

CHAPTER ONE

THE EEO PROCESS: WHAT IT IS & HOW IT WORKS

“The hardest thing in the world to understand is the income tax.”

Albert Einstein.

It may not be as hard to understand as the income tax, but the federal sector EEO complaint process is by no means a simple one. I cannot, in this book, take a complex process and make it simple. What I can hope to do, borrowing on another quote attributed to Albert Einstein, is make the process as simple as I can and no simpler. The complex parts of the process I will attempt to explain in such a way that they are understandable. The goal is to make it possible for you, the *pro se* complainant, to get through the process alive. What, you say? Latin phrases, already! Yes, but only to the extent that these are phrases you are likely to hear as you pursue your complaint through the process, and it is important for you to understand those phrases so that you know what’s being said. *Pro se* simply means “for self” and is used, in the legal system, to describe an individual who is representing him or herself. Presumably, if you’re reading this book, you either are, or are contemplating, representing yourself and the term “*pro se*” describes you. All of which brings us to the first point in this book and one of the most important: Whenever you do not understand what’s going on in this process, ask. You can ask the EEO counselor, the investigator, the EEOC administrative judge, or even a union official with experience in the process. Whatever you do, do not remain silent and pretend you know what’s going on for fear of looking stupid. The only dumb question is the one that wasn’t asked.

I WHAT IS THE EEOC?

The Equal Employment Opportunity Commission was created through Title VII of the 1964 Civil Rights Act. At that time, the federal government was exempt from Title VII and discrimination on the basis of race, color, sex, national origin and religion was prohibited by presidential executive order. Enforcement was through the former Civil Service Commission. The EEOC was created to enforce Title VII in the private sector, and for the first several years of its existence, that’s what it did. In 1972, Congress amended Title VII to include the federal government as a covered employer. The CSC remained responsible for enforcement of Title VII for federal employees.

One year later, Congress passed the Rehabilitation Act of 1973, which prohibited discrimination in federal employment on the basis of what was then known as “handicapping conditions.” The Act also required agencies to provide reasonable accommodation to qualified “handicapped” employees. The CSC was also responsible for enforcing the Rehabilitation Act.

The following year, Congress amended the Age Discrimination in Employment Act and made it applicable to federal employees. Again, the CSC was responsible for enforcing that Act.

In 1978, President Jimmy Carter issued Reorganization Plans Nos. 1 and 2. The plans became the basis of the Civil Service Reform Act. The CSRA abolished the CSC and Reorganization Plan No. 1 transferred responsibility for enforcing Title VII, the Rehabilitation Act and the ADEA from the CSC to the EEOC.

Why should any of this matter to you? Perhaps, it does not and should not. On the other hand, it doesn’t hurt to know a little bit about the agency that will decide your discrimination complaint. The main point of the above, though, is this: The EEOC’s primary responsibility is and has been enforcement of the nation’s anti-discrimination laws in the private sector. That is not to say that your case will not get the attention it deserves. It is to say that most of the EEOC’s resources go into the private sector. Though there are signs that the process is improving, the federal sector EEO process takes time. Knowing that from the outset may alleviate some of the concern when long periods of time pass without any activity on your complaint.

The EEOC has other federal sector duties that will not affect your case, but the three that will most concern you and your particular complaint are: 1) the EEOC oversees the federal sector complaint process that is administered by other federal agencies; 2) the EEOC provides administrative judges that hear federal sector complaints of discrimination when a hearing is requested; and 3) the EEOC also decides appeals from the decisions of administrative judges and final agency decisions on complaints of discrimination.

Let’s talk a bit now about the organization of the Commission. While knowing what follows will probably not be what determines if you win or lose your EEO case and there is no quiz at the end of the chapter, it is helpful to understand how the Commission works in the federal sector.

A. THE COMMISSIONERS

There are five Equal Employment Opportunity Commissioners. The Commissioners are presidential appointees who must be confirmed by the Senate. The president also gets to appoint a chair and vice chair of the Commission.

The Commissioners will not hear your case. They have other things to do. They will, on occasion, review a case when there is a request for reconsideration, which is discussed below.

The Commissioners do oversee federal sector operations and set policy that affects the federal sector. Primarily, this is done through the Commission's District Offices, the Office of Federal Programs and the Office of Field Programs.

1. The District Offices

The EEOC has district offices located throughout the country. The district offices have many functions and, again, most of those relate to the private sector and, therefore, are not your concern. From your perspective, the important thing is that the district offices are where the Commission's administrative judges work. When the time comes for you to submit a hearing request, it will go to the district office that covers your location and an administrative judge from that office will be assigned to hear the case.

2. The Office of Federal Programs

The Office of Federal Programs, or OFO, is located at the Commission's headquarters in Washington, D.C. One of the primary functions of OFO and the one that most likely affects you is that OFO decides appeals on federal sector discrimination complaints. Whether an appeal is filed by you or the agency, OFO has 30-40 appellate attorneys who will review the briefs submitted, as well as the case record, and draft a decision for the director of OFO.

Although this may seem strange, if you or your agency is not happy with the decision of OFO on appeal, a request for reconsideration can be made by either party. Where does that request go? It goes to OFO.

Most requests for reconsideration never leave OFO. OFO makes a decision on whether the request meets the criteria for reconsideration. If not, the request is denied; if so, then OFO reviews the request and any opposition and issues a final decision on the merits.

On occasion, a request for reconsideration is elevated to the level of the Commissioners. Usually, those requests involve decisions that will ultimately impact a large number of cases, decisions that raise issues not previously decided by the EEOC, or decisions that propose to change previous case law.

3. The Office of Field Programs

The Office of Field Programs oversees the district offices. This means that OFP and not OFO ultimately supervises the administrative judges through the directors of the local district offices.

II. WHAT LAWS DOES THE EEOC ENFORCE?

The EEOC enforces four laws that prohibit discrimination. We will briefly discuss each of these laws. In the end, though, it is not important that you be able to identify which law you contend was violated. What is important is that your complaint allege that your agency did something to you for one of the following reasons:

- Race,
- Color,
- Sex,
- National origin,
- Religion,
- Disability,
- Age, or
- Retaliation for protected EEO activity.

If your complaint does not involve one of these reasons, it is not an EEO complaint. You may have rights that you can pursue through the grievance and arbitration process of your collective bargaining agreement if you are covered by one. You may have the right to file a complaint with the Office of Special Counsel. Depending on the nature of the action taken by your agency, you may even have the right to appeal the action to the Merit Systems Protection Board. But, it is not an EEO complaint. We will discuss more about what makes a valid EEO complaint later in this book. For now, let's take a look at the laws enforced by the EEOC.

A. TITLE VII OF THE 1964 CIVIL RIGHTS ACT

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex and national origin. As originally passed, Title VII did not apply to federal government employees or applicants for employment with the federal government. In 1972, Title VII was amended by Congress and became applicable to the federal workplace. The amendment, 42 USC 2000e-16(a), provides, in relevant part: