



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: April 26, 2016

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities
Dm-p/20

RE: S.B. 214 (Employment Discrimination)

The State Council for Persons with Disabilities (SCPD) has reviewed S.B. 214 which increases the amount of time provided to a person seeking to file a charge of employment discrimination from 120 days to 300 days, making Delaware's statute of limitation consistent with the statute of limitations under federal discrimination law. SCPD endorses the proposed legislation and has the following observations.

As background, Delaware law currently imposes a 120-day statute of limitation for the filing of an employment discrimination complaint. This includes complaints based on the "Persons with Disabilities Employment Protections Act". See Title 19 Del.C. §§712 and 727. The 120-day standard does not conform to federal law. Consistent with the attached excerpt from the EEOC Website, the statute of limitation is 300 days for states whose departments of labor are authorized to process complaints:

IX. What Agency Handles a Charge that Is also Covered by State or Local Law?

Many states and localities have anti-discrimination laws and agencies responsible for enforcing those laws. EEOC refers to these agencies as "Fair Employment Practices Agencies (FEPAs)". Through the use of "work sharing agreements", EEOC and the FEPAs avoid duplication of effort while at the same time ensuring that a charging party's rights are protected under both federal and state law.

VIII. What Are the Time Limits for Filing a Charge of Discrimination?

...There are strict time limits within which charges must be filed:

- A charge must be filed with EEOC within 180 days from the date of the alleged violation, in order to protect the charging party's rights.
- This 180-day filing deadline is extended to 300 days if the charge is also covered by state or local anti-discrimination law.

S.B. 214 conforms the State statute of limitations to match the above federal standard, i.e., 300 days. This is highly preferable for multiple reasons. First, individuals looking at the current Delaware Code may be misled into believing they only have 120 days to file a charge under both federal and state law. Second, it facilitates the administration of the State Department of Labor to have a State charge time line equal to the federal standard. Under current law, Delawareans who file charges within 120 days can have their claims processed by the State while those filing between 121-300 days have their claims routed to the federal EEOC for processing. See attached excerpt from Delaware DOL Website. This is an awkward and confusing system for consumers.

Thank you for your consideration and please contact SCPD if you have any questions regarding our position or observations on the proposed legislation.


cc: Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

SB 240 employment discrimination 4-19-16

Grow Your Legal Practice (<http://www.martindalenolo.com/resources/grow-your-practice>)
Lawyer Directory (<http://www.nolo.com/lawyers>)

Time Limits for Filing a Charge of Discrimination

Before you can sue your employer for discrimination, you must first file a charge of discrimination with the EEOC or a similar state agency.

<p>Talk to an Employment Lawyer Enter Your Zip Code to Connect with a Lawyer Serving Your Area</p> <input type="text" value="Enter Zip Code"/> <input type="button" value="SEARCH"/>	
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Before an employee may sue for [discrimination, harassment, or retaliation \(/topics/discrimination-and-harassment\)](#) under federal law, the employee must file a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) and get a right to sue letter. This is a necessary prerequisite to filing a lawsuit: If an employee files a lawsuit without first filing an administrative charge, the lawsuit will be dismissed.

Which Laws Are Covered

An employee is required to file a charge of discrimination with the EEOC before filing a lawsuit against an employer for violating Title VII (the federal law that prohibits discrimination on the basis of race, color, national origin, religion, and sex), [the Americans with Disabilities Act \(/american-disabilities-act.cfm\)](#), the Age Discrimination in Employment Act, or the Genetic Information Nondiscrimination Act. An employee alleging harassment or retaliation under any of these laws must also first file a charge. However, an employee does not have to file a charge before bringing a lawsuit for violation of the Equal Pay Act, which requires employees to pay men and women equally for equal work.

Most states have their own laws that prohibit certain types of discrimination. Some states also require employees to file a charge of discrimination before filing a lawsuit for violation of state law; others don't.

Learn more about [Your Rights in a Discrimination Case \(/topics/asserting-your-rights\)](#).

Time Limits for Filing a Charge

* The statute of limitations for filing a charge of discrimination depends on state and local law. Generally, an employee has 180 days from the date the alleged discrimination took place to file a charge. If a state or local agency enforces a law prohibiting the same type of discrimination, the time limit is extended to 300 days. For age discrimination cases, the rule is different: The deadline is extended to 300 days only if a state agency (not a local agency) enforces a law prohibiting age discrimination.

