

EEOC · RAPID RESPONSE · CHECKLIST COMPANION

EEOC Charge: First 72 Hours

What to do in the first hours after an EEOC or state-agency charge arrives, and why each move protects your position.

EEOC

CHARGE RESPONSE

RETALIATION

Checklist Companion

EEOC Charge: First 72 Hours

A charge is not a lawsuit, but the first 72 hours shape everything that follows. The goal is simple: preserve the record, prevent a second claim, and respond on time and on point.

When the EEOC receives a charge, it notifies the employer, usually within about ten days, and typically asks for a written response, a position statement, generally within 30 days. Two clocks start immediately: the deadline to respond, and the duty to preserve evidence. Missing either is a self-inflicted wound.

Preserve first, respond second

The duty to preserve relevant evidence attaches as soon as you are on notice, because litigation is now reasonably anticipated. Issue a written litigation hold, suspend any automatic deletion of email and records, and preserve the charging party's files, the relevant supervisor and investigation files, and related communications. Courts sanction spoliation harshly, including adverse-inference instructions and monetary penalties, so this step comes before anything else.

Do not create a second claim

Retaliation is the single most common charge the EEOC receives, and it is independently unlawful. Remind the managers who know about the charge that no adverse action may be taken against the charging party for filing. Route any employment decision affecting that person through counsel before acting; a poorly timed discipline or transfer can turn one charge into two.

Build a focused position statement

The position statement is your chance to tell the employer's side, tied to facts and documents. Keep it specific to the allegations and identify the evidence that supports each point. Since 2016, the EEOC will share your position statement with the charging party on request, so put confidential, medical, and third-party information into separately labeled attachments rather than the body.

Decide on mediation and submit on time

The EEOC often invites the parties to voluntary, confidential mediation early. Weigh it with counsel; declining is not held against you. Then submit through the Respondent Portal by the deadline in the notice, requesting an extension in writing if you genuinely need one, and prepare for a possible Request for Information, on-site visit, or fact-finding conference.

WHAT NOT TO DO

Do not alter, backdate, or 'clean up' records, and do not let routine auto-deletion continue; that is spoliation. Do not retaliate against or contact the charging party directly. Do not miss the response deadline, and do not bury confidential data in the position statement itself.

At a Glance

The checklist at a glance

The companion checkbox sheet walks through these 14 steps. Use the sheet in the moment; use this guide to understand the why behind each move.

PRESERVE & PROTECT (FIRST HOURS)

- ☐ **1** Calendar the response deadline stated in the Notice of Charge.
- ☐ **2** Issue a written litigation hold; suspend routine deletion.
- ☐ **3** Preserve the relevant files.
- ☐ **4** Route all charge communication through counsel.

PREVENT A SECOND CLAIM

- ☐ **5** Send a no-retaliation reminder to managers who know about the charge.
- ☐ **6** Flag any pending decision affecting the charging party for review.

ASSEMBLE THE RESPONSE

- ☐ **7** Engage employment counsel and name one internal point of contact.
- ☐ **8** Gather the facts and documents for each allegation.
- ☐ **9** Draft the position statement focused on the specific allegations.
- ☐ **10** Segregate confidential, medical, and third-party data into labeled attachments.
- ☐ **11** Decide on the EEOC's mediation invitation with counsel.

SUBMIT & TRACK

- ☐ **12** Submit through the EEOC Respondent Portal by the deadline.
- ☐ **13** Prepare for a possible Request for Information, on-site visit, or fact-finding conference.
- ☐ **14** Log the matter, set review dates, and keep the litigation hold in force until released.

Important

About this guide

Educational information, not legal advice. This guide is provided by empathiHR for general educational purposes. It is not legal advice and does not create an attorney–client or consultant–client relationship. Employment law changes frequently and varies by jurisdiction, industry, and the specific facts of each situation.

Charge–response deadlines and procedures vary by agency, by work–sharing arrangements with state and local fair–employment agencies, and by the facts of each matter; the date stated in your Notice of Charge controls. Before acting on anything in this guide, review your policies, programs, and specific circumstances with qualified employment counsel. empathiHR works alongside your legal counsel to build and maintain the operational program described here.

Case citations, statutes, and figures were current as of the update date on the cover and should be re–verified against primary sources before you rely on them. Where the law is unsettled or a figure is not fixed by statute, this guide says so.



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