

# How a Private Employer or State or Local Government Agency Can Develop Its Own Jurisdiction Checklist and Templates For Investigating Employment-Related Discrimination Complaints

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# Jurisdiction Checklist

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## Checklist for Establishing Jurisdiction

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- The formal complaint is in writing
- The formal complaint signed by the Complainant or an authorized representative of the Complainant
- A Respondent is identified (may be an individual and/or entity)  
Name(s): \_\_\_\_\_
- There is an employment-related "relationship" between Complainant and Respondent.  
State the relationship between the Complainant and named Respondent:
- Current employee
- Former employee
- Applicant for employment
- Applicant to, and participant in, a training and apprenticeship program
- Other (explain)
- The complaint alleges a covered "basis" of discrimination
- Under **federal** civil rights laws, "basis" means the complainant has protected class status on one of the following grounds: race; color; national origin; age (40 and older); sex (including pregnancy and sexual harassment); religion; genetic information; equal compensation; disability; and/or reprisal for a prior EEO complaint or activity. The following constitutes the

**federal** civil rights statutes applicable to your employment practices: Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the Lilly Ledbetter Fair Pay Act of 2009, the Americans with Disabilities Act of 1990, the Americans With Disabilities Amendments Act of 2008, the Rehabilitation Act of 1973, the Age Discrimination in Employment Act of 1967, and the Genetic Information Nondiscrimination Act of 2008.

For those **states, counties, cities, and towns** that have their own laws prohibiting discrimination, you will want to know those laws and the “bases” of discrimination they prohibit. You will find this information through the offices of your Governor, Mayor, County Executive, or the like. To the extent that state and/or local laws are more liberal, you will apply them to your investigations. For example, at the federal level, the Age Discrimination in Employment Act prohibits discrimination on the basis of age 40 years and older. New York State, however, has a law prohibiting discrimination on the basis of age 18 years and older—this law would be applied by agencies and private employers in New York State.

Set forth any **state, county, city, and town** antidiscrimination laws, and the bases of discrimination they prohibit:

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State the covered “basis” of this complaint?

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\_\_\_\_\_ The complaint has “apparent merit”.

“Apparent merit” means that the Complainant alleged that Respondent took an “adverse action” against the Complainant due to a prohibited “basis” of discrimination.

Some examples of issues are: (1) job decisions, employment practices, and other terms, conditions, and privileges of employment; (2) harassment occurring on a protected basis; (3) referral practices; (4) labor organization practices; (5) practices undertaken by apprenticeships and other training programs; (6) advertising and recruitment; (7) medical inquiries and examinations; (8) maintenance and confidentiality of medical records; (9) limiting, segregating, and classifying; and (10) retaliation.

Brief statement of alleged "adverse action" or "issue."

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\_\_\_\_\_ The complaint is timely.

You will need to do a little research here as well. The following is an informational excerpt taken directly from the U.S. Equal Employment Opportunities Commission (EEOC) website at [www.eeoc.gov/employees/fepa](http://www.eeoc.gov/employees/fepa):

Many states, counties, cities, and towns have their own laws prohibiting discrimination, as well as agencies responsible for enforcing these laws. We call these state and local agencies "Fair Employment Practices Agencies" (FEPA). Usually the laws enforced by these agencies are similar to those enforced by EEOC. In some cases, these agencies enforce laws that offer greater protection to workers . . . . There also may be different deadlines for filing a charge, different standards for determining whether you are protected by these laws, and different types of relief available to victims of discrimination.

Under federal law, generally, a complaint must be filed within **180 days** of the date of the alleged adverse action (discrete act). However, if your jurisdiction has a FEPA, then the deadline is extended and a complaint must be filed within **300 days** of the date of the alleged adverse action. Keep in mind that, for a complaint alleging a series of events comprising a **hostile work environment**, the time limitation begins to run as of the date of the last incident.

For **age** discrimination complaints, the EEOC states, "For age discrimination, the filing deadline is only extended to 300 days if there is a state law prohibiting age discrimination and a state agency or authority enforcing that law." The EEOC further provides, "The deadline is not extended if only a local law prohibits age discrimination."

Finally, a complaint alleging a violation of the **Equal Pay Act** must be filed within two years. However, if the violation is deemed willful, the time limitation for filing is extended to three years.

\_\_\_\_\_ Is there a state or local option for a potential complainant to go to an EEO counselor? If so, what is the time limitation?

