

EEOC Electronic Charge Filing Is Coming – Are You Prepared?

Labor & Employment Law Update

on October 9, 2015

In May 2015, the U.S. EEOC announced that 11 of 53 offices would begin to implement the ACT Digital Pilot Program, which facilitates communication between the EEOC and parties. The pilot program recently has been expanded to more offices, and appears to be here to stay. While this modernization and electronic communication appear appropriate at first, employers must be aware of the potential for significant pitfalls.

Employer Benefits:

Employers can use an online portal to obtain copies of discrimination charges, submit responses, and communicate with the EEOC. Employers are meant to benefit from increased speed of communication and charge processing, reduced physical paperwork, and no lost mail. Employers may also designate a nationwide single point of contact with the EEOC to avoid local managers or others from inappropriately receiving and handling charges.

Be Careful What You Wish For:

However, employers must be aware of the potential downfalls from the electronic system and electronic communication.

Employers may not necessarily gain from speeding up the EEOC investigation and conciliation process. While we all want to “get through” a charge quickly, there may be benefits to a slower paced process. For example, potential claims that were not included in the original charge may become time-barred by a statute of limitations if the charging party fails to file an amended charge.

Secondly, while the EEOC has indicated this is a secure system, employers in this digital age must be cognizant of potential concerns regarding information being uploaded through electronic means – no entity (even the U.S. Government) is immune from data breaches. Thus, participating employers should review what sensitive or confidential information they are uploading and/or redact such information when possible.

Finally, in the future employees may have the ability to file electronic charges. Currently, a claimant must make the (minimal) effort of actually appearing at an EEOC office or mailing a charge of discrimination. Digitizing the process may allow disgruntled workers to file a charge from their desks or mobile devices immediately after receiving discipline, a sideways look, or hearing a single inappropriate comment. Remember, there are no monetary costs – just time and minimal effort – for an employee to initiate a charge. This digital filing removes all barriers to the worker, which could make impulse decisions to file charges the New Norm. Unfortunately, an employer may not opt-out of this part of the program!

Change Is Coming:

Employers need to be prepared well in advance, including:

- Updating and strengthening workplace policies and handbooks regarding use of electronic devices in the workplace during work time, including who may and may not use computers and mobile devices.
- Ensuring that supervisors and managers are trained in anti-discrimination/harassment, including how to accept complaints. Don't forget, some states, like California, mandate such training.
- Consulting with experienced employment counsel to ensure compliance with federal, state, and local laws – here, the ounce of prevention is worth more than the ton of cure.

EEOC
Electronic
Charge
Filing Is
Coming –
Are
You Prepared?