOC Initiatives

- ▶ E-RACE Initiative – race and color discrimination
- ▶ New Enforcement Guidance -*Disparate Treatment against Workers with Care giving Responsibilities*
- ▶ Youth @ Work Initiative
- ▶ National Origin Discrimination
 - ▶ Emerging as a more significant issue
 - ▶ Post 9/11
 - ▶ Reflection of changing demographics of workforce



Remedies Available for Violations of Federal EEO Law

- ▶ Back pay plus interest
- ▶ Lost benefits
- ▶ Reinstatement/front pay
- ▶ Compensatory damages
- ▶ Punitive damages (private employers)
- ▶ Injunctive relief

Caps depending on size of employer

- ▶ 15-100: \$50,000 101-200: \$100,000
- ▶ 201-500: \$200,000 500+: \$300,000



MEDIATION



New EEOC Mediation Process

- One internal EEOC staff mediator
- No ADR coordinator in Seattle
- Convening conducted by ADR program assistant and in-house staff mediator.
- ADR coordinator in SF office assigns cases to contract or pro bono mediator.
- New cadre of mediators are both attorneys and non-attorneys; experienced and novice
- Limited flexibility in assignment and timelines

Advantages of EEOC's Mediation Program

- ▶ Confidential
- ▶ Voluntary
- ▶ Prompt -- 45 days after filing charge (or will be sent to investigation)
- ▶ Free
- ▶ Informal
- ▶ Fair and neutral
- ▶ Fosters communication, cooperation



Timing of EEOC Mediation

Very early opportunity to resolve dispute

Pre-EEOC investigation

Pre-discovery, pre-litigation

Ideal for continued employment relationship

Negotiating accommodations or severance

Be prepared to learn new facts

Reevaluate case with new information

May be too early for some cases



Preparing for a Mediation

- ▶ *Preparation pays off!*
 - ▶ Honest analysis of strengths and weaknesses of case
 - ▶ Thorough discussion of options for resolution
 - ▶ Special need for resolution without litigation
 - ▶ Costs of alternative to settlement
 - ▶ Time
 - ▶ Money
- ▶ Change gears from warfare to treaty negotiation
- ▶ Change role from litigation warrior to mediation advocate
- ▶ Come with an open mind and willingness to understand the other's perspective
- ▶ Challenge yourself into changing your view
- ▶ Pre-mediation discussions with mediator



Handling Weaknesses

- ▶ Take responsibility and acknowledge !! ??
- ▶ Where appropriate
- ▶ Does not equate to a capitulation or legal admission
- ▶ Remember confidentiality of caucus
- ▶ Use mediator to craft the message carefully
- ▶ Often serves as a pivotal turning point
- ▶ Paves way to resolution

