

EEOC Compliance Manual Section 2: Threshold Issues

2-IV Timeliness

(deleted A. Charge Filing through B. Filing Civil Actions)

C. When Can a Discriminatory Act Be Challenged?

1. Generally

A charging party is generally required to file a charge within 180/300 days after the alleged unlawful employment practice occurred.⁽¹⁷⁸⁾ A federal sector complainant must initiate the EEO process within 45 days.⁽¹⁷⁹⁾ In *National Railroad Passenger Corp. v. Morgan*, the Supreme Court ruled that the timeliness of a charge depends upon whether it involves a discrete act or a hostile work environment claim.⁽¹⁸⁰⁾

a. Discrete Acts

A discrete act, such as failure to hire or promote, termination, or denial of transfer, is independently actionable if it is the subject of a timely charge.⁽¹⁸¹⁾ Such acts must be challenged within 180/300 days of the date that the charging party received unequivocal written or oral notification of the action, regardless of the action's effective date.⁽¹⁸²⁾ A mere warning or proposal that an action might be taken does not trigger the start of the limitations period for challenging the completed final action.

Example 1 - On March 1, 2002, CP received written notification that he would be discharged effective April 30, 2002. Accordingly, CP must file a charge within 180/300 days of March 1, 2002.

Example 2 - On January 1, 2002, CP was notified that his demotion was being proposed. On February 1, 2002, CP was notified that his demotion would be effective on March 1, 2002. Accordingly, CP must file a charge within 180/300 days of February 1, 2002.

Example 3 - On January 1, 2002, CP was injured on the job, and

she remained unable to work for many months. In September, her doctor released her to return to work. When CP reported to work on September 15, 2002, she was notified that her employment had been terminated on August 1, 2002, and that there was no position available for her. Accordingly, CP must file a charge within 180/300 days of September 15, 2002.

Repeated occurrences of the same discriminatory employment action can be challenged as long as one discriminatory act occurred within the charge filing period.⁽¹⁸³⁾ Similarly, because an employer has an ongoing obligation to provide a reasonable accommodation, failure to provide such accommodation constitutes a violation each time the employee needs it.⁽¹⁸⁴⁾ A timely charge also may challenge related incidents that occur *after* the charge is filed.⁽¹⁸⁵⁾

Example 4 - Robert, a hearing-impaired federal employee, requests a sign language interpreter for each weekly office planning session. The request was denied on March 1, 2001. Robert continues to attend the meetings without an interpreter, but on July 1, 2001, Robert's supervisor comments that Robert doesn't seem to be keeping up with the office's priority planning. Robert immediately contacts an EEO Counselor about the denial of accommodation. Robert has initiated the EEO process in a timely manner.

Individual discrete acts that occurred before the filing period will generally be untimely – and therefore not actionable – even if they are arguably related to acts that occurred within the filing period.⁽¹⁸⁶⁾ Nonetheless, these untimely discrete discriminatory acts may be considered as background evidence if they are relevant to the determination of whether acts taken inside the filing period were discriminatory.⁽¹⁸⁷⁾ There is *no* time limit on relevant evidence.

Example 5 - CP applied for promotion to a supervisory position on four occasions over a three-year period. Two months after the most recent denial, he filed a charge alleging that he was denied a promotion each time because of his national origin. The investigator notes that, while the promotion decisions were each made by the same manager and were for positions in the same

department, only the last promotion decision occurred within the filing period. Because denial of promotion is a discrete act, only the final promotion decision is timely. However, the investigator may use the untimely promotion decisions as background evidence in evaluating whether the timely decision was discriminatory.

b. Hostile Work Environment Claims

Because the incidents that make up a hostile work environment claim "collectively constitute one 'unlawful employment practice,'" ⁽¹⁸⁸⁾ the entire claim is actionable, as long as at least one incident that is part of the claim occurred within the filing period. ⁽¹⁸⁹⁾ This includes incidents that occurred outside the filing period that the charging party knew or should have known were actionable at the time of their occurrence. ⁽¹⁹⁰⁾

Example 1 - CP files a charge on September 3, 2002, alleging that he was subjected to derogatory age-based comments by his supervisor and coworkers over two and a half years. The last incident occurred on July 15, 2002. The investigation reveals that the incidents are related and constitute a single hostile work environment claim and that at least one of the incidents occurred within the filing period. All of the incidents that make up the hostile work environment should be considered in determining liability and damages related to the claim.

