

Effective Position Statements

When a charge of discrimination is filed with EEOC, the agency has the authority to investigate to determine whether there is a reasonable cause to believe discrimination occurred. EEOC will ask both the Charging Party and the Respondent to provide information as part of its investigation. EEOC may request specific documents, information or interviews from your organization concerning the charge. In most cases, EEOC requests that the Respondent submit a statement of its position (known as a "position statement") with supporting documentation. The purpose of this document is to explain how Respondents can draft effective position statements.

What should a position statement include?

Fact-Based Position Statement

At a minimum, it should include **specific, factual** responses to every allegation of the charge, as well as any other facts which you deem relevant for EEOC's consideration. The position statement should clearly explain the Respondent's version of the facts and identify the specific documents and witnesses supporting its position. A well drafted position statement can help EEOC accelerate the investigation and limit requests for additional information.

EEOC also requests that you submit all documentary evidence you believe is responsive to the allegations of the charge. If you submit only an advocacy statement, unsupported by documentary evidence, EEOC may conclude that Respondent has no evidence to support its defense to the allegations of the charge.

Keep the following points in mind as you prepare the response to the charge:

- Address each alleged discriminatory act and your position regarding it and provide copies of documents supporting your position and/or version of the events.
- Provide a description of the organization; include the organization's legal name and address, the name, address, title, telephone number and email address of the person responsible for responding to the charge, the primary nature of the business, and the number of employees. A staffing or organizational chart is also useful in helping to focus the investigation.
- Provide any applicable practices, policies or procedures applicable to the allegations in the charge.
- Identify any individuals other than the Charging Party who have been similarly affected by these practices, policies or procedures; describe the circumstances in which the practices, policies, or procedures have been applied.
- Explain why individuals who were in a similar situation to the Charging Party were not similarly affected.
- Identify official(s) who made decisions or took action relating to the matter(s) raised in the charge.
- Be specific about date(s), action(s) and location(s) applicable to this case.
- Provide internal investigations of the alleged incidents or grievance hearing reports.

- **Inform EEOC if the matter has been resolved or can be resolved; if it can be resolved, please indicate your proposal for resolution.**

An effective position statement is clear, concise, complete and responsive. A position statement that simply denies the allegations without providing your position or supporting information is not sufficient.

EEOC may also release your position statement and non-confidential attachments to Charging Parties and their representatives and allow them to respond to enable the EEOC to assess the credibility of the information provided by both parties. It is in the Respondent's interest to provide an effective position statement that focuses on the facts. EEOC will not release the Charging Party's response, if any, to the Respondent.

Examples of Supporting Documentary Evidence

Some *examples* of the types of documentary evidence which may be submitted in support of a position statement are:

Example 1: Charging Party alleges sexual harassment:

You may submit statements or affidavits from witnesses with direct knowledge of the alleged events and/or from the alleged harasser responding to the CP's allegations.

Example 2: Charging Party alleges racial discrimination in pay:

You may submit payroll records showing that the compensation of all employees in positions comparable to Charging Party, and information regarding their racial category, criteria for setting pay, and how each employee's pay was determined.

Example 3: Charging Party alleges she was fired because of her age (55):

You may submit personnel records documenting the reasons for her termination.

Example 4: Charging Party alleges termination because of pregnancy:

You may submit documentation showing your reason for terminating CP.

Segregate Confidential Information into Separately Marked Attachments

The position statement should only refer to, but not identify information that the Respondent asserts is sensitive medical information, or confidential commercial or financial information. If Respondent relies on confidential medical or commercial information in its position statement, it should provide such information in separate attachments to the position statement labeled "Sensitive Medical Information," "Confidential Commercial or Financial Information," or "Trade Secret Information" as applicable. Provide an explanation justifying the confidential nature of the information contained in the attachments. Medical information about the Charging Party shall not be deemed sensitive or confidential medical information in relation to the investigation.

Respondent should segregate the following information into separate attachments and designate them as follows:

- Sensitive medical information (except for the Charging Party's medical info).
- Social Security Numbers.
- Confidential commercial or financial information.
- Trade secrets information.
- Non-relevant personally identifiable information of witnesses, comparators or third parties, for example, social security numbers, dates of birth in non-age cases, home addresses and personal phone numbers, etc.

- Any reference to other charges filed against the Respondent or to other charging parties, unless the other charges are by the Charging Party.

EEOC will review attachments designated as confidential and consider the justification provided, as the agency will not condone blanket or unsupported assertions of confidentiality.

Provide Your Response by the Due Date

Provide your response within the stated deadline. A brief extension of time **may** be allowed in particular cases, but only when it is clear that you are working with due diligence to supply all of the necessary information. Evidence of due diligence would include a partial submission of information related to the allegations in the charge.

Requests for an Extension:

If Respondent believes it requires additional time to respond, it must, at the *earliest possible time* in advance of the due date, make a written request for extension, explain why an extension is necessary, and specify the amount of additional time needed to reply. Submitting a written request for extension of time which has not been granted does not relieve Respondent of complying with the deadline.

Upload the Position Statement and Attachments into the Respondent Portal

You can upload your position statement and attachments into the Respondent Portal using the + **Upload Documents** button. Select the "Position Statement" Document Type and click the **Save Upload** button to send the Position Statement and attachments to EEOC. Once the Position Statement has been submitted, you will not be able to retract it via the Portal.

If you do not submit a position statement or respond to EEOC's requests for information, the EEOC may proceed directly to a determination on the merits of the charge based on the information at its disposal or subpoena specific information related to the allegations in the charge.