

EEOC Overview and Discrimination Charge Process

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Learning Objectives



- Gain more knowledge of the EEOC and learn about the statutes it enforces
- Learn about and/or gain a better understanding of citizen's federally protected employment rights
- Learn the EEOC charge processing cycle



Our Vision- Justice and Equality in the
Workplace

Our Mission- Stop and Remedy Unlawful
Employment Discrimination

EEOC Overview



The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit (Retaliation).

EEOC Overview (Continued)

- Headquartered in Washington, D.C.
- Divided into 15 Districts with 53 Field Offices
- Jenny R. Yang, Chair
- Constance S. Barker, Commissioner
- Chai R. Feldblum, Commissioner
- Victoria A. Lipnic, Commissioner
- Charlotte A. Burrows, Commissioner
- David Lopez, General Counsel



EEOC Statutes



- **Equal Pay Act (EPA)** of 1963, as amended;
Difference in pay based on gender
- **Title VII of the Civil Rights Act (TVII)** of 1964, as amended;
Race, color, religion, sex (gender) – sexual harassment, and national origin
- **Age Discrimination in Employment Act (ADEA)** of 1967, as amended;
Applicants and employees 40 years of age or older
- **Americans with Disabilities Act (ADA)** of 1990, as amended;
Persons with disabilities, record of a disability, regarded as having a disability
- **Genetic Information Nondiscrimination Act** of 2008;
Use of family genetic information unlawful in employment decisions

