

EEOC Revises Language in Dismissal Letters to Note Dismissal Is Not Merits Determination

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October 16, 2020

The U.S. Equal Employment Opportunity Commission (EEOC) has published a [Final Rule](#) amending its procedural regulations with regard to closing investigations and issuing Dismissal and Notice of Rights correspondence. The changes are set to take effect on November 16, 2020.

Previously, once the EEOC closed its investigation of a charge and issued a dismissal, the subsequent letter of determination (called a “Dismissal and Notice of Rights”) distributed to charging parties and respondents stated, “Based on its investigation, the EEOC [was] unable to conclude that the information ... establishe[d] [a] violation[] of the statute.” The letter stated that the EEOC had no reasonable cause to believe that an unlawful employment practice had occurred or was occurring.

The Final Rule revises the language included in Dismissal and Notice of Rights correspondence to specifically advise charging parties that a dismissal by the EEOC was not a determination on the merits of the issues purported to be raised in the charge.

The revised language states:

The EEOC will not proceed further with its investigation, and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no findings as to the merits of any other issues that might be construed as having been raised by this charge.

See 85 F.R. 65214 at 65216.

This latest change is a contrast to earlier positions of the EEOC, in which it stated that its conclusions regarding violations of the law were merits determinations. EEOC Guidance, *What You Should Know: The EEOC, Conciliation, and Litigation* (Jan. 21, 2015).

When initial proposals of the new language were first submitted for comment, a few practitioners disapproved of retaining the phrases “based on its investigation” and “[the Commission] has sufficient information.” Practitioners stated that these phrases were misleading given the variance in scope of EEOC investigations, some of which are closed based on the charge or position statement alone. The EEOC states that these final revisions are consistent with the language of the EEOC’s procedural regulations and were necessary to ensure charging parties, respondents, and courts that, despite dismissal, private litigation may still lead to discrimination findings and settlements.

The Final Rule also amends the procedural regulations to provide delegation authority to investigators to issue dismissal notices. During the review period for proposed changes, commentators expressed concern that providing investigators with this authority may eliminate independent review of a charge by more senior officials. However, the EEOC advised in its Final Rule that EEOC personnel with authority to issue dismissal notices will be equipped with requisite experience and guidance. Additionally, providing delegation authority to investigators is expected to result in quicker turnaround times for “no cause” findings, closer to the point of investigation, and could help eliminate delays in charge closures.

Additionally, the EEOC’s procedural regulations now expressly permit digital transmission of charge-related documents, a practice already heavily utilized. Additionally, the regulations clarify the process of deferring charges to state and local agencies. These changes seem to be part of the EEOC’s increased efforts at efficiency and transparency.

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The changes to language in EEOC determination letters likely will not significantly affect court proceedings, since EEOC “no cause” findings are not, as a matter of law, dispositive. The EEOC’s Office of Field Programs will make the changes to the dismissal notices and will issue guidance to field offices regarding authority to issue dismissal notices.

If you have any questions about the Final Rule or changes to the EEOC’s procedural regulations, feel free to contact your Jackson Lewis attorney.

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