Sample  
“Complaint Investigation Plans”  
for each legal theory

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**SAMPLE COMPLAINT INVESTIGATION PLAN**  
**FOR DISPARATE TREATMENT**  
**(Nonselection and Nonpromotion)**

This plan can be easily modified to reflect any adverse action alleged by the Complainant. The following outline is intended to give you a general idea of how to properly organize evidence in a complaint investigation.

Complainant: [name, address, and telephone number]

Respondent: [name, address, and telephone number]

Date of alleged act of discrimination: \_\_\_\_\_

Date written complaint filed: \_\_\_\_\_

Acceptance letter issued on: \_\_\_\_\_

Interrogatories to the parties issued: \_\_\_\_\_

Due date for responses: \_\_\_\_\_

Issue(s): \_\_\_\_\_

Basis: \_\_\_\_\_

Legal Theory: \_\_\_\_\_

Statute/Regulations: \_\_\_\_\_

Elements of proof	Information on file	Information needed	Sources
<p>The Complainant is a member of a protected class</p>			
<p>The Complainant sought to apply, or applied, for specific aid/training/benefit/service/job</p>			
<p>The Complainant met the <i>bona fide occupational qualifications</i> for the specific aid/training/benefit/service/job</p>			
<p>The Complainant was denied access to apply, or the Complainant's application for the specific aid/training/benefit/service/job was denied</p>			
<p>Respondent proffers legitimate, nondiscriminatory reasons for denying the Complainant's access to apply, or for denying the application for specific aid/training/benefit/service/job</p>			
<p>Complainant demonstrates that Respondent's proffered reasons are pretextual</p>			

**COMPLAINT INVESTIGATION PLAN FOR "REASONABLE  
ACCOMMODATION"**

Complainant: [name, address, and telephone number]

Respondent: [name, address, and telephone number]

Date of alleged act of discrimination: \_\_\_\_\_

Date written complaint filed: \_\_\_\_\_

Acceptance letter issued on: \_\_\_\_\_

Interrogatories to the parties issued: \_\_\_\_\_

Due date for responses: \_\_\_\_\_

Issue(s): \_\_\_\_\_

Basis: \_\_\_\_\_

Legal Theory: \_\_\_\_\_

Statute/Regulations: \_\_\_\_\_

Elements of proof	Information on file	Information needed	Sources
<p>The Complainant is an "individual with a disability" (<i>i.e.</i> the disability "substantially limits a major life activity")</p> <p>The Complainant is a "qualified" individual with a disability (<i>i.e.</i> the Complainant meets the <i>bona fide occupational qualifications</i> for the aid/training/benefit/service/job at issue, and can perform the "essential functions" of the job, even without the requested accommodation)</p> <p>The Complainant sought to apply, or applied, for specific aid/training/benefit/service/job</p> <p>The Complainant requested "reasonable accommodation" in writing or verbally (need not use words "reasonable accommodation")</p> <p>Respondent proffers legitimate, nondiscriminatory reasons for its failure or refusal to offer the requested "accommodation" (<i>i.e.</i> whether Respondent offered another "effective" accommodation that was refused by the Complainant, undue hardship, etc...)</p> <p>Complainant demonstrates the proffered reasons are pretextual</p>			

**COMPLAINT INVESTIGATION PLAN FOR "REASONABLE  
MODIFICATION"**

Complainant: [name, address, and telephone number]

Respondent: [name, address, and telephone number]

Date of alleged act of discrimination: \_\_\_\_\_

Date written complaint filed: \_\_\_\_\_

Acceptance letter issued on: \_\_\_\_\_

Interrogatories to the parties issued: \_\_\_\_\_

Due date for responses: \_\_\_\_\_

Issue(s): \_\_\_\_\_

Basis: \_\_\_\_\_

Legal Theory: \_\_\_\_\_

Statute/Regulations: \_\_\_\_\_

Elements of proof	Information on file	Information needed	Sources
<p>The Complainant has a <i>bona fide</i> religious belief or practice</p> <p>The Complainant meets the <i>bona fide occupational qualifications</i> at issue, and can perform the "essential functions" of the job even without the requested modification</p> <p>The Complainant requested "reasonable modification" in writing or verbally (need not use words "reasonable modification")</p> <p>Respondent proffers legitimate, nondiscriminatory reasons for its failure or refusal to offer the requested "modification" (<i>i.e.</i> another "effective modification" was offered and rejected, undue hardship, etc.)</p> <p>The Complainant demonstrates that the proffered reasons are pretextual.</p>			

A sample letter finding  
no jurisdiction on any basis *except*  
untimeliness

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**NOTICE OF FINAL ACTION**

[date]

[name and address of complainant  
and name and address of respondent]

Dear Mr./Ms. \_\_\_\_\_:

This acknowledges receipt of a complaint of discrimination dated \_\_\_\_\_, the Complainant, alleges that, on \_\_\_\_\_, s/he was discriminated against by \_\_\_\_\_ on the basis of \_\_\_\_\_.

