

ARTICLE

**PRACTICAL PROCEDURE: YOUNG LAWYERS' QUICK REFERENCE
FOR EMPLOYMENT DISCRIMINATION CLAIMS**

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Introduction

The practice of law is a noble profession because it affords practitioners the opportunity to assist individuals during crisis situations. For example, a crisis situation arises when an individual believes that he has been discriminated against at his place of employment. To effectively assist with the pursuit of justice, legal counsel must have a sound understanding of the necessary procedures required to bring this type of civil rights action. This article provides practical procedural guidance to help young lawyers, or lawyers without much employment experience, advance civil rights claims under Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991 (Title VII).¹

Title VII is one of our federal anti-discrimination laws.² It was designed to address racial, religious, gender, national origin, and color discrimination in the workplace. If an individual wants to file suit against his employer because he has been discriminated against on the basis of any of the aforesaid identities, his lawyer should consider the practical procedural guidance discussed in this article.

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¹ Civil Rights Act of 1964, tit. VII, 42 U.S.C. §§ 2000e to 2000e-17 (2012).

² The Americans with Disabilities Act (ADA) addresses employment discrimination of persons with disabilities. 42 U.S.C. §§ 12101–12213 (2012). The Age Discrimination in Employment Act of 1967 (ADEA), provides avenues of redress for American workers over the age of forty who believe they have been discriminated against in the workplace because of their age. 29 U.S.C. §§ 621–34 (2012).

I. Pre-Litigation Considerations: Exhaustion of Administrative Remedies and Right to Sue Letter

Individuals who have experienced employment discrimination and want to pursue legal redress must first exhaust all available administrative remedies before filing suit in federal court.³ An individual exhausts his administrative remedies when he has filed a timely complaint (charge) with the Equal Employment Opportunity Commission (EEOC)⁴; the EEOC dismisses the charge; and the EEOC informs the individual through a “Right to Sue Letter” of his right to sue in federal court.⁵

A. Timeliness: How Long Do You Have to Exhaust Administrative Remedies?

An individual should file a charge with the EEOC within 180 calendar days from the date the discrimination took place.⁶ However, under Title VII, this deadline may be extended to 300 calendar days if there is a state or local agency that enforces laws that echo Title VII and the individual first filed a charge with the state or local agency.⁷ It is important to note that holidays and weekends must

³ Taylor v. Books A Million, Inc., 296 F.3d 376, 378–79 (5th Cir. 2002); Bouaziz v. AZT Corp., No. 3:13-CV-0053-B, 2010 WL 2813403, at *1 (N.D. Tex. July 9, 2010). Exhaustion of administrative remedies is also required in Texas state court. See Price v. Phila. Am. Life Ins. Co., 934 S.W.2d 771, 773–74 (Tex. App.—Houston [14th Dist.] 1996, no writ). However, this article focuses on the requirements to proceed with a Title VII action in federal court.

⁴ Taylor, 296 F.3d at 379. Filing a charge with the EEOC also satisfies state court exhaustion requirements. See Vela v. Waco Indep. Sch. Dist., 69 S.W.3d 695, 700 (Tex. App. 2002) (employee exhausted her administrative remedies to bring state employment discrimination action when she filed discrimination complaint with the EEOC and received a right-to-sue letter from state agency that is deferential to the EEOC). Further, state court exhaustion requirements may be met by filing a complaint with state and local agencies that enforce civil rights laws in a manner that is equivalent to the EEOC. See *id.*

⁵ Bouaziz, 2010 WL 2813403, at *1 (citing Hall v. Cont'l Airlines, Inc., 252 F. App'x 650, 653 (5th Cir. 2007)).

⁶ 42 U.S.C. § 2000e-5(e)(1).

⁷ *Id.* Claims brought under the ADA have the same 180/300-day deadline as Title VII claims. See 42 U.S.C. § 12117(a) and Branham v. Delta Airlines, 184 F. Supp. 3d 1299, 1306–07 (D. Utah 2016). However, the rules are slightly different for age discrimination charges brought under the ADEA. For those claims, the deadline to file a charge is extended to 300 days only if there is a state law prohibiting age discrimination in employment and a state agency or authority enforcing that law. 29 U.S.C. § 626(d)(1). The deadline is not extended if only a local law prohibits age discrimination. See *id.* § 626(d)(1)(B).

be included in the 180/300-day calculation.⁸ However, if the last day of the 180/300-day period falls on a weekend or a holiday, an individual may file his charge with the EEOC on the next business day.⁹

The 180/300-day deadline for filing a charge with the EEOC generally will not be extended while or because an individual attempted to resolve the alleged discrimination internally, through a union representative, arbitration, or mediation.¹⁰ However, an individual may simultaneously pursue the aforesaid resolution avenues and file a charge with the EEOC.¹¹

