

# 2016 Brings Procedural Changes at EEOC, Are you Prepared?

## Labor & Employment Law Update

on March 4, 2016

Effective January 1, 2016 all 53 EEOC field offices across the country have implemented the Commission's new "Digital Charge System," an online portal through which employers will receive and transmit information to the EEOC. From now on, all major communications between the EEOC and employers, *including the Commission's service of newly filed EEOC charges*, will be transmitted through the online portal. In most cases, the EEOC will no longer mail paper copies of EEOC charges and related documentation to employers. Instead, the EEOC will send an email to the employer instructing it to access the online portal to view and download the newly filed charge and related information (including deadlines and instructions for submitting its position statement electronically). The time period for providing the position statement (usually 30 days) begins to run when the portal is first accessed.

Also effective as of January 1, 2016 is the EEOC's new nationwide policy to release the employer's position statement to the charging party *during the course of the investigation*. Unfortunately the new policy is a one way street. Any written rebuttal submitted on the charging party's behalf will not be shared with the employer.

### What Should Employers Do Now?

1. Designate a contact person to receive EEOC charges on the company's behalf and provide your local EEOC office with an accurate email address for that person now. Yes, we mean *before* a charge is filed. Because initial notice that a charge has been filed will now be communicated via email, it is important that employers control who receives the notice.
2. Alert management employees to the new procedure and instruct them to immediately forward any email communication from the EEOC to the company's designated contact person. Because service is effected when the portal is first accessed, a supervisor who receives the first notice could unknowingly trigger the time period for submitting a response before upper management even knows a charge has been filed.
3. Create and implement a data preservation policy to safeguard all potentially relevant information as soon as you learn a charge has been filed.

4. Involve legal counsel *before* submitting your position statement. Because the position statement will now be provided directly to the charging party (and her attorney), it is more important than ever for employers to have experienced employment counsel involved before any information is submitted to the Commission.
5. Assume anything you submit to the EEOC will be forwarded to the charging party's attorney. The EEOC instructs employers to mark confidential information and advises that its investigators may redact confidential information prior to sharing the position statement with the charging party. No employer should assume the EEOC shares their view of what is confidential. Moreover, even if confidential information is redacted while the charge is pending, the Freedom of Information Act (FOIA) still allows the charging party to obtain a copy of the investigative file once the EEOC closes its investigation.

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