Work-Sharing Agreements

In many states, the EEOC has entered into a work-sharing agreement with the state fair employment practices agency. If you file a charge of discrimination with either the EEOC or the state agency in one of these states, it will automatically be filed with the other agency, too. If your state doesn't have a work-sharing agreement, and you want to preserve your rights under both federal and state law, you may file a charge with both agencies yourself.

Filing a Charge

Currently, you may file a charge of discrimination with the EEOC in person or by mail. To file by mail, you must include the following information:

- your name, address, and phone number
- the name, address, and phone number of the employer
- how many employees the employer has
- a short description of the discriminatory incident(s), including when it took place, and
- the basis for the discrimination (that is, whether the employer discriminated against you based on race, religion, or sex, for example).

You can find detailed information on the EEOC's charge-filing procedures at the [EEOC website](http://www.eeoc.gov) (<http://www.eeoc.gov>). To find out how to file a charge of discrimination under state law, contact your state's fair employment practices agency.

Getting Legal Help

If you believe you have been discriminated against, you may want to contact an experienced employment lawyer right away. A lawyer can help you figure out how best to protect your rights going forward, including whether and when to file a charge of discrimination and what to include in it. Once you file a charge, a lawyer can help you negotiate with your employer, participate in the agency's investigation (if there is one), and file a lawsuit.

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**Department of Labor (<http://dol.delaware.gov/>)>>Division of Industrial Affairs
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File a Charge

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[Charge Processing Procedures \(/discrimination/procedures.php\)](/discrimination/procedures.php)

[What An Employer Should Know \(/discrimination/what-an-employer-should-know.php\)](/discrimination/what-an-employer-should-know.php)

[Mediation at DDOL \(/discrimination/mediation.php\)](/discrimination/mediation.php)

[Facts About Mediation \(/discrimination/mediation-facts.php\)](/discrimination/mediation-facts.php)

[Discrimination Intake Form \(/discrimination/discrimination-questionnaires.php\)](/discrimination/discrimination-questionnaires.php)

[Questions & Answers About Mediation \(/discrimination/mediation-q-and-a.php\)](/discrimination/mediation-q-and-a.php)

NOTE: Federal employees or applicants for Federal employment should contact the EEOC for information on procedures to make a complaint of discrimination.

Who Can File a Charge of Discrimination?

- Any individual who believes that his or her employment rights have been violated under the **Delaware Discrimination in Employment Act** (<http://delcode.delaware.gov/title19/c007/sc02/index.shtml>) or the **Handicapped Persons Employment Protections Act** (<http://delcode.delaware.gov/title19/c007/sc03/index.shtml>) may file a charge of discrimination with DDOL.

How is a Charge of Discrimination filed?

- A charge may be filed in person at the DDOL office in Dover or Wilmington.
- You may start the process by downloading and completing **Discrimination Intake Form (discrimination-questionnaires.php)**. Submit the completed questionnaire to our offices. We will contact you to set up an appointment to finalize the filing process.
- Individuals who need an accommodation in order to file a charge (e.g., sign language interpreter, print materials in an accessible format) should inform the DDOL office in advance so appropriate arrangements can be made.

What Information Must Be Provided to File a Charge?

- The complaining party's name, address, and telephone number;

- The name, address, and telephone number of the respondent employer, employment agency, or union that is alleged to have discriminated, and number of employees (or union members), if known;
- A short description of the alleged violation (the event that caused the complaining party to believe that his or her rights were violated); and
- The date(s) of the alleged violation(s).
- The **Discrimination Intake Form (discrimination-questionnaires.php)** will help you gather the information we will need for your specific situation.

What Are the Time Limits for Filing a Charge of Discrimination?

* All laws enforced by DDOL require filing a charge with DDOL before a private lawsuit may be filed in court. There are strict time limits within which charges must be filed:

- A charge must be filed with DDOL within 120 days from the date of the alleged violation, in order to protect the charging party's rights to file an action in state court.
- The filing deadline is to 300 days under federal law. A charge filed between 121 and 300 days will be forwarded to the EEOC for processing.
- To protect legal rights, it is always best to contact DDOL promptly when discrimination is suspected.

What Agency Handles a Charge that is also Covered by Federal Law?

Through the use of "work sharing agreements," EEOC and the DDOL avoid duplication of effort while at the same time ensuring that a charging party's rights are protected under both federal and state law.

- If a charge is filed with the DDOL and is also covered by federal law, the DDOL "dual files" the charge with EEOC to protect federal rights. The charge usually will be retained by the DDOL for handling.
- If a charge is filed with EEOC and also is covered by state or local law, EEOC "dual files" the charge with the state or local FEPA, but ordinarily retains the charge for handling.

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