

PRACTICAL TIPS FOR EMPLOYERS IN RESPONDING TO IHRC OR EEOC CHARGES**August 4, 2016****Author:** Bobbi K. Dominick

You have been served with a complaint of discrimination or harassment filed in the Idaho Human Rights Commission or the EEOC. What do you do now?

WORK WITH LEGAL COUNSEL

A discrimination charge can be the first step to legal action, so protect your company's interests. Many employers ask their attorneys to investigate and prepare the response. If not, have an attorney review a draft before you submit it.

RESPOND PROMPTLY

Many employers and their attorneys fail to stay in touch with the Equal Employment Opportunity Commission (EEOC) while an investigation is taking place. Proactive communication with the EEOC investigator builds credibility for the company.

TELL THE WHOLE STORY

Often, an EEOC charge contains just one or two paragraphs, with conclusory allegations of discrimination. Resist the temptation to put minimal effort into your response. Provide details about the circumstances surrounding the employment relationship and the reasons for adverse employment actions. Demonstrate that there were legitimate business reasons for your actions.

USE DOCUMENTATION

If you have documents supporting your version of events, consider including them with your response. Documentation dating from the time of the adverse employment action can be the best way of discrediting the allegations. Attendance records, leave requests, reports and e-mail messages can all help prove that events happened the way you contend, and support the company's decisions.

VERIFY THE RESPONSE'S ACCURACY

Since the information you submit could be used in later legal proceedings, make sure everyone involved reviews the response and verifies the accuracy of every statement. Also be sure that the employer's stated reason for termination is accurate.

HIGHLIGHT CONSISTENT PAST DECISIONS

One of the best ways to demonstrate that a decision was not motivated by unlawful discrimination is to point to the same actions taken against similarly situated employees who are not members of the charging party's protected class. Tell the agency of instances when you terminated others for the same misconduct.

REMEMBER, THE AGENCY DOESN'T KNOW YOUR BUSINESS

Share details about your business that will help the agency understand your actions. Think about why the charging party's performance concerned you. Would that be readily apparent to an outsider?

MAINTAIN CONFIDENTIALITY

Information about the charge should be on a need-to-know basis, especially if the charging party is still employed. If you know investigators will contact employees, couch your message like this: "While we do not feel there is any merit to the allegations, we respect Employee X's right to bring this charge. If you are contacted by the agency, you should cooperate and be completely honest."

BE COOPERATIVE AND RESPECTFUL

Many employers and their counsel underestimate the competence and professionalism of the EEOC. This is a mistake. Do not be adversarial; this is not a litigation forum.

CONTACT YOUR INSURER

Many employment practices liability policies define claims to include discrimination charges. Failing to inform the insurer of a charge could result in denial of coverage, not only for the charge but all subsequent legal claims.

PRESERVE ALL DOCUMENTS

Courts are increasingly imposing harsh sanctions on companies that fail to adequately preserve relevant evidence.

WORK HARD TO MAKE SURE THERE IS NO RETALIATION AGAINST THE COMPLAINANT

Retaliation can exist regardless of the strength of the underlying claim. Protect the complainant. Also protect the people who brought the complaint forward or participated in the investigation.

MEDIATE WHEN GIVEN THE OPPORTUNITY

Not every case is suitable for mediation, but more cases are mediation-worthy than an employer might think. There are cases that can be resolved for a minimum of hassle, saving the costs of defense. There may be cases where the employer must admit that something bad truly did happen, and mediation is a chance to make it right before publicized litigation.

Please contact a Gjording Fouser lawyer at 208.336.9777 if you would like any additional information about this topic or any other employment issues facing your company.