

PUBLICATION

Received an Email Link to Important Documents Via EEOC Portal? You Better Open It.

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Did you know that the average person receives more than 100 emails per day? Or that the average working professional sends more than 40 emails per day? What about the fact that 80 percent of users check their email every day? These are just a few statistics released in a recent article from Earthweb. But, what happens when you ignore an email? Usually, you don't expect anything significant to come from waiting. However, if it is from the Equal Employment Opportunity Commission (EEOC), open it and follow the instructions as soon as you receive it to notate the deadline that an individual has to file an employment discrimination lawsuit and to begin that clock running on the statute of limitations to file suit!

In November 2017, the EEOC launched the EEOC Public Portal (Portal), which is a secure, web-based application developed for individuals to interact with the EEOC regarding a complaint of employment discrimination. Through the Portal, a Charging Party (the employee) submits a discrimination complaint electronically and the Respondent (the employer) submits its position statement and supporting documents. At the end of the investigation, one of the most important automated emails that both parties will receive pertains to the issuance of a Notice of Right to Sue. According to the [EEOC Public Portal User's Guide](#), the automated email will read as such:

FROM: U.S. Equal Opportunity Employment Commission (EEOC)
TO: {Charging Party Email}; {Charging Party Contact/Legal Representative Email(s)}
SUBJECT: Important Document Available for EEOC Charge {EEOC Number}
U.S. Equal Employment Opportunity Commission {Charge's Accountable Office}

EEOC has made a decision regarding charge number {EEOC Number}. It is very important that you download and retain a copy of this document. You may review this decision by logging into {EEOC Public Portal link}.

This email is an official notification from the Equal Employment Opportunity Commission (EEOC) regarding charge {EEOC Number}. Please do not reply to this email.

Notice of Confidentiality: The information contained in this transmission may contain privileged and confidential information, including information protected by federal and state privacy laws. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this communication is strictly prohibited and may be unlawful. If you are not the intended recipient, please contact us at digitalsupport@eeoc.gov and destroy all copies of the original message and attachments.

Both the Charging Party and Respondent's legal representative during the EEOC process should also receive such email notification.

So, What is the Relevance of Receiving Such Email Notification?

Employment discrimination plaintiffs must exhaust administrative remedies before pursuing claims in federal court. Exhaustion occurs when the plaintiff files a timely charge with the EEOC and receives a statutory notice of right to sue. Under most anti-discrimination statutes, a plaintiff has 90 days to file a civil action after receipt of such a notice from the EEOC. Prior to November 2017, the notice was mailed to both parties. Most jurisdictions typically have held that the 90-day deadline does not commence until actual receipt of the notice through the mail by the plaintiff. Now, the notice is uploaded on the Portal on the day it is issued and both parties (and their legal representatives) receive an email notification informing them to access the Portal to retrieve the document. The parties might also still receive such notice in the mail.

What Happens When You Receive This Email?

Recently, courts are holding that the receipt of such email notification triggers the 90-day deadline to file an employment discrimination lawsuit in state or federal court. Failure to promptly open the link could result in a plaintiff filing an untimely lawsuit.

Recent Court Cases

Recently in *Paniconi v. Abington Hospital-Jefferson Health* (2022 WL 1634224 (E.D. Penn. May 24, 2022)), the Eastern District of Pennsylvania held that the period in which to file an employment discrimination complaint began to run when the email notification indicating the EEOC's issuance of a right-to-sue letter reached the employee's attorney's inbox. In that case, the plaintiff's counsel and plaintiff received an email from the EEOC informing counsel to check the EEOC portal to access an "important document," which turned out to be the right-to-sue letter. Neither the plaintiff nor her attorney accessed the document until five days later. The plaintiff filed her complaint 91 days after receiving the email from the EEOC, and the court concluded it was untimely.

In April 2022 in *McNaney v. Sampson and Morris Group, Inc.* (2022 WL 1017388 (W.D. Penn. Apr. 5, 2022)), the Western District of Pennsylvania rejected the employee's argument that the EEOC's electronic delivery system was inadequate to trigger the 90-day limitations period. In that case, the plaintiff's counsel admitted that he received notice from the EEOC informing him that a decision had been reached regarding the charge and "it [was] very important that you download and retain a copy of this document." Counsel simply did not access the documents referenced in the emails. The court concluded that had he done so, he would have discovered that the right-to-sue letter was issued by the EEOC triggering the 90-day deadline.

In March 2021 in *Boyd v. Monroe City Hall* (2021 WL 1305385 (W.D. La. Mar. 8, 2021)), the Western District of Louisiana held that the EEOC Notice of Right to Sue was transmitted to the plaintiff by email on a specific date and he had 90 days from then to file suit, even when the email was deposited in the plaintiff's spam folder. In that case, the plaintiff did not refute that such email notification could constitute "receipt" to trigger the 90-day deadline to file suit. Instead, the plaintiff argued that the 90-day deadline did not begin until he saw the email, which was sent to his spam folder. The court disagreed, reasoning that the plaintiff discovered the email in his spam folder nearly two months before the 90-day deadline and had plenty of time to file suit within the 90-day period, which began to run upon electronic receipt of the EEOC notification. Accordingly, the court dismissed the plaintiff's complaint concluding that his one day late filing rendered his petition untimely.

Takeaway

As more courts are concluding that the EEOC's email notification can trigger the deadline to file an employment discrimination lawsuit, employers and/or their legal representative should access the EEOC Portal as soon as they receive notification to obtain any important document during the EEOC process, which could include the Notice of Right to Sue. You should document the date you receive the EEOC email notification that provides the link to access the Notice of Right to Sue to track the 90-day deadline for a plaintiff to file such lawsuit. If a lawsuit is filed after the 90-day deadline upon receipt of the email notification, an employer might have a strong argument to have the complaint dismissed as untimely.

For more information about this recent trend, please reach out to any member of Baker Donelson's [Labor & Employment Group](#).