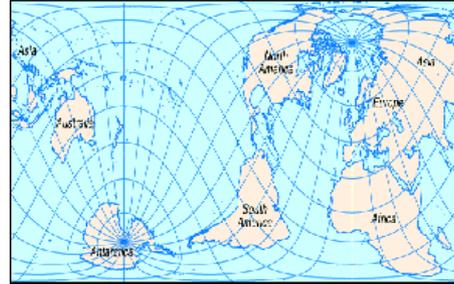
8 Protected Categories



race



color



national origin



religion



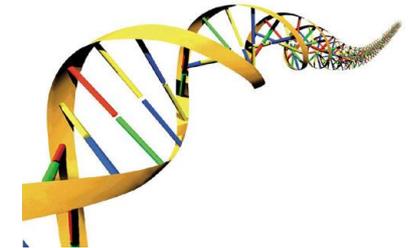
sex



disability



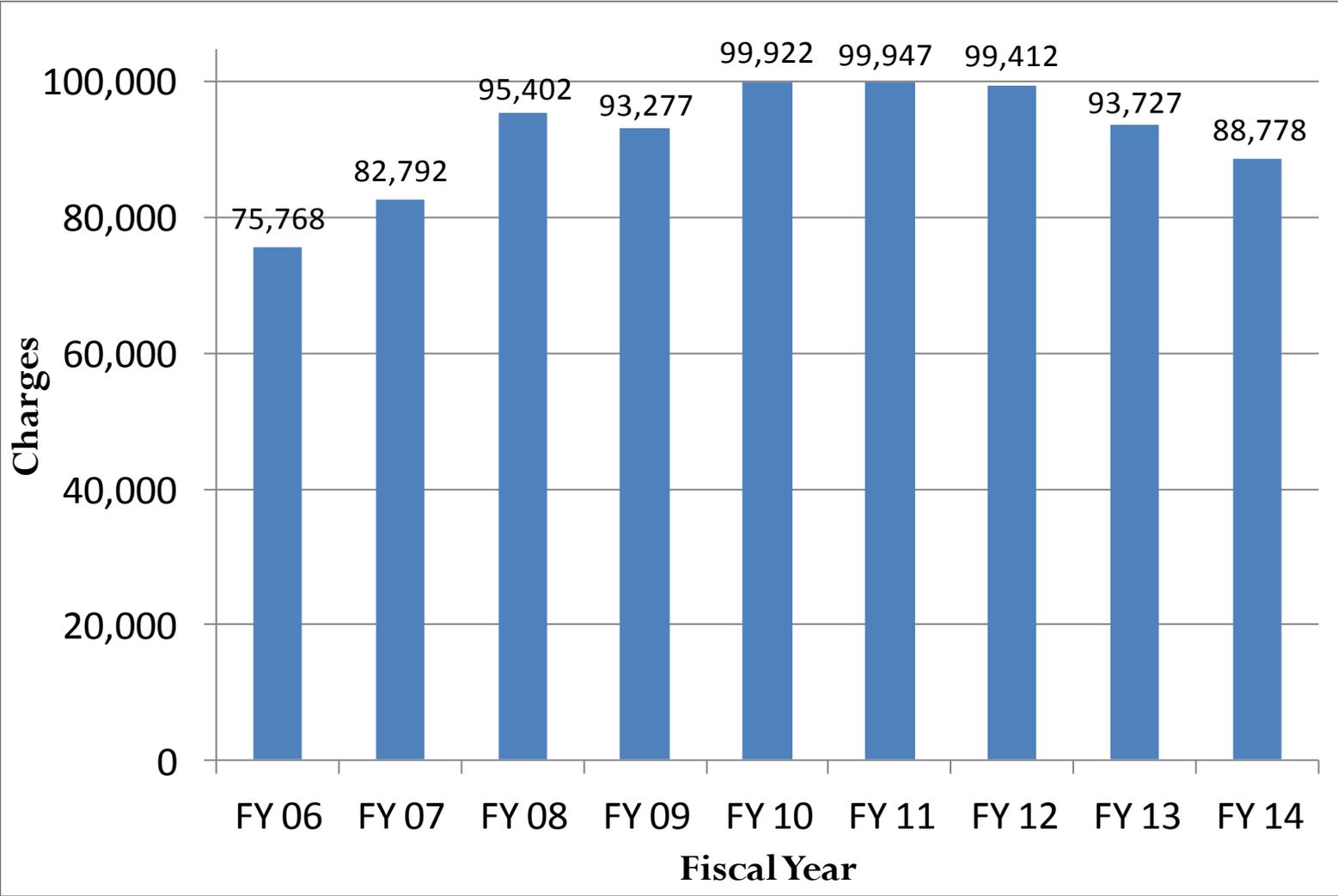
age (≥ 40)



