

Preparing for Employee Discrimination Notices

Sarah Sawyer: Welcome to this week's OK at Work with myself, Sarah Sawyer, and my colleague Russell Berger, both attorneys at Offit Kurman. And today we are talking about charges of discrimination that, you know, you might receive after you've terminated an employee or from a current employee. They kinda come in some different forms, but, it's a administrative process, so you'll get an administrative document saying that there's been a charge filed, and giving you a certain, amount of time and things to respond.

And it can be a little confusing because before you've gotten a charge from, the EEOC or a local agency that's related, you might not know what you're really looking at from what it is. And it looks a little different than if you get sued and there's a lawsuit or something like that.

So what are some things that employers should be thinking about when they get these notices, Russell, and all the mumbo jumbo? And 'cause obviously there's the charge mixed in there, and there's instructions, [00:01:00] and there's portals to log into and all different sorts of things. So where do people start?

Russell Berger: Yeah. So a good starting point is it's maybe a little less strict and formulaic but it's still a formal, professional, it matters type of process. you know, The way the, employment discrimination laws are written, and this is true in pretty much every state if not all the states, as well as at the federal level, is that before you can go to court on a claim of discrimination or harassment, that you have to exhaust administrative remedies, which means going through an administrative process, which is filing a charge of discrimination with the EEOC or the state equivalent.

when that charge gets served on you as the employer it's usually with a prompt that says you've got 30 days to provide a position statement or you can engage in mediation or some sort of settlement negotiation process, depending on the jurisdiction and the agency. To fast-forward a little bit, no matter what happens at the end of the administrative process, [00:02:00] the employee will either get a right to sue letter because the agency isn't gonna pursue it, or the agency might pursue it on their behalf.

And that's whether you win or lose in that administrative proceeding. So you might think this is pretty inefficient, this is a lot of extra process, why am I dealing with this? To me that's by design. The process is designed to be burdensome and extra so that it compels people to reach resolutions on things that are relatively small claim.

These, often are not, six, seven-figure type lawsuits. These are, you know, I was out of work for three months, I was out of work for six months I make \$75,000 a year, we're fighting over, 37 grand. From that standpoint as an employer, I think it's important to engage and participate because, one, if you don't get- to a resolution.

Winning will put you in a better position relative to whether the employee wants to go forward with litigation in court, or whether the employee's lawyer wants to go forward with litigation in court. It also gives you, creates leverage and gives you an opportunity to resolve the matter. And frankly, you just, a bad look to say, "Ah, [00:03:00] just blow it off.

I didn't care."

Sarah Sawyer: Yeah. Yeah, and you learn a lot during that process, right? So there's whether you engage in mediation or there's an investigation, you'll learn a lot of information about what the employee is actually claiming a- and understanding more from their perspective, which does help you understand more about, how to approach it, how there might be a resolution.

'Cause a lot of times you'll make an assumption about what you think the employee wants or what they're concerned about that's either from their original charge, or maybe they made an internal complaint to the company before filing. But really, what they're after is something that the company would be willing to do, but they just haven't been able to articulate it properly.

And so a lot of times you get a lot of information. But one thing I will say about the process is definitely pack your patience because it is definitely, it takes time. Obviously there's always you'd mentioned some of the quick deadlines that happen right after getting a statement, and it is important to take those seriously and abide by those and engage in the process.

But it's a lot of start and stop in the process. And y- generally speaking, depending on what the resources of the agency are at [00:04:00] the time, those types of things, someone could go out on leave that's investigating it. And so it really varies how long these things will take, But it's a process that patience really helps, I would say.

Russell Berger: To that point, I mean, we've had 'em where the government has shut down, and so the investigation stopped because you know, the EEOC hasn't been being funded because of government shutdown. So it is a time-consuming process, but I think the important thing for, the employer side to remember is that maybe that works to your advantage.

And, the fact that, someone is looking for a financial settlement but it's gonna take time for them to get to it might be something that gives you leverage in terms of a negotiation, and can get you to a cost-effective resolution that's to your benefit.

Sarah Sawyer: Yeah, and also you'll see too is, obviously these happen sometimes when these filings happen when someone leaves. But also someone could file one while they're still working at your company or your organization. So definitely important to come up with a plan if you got a complaint through HR, to make sure that you've got a good plan in place to avoid any [00:05:00] retaliation or any perception of retaliation, and making sure to find a way to maybe address the concerns that are in the complaint internally as well, if that is applicable, and there needs to be anything done, inside the organization while the employee's there.

So that kind of adds another step. If the employee's not there anymore it makes it a little bit easier in a sense 'cause obviously you're dealing with someone who's already left. But if you've got an employee who's actively there, you might have some more proactive things that you need to do to stabilize the environment.

Russell Berger: And to broaden that out a step or two, um- Mm-hmm ... and you might learn things that you should be doing differently. You know what I mean? It might help you to uncover something like, hey, we can defend this claim, but maybe there's some things we could change and do better going forward process, training, what have you.

So you know, there's some learnings that can come from it too.

Sarah Sawyer: Yeah. Well, thanks, Russell. See you next time.

Russell Berger: Thanks, Sarah.