I have authority to investigate and determine complaints of discrimination arising under the following federal statutes: (1) Title VII of the Civil Rights Act of 1964, as amended at 42 U.S.C. § 2000e *et seq.*; (2) the Rehabilitation Act of 1973 at 29 U.S.C. § 791 *et seq.*; (3) Title I of the Americans with Disability Act at 42 U.S.C. § 12101, as amended, and the Americans with Disabilities Amendments Act of 2008; (4) the Age Discrimination in Employment Act of 1967 at 29 U.S.C. § 621 *et seq.*; (5) the Equal Pay Act of 1963 and the Lilly Ledbetter Fair Pay Act of 2009; and (6) the Genetic Information Nondiscrimination Act of 2008.

I also have authority to investigate and determine complaints of discrimination arising under the following state and local laws:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

As a whole, these federal statutes bar discrimination on the "basis" of race, color, national origin, age (40 years old and older), sex (including sexual harassment), religion, disability, genetic information, and/or reprisal for prior EEO activity.

Upon review of your complaint, it is determined that I lack jurisdiction to investigate and decide this matter because:

\_\_\_\_\_ The formal complaint is not in writing.

\_\_\_\_\_ The formal complaint is not signed.

\_\_\_\_\_ The formal complaint did not identify a Respondent.

\_\_\_\_\_ The formal complaint identified a Respondent, but this I am without authority to investigate allegations against this Respondent.

\_\_\_\_\_ There is no covered relationship (employment relationship) between the Complainant and the named Respondent.

\_\_\_\_\_ The complaint does not state a covered "basis" as defined above.

\_\_\_\_\_ The complaint lacks "apparent merit" as defined above.

\_\_\_\_\_ The Complainant cannot be located.

\_\_\_\_\_ Complainant was contacted by [telephone/letter] on \_\_\_\_\_ and advised that this complaint would be denied based on the foregoing deficiency if I did not receive a supplemental statement addressing the deficiency within 15 calendar days. To date, no supplemental response has been received. As a result, I conclude that I lack jurisdiction to investigate and decide the complaint. This constitutes my final determination.

Respectfully,

/s/

[name and title of investigator]

### **NOTICE OF RIGHT TO FILE APPEAL**

(Here you will insert a paragraph notifying the parties of any right of appeal they may have within your organization or agency. You will provide the time frame allowed for filing the appeal as well as the name and address of the appropriate authority to accept the appeal. If there is no further appeal within your organization, then you will delete this section.)

**NOTICE OF RIGHT TO FILE COMPLAINT:**

Notwithstanding the fact that you have filed a complaint with us, you also may elect to file complaints with one or both of the following investigative agencies. The filing of a complaint before us does not toll (extend) the time period to file complaints before the following two agencies.

Within **180/300 days** of the date of the alleged discriminatory act, you may elect to file a complaint of discrimination with the Equal Employment Opportunity Commission (EEOC). (Provide the address for the EEOC office in your state.)

If your state also has a FEPA, then you will notify the complainant of his or her right to file with that agency. Because the timeframes for filing discrimination complaints vary from state to state, you will research this and provide notice of the time allowed to file a complaint as well as the address of the FEPA.

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## A sample “no jurisdiction” letter (complaint untimely)

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**NOTICE OF FINAL ACTION**

[date]

[name and address of charging party]

Dear Mr./Ms. \_\_\_\_\_:

This acknowledges receipt of a complaint of discrimination dated \_\_\_\_\_.

I have authority to investigate and determine complaints of discrimination arising under the following federal statutes: (1) Title VII of the Civil Rights Act of 1964, as amended at 42 U.S.C. § 2000e *et seq.*; (2) the Rehabilitation Act of 1973 at 29 U.S.C. § 791 *et seq.*; (3) Title I of the Americans with Disability Act at 42 U.S.C. § 12101, as amended, and the Americans with Disabilities Amendments Act of 2008; (4) the Age Discrimination in Employment Act of 1967 at 29 U.S.C. § 621 *et seq.*; (5) the Equal Pay Act of 1963 and the Lilly Ledbetter Fair Pay Act of 2009; and (6) the Genetic Information Nondiscrimination Act of 2008.

