

Know Your Rights: Filing an Employment Discrimination Complaint with the EEOC

Background of Federal Employment Rights for Transgender Employees

In 2012, the U.S. Equal Employment Opportunity Commission (EEOC)¹ issued a landmark decision, *Macy v. Holder*, holding that the federal sex discrimination law, Title VII², prohibits discrimination against transgender employees. This ruling was issued in the case of *Macy v. Holder*, brought to the EEOC by Transgender Law Center on behalf of our client Mia Macy. In 2015, the EEOC decided *Lusardi v. McHugh*, holding that some of the most common forms of harassment faced by transgender employees – telling them they can’t use the same restroom as everyone else, or intentionally calling them by the wrong name and pronoun – constitute unlawful discrimination under Title VII. Transgender Law Center was proud to represent the employees in both *Macy* and *Lusardi*.

What Does This Mean for You?

This means that transgender and gender non-conforming people everywhere in the United States are protected from employment discrimination by federal law and have access to legal protection through the EEOC if they experience employment discrimination because of their gender identity or expression. This is especially important for transgender employees in the 31 states that do not yet have state-level employment nondiscrimination laws that explicitly include gender identity or expression.

These EEOC decisions are binding on all federal agencies and federal contractors and on EEOC offices and investigators across the country. The decisions affect transgender people throughout the United States, because Title VII applies to all employers with 15 or more employees, including private sector employers and federal, state, and local government employers.

Important Timelines for Filing a Complaint

- Employees of private business, state or local governments (“non-federal employees”) usually have **180 days** from when the discrimination took place to file a complaint (this may be extended to 300 days if the charge is covered by a state or local non discrimination law).
- Federal employees have only **45 days** to file a complaint.

Filing a Complaint as a Non-Federal Employee

For employees and job applicants in the private sector and in state and local governments, EEOC staff investigates complaints of discrimination and makes a determination; provides mediation between employers and individuals who have experienced discrimination; and EEOC attorneys can bring lawsuits in federal court against employers who discriminate.

If you live someplace that has a state law prohibiting employment discrimination based on gender identity or expression³, you may want to make a complaint with the appropriate state agency and ask them to “cross-file” (that is, to open a parallel complaint) with the EEOC.

¹ The EEOC is the federal agency in charge of enforcing and interpreting federal discrimination laws. Its decisions confirm the growing trend of court decisions holding that sex discrimination laws protect transgender people from employment discrimination.

² Title VII refers to Title VII of the Civil Rights Act of 1964, which is a federal law that prohibits employment discrimination based upon race, religion, sex, color, and national origin.

³ As of April 2015, 19 states and Washington, D.C. have laws that explicitly prohibit gender identity employment discrimination: California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, Nevada, Oregon, Rhode Island, Utah, Vermont, and Washington. See http://www.lgbtmap.org/equality-maps/non_discrimination_laws.

Online Assessment

The EEOC does not accept discrimination complaints online. But they do have an online assessment tool that can help you decide if the EEOC is the right agency to assist you. You can visit <https://egov.eeoc.gov/eas/> to begin the online assessment. Print the intake questionnaire and then either bring or mail it to your local EEOC field office to begin the process of filing a discrimination complaint.

What Information Should You Gather?

You should bring any information or papers that will help the EEOC understand your case. For example, if you were told that you were fired because of your performance, you might bring with you the letter or notice telling you that you were fired and your performance evaluations. You might also bring with you the names of people who know about what happened and information about how to contact them.

Additionally, you should document any interactions with your employer and create a timeline of discriminatory events to create a strong case to support your employment discrimination claim. If you have attempted to go through an internal complaint process at your place of employment, document those interactions and what steps, if any, your employer has taken to address the discrimination you experienced.

In Person

You can visit your local EEOC field office just by walking in, or by making an. Each office's procedures differ, so you should contact your local field office for information about their procedures. You can find your local field office by entering in your zip code on the EEOC website here: <http://www.eeoc.gov/field/>

Telephone

Although charges can't officially be filed by phone, EEOC operators are available to walk you through the process of filing a charge and answer any questions you may have. Specifically, operators can assist you in finding the filing forms online and/or filling out the forms once you have them. Note, however, that hold times can be long. You can reach the EEOC hotline by calling 1-800-669-4000.