genetic information

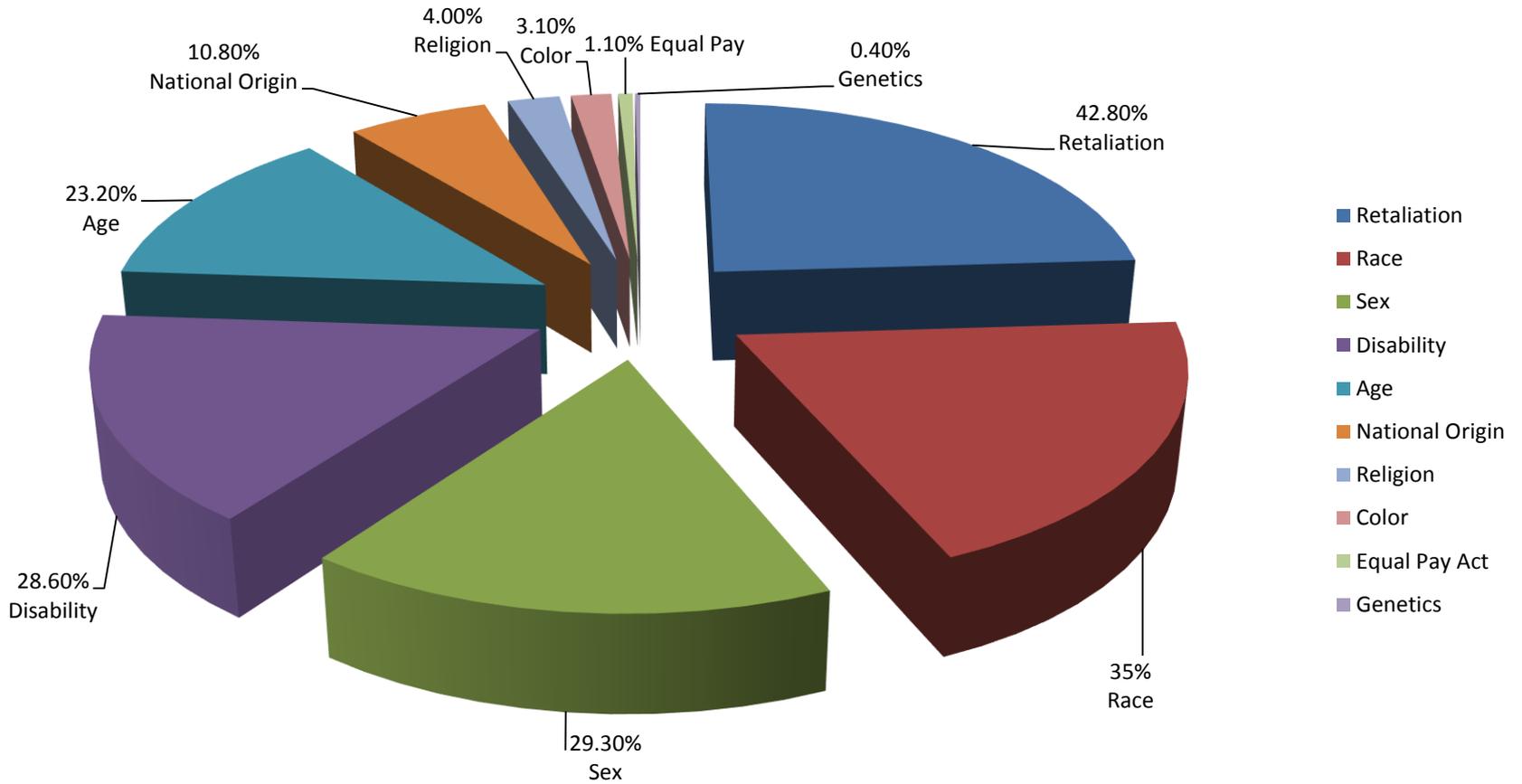
and *retaliation*

National Charge Receipts by Year



Source: www.eeoc.gov

FY 2014 National Charge Receipt by Bases



Discrimination Can Occur in the Following Scenarios:

- Hiring/Firing
- Wages
- Promotion/Demotion
- Harassment
- Different Terms and Conditions: i.e. Job Assignments, Benefits, Leave, Training
- Failure to Accommodate for Disability and Religion



A note on RETALIATION

Illegal to fire, demote, harass, or otherwise “retaliate” because an employee/applicant filed a charge, complained to their employer about discrimination, or participated in an employment discrimination proceeding (such as an investigation or lawsuit).



**Pertains to all statutes*

Who is Protected?

- An employee
- A temporary worker
- A job applicant
- A former employee
- Undocumented workers too!



Disparate Treatment



Individuals are treated differently because of their membership in a protected class:

- Less qualified Caucasian selected over African American
- Female requests training and is denied, male requests training and training request is granted
- Disabled employee terminated for sleeping on the job, non-disabled employee counseled for sleeping on the job

Adverse Impact

Facially neutral policy/practice disproportionately impacts members of protected group:

- Minimum height/weight requirements
- Nepotism policy
- Certain physical agility tests
- “No beards” policy
- Background checks – e.g., conviction records, credit checks



Harassment

- Harassment is unwelcome verbal or physical conduct that is based on:
race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or genetic information.



Elements of Harassment Claim

- Individual subjected to unwelcome comments or conduct based on his/her protected basis
- Conduct results in a tangible employment action (TEA) or was severe or pervasive enough to interfere with work performance to create a hostile work environment
- A legal basis for holding employer liable for harassment

Obligations of Employers

- Make the workplace free of unlawful discrimination, harassment and retaliation
- Promptly and confidentially investigate complaints of discrimination, harassment and retaliation
- Where discrimination, harassment and retaliation may have occurred, take prompt and appropriate remedial action (i.e., discipline commensurate with the offense)

What Should I Do If I Believe I Am a Victim of Employment Discrimination and/or Harassment?



- Make it clear that you want the discrimination and/or harassment to stop;
- Tell your employer/file internal complaint- Put complaint in writing (employer can't solve the problem if it is not aware of problem);
- If you have not been able to resolve your situation with your employer, you may want to contact EEOC.

EEOC's Role

Enforcement of Laws Against Job Discrimination

- Education of Employees and Employers
- Assistance with Compliance
- Neutral Investigation of Charges
- Identification and Correction of Violations



What Is a Charge?

