

QUALITY PRACTICES FOR EFFECTIVE INVESTIGATIONS AND CONCILIATIONS

This Quality Control Plan¹ is issued pursuant to the Equal Employment Opportunity Commission's [Strategic Plan for Fiscal Years 2012 – 2016](#), to provide guidance concerning the EEOC's investigations and conciliations of charges of discrimination.² In its Strategic Plan, the Commission stated that "it is a significant Commission priority to improve the timeliness and ensure the continued quality of its enforcement activities."³ The Commission sets forth the following practices for investigations and conciliations to advance the plan's objectives of strategic law enforcement and delivering excellent and consistent service.

I. Background

The EEOC has statutory authority to investigate and conciliate charges of discrimination filed under Title VII,⁴ the Age Discrimination in Employment Act (ADEA),⁵ the Equal Pay Act (EPA),⁶ the Americans with Disabilities Act (ADA),⁷ and the Genetic Information Nondiscrimination Act (GINA).⁸ Title VII states that the

¹ The practices set forth in this Quality Control Plan (QCP) have been developed and disseminated by the EEOC exclusively to provide guidance and practical support to EEOC staff. The QCP shall not be construed as creating any right or benefit, substantive or procedural, enforceable at law or in equity against the EEOC or its employees. The QCP shall not be construed to create any right to judicial review involving the compliance or noncompliance of the EEOC or its employees with any matter dealt with in the QCP. The QCP is not intended and should not be construed by any party to judge whether a particular investigation or conciliation was adequate, or whether a particular determination was justified.

² This plan applies only to investigations and conciliations of charges of discrimination within the private and public sector enforcement system. The development of a QCP for the federal sector has been predicated upon development and approval of a private sector plan.

³ [EEOC Strategic Plan for Fiscal Years 2012-2016](#), p. 28.

⁴ 42 U.S.C. § 2000e-5(b).

⁵ 29 U.S.C. § 626(a).

⁶ 29 U.S.C. § 206(d). The EPA does not contain a charge filing, investigative or conciliation requirement.

⁷ Section 107 of the ADA, 42 U.S.C. § 12117, incorporates the procedural provisions of Title VII into the ADA.

⁸ Section 207 of GINA incorporates the procedural provisions of Title VII into GINA.

Commission “shall make an investigation”⁹ of a charge filed with the Commission, but “does not define ‘investigation’ or prescribe the steps that the EEOC must take in conducting an investigation.”¹⁰ Courts have generally recognized that the nature and extent of an EEOC investigation into a discrimination claim is a matter within the discretion of the agency.¹¹

Title VII’s conciliation provision instructs the Commission to “endeavor to eliminate [an] alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion.”¹² The Supreme Court concluded that this language granted “expansive discretion” to the EEOC “to decide how to conduct conciliation efforts and when to end them,”¹³ in holding that the precondition of conciliation must be satisfied before the EEOC can file suit.¹⁴

In contrast, an individual’s right to file suit under the statutes enforced by EEOC is conditioned only upon the filing of a charge of discrimination with the EEOC,¹⁵ and receipt of a notice of right to sue.¹⁶ Congress gave individuals the right to file suit in

⁹ See 42 U.S.C. § 2000e-5(b). The ADEA states that the EEOC “shall make an investigation” of a charge filed with the agency, 29 U.S.C. §626(a), and requires the EEOC to “promptly seek to eliminate any alleged unlawful practice by informal methods of conciliation, conference, and persuasion.” 29 U.S.C. § 626(d)(2).

¹⁰ *EEOC v. Sterling Jewelers Inc.*, 2015 WL 5233636, *3 (2d Cir. 2015).

¹¹ *Id.* In *Sterling Jewelers*, the Second Circuit held that “courts may not review the *sufficiency* of an investigation --- only whether an investigation occurred” in determining whether EEOC met this requirement prior to filing suit.

¹² 42 U.S.C. §2000e-5(b).

¹³ *Mach Mining v. EEOC*, ___ U.S. ___, 135 S.Ct. 1635, 1656 (2015).

¹⁴ *Id.* at 1651. *Mach Mining* addressed the Commission’s statutory obligation to engage in conciliation prior to the Commission’s initiation of litigation under Title VII §706, 42 U.S.C. §2000e-5(f). It does not apply to conciliations that precede suit by a private party, which constitute the majority of investigations and conciliations conducted by the EEOC each year.

¹⁵ While Title VII, ADEA, ADA and GINA require the filing of a charge prior to the initiation of a lawsuit by an individual, the EPA does not require the filing of a charge. 29 U.S.C. §206(d).