Whether a particular incident is part of a hostile work environment claim is a fact-specific determination. An incident may be part of a hostile work environment even if it is also a discrete act. ⁽¹⁹¹⁾ However, a discrete act of discrimination may be part of a hostile work environment only if it is related to abusive conduct or language, i.e., a pattern of discriminatory intimidation, ridicule, and insult. ⁽¹⁹²⁾ A discrete act that is unrelated to abusive conduct or language ordinarily would not support a hostile work environment claim. ⁽¹⁹³⁾

If a discrete act that occurred before the filing period is part of a timely hostile work environment claim, the charging party may only challenge the act as part of the hostile work environment claim. For example, if a pre-filing period demotion is related to a

pattern of abusive conduct or language that continued into the filing period, then the demotion may be considered in assessing whether the employee was subjected to a hostile work environment and determining the appropriate remedy for that violation. However, because no timely challenge was made to the demotion, it is not independently actionable, and the charging party would not be entitled to relief, such as back pay or reinstatement, for the demotion itself.⁽¹⁹⁴⁾

Example 2 - On March 15, 2002, CP files a charge alleging that his supervisor subjected him to discriminatory, race-based conduct between CP's date of hire, January 1, 2000, and January 15, 2002, when CP received a transfer. Specifically, CP alleges that he was subjected to a hostile work environment and that he was discriminatorily denied two bonuses, one in December 2000 and another in December 2001.

The investigator determines that both bonus decisions were related to a pattern of harassment that continued into the 300-day filing period. Therefore, both bonus decisions are part of CP's hostile work environment claim and may be considered in determining whether the harassing conduct was sufficiently severe or pervasive to create a hostile work environment, and if so, what relief is appropriate.

In addition, because a bonus decision is a discrete act, CP could recover back pay for the second bonus decision. CP could not, however, recover back pay for the first bonus decision because it occurred before the filing period and is, therefore, not separately actionable. However, that first decision may be relevant background evidence for determining whether the second bonus decision was discriminatory.

Example 3 - May 15, 2002, CP files a charge alleging that, beginning early in 2001, her supervisor, John, subjected her to a pattern of sexual innuendo that created a hostile work environment and that the conduct continued until she filed her charge. She also alleged that she was denied a promotion in March 2001 because of her sex.

Because the denial of promotion occurred outside the filing period, it is not actionable as a discrete act. However, CP alleges

that it was part of the pattern of harassment. The investigation shows that John liked CP and thought that he was engaged in an "innocent flirtation" with her, that he had engaged in similar inappropriate conduct with several other women whom he promoted, that there were twenty applicants for the promotion, and that the selection decision was not made by John alone, but by a five-member panel of which he was the junior member. The investigator concludes that the promotion denial was not part of the pattern of harassment.

2. Pattern-or-Practice Claims

Discriminatory acts that are part of a pattern or practice of discrimination can be challenged as a single claim. If the discriminatory pattern or practice continues into the filing period, all of the component acts of the pattern or practice will be timely, and relief can be recovered for any of those acts.⁽¹⁹⁵⁾

Example - In March 2003, CP files a charge alleging that Respondent discriminates against African-American applicants to its apprenticeship program. According to CP, he has applied for the apprenticeship program repeatedly since its initiation in September 2000 but has never been selected. The investigation reveals that African-American applicants for the apprenticeship program have been selected at a much lower rate than similarly qualified white applicants. Because Respondent's systematic discrimination against African-American applicants to the apprenticeship program constitutes a pattern or practice of discrimination, all discriminatory selection decisions under the program are timely.