Formal written complaint accusing someone of something, especially an offense under law.



Sample Charge

I have been employed by Acme Bank as a Teller since September 9, 2005. I was denied promotion to the position of Senior Teller on January 16, 2014. The promotion went to a less qualified, younger Teller.

I believe that I was denied the promotion because of my age, 56.

Who can file an EEOC Charge?



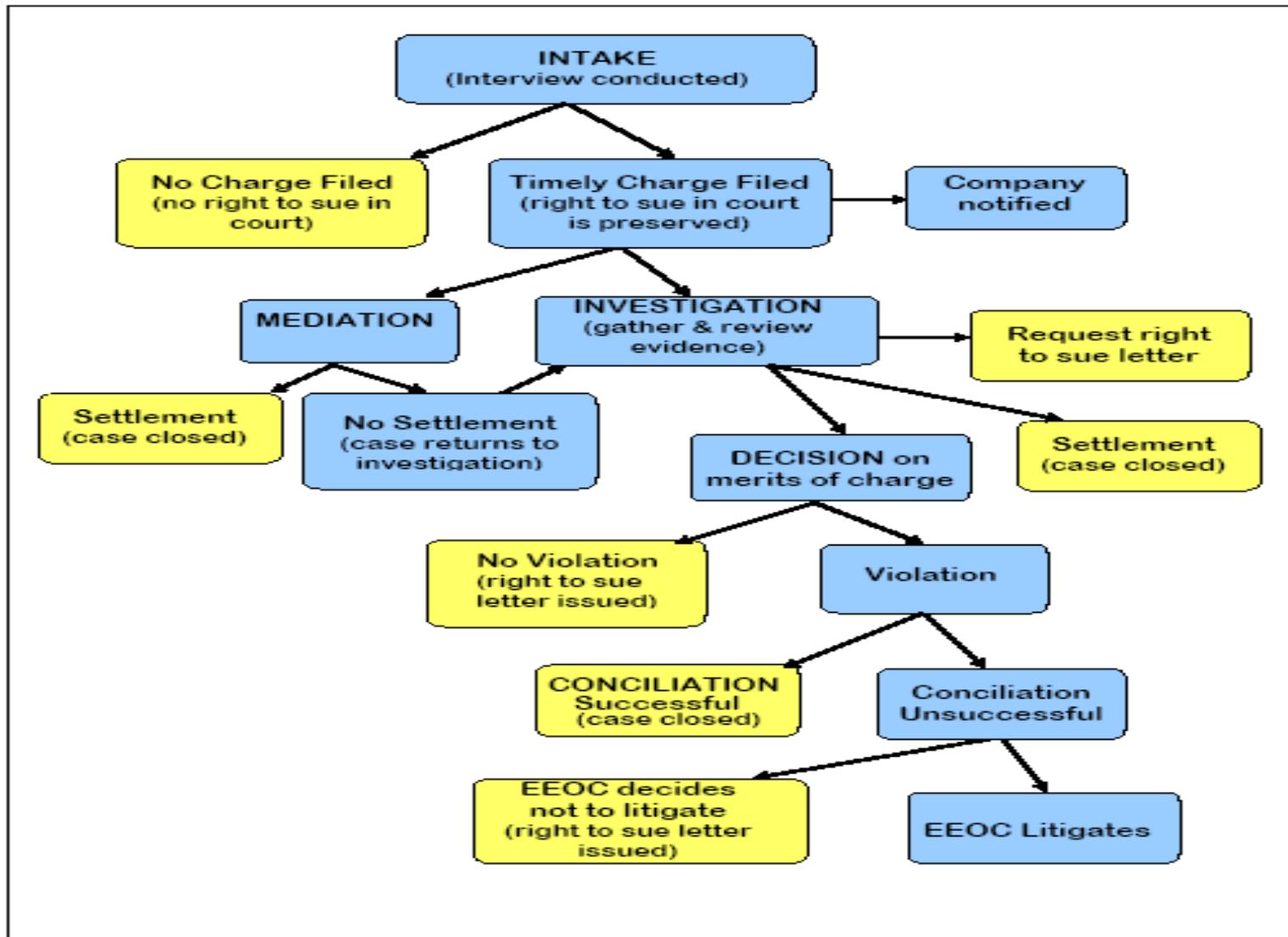
- Individuals
- Individuals or organizations on behalf of others (third party charges)
- EEOC District Director (ADEA or EPA Directed Charge)
- EEOC Commissioner's Charge (systemic)

Jurisdictional Concerns



- An EEOC Charge must be filed within 300 days of the last discriminatory act (in Ohio & most cases)
- Equal Pay Act (EPA) complainants may file directly in court within two years of the last discriminatory act (3 years if willful)
- Employer must have at least 15 employees for most statutes (20 for age discrimination; 1 for EPA).