B. EEOC: How Do You File a Charge?

Individuals may file a charge with the EEOC by phone, by mail, in person, or through www.eeoc.gov.¹² The wronged employee can complete a Charge Intake Questionnaire form by utilizing these forums. The Charge Intake Questionnaire form helps the EEOC determine how to investigate the situation.¹³

C. Right to Sue Letter: What is that?

After an individual files a charge with the EEOC, the EEOC will decide whether to investigate the individual's claims or issue a Right to Sue letter.¹⁴ A Right to Sue letter allows the individual to file a lawsuit.¹⁵ If the EEOC has not issued its decision (to investigate or issue a Right to Sue letter) within 180 days after the charge was filed, the individual may demand a Right to Sue letter to end the administrative process and then file a lawsuit in federal court.¹⁶

⁸ *Time Limits for Filing a Charge*, U.S. EQUAL EMP'T OPPORTUNITY COMM'N, <https://www.eeoc.gov/employees/timeliness.cfm> (last visited Oct. 29, 2017).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *How to File a Charge of Employment Discrimination*, U.S. EQUAL EMP'T OPPORTUNITY COMM'N, <https://www.eeoc.gov/employees/howtofile.cfm> (last visited Oct. 29, 2017).

¹³ *Id.*

¹⁴ *What You Can Expect After a Charge is Filed*, U.S. EQUAL EMP'T OPPORTUNITY COMM'N, <https://www.eeoc.gov/employers/process.cfm> (last visited Oct. 29, 2017).

¹⁵ *Id.*

¹⁶ *Smith v. Dall. Cty. Hosp. Dist.*, No. 3:13-CV-0792-G BN, 2014 WL 645248, at *3 (N.D. Tex. Feb. 19, 2014) (order accepting findings and recommendations of the United States magistrate judge) (“[P]laintiff may demand a right-to-sue letter 180 days after the charges are filed with the EEOC . . .”).

II. Litigation Considerations: Avoiding Procedural-Based Dismissals

Once an individual has satisfied the administrative prerequisites and received his Right to Sue letter, he can seek justice for his discrimination through judicial intervention by becoming a plaintiff in a Title VII lawsuit. Below, are some considerations the plaintiff's attorney should make to lessen the risk that the defendant/employer can lodge a successful and early procedural dispositive motion.

A. Timeliness: When to File a Lawsuit

To protect his right to seek judicial recourse for employment discrimination, a plaintiff must file a lawsuit in federal court, or another court of competent jurisdiction, within 90 days from the date he received his Right to Sue letter from the EEOC.¹⁷

B. Scope: Which Claims to Include in the Lawsuit

The receipt of a Right to Sue letter does not give a plaintiff license to assert all his employment claims against an employer in federal court. To hold otherwise would invalidate the need to exhaust administrative remedies in the first place. Therefore, a plaintiff should only include claims in the lawsuit that are reasonably related to the allegations asserted in his EEOC charge.¹⁸

C. Consistency: What Representations has the Plaintiff Already Made to a Court?

Lawyers should know whether their client has been involved in other court proceedings to determine what representations the plaintiff has previously made in court. Under the judicial estoppel doctrine, an employer can move to dismiss an employment discrimination suit if the plaintiff has taken inconsistent legal positions in courts of competent jurisdiction.¹⁹

¹⁷ *Montgomery v. Bridgeway Healthcare, Inc.*, No. 4:05-CV-824-BE, 2007 WL 2827998, at *2 (N.D. Tex. Sept. 28, 2007); *See Taylor v. Books A Million, Inc.*, 296 F.3d 376, 379 (5th Cir. 2002) (“When the date on which the right-to-sue letter was actually received is either unknown or disputed, courts have presumed various receipt dates ranging from three to seven days after the letter was mailed.”) (citations omitted).

¹⁸ *See Sanchez v. Standard Brands, Inc.*, 431 F.2d 455, 465–466 (5th Cir. 1970).

¹⁹ *Smith v. Dall. Cty. Hosp. Dist.*, No. 3:13-CV-0792-G (BN), 2014 WL 6991482, at *3 (N.D. Tex. Dec. 9, 2014) (order accepting findings, conclusions, and recommendation of the United States magistrate judge).

For instance, in *Smith v. Dallas County Hospital District*, the Northern District of Texas dismissed the plaintiff's Title VII suit because she did not disclose her pending claim against her employer in bankruptcy court.²⁰ To avoid a similar outcome, practitioners should determine whether their plaintiff has made representations in another court and correct any inconsistencies or omissions.

Conclusion

Though these procedural considerations will not guarantee that your client will prevail in an employment discrimination suit, they will at least leave the suit less vulnerable to early dispositive motions, allowing a court to rule on the facts and individual merits of the case.

²⁰ *Id.* at *7.