I also have authority to investigate and determine complaints of discrimination arising under the following state and local laws:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

As a whole, these federal statutes bar discrimination on the "basis" of race, color, national origin, age (40 years old and older), sex (including sexual harassment), religion, disability, genetic information, and/or reprisal for prior EEO activity.

In order for me to have authority to investigate a complaint, the complaint must comply with certain federal requirements. Of relevance here, federal and state law requires that the complaint be filed within **180/300 days** of the date of the alleged discriminatory conduct by Respondent.

Upon review of this complaint, I find that I lack jurisdiction to investigate and decide this matter because the Complainant alleges

that the discriminatory act occurred on \_\_\_\_\_, but this complaint was filed more than **180/300 days** later, on \_\_\_\_\_.

Because the complaint is untimely on its face, there is no jurisdiction to investigate it.

Respectfully,

/s/

[name and title of investigator]

**NOTICE OF RIGHT TO REQUEST WAIVER:** This complaint has been found untimely because it was not filed within **180/300 days** of the alleged act of discrimination. (Here you will provide the contact information for any authority who may waive the time limitation for filing a complaint. If there is no authority within your organization, then you can provide the EEOC's contact information in your state).

**NOTICE OF RIGHT TO FILE COMPLAINT:** Notwithstanding the fact that you have filed a complaint with us, you also may elect to file complaints with one or both of the following investigative agencies. The filing of a complaint before us does not toll (extend) the time period to file complaints before the following two agencies.

Within **180/300 days** of the date of the alleged discriminatory act, you may elect to file a complaint of discrimination with the Equal Employment Opportunity Commission (EEOC). (Provide the address for the EEOC office in your state.)

If your state also has a FEPA, then you will notify the complainant of his or her right to file with that agency. Because the timeframes for filing discrimination complaints vary from state to state, you will research this and provide notice of the time allowed to file a complaint as well as the address of the FEPA.

## A sample “notice of acceptance” letter

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## NOTICE OF ACCEPTANCE

[date]

[complainant's name and address  
and respondent's name and address]

Dear \_\_\_\_\_:

The parties are notified that the undersigned has accepted a complaint of discrimination filed by \_\_\_\_\_, the Complainant, against \_\_\_\_\_, the Respondent. The complaint of discrimination at issue is dated \_\_\_\_\_.

### **I Authority**

I have authority to investigate and determine complaints of discrimination arising under the following federal statutes: (1) Title VII of the Civil Rights Act of 1964, as amended at 42 U.S.C. § 2000e *et seq.*; (2) the Rehabilitation Act of 1973 at 29 U.S.C. § 791 *et seq.*; (3) Title I of the Americans with Disability Act at 42 U.S.C. § 12101, as amended, and the Americans with Disabilities Amendments Act of 2008; (4) the Age Discrimination in Employment Act of 1967 at 29 U.S.C. § 621 *et seq.*; (5) the Equal Pay Act of 1963 and the Lilly Ledbetter Fair Pay Act of 2009; and (6) the Genetic Information Nondiscrimination Act of 2008.

I also have authority to investigate and determine complaints of discrimination arising under the following state and local laws:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

As a whole, these federal statutes bar discrimination on the "basis" of race, color, national origin, age (40 years old and older), sex (including sexual harassment), religion, disability, genetic information, and/or reprisal for prior EEO activity.

In order to have authority to investigate a complaint, the complaint must comply with certain basic requirements. Upon review of the complaint at issue here, I find that all of the basic requirements are met and I will conduct an investigation of this matter.

**II**  
**Issue accepted for investigation**

I will conduct an investigation of the following issue and render a final agency decision on the merits of the issue:

[statement of issue accepted for investigation]

**III**  
**Interrogatories and document production requests**

Interrogatories (questions) have been attached for each party to complete. The deadline for submission of your interrogatory responses is \_\_\_\_\_ . The Complainant is advised that a failure to respond to interrogatories may result in the dismissal of the complaint of discrimination, or adverse inferences may be drawn against the Complainant. The Respondent is advised that a failure to respond to interrogatories may result in a finding of discrimination, or adverse inferences may be drawn against the Respondent.

Each party may also submit a position statement. Respondent's position statement is due on or before \_\_\_\_\_ , with a copy to be served on the Complainant. If the Respondent submits a position statement, then the Complainant shall be afforded the opportunity to submit a response. The Complainant's response must be submitted to the undersigned on or before \_\_\_\_\_ .

I will conduct interviews of both parties either in-person or by telephone and may also interview any identified witnesses.

**IV**  
**Right to representation**

(Check your employment manual to determine whether this issue is addressed. If the parties are allowed representation, you should provide notification of this.)

An example:

Please be advised that, while not required, each party is permitted to secure representation for this complaint process.

**V**  
**Opportunity for mediation**

(This is an optional paragraph to include in your notice of acceptance. Mediation may be available based on agency or company resources. It can

often offer time and money savings as the parties work to find solutions to the problem with the help of a third party neutral.)

An example

You are notified that you may choose to mediate this discrimination complaint. The mediation process is voluntary and both parties must consent before the mediation process will proceed. If you would like to try mediation of this complaint, you should submit a request in writing to the undersigned investigator. If you elect mediation, but the complaint is not resolved through mediation, then I will continue to investigate and process the complaint and issue a final decision resolving the issues.

If you have any questions, or need clarification, please feel free to contact me.

Respectfully,

/s/

[name and title of investigator]

*As with the previous template, you will want to notify the parties of their rights to file a complaint with the EEOC:*

**NOTICE OF RIGHT TO FILE COMPLAINT:**

Notwithstanding the fact that you have filed a complaint with us, you also may elect to file complaints with one or both of the following investigative agencies. The filing of a complaint before us does not toll (extend) the time period to file complaints before the following two agencies.

Within **180/300 days** of the date of the alleged discriminatory act, you may elect to file a complaint of discrimination with the Equal Employment Opportunity Commission (EEOC). (Provide the address for the EEOC office in your state.)

If your state also has a FEPA, then you will notify the complainant of his or her right to file with that agency. Because the timeframes for filing discrimination complaints vary from state to state, you will research this and provide notice of the time allowed to file a complaint as well as the address of the FEPA.

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# Sample Final Decision

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## FINAL DECISION

[name and address of complainant]

[name and address of complainant's representative,  
if appropriate]  
Complainant

**v.** Complaint No. \_\_\_\_\_

[name and address of respondent]

[name and address of respondent's representative, if appropriate]  
Respondent

### **I Jurisdiction**

The parties are notified that the undersigned has accepted a complaint of discrimination filed by \_\_\_\_\_, the Complainant, against \_\_\_\_\_, the Respondent. The Complainant alleges that the Respondent discriminated against him/her on the basis of \_\_\_\_\_ in violation of federal and state nondiscrimination laws.

The complaint is timely filed and all other jurisdictional requirements are met. I have jurisdiction to investigate and decide this matter.

### **II Issue accepted**

The following issue was accepted for investigation by "Notice of Acceptance" dated \_\_\_\_\_ and is the subject of this final decision:

[State the issue exactly as it is stated in the "Notice of Acceptance." Do not modify or change the issue in any way.]

### **III Findings of fact**

Based on documentation and statements submitted by the Complainant and the Respondent, I make the following findings of fact:

[Numbering each relevant finding of fact separately makes it easier to follow for the reader. Go by date chronology to the extent possible.]

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.

10.

#### **IV Analysis**

[For each issue listed in Part II of this determination, list each element of proof separately and make a finding whether the Complainant has/has not established that element. You will find the elements of proof on your Complaint Investigation Plan.]

- 1.
- 2.
- 3.
- 4.
- 5.

#### **V Conclusions**

With regard to the issues accepted for this complaint investigation, and based on the foregoing findings of fact, it is concluded that:

[render a separate conclusion for each issue accepted for investigation]

This final decision concludes my processing of this matter.

#### **VI Remedies and corrective actions**

[if you find that discrimination has occurred, then set forth the remedies, sanctions, and/or corrective actions here]

**VII**  
**Notice of Right to File Appeal**

Here you will insert a paragraph notifying the parties of any right of appeal they may have within your organization or agency. You will provide the time frame allowed for filing the appeal as well as the name and address of the appropriate authority to accept the appeal. If there is no further appeal within your organization, then you will delete this section.

**VIII**  
**Notice of Right to File Complaint**

Notwithstanding the fact that you have filed a complaint with us, you also may elect to file complaints with one or both of the following investigative agencies. The filing of a complaint before us does not toll (extend) the time period to file complaints before the following two agencies.

Within **180/300 days** of the date of the alleged discriminatory act, you may elect to file a complaint of discrimination with the Equal Employment Opportunity Commission (EEOC). (Provide the address for the EEOC office in your state.)

If your state also has a FEPA, then you will notify the complainant of his or her right to file with that agency. Because the timeframes for filing discrimination complaints vary from state to state, you will research this and provide notice of the time allowed to file a complaint as well as the address of the FEPA.

Be advised that the foregoing time periods for filing with the EEOC have not been tolled (extended) because of the discrimination complaint investigation before me.

/s/  
[name of investigator and date]