

Equal Employment Opportunity Comm.

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(d) Upon the failure of informal conciliation, conference and persuasion under section 7(b) of the Act, the Commission may initiate and conduct litigation.

(e) The District Directors, the Field Directors, the Director of the Office of Field Programs or their designees, are hereby delegated authority to exercise the powers enumerated in § 1626.15(a) (1) through (7) and (b) and (c). The General Counsel or his/her designee is hereby delegated the authority to exercise the powers in paragraph (a) of this section and at the direction of the Commission to initiate and conduct litigation.

[48 FR 140, Jan. 3, 1983, as amended at 54 FR 32063, Aug. 4, 1989; 54 FR 33503, Aug. 15, 1989; 68 FR 70152, Dec. 17, 2003; 71 FR 26831, May 9, 2006]

§ 1626.16 Subpoenas.

(a) To effectuate the purposes of the Act the Commission shall have the authority to issue a subpoena requiring:

(1) The attendance and testimony of witnesses;

(2) The production of evidence including, but not limited to, books, records, correspondence, or documents, in the possession or under the control of the person subpoenaed; and

(3) Access to evidence for the purpose of examination and the right to copy.

(b) The power to issue subpoenas has been delegated by the Commission, pursuant to section 6(a) of the Act, to the General Counsel, the District Directors, the Field Directors, the Director of the Office of Field Programs, or their designees. The subpoena shall state the name, address and title of the issuer, identify the person or evidence subpoenaed, the name of the person to whom the subpoena is returnable, the date, time and place that testimony is to be given or that documents are to be provided or access provided.

(c) A subpoena issued by the Commission or its designee pursuant to the Act is not subject to review or appeal.

(d) Upon the failure of any person to comply with a subpoena issued under this section, the Commission may utilize the provisions of sections 9 and 10 of the Federal Trade Commission Act, 15 U.S.C. 49 and 50, to compel compliance with the subpoena.

(e) Persons subpoenaed shall be entitled to the same fees and mileage that are paid witnesses in the courts of the United States.

[48 FR 140, Jan. 3, 1983, as amended at 54 FR 32063, Aug. 4, 1989; 71 FR 26831, May 9, 2006]

§ 1626.17 Notice of dismissal or termination.

(a) *Issuance of Notice of Dismissal or Termination.* (1) Where a charge filed with the Commission under the ADEA is dismissed or the Commission's proceedings are otherwise terminated, the Commission will issue a Notice of Dismissal or Termination on the charge as described in paragraph (c) of this section to the person(s) claiming to be aggrieved. In the case of a charge concerning more than one aggrieved person, the Commission will only issue a Notice of Dismissal or Termination when the charge is dismissed or proceedings are otherwise terminated as to all aggrieved persons.

(2) Where the charge has been filed under the ADEA and Title VII or the Americans with Disabilities Act (ADA), the Commission will issue a Notice of Dismissal or Termination under the ADEA at the same time it issues the Notice of Right to Sue under Title VII or the ADA.

(3) The issuance of a Notice of Dismissal or Termination does not preclude the Commission from offering such assistance to a person receiving the notice as the Commission deems necessary or appropriate. The issuance does not preclude or interfere with the Commission's continuing right to investigate and litigate the same matter or any ADEA matter under its enforcement authority.

(b) *Delegation of Authority To Issue Notices of Dismissal or Termination.* The Commission hereby delegates authority to issue Notices of Dismissal or Termination, in accordance with this section, to: Directors of District, Field, Area and Local offices; the Director of the Office of Field Programs; the Director of Field Management Programs, Office of Field Programs; the General Counsel; or their designees.

(c) *Contents of the Notice of Dismissal or Termination.* The Notice of Dismissal or Termination shall include:

(1) A copy of the charge;

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(2) Notification that the charge has been dismissed or the Commission's proceedings have otherwise been terminated; and

(3) Notification that the aggrieved person's right to file a civil action against the respondent on the subject charge under the ADEA will expire 90 days after receipt of such notice.

[68 FR 70152, Dec. 17, 2003, as amended at 71 FR 26831, May 9, 2006]

§ 1626.18 Filing of private lawsuit.

(a) An aggrieved person may file a civil action against the respondent named in the charge in either Federal or State court under section 7 of the ADEA.

(b) An aggrieved person whose claims are the subject of a timely pending charge may file a civil action at any time after 60 days have elapsed from the filing of the charge with the Commission (or as provided in §1626.12) without waiting for a Notice of Dismissal or Termination to be issued.

(c) The right of an aggrieved person to file suit expires 90 days after receipt of the Notice of Dismissal or Termination or upon commencement of an action by the Commission to enforce the right of such person.

(d) If the Commission becomes aware that the aggrieved person whose claim is the subject of a pending ADEA charge has filed an ADEA lawsuit against the respondent named in the charge, it shall terminate further processing of the charge or portion of the charge affecting that person unless the District Director; Field Director; Area Director; Local Director; Director of the Office of Field Programs; the General Counsel; the Director of Field Management Programs; or their designees determine at that time or at a later time that it would effectuate the purpose of the ADEA to further process the charge.

[68 FR 70152, Dec. 17, 2003, as amended at 71 FR 26831, May 9, 2006]

§ 1626.19 Filing of Commission lawsuit.

The right of the Commission to file a civil action under the ADEA is not dependent on the filing of a charge and is not affected by the issuance of a Notice

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of Dismissal or Termination to any aggrieved person.

[68 FR 70152, Dec. 17, 2003]

§ 1626.20 Procedure for requesting an opinion letter.

(a) A request for an opinion letter should be submitted in writing to the Chairman, Equal Employment Opportunity Commission, 131 M Street, NE., Washington DC 20507, and shall contain:

(1) A concise statement of the issues on which an opinion is requested;

(2) As full a statement as possible of relevant facts and law; and

(3) The names and addresses of the person making the request and other interested persons.

(b) Issuance of an opinion letter by the Commission is discretionary.

(c) *Informal advice.* When the Commission, at its discretion, determines that it will not issue an opinion letter as defined in §1626.18, the Commission may provide informal advice or guidance to the requestor. An informal letter of advice does not represent the formal position of the Commission and does not commit the Commission to the views expressed therein. Any letter other than those defined in §1626.18(a)(1) will be considered a letter of advice and may not be relied upon by any employer within the meaning of section 10 of the Portal to Portal Act of 1947, incorporated into the Age Discrimination in Employment Act of 1967 through section 7(e)(1) of the Act.

[48 FR 140, Jan. 3, 1983, as amended at 54 FR 32063, Aug. 4, 1989. Redesignated at 68 FR 70152, Dec. 17, 2003; 74 FR 3430, Jan. 21, 2009]

§ 1626.21 Effect of opinions and interpretations of the Commission.

(a) Section 10 of the Portal to Portal Act of 1947, incorporated into the Age Discrimination in Employment Act of 1967 through section 7(e)(1) of the Act, provides that:

In any action or proceeding based on any act or omission on or after the date of the enactment of this Act, no employer shall be subject to any liability or punishment * * * if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any written