



# EMPLOYMENT LAW HANDBOOK FOR NON-LAWYERS

COMMITTEE ON  
LABOR AND EMPLOYMENT LAW

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## **EMPLOYMENT LAW HