

HELPFUL TIPS

FROM THE BOOK

FIRED!

FINAL TIPS

ABOUT WINNING A DISCRIMINATION CASE



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Final Tips About Winning a Discrimination Case

Filing a discrimination charge is only the first step; proving your case is an entirely different matter. While the advice and guidance of a skilled employment lawyer is usually necessary, acting on the following strategies can improve your chances of success.

- 1 Develop the facts beforehand.** Collect and save all pertinent nonconfidential documentation before filing a formal charge or being fired. Copies of favorable e-mails, letters of reference, and performance reviews in your possession for example may make it more difficult for the employer to argue that you were fired for poor work performance.
- 2 Try to prove your case through direct evidence.** Statements made by supervisors or managers about your age, gender, or color that are overheard by others can be more effective in proving your case than relying on circumstantial evidence (such as statistics that tend to demonstrate a pattern of discrimination). Maintain a diary listing damaging statements made to you or about you, especially discriminatory comments others tell you they heard.
- 3 Be able to refute the employer's defenses with logic.** In court, the employer will typically respond to your charges by attempting to prove that its actions were the result of legitimate, nondiscriminatory factors. This often includes firing you for performance or company-wide financial reasons. You will then have the challenge of offering evidence to show that the excuse is merely a pretext (a cover-up) for discrimination. Although this is often difficult to do, you may be able to prevail by proving the employer's reason is factually untrue, insufficient to have actually motivated your discharge, done in retaliation for your complaining about or filing a formal charge of discrimination, or implausible.

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Final Words on the Subject: The decision of whether or not to complain to the EEOC or to a state administrative agency, and, if so, what to include in such an administrative complaint, can be extremely confusing. If the correct decisions are not made at this stage, you may be effectively barred from suing your employer for discrimination or retaliation.

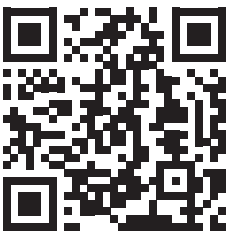
What can go wrong? The real question here is “What can’t go wrong?” According to Scott A. Lucas, Esq., common errors that can occur during the “administrative” phase of a dispute include:

- 1** Not timely filing an administrative complaint with the EEOC and/or your state and/or local anti-discrimination agency (e.g., within 180, 240, or 300 days, or whatever other deadline may apply).
- 2** Not identifying all of the grounds on which you believe you were illegally fired, demoted, etc. For example, if you think you were fired due to your gender and race, but only mention race in your EEOC charge, you may be barred from seeking to prove gender discrimination in a later lawsuit.
- 3** Including too few facts in your administrative charge. In a later lawsuit, employers often successfully claim that issues not adequately raised in the EEOC charge can’t be raised in court. Be aware of this.
- 4** Including unhelpful facts in your administrative charge that can prejudice the case.
- 5** Filing a charge of discrimination with an administrative agency and not timely and/or correctly withdrawing it. For example, an employee in New York can sue an employer for unlawful discrimination in court

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within three years of discriminatory conduct that harmed her, but if she files a charge of discrimination beforehand with the New York State Division of Human Rights, then she must generally request and receive a particular type of withdrawal of that administrative complaint before being allowed to file a lawsuit. This is a complex area of law. Since state and local laws vary, be sure to consult a knowledgeable employment attorney.

- 6 Not filing a lawsuit within 90 days of receiving a “right to sue” letter from the EEOC. After a period of time, the EEOC will usually issue what is known as a “right to sue” letter. The letter will typically state that you have 90 days to file a lawsuit or your federal claims may be waived. Lawyers require plenty of lead time in order to prepare a well-drafted complaint; be sure to consult with a knowledgeable employment attorney early in the process, preferably as soon as possible after being fired, demoted, etc.
- 7 Since the EEOC and state and local anti-discrimination agencies have heavy caseloads, you must be able to prove that whatever you sent to the agency was received by the agency. Certified mail is strongly recommended.



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