¹⁶ See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 798-99 (1973) (“Green satisfied the jurisdictional prerequisites to a federal action (i) by filing timely charges of employment discrimination with the Commission and (ii) by receiving and acting upon the Commission’s statutory notice of the right to sue, [42 U.S.C. §§ 2000e-5\(a\)](#) and [2000e-5\(e\)](#). The Act does not restrict a complainant’s right to sue to those charges as to which the Commission has made findings of reasonable cause, and we will not engraft on the statute a requirement which may inhibit the review of claims of employment discrimination in the federal courts.”).

court, without regard to the nature or outcome of an EEOC investigation or conciliation.¹⁷

In exercising the broad discretion that Congress gave the EEOC to decide how to conduct and when to conclude investigations and conciliations, the Commission issues the following guidance to its staff. This guidance is not a description of legal requirements, but rather is intended to assist the Commission's field staff by providing an overview of effective investigative and conciliation practices. This guidance will also inform the public of the practices that support effective investigations and conciliations.

II. Framework for Investigations and Conciliations

The EEOC is committed to delivering excellent and consistent service in investigating charges and engaging in conciliation. As a national law enforcement agency, the EEOC must also make strategic decisions about which investigations will have the most law enforcement potential.

The EEOC uses Priority Charge Handling Procedures (PCHP) to make determinations regarding the extent of resources committed to different investigations. The Commission's [Strategic Enforcement Plan \(SEP\)](#) supplemented by District Complement Plans (DCPs), sets forth the issues and types of charges that are the priorities for the Commission.

EEOC staff should ensure that charging parties and respondents have appropriate expectations with regard to investigations, in light of the PCHP framework and the cooperation of the parties. In investigations, EEOC's role is to gather facts to objectively determine whether there is reasonable cause to believe that discrimination occurred. The cooperation of the parties and witnesses to provide timely and meaningful information has a significant impact on the progress and effectiveness of the EEOC's investigation. The EEOC encourages the parties to promptly and fully share relevant information with the agency.

Once the EEOC has determined there is reasonable cause to believe discrimination occurred, the agency's role is to attempt to eliminate the unlawful employment

The ADEA permits individuals to file suit without receiving a notice from the EEOC, as long as 60 days have passed since the filing of a charge with the EEOC. 29 U.S.C. § 626(d)(1).

¹⁷ See *McDonnell Douglas Corp. v. Green*, 411 U.S. at 798-99.

practice through “informal methods of conference, conciliation, and persuasion.”¹⁸ The efforts of all involved are critical to effective conciliations. The EEOC has a strong commitment to securing resolutions through conciliations. The EEOC encourages respondents to respond to or submit conciliations proposals in a timely fashion and, encourages both respondents and charging parties to assist in the resolution of the case through conciliation.

III. Quality Practices for Effective Investigations

The practices outlined below may be accomplished in different ways based on the extent of the investigation and the investigative tools and techniques utilized, which are within the discretion of the EEOC.

1. EEOC identifies the bases, issues, and relevant allegations of the alleged unlawful employment action in a charge.

- Staff attempt to interview a potential charging party prior to the filing of a charge. When an intake interview is conducted, staff’s intake notes reflect the salient facts and issues identified during the interview, including potential discriminatory systemic practices or policies, based on the information received from the charging party.
- The charge identifies the issue(s), basis or bases, and relevant allegations of the alleged unlawful employment action.
- If new or additional allegations arise during the course of the investigation, staff assess whether the charge should be amended, a new charge should be filed, or the investigation should be expanded. Staff take appropriate action and notify the parties.

2. EEOC conducts an investigation consistent with its Priority Charge Handling Procedures and applies the law to the facts in its findings.

- Based on the charge’s prioritization, staff take investigative actions within a reasonable amount of time given the type of investigation, the resources available in the office, the complexity of the case, the need for legal advice and assistance, and the cooperation of the parties.
- Staff utilize investigative tools to obtain information necessary to determine whether discrimination likely occurred.

¹⁸ 42 U.S.C. §2000e-5(b).

- Staff address new issues in the investigation, including potential systemic issues, as warranted.
- Staff attempt to interview the charging party prior to reaching a determination on the charge.
- EEOC's analyses and conclusions are supported by the evidence obtained and contained in the investigative file, reflect a reasonable application of the law and current Commission policy, and are informed by consultation with its legal personnel, as warranted.

3. EEOC communicates with the charging party, respondent, and their representatives to facilitate the progress of the investigation.

