

EEOC Publishes New Nationwide Procedures for Employer Position Statements

When an employee or former employee files a discrimination charge with the Equal Employment Opportunity Commission (EEOC), the first step in the investigation is generally the EEOC's request for a position statement from the employer in response to the charge. Although many employers depend on their labor and employment counsel to gather the necessary information and submit the position statement on their behalf, some employers choose to handle the submission of the position statement themselves. Employers that submit their own responses should be aware that the EEOC has published new procedures for how it will handle the release of information contained in employer position statements to the charging party. The EEOC's new procedures and a Q&A for employers can be found on the EEOC's web site at http://www.eeoc.gov/eeoc/newsroom/release/position_statement_procedures.cfm.

According to these new procedures, the EEOC will begin releasing employer position statements and "non-confidential attachments" to the position statements to a charging party upon request during the EEOC's investigation. The charging party will be permitted to submit a response to the EEOC investigator. Notably, the EEOC procedures advise charging parties that they can submit this response in writing or they can simply call the investigator to discuss their response. Employers will not be able to receive a copy of the charging party's response, even if it is submitted in writing.

Historically, a charging party's ability to obtain the employer's position statement and/or exhibits varied depending upon the individual procedures of each EEOC District Office. These new nationwide procedures are intended to make the EEOC's approach uniform across all offices.

Under these new procedures, an employer that submits a position statement is directed to refer to, but not identify, the information it considers "confidential" and to provide that information in a separate attachment that will not be shared with the charging party. Justification must be included to explain the segregation of this information. This "confidential" information includes, and must be labeled as, one of the following:

- sensitive medical information (except for the charging party's medical information);
- social security numbers;
- confidential commercial or financial information;
- trade secret information;
- non-relevant personally identifiable information of witnesses, comparators, or third parties, such as social security numbers, dates of birth in non-age cases, home addresses, phone numbers, etc.; or
- any references to charges filed against the employer by other charging parties.

These new procedures apply to all EEOC requests for employer position statements on or after January 1, 2016.

To learn more, contact [Christa Richer Cook](#) at 315.218.8321 or ccook@bsk.com.



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