



**U.S. Equal Employment Opportunity Commission**

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# A Guide to the Discovery Process for Unrepresented Complainants

## **What is Discovery?**

Discovery is a process by which the parties gather and exchange information that is important to the case.

## **What is the Purpose of Discovery?**

The purpose of discovery is to provide parties the opportunity to gather evidence relevant to proving or defending the case. Evidence includes, for example, witness testimony, documents (memos, notes, email messages, agency policies and procedures, and other written or electronic records), and video or audio recordings.

## **When Do Parties Have a Right to Discovery?**

Discovery is permitted if the Administrative Judge has determined that it is necessary to supplement the evidence already gathered in the investigative file prepared by the agency. In most cases, the Administrative Judge will approve or disapprove discovery during an Initial Conference. Initial Conferences are conducted in most but not all cases at the beginning of the hearings process, and typically involve discussion of the discrimination claims, settlement, discovery, deadlines for the major stages of the process, and related matters. If discovery is approved, the Administrative Judge will also decide how much discovery is necessary, and how long the discovery period should take.

## **When Does Discovery Take Place?**

The Administrative Judge determines the beginning and end dates of discovery, as well as the deadlines for submitting and responding to discovery requests. In most cases, discovery starts immediately after the Initial Conference, but discovery can take place at any stage of the hearings process at the discretion of the Administrative Judge.

### **How Does Discovery Work?**

There are four main types of discovery requests: (1) depositions; (2) interrogatories; (3) requests for admissions; and (4) requests for the production of documents.

- 1. Depositions are formal witness interviews. Every deposition must be transcribed (recorded word-for-word) by a certified court reporter, who will produce a verbatim transcript of the deposition soon after it takes place. The party requesting the deposition is responsible for hiring a court reporter and paying the court reporter costs.*
- 2. Interrogatories are open-ended written questions that solicit information about a case. For example, “What is the agency’s formal explanation for terminating the complainant?”*
- 3. Requests for admissions are closed-ended written statements that typically call for a “yes/admit” or “no/deny” response. For example, “Admit that the agency filled the vacancy created by the complainant’s termination.”*
- 4. Requests for the production of documents give the parties an opportunity to obtain memos, notes, email messages, agency policies and procedures, and other written or electronic records related to the case that are in the possession of the other party.*

The Administrative Judge will determine which types of discovery requests may be used and how many of each. Parties usually send their discovery requests and responses to the other party electronically, by email. But, parties may also send or respond to discovery requests by U.S. mail or a parcel service. Discovery requests and responses should not be sent to the Administrative Judge, except to support a motion.

### **Am I Required to Participate in Discovery?**

Neither party is required to submit discovery requests to the other party. If a party wishes to submit discovery requests, it must do so by the established deadline,

unless the Administrative Judge has approved an extension of the deadline. Both parties are required in all cases to respond to authorized discovery requests received from the other party by the established deadline unless the Administrative Judge has approved an extension of the deadline. Failure to comply with discovery obligations may result in sanctions. Sanctions are actions taken by the Administrative Judge to penalize a party that fails to comply with their orders or other legal obligations. Examples of sanctions include dismissal of the complainant's hearing request, restrictions on a party's ability to rely on certain evidence, and default judgment entered against the agency.

### **Can the Administrative Judge Order a Party to Produce Evidence?**

Yes. In some cases, the Administrative Judge may order a party to produce specific evidence related to the case. If that happens, the party must timely comply with the Administrative Judge's order or face the possibility of sanctions.

### **Can Parties Object to Particular Discovery Requests?**

Yes. Parties may object to one or more of the other party's discovery requests, but they must have a legitimate reason for doing so. Legitimate reasons for objecting to a discovery request include but are not limited to: (1) the request seeks information that is not relevant to the case; (2) the information requested is privileged (in other words, restricted); and (3) the information requested would be too costly, time-consuming, or difficult to produce. The opposing party must notify the requesting party of their objections and the specific reasons for each.

### **What if the Parties Disagree About Discovery Obligations or Objections?**

Parties are required to make a good faith effort to resolve their discovery dispute(s) before bringing them to the attention of the Administrative Judge. Such efforts can be accomplished by telephone, video chat, email, or in person. If the parties are unable to resolve their dispute(s) even after making a good faith effort, the party seeking information through the disputed discovery request(s) may file a Motion to Compel with the Administrative Judge. Motions to Compel must contain a written statement that the requesting party has made a good faith effort to resolve the discovery dispute with the opposing party; failure to include the statement may result in denial of the Motion.

After considering the Motion and any response/reply, the Administrative Judge will decide whether the opposing party should be excused from responding to the

discovery request(s). If the Administrative Judge decides that the opposing party must respond to one or more disputed discovery requests, they will order the party to do so. The opposing party's failure to comply with such an order may result in sanctions.

### **Can Parties Challenge the Administrative Judge's Discovery Order(s)?**

Either party may challenge an Administrative Judge's discovery order(s), but only as part of a later appeal to the EEOC's Office of Federal Operations (OFO). Appeals may be filed only after the Administrative Judge has completed their processing of the case **and** after the federal agency has issued a decision either accepting or rejecting the Administrative Judge's final decision. Information about how and when to submit an appeal to EEOC's OFO will be provided by the federal agency when it takes final action on the complaint.

### **What Happens to the Information Obtained During Discovery?**

Information obtained during discovery can be used to prove or defend a case. More specifically, it can be used to support or respond to a motion, and it can be offered into the record in the form of an exhibit during a hearing. When discovery material is attached to a motion/response/reply, or accepted as a hearing exhibit, it becomes part of the broader hearings record that will form the basis for the Administrative Judge's final decision in the case.

Learn more here about the EEOC's federal sector case processing requirements, including information about the discovery process:

- **[U.S. Equal Employment Opportunity Commission \(eeoc.gov\)](https://www.eeoc.gov/)**  
**[\(https://www.eeoc.gov/\)](https://www.eeoc.gov/)**
- **[29 C.F.R. Part 1614 \(regulations governing the EEOC's federal sector hearings process\)](https://www.govinfo.gov/content/pkg/CFR-2020-title29-vol4/xml/CFR-2020-title29-vol4-part1614.xml)** **[\\_ \(https://www.govinfo.gov/content/pkg/CFR-2020-title29-vol4/xml/CFR-2020-title29-vol4-part1614.xml\)](https://www.govinfo.gov/content/pkg/CFR-2020-title29-vol4/xml/CFR-2020-title29-vol4-part1614.xml)**
- **[EEOC's Management Directive 110, Chapter 7 \(Hearings\)](https://www.eeoc.gov/federal-sector/management-directive/chapter-7-hearings)**  
**[\\_ \(https://www.eeoc.gov/federal-sector/management-directive/chapter-7-hearings\)](https://www.eeoc.gov/federal-sector/management-directive/chapter-7-hearings)**