EEOC CHARGE PROCESSING



Yellow = Charge process ends

Blue = Charge process continues

What should an Employer NOT do upon receipt of a charge of discrimination?

PANIC!!!

Don't panic if you receive a charge of discrimination from the EEOC.

Do cooperate during the investigation, and the process will move much more quickly.

Pre-Determination Settlement

- Either Party Can Initiate
 - Can Happen without EEOC
 - EEOC Can Act as Broker
- Settlement Ends Investigation
- No EEOC Determination
- Can Salvage Employment Relationship



Components of an Investigation

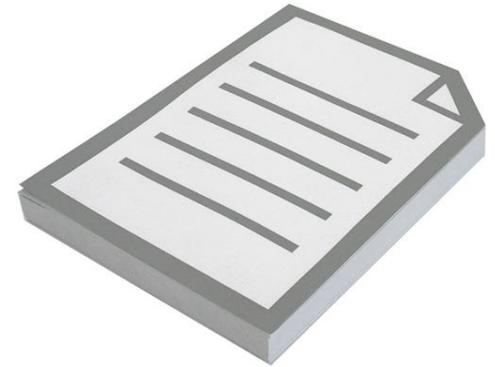
- Employer's Position Statement
- Request for Information
- Interviews
- On-Site Visit



***Pre-Determination Settlement opportunities always exist while case is open*

Employer's Position Statement

- Information about the Employer
 - Type of Business
 - History and Ownership
 - Number of Employees
- Denial of Allegations
 - Alternative Explanation for the Employment Action
- Criticism of the Charging Party
 - Performance Problems
 - Conduct Problems



Request for Information (RFI)

- Documents
 - Personnel Records of Charging Party and Others
 - Job Applications
 - Performance Evaluations
 - Disciplinary Records
 - Policies
 - Applied Uniformly?
- Lists
 - Employees
 - Name, Position, Dates of Employment
 - Race, Sex, or other relevant category
 - Home Address and Home Telephone Number



On-Site Visit



- Tour of the Workplace
 - The Scene of the Alleged Events
- Interview Management and Supervisors
 - Get More Detail on Their Turf
 - Non-Verbal Cues at Interview
 - Can Review Documents with Witnesses
- Additional Requests for Information
 - Adapt to New Discoveries

Determination

The Moment of Decision

- Standard: “Reasonable Cause”
 - “More Likely Than Not” Discrimination Occurred
 - Yes or No
- Insufficient Evidence (Dismissal)
 - EEOC Takes No Further Action
 - Notice of Right to Sue Issued to Charging Party (90 days maximum to file in Federal Court)
 - Charging Party May Sue Privately
- Reasonable Cause (Violation)
 - Conciliation Begins

“YES”
or
“NO”

Conciliation

Settlement After “Reasonable Cause” Determination

- Confidential
- EEOC and Charging Party Agree Not to Sue
- Terms of Conciliation Can Include
 - Hiring or Reinstatement
 - Training of Supervisors and Managers
 - Discipline of Discriminating Individual
 - Posting of a Notice
 - Monitoring and Reporting
 - Monetary Payment to the Charging Party
 - Lost Wages
 - Compensatory Damages
 - Punitive Damages



Litigation

EEOC is No Longer Neutral

- Review by Legal Unit
- Lawsuit May be Filed
 - Limits on Lawsuits against States
 - EEOC May Not Sue under Title VII or ADA
 - Individuals May Not Sue under ADA or ADEA
- EEOC Represents the Public Interest
- Charging Party May Intervene
- Pre-Trial Settlement
- Trial



EEOC Contact Information

Toll Free: 1-800-669-4000 Tel.

