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Insights

EEOC Shortens the Shot Clock: Florida Employers May Now Have Just 15 Days to Respond to Charges of Discrimination

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Florida employers facing a charge of discrimination from the U.S. Equal Employment Opportunity Commission (EEOC) have generally had 25 to 30 days to respond. That may no longer be the case. Some charge notices now being issued by EEOC offices in Florida require employers to submit a position statement (the employer's written response to the charge) and supporting documents within 15 days.

What Changed?

The 15-day deadline is not an official EEOC policy. According to a Bloomberg Law report, an EEOC spokesperson stated that the agency has not made an "official agency-wide policy change" and that response deadlines "may vary among EEOC offices." Rather, the shorter 15-day deadline has started appearing in the individual notices that local offices send to employers, and some employers may still receive notices that allow 30 days to respond.

Consistent with the absence of an official policy change, the EEOC's own public guidance for respondents still states, as of the date of this article, that a respondent "generally has 30 days" to submit its position statement. Because the deadline can differ from one notice to the next, employers should not rely on that general guidance. Instead, employers should read each notice carefully and follow the deadline stated in the notice.

Why Does the Shorter Deadline Matter?

A position statement gives the employer its earliest opportunity to present the facts from the company's perspective and demonstrate to the EEOC why the employment decision was lawful.

If the deadline is missed, the EEOC investigator may make a "cause" finding (the EEOC's conclusion that there is reason to believe discrimination occurred) based only on the employee's allegations and other information

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Jyllian R. Bradshaw

Rachel D. Gebaide

Adam Sanderson

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provided by the employee. A "cause" finding brings the employer into the EEOC's conciliation process and, if conciliation fails, may result in the EEOC filing suit itself. It can also strengthen the employee's hand in any later lawsuit and settlement discussions.

A 15-day deadline leaves half the usual time to gather documents, speak with the managers involved, and prepare a careful response. That matters because the EEOC likely will share the position statement with the employee, and it may later be used in court. Accordingly, the employer's goal is to prepare a position statement that is both timely and accurate.

Check Both Your Mailbox and Your Inbox

Charge notices do not always arrive the same way. Some notices may come by U.S. mail, while others may come by email, usually directing the employer to view the charge through the EEOC's online Respondent Portal. Because a 15-day deadline leaves little room for delay, Florida employers should check both their mail and their email and periodically update the company's mailing address and email contacts with the EEOC so that notices reach the right people within the company. Charge notices also generally ask employers to log in and view the charge within 10 days of receiving the notice.

What Should Florida Employers Do Now?

- Decide now who in the organization will be responsible for receiving EEOC notices by mail and by email, name someone to provide "backup" when that person is out of the office, and make sure notices are forwarded to the appropriate person within the company the same day, which could be a Director of Human Resources or in-house General Counsel, who will then contact outside counsel.
- Check the due date stated in each notice, whether it is 15 days or 30 days, and build an internal timeline that works backward from it, leaving time for counsel's review before submission.
- Contact employment counsel right away so that the internal investigation, document collection, and drafting can begin without delay.
- Preserve relevant records. Instruct the managers and departments involved not to delete or discard documents, emails, or other records related to the charge.
- Train supervisors to document the basis for discipline, terminations, and other employment decisions as those decisions occur, and keep policies, handbooks, and accommodation files in one central location so they can be gathered quickly if a charge is filed.

What if the Charge Comes from the FCHR?

The EEOC and the Florida Commission on Human Relations (FCHR) have a work-sharing agreement such that Charges of Discrimination are typically "dual-filed," and either agency can investigate. The FCHR has not, as of the date of this article, shortened its response time to 15 days, but employers should always read every FCHR notice carefully to determine when the agency requires the employer to submit its position statement.

The Lowndes Labor & Employment team regularly assists Florida employers in responding to EEOC charges and preparing position statements. If your organization receives a charge or would like to review its charge-response procedures, please contact a member of our team.