Mail

You can also file a charge by sending a letter to the local EEOC field office. (Note: If you're getting close to your time limit, it is not advisable to file by mail.) Make sure your letter includes the following information:

- ☐ Your name, address, and telephone number;
- ☐ The name, address, and telephone number of the employer (or employment agency or union) you want to file your charge against;
- ☐ The number of employees employed there (if known);
- ☐ A short description of the events you believe were discriminatory (for example, you were fired, demoted, harassed);
- ☐ When the events took place, timeline of events;
- ☐ Why you believe you were discriminated against (for example, because of your sex, transgender status, gender identity, gender expression, transgender status, gender transition, or sex stereotyping); and
- ☐ Your signature.

Don't forget to sign the letter. If you don't sign it, it won't be investigated.

What's Next?

Your letter will be reviewed and if more information is needed, you will be contacted to gather that information or you may be sent a follow up questionnaire. Once your information is complete, you will be contacted and may be asked to sign a document with all of the information you provided on an official EEOC charge form.

Filing a Complaint as a Federal Employee

For federal employees and job applicants, the EEOC can actually rule on discrimination complaints, and order that remedies like money damages be paid to individuals.

If you are a federal employee or job applicant, the first step is to contact an EEO Counselor at the agency where you work or where you applied for a job. Generally, you must contact the EEO Counselor within **45 days** from the day the discrimination occurred.

In most cases the EEO Counselor will give you the choice of participating either in EEO counseling or in an alternative dispute resolution (ADR) program, such as a mediation program. If you do not settle the dispute during counseling or through ADR, you will be provided a written notice that your counseling has been completed. From there, you can file a formal discrimination complaint against the agency with the agency's EEO Office. After your final interview with your agency's EEO Counselor, the EEO Counselor will send you a notice about how to file a formal discrimination complaint. You must file your complaint within 15 days of receiving notice from your EEO Counselor about how to file.

Filing a Formal Complaint

You must file your complaint at the same EEO Office where you received counseling. When you prepare your discrimination complaint, it must contain the following:

- ☐ Your name, address, and telephone number
- ☐ A short description of the events you believe were discriminatory (for example, the fact that you were terminated, demoted, or harassed);
- ☐ Why you believe you were discriminated against (for example, because of your sex, transgender status, gender identity, gender expression, transgender status, gender transition, or sex stereotyping);
- ☐ A short description of any injury you suffered; and
- ☐ Your signature (or your lawyer's signature).

What's Next?

Once you have filed a formal complaint, the EEOC will send you a letter letting you know it received your complaint and will begin its review and decide whether or not the case will be accepted or dismissed for a procedural reason (for example, if your claim was filed too late). If the EEOC doesn't dismiss the complaint, it will conduct an investigation. Unless they tell you otherwise, they have 180 days from the day you filed your complaint to finish the investigation. (After 180 days have gone by, even if the investigation is not complete, you have the option to go directly to federal court to file a lawsuit.)

When the investigation is finished, the agency will issue a notice giving you two choices: you can either request a hearing before an EEOC administrative judge, or ask the agency that discriminated against you to issue a decision as to whether or not they think the discrimination occurred. If you request a hearing, you will have the opportunity to provide evidence of the discrimination to an EEOC administrative judge, who will then make a decision about whether it occurred and can award you damages. In either case, you can appeal the result to a federal court.

Keep in mind that you may have other remedies to discrimination as a federal employee. To help employees better understand these remedies and the process for accessing them, the U.S. Office of Personnel Management, the Equal Employment Opportunity Commission, the Office of Special Counsel, and the Merit Systems Protection Board have created a guide, *Addressing Sexual Orientation and Gender Identity Discrimination In Federal Civilian Employment A Guide to Employment Rights, Protections, and Responsibilities*. It is available online at <http://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/addressing-sexual-orientation-and-gender-identity-discrimination-in-federal-civilian-employment.pdf>

Any Questions?

If you have any questions, please contact Transgender Law Center's Legal Helpline at <http://transgenderlawcenter.org/help> or (415) 865-0176 x306.

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