1-800-669-6820 TTY

- At any time, obtain answers to frequently asked questions using our automated phone system
- Live customer service representatives Monday – Friday, 8:00 a.m. – 9:00 p.m., Eastern Time
- Free and Confidential Services
- Assistance in 151 languages

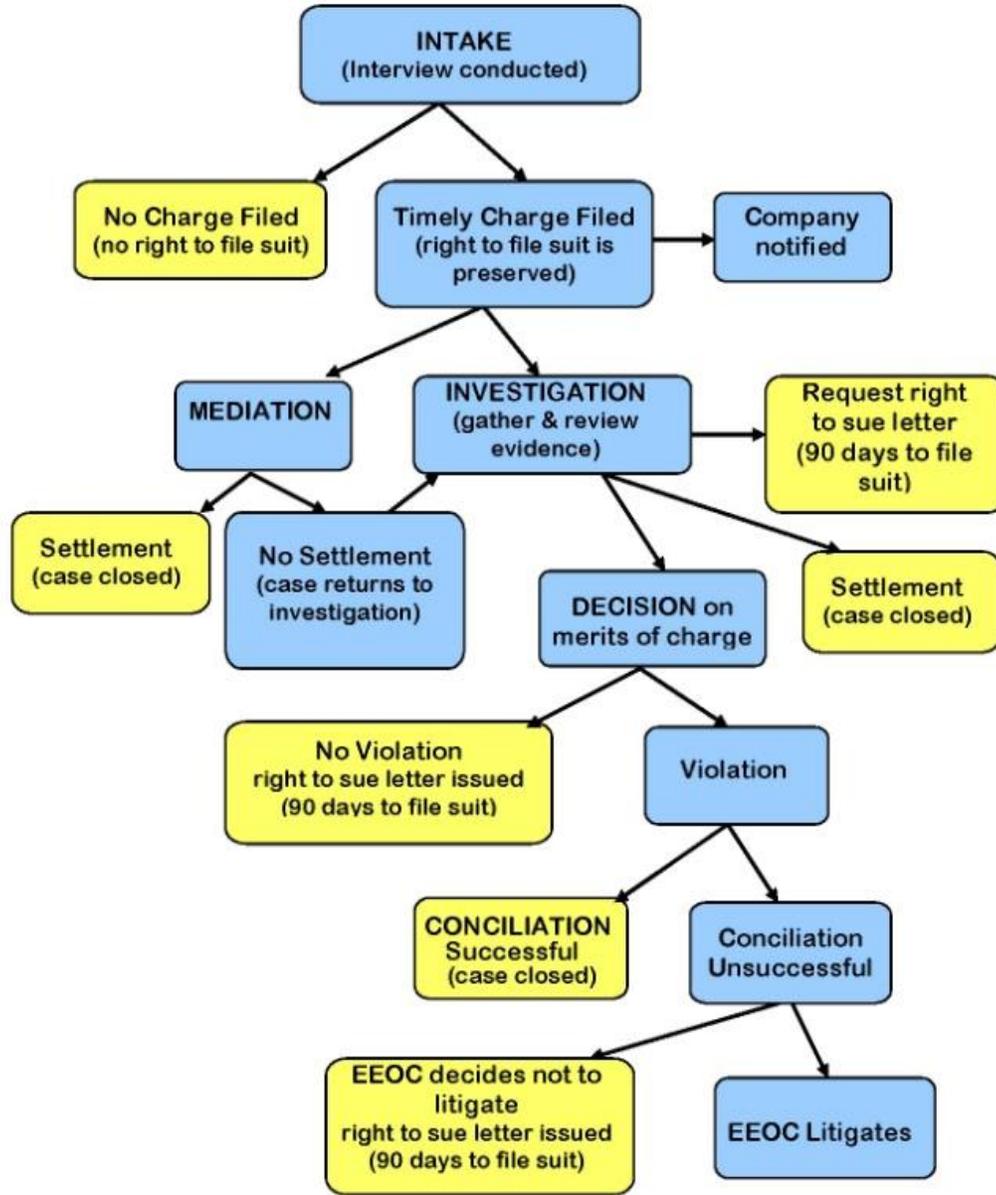
E-mail: info@eeoc.gov

Web: www.eeoc.gov

Questions



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