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EEOC Proposes Sweeping Changes to Federal-Sector EEO Complaint Process

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On August 28, 2026, the U.S. Equal Employment Opportunity Commission (EEOC) published a proposed rule that would substantially revise the federal-sector EEO complaint process under 29 C.F.R. Part 1614—the regulations governing how discrimination and retaliation complaints by federal employees and applicants are filed, investigated, and decided. Comments are due September 28, 2026. The proposed rule is not yet final.

The proposed rule would apply only to federal agencies, their employees, and applicants. It would not change the EEOC charge process for private-sector employers or state and local government employers.

Major Proposed Changes

1. **Direct filing would replace mandatory EEO counseling.** Currently, federal employees and applicants must complete pre-complaint EEO counseling before filing a formal complaint. Under the proposed rule, that step would be eliminated. Instead, complainants generally would have 60 days to file directly with the employing federal agency. The 60-day clock would start from the challenged conduct, the effective date of a personnel action, or the latest act in a continuing violation. Federal agencies would still be required to provide technical assistance, maintain alternative dispute resolution (ADR) programs, and pursue voluntary resolution where appropriate.

2. **Federal agencies would make the initial decision on the merits.** After investigating an accepted complaint, the employing federal agency—rather than an EEOC administrative judge—generally would issue the first decision on whether discrimination or retaliation occurred. Key deadlines would apply:

Investigation: 180 days for complaints filed before January 1, 2028; 135 days thereafter.

Additional evidence: The parties would have 15 days after the investigation closes to submit supplemental evidence.

Final decision: The employing federal agency would then have 30 days to issue its decision.

3. **Administrative judge proceedings would become discretionary.** Under the current process, complainants have an automatic right to request a hearing before an EEOC administrative judge before the employing federal agency issues its decision. The proposed rule would eliminate that right. Instead, a complainant could appeal the agency's decision to the EEOC and request administrative judge proceedings, but the EEOC would decide whether such proceedings are warranted. On appeal, the EEOC could:

Decide the case on the written record;

Limit any discovery or hearing to specific issues;

Supplement the record; or

Return the matter to the employing federal agency for further action.

4. **Administrative class complaints would be eliminated.** The EEOC would no longer certify or adjudicate classes, provide class notice, approve class settlements, or award relief to absent individuals through the administrative process. Individuals could still identify putative class claims in their complaints to preserve exhaustion arguments for later litigation in court. Related individual complaints could be processed together when appropriate.

5. **Complaints would need to allege a plausible claim.** A complaint would need to contain enough factual detail, accepted as true, to support a plausible claim of discrimination or retaliation—a standard analogous to federal court pleading requirements. Legal terminology would not be required, but labels, speculation, and conclusory allegations would not be sufficient. Complainants generally could add existing related claims within 21 days after filing and could add later-arising related claims before the employing federal agency issues its final decision.

6. **Settlement offers could limit attorney-fee recovery.** After a complaint is filed, a federal agency could make a formal written offer of resolution. If the complainant rejects the offer and ultimately does not obtain more favorable relief, the complainant generally could not recover attorney fees or costs incurred after the offer expired. To be valid, an offer would need to:

Remain open for at least 30 days; and

Clearly identify both the monetary and nonmonetary relief offered.

7. **Attorney-fee requirements would become more detailed.** The proposed rule would retain the "lodestar" method (reasonable hours multiplied by a reasonable hourly rate) but would impose more specific standards for billing records, reasonable hours and rates, and fee reductions for unsuccessful or partially successful claims. Fee matrices generally would be disfavored unless the party relying on them can demonstrate they reflect prevailing rates for comparable federal-sector EEO work.

8. **Transparency and accountability requirements would expand.** Federal agencies would face additional obligations in several areas:

Public disclosure**:** Publishing notice of final findings of discrimination or retaliation;

Disciplinary reporting**:** Reporting disciplinary actions taken in connection with EEO findings;

Complaint tracking**:** Maintaining systems to track complaints, deadlines, and outcomes;

Personnel records**:** Making appropriate notations in personnel records; and

Data publication**:** Producing quarterly and annual data reports.

Additionally, each federal agency's EEO director would be required to report directly to the head of the agency and operate independently from offices that could create actual or perceived conflicts of interest.

What This Means for Employers

Private-sector employers do not need to take any action in response to this proposed rule. Because the proposed rule applies exclusively to the federal-sector EEO complaint process, it would not change how the EEOC handles charges filed against private employers. That said, private-sector employers should:

Stay the course. Continue providing clear ways for employees to raise concerns, responding promptly, conducting fair investigations, preventing retaliation, and documenting the process.

Keep an eye on developments. Private employers should monitor the final rule and any related EEOC guidance, but no action is currently required.

Federal agencies, however, should begin planning now for significant operational changes if the proposed rule is finalized. The following steps can help agencies prepare:

Review the current process from start to finish. Identify which complaint procedures, notices, forms, templates, and settlement documents would need to change.

Make sure the team can meet shorter deadlines. Consider whether EEO, HR, legal, investigative, and case-management teams have enough capacity to complete investigations and issue final decisions on time.

Build a complete record early. Because federal agencies would bear greater responsibility for the initial merits decision, investigations should be thorough from the start—identifying key documents and witnesses, addressing disputed facts, and clearly explaining the basis for the final decision.

Preserve evidence right away. Relevant documents, emails, text messages, chat logs, and other records should be preserved as soon as a complaint is filed or anticipated, and key witnesses should be identified early. Under the proposed rule, the parties would have only 15 days after the investigation closes to submit additional evidence, making early preservation critical.

Revisit the settlement strategy. The new offer-of-resolution mechanism could become a valuable tool for resolving complaints efficiently and limiting later attorney-fee exposure. However, any offer would need to comply with the proposed timing and content requirements—including the 30-day open period and clear identification of relief offered—to trigger the fee-recovery limitation.

Prepare for expanded tracking and public reporting. Federal agencies should evaluate whether their current systems can track complaints, findings, disciplinary decisions, and deadlines, and generate the quarterly and annual reports the proposed rule would require.

Review the EEO reporting structure. Confirm that the EEO director reports directly to the head of the federal agency and that the EEO function operates independently from offices that could create an actual or perceived conflict.

Contact Us

If you have any questions regarding the EEOC's proposed rule and its implications for your organization's federal-sector EEO complaint process, contact Kevin Koronka, Sarah Vincent, Chengzhuo He, Nora Evans, or your Husch Blackwell attorney.