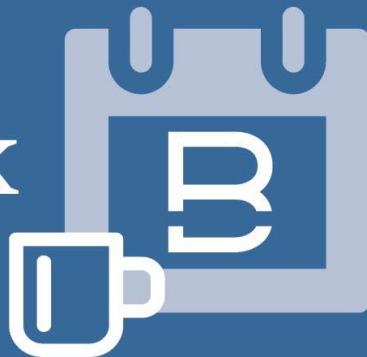


# The Work Week

Bassford Remele Employment Practice Group



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Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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## Responding to EEOC Charges: A Guide for Employers

[Michael J. Pfau](#)

Receiving a Charge of Discrimination from the Equal Employment Opportunity Commission (EEOC) or state agency is unsettling for any employer. Even when you believe the claim is meritless, the way you respond can significantly affect the outcome. A thoughtful, organized approach is essential to minimizing risk and protecting the company. Here is a guide for an optimal response.

### **1. Don't Panic, But Don't Ignore It**

An EEOC charge is not a lawsuit; rather it is a formal allegation that triggers a government investigation. For example, a charge can be a complaint of discrimination—not a determination that discrimination has occurred. The notice will include a deadline for submitting a position statement and supporting documents, which is typically 30 days. Missing that deadline can create the impression that the employer is uncooperative or has something to hide. The first step is simple: calendar the response date and take the matter seriously. If the employer needs additional time to respond, contact the investigator assigned to the charge. The EEOC may grant an extension to respond.

### **2. Immediately Preserve Relevant Evidence**

As soon as a charge is received, employers should issue a litigation hold to ensure that relevant emails, personnel files, time records, and other documents are preserved. Destruction of evidence, even if routine, can later be portrayed as retaliation or obstruction. Preservation

should include electronic data and communications involving supervisors or decisionmakers connected to the complaining employee.

### **3. Conduct an Internal Investigation**

Before drafting any response, the employer needs to understand what actually happened. Interview key witnesses, review personnel records, and gather objective documentation such as performance reviews, disciplinary notices, and company policies. Often the EEOC charge presents only one side of the story. A prompt internal review allows the employer to identify legitimate, non-discriminatory reasons for its actions. The key is to gain an understanding of the whole picture, including the bad.

### **4. Draft a Clear, Credible Position Statement**

The position statement is the employer's primary opportunity to tell its side of the story. It should be factual, professional, and supported by evidence. Avoid coming off as defensive. Effective statements typically include:

- A concise timeline of relevant events;
- Identification of decisionmakers;
- Legitimate business reasons for the challenged action;
- Citations to policies or records that support the employer's position; and
- Explanations that directly address each allegation.

Overly brief responses can appear evasive, while excessively long narratives may raise unnecessary issues. Striking the right balance is critical. Attaching relevant documents such as key communications, disciplinary notices, and pertinent policies will also add credibility to the employer's position statement.

### **5. Avoid Retaliation at All Costs**

Once an employee files an EEOC charge, they are protected from retaliation. Any negative employment action taken after the filing, including discipline, schedule changes, or termination, will be closely scrutinized. Employers should ensure that managers understand this and that any subsequent decisions are carefully documented and based on legitimate reasons.

### **6. Cooperate With the Investigation**

At times, the EEOC may follow up with the employer after the employer submits its position statement. The EEOC may require the employer to respond to a Request for Information, which may include providing personnel policies, personnel files, and other relevant information. In other circumstances, the EEOC may request an on-site visit, send requests for additional

information such as employee contacts, or even request to make them available for witness statements. The employer should timely respond to such requests and cooperate with the EEOC.

Because a charging party may add to their existing charge and file new ones if any discrimination or retaliation occurs while the charge is being investigated, the EEOC may request additional information accordingly. The employer should timely respond to any amended charges or requests.

## **7. Involve Counsel When Appropriate**

While employers can respond to charges on their own, involving experienced employment counsel often leads to stronger, more strategic responses. Attorneys can help frame legal arguments, maintain privilege over sensitive communications, and prevent missteps that could later be used in court.

## **Final Thoughts**

An EEOC charge does not have to turn into a disaster. Employers that respond promptly, investigate thoroughly, and present a well-supported position dramatically improve their chances of a favorable outcome. Treat the process with care and professionalism, and it can often be resolved with minimal disruption to the business.

The Bassford Remele Employment Law Group is here to support employers in responding to EEOC charges and investigations. We understand that agency investigations can be disruptive and time-sensitive, and we focus on minimizing business interruption while protecting the company's legal interests. Our practical, proactive approach is designed to resolve matters early whenever possible and to place employers in the strongest position should litigation ultimately follow. Please reach out with any questions.

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