- Staff inform charging party of his or her rights and explain how EEOC conducts its investigation of charges.
- EEOC provides notice to the respondent of the charge and identifies the issues, bases, and relevant allegations regarding the alleged unlawful employment action(s).
- EEOC may request that the respondent provide a position statement with supporting documentation to respond to the facts in the charge.
- EEOC may request that the charging party provide a response to the position statement submitted by the respondent.
- Staff timely communicate with the charging party, the respondent, or their representatives, as the investigation warrants.
- Communications between the EEOC and the parties are clear and respectful to facilitate the progress of the Commission's investigation.
- EEOC may also require the respondent to provide access to evidence and to produce information or evidence relevant to the charge.

4. EEOC communicates its resolution of the investigation to the parties.

- When the agency concludes that further investigation is unlikely to lead to a finding of reasonable cause to believe discrimination occurred, staff convey this determination to the charging party and advise the charging party of the right to file a lawsuit and the time limits for filing, and notify the respondent.
- When the agency determines there is reasonable cause to believe discrimination occurred, it will issue a "Letter of Determination" that will inform the respondent of a) the actions/practice/policy EEOC alleges to have been in violation of the law(s); b) the person(s) or description of the class harmed by the violation(s); and c) the time period. If EEOC intends to seek relief for multiple facilities or locations, the Commission shall identify the geographic scope. EEOC also notifies the charging party of its determination.

IV. Quality Practices for Effective Conciliations

EEOC has a strong commitment to resolving charges through conciliation as such resolutions are one of the most effective means for bringing employers into compliance with the statutes the agency enforces. Effective conciliation depends on the efforts of all involved to attempt to remedy and eliminate the alleged discrimination. Successful conciliations ensure that unlawful employment practices are resolved more quickly, thus conserving the agency's and the parties' resources. Conciliation agreements also serve an important role in improving workplace policies and preventing discrimination from occurring.

1. EEOC invites the respondent to participate in conciliation efforts.

- The Letter of Determination invites the respondent to engage in conciliation efforts in order to eliminate the alleged unlawful employment practices and reach a just resolution of the matter.
- The conciliation request is based on the findings of the investigation and informs the parties of the relief sought.
- The conciliation request provides the respondent with a reasonable amount of time to respond to EEOC's conciliation proposal or to submit its conciliation proposal.

2. The conciliation request seeks meaningful relief for the victims of discrimination and seeks to remedy the discriminatory practices.

- The conciliation request provides meaningful remedies to the aggrieved individuals.
- The relief sought in conciliation explicitly addresses the discriminatory employment practices at issue in the case.
- The request typically seeks targeted, equitable relief in order to prevent similar violations in the future.

3. EEOC considers offers made by the respondent.

- Staff consider offers made by the respondent in a timely fashion.
- When the agency determines that further conciliation efforts would be futile or non-productive, the agency notifies the charging party and respondent in writing.

4. EEOC attempts to secure a resolution acceptable to the agency.

- Staff timely communicate with the charging party and the respondent (or their representatives) as the conciliation warrants.
- Communications between the EEOC and the parties are clear and respectful to facilitate productive efforts in conciliation toward a resolution acceptable to the EEOC and the parties.

Appendix

Development of a Quality Control Plan

The U.S. Equal Employment Opportunity Commission's [Strategic Plan for Fiscal Years 2012 – 2016](#) provides for the development of a [Quality Control Plan \(QCP\)](#) that establishes criteria for evaluating the quality of EEOC investigations and conciliations and a peer review system to conduct assessments of investigations and conciliations. To ensure that the QCP was developed by those with in-depth knowledge of the agency's administrative enforcement program, former Chair Jacqueline A. Berrien appointed an internal work group of EEOC front-line staff and managers to develop a draft plan for the Commission's review and approval. The work group was led by Commissioner Chai R. Feldblum, former Dallas District Director Janet Elizondo, and former Chicago District Director John P. Rowe.

The Commission also solicited recommendations for quality indicia from EEOC staff, the National Council of EEOC Locals, No. 216, AFGE/AFL-CIO, and external stakeholders. In February 2013, the Commission solicited [written input](#), and in March 2013, the Commission held a [public meeting](#) with three roundtables of experts familiar with the agency's administrative enforcement program: EEOC front-line staff and a union representative, private practitioners representing charging parties and respondents, and EEOC senior managers. In May 2013, the work group [requested public input](#) on a set of principles for the QCP. To allow for additional Commission review and input by the full Commission, a vote on the QCP was postponed until the second quarter of fiscal year 2014. After careful review, Chair Berrien decided to extend the postponement of a vote on a Quality Control Plan.

A renewed effort in fiscal year 2015 by Chair Jenny R. Yang to reach consensus on a Quality Control Plan sought extensive input from Commissioners and staff. While this effort was underway, Chair Yang prioritized the development of training modules and revisions to relevant sections of the Compliance Manual with the objective of strengthening the quality of the agency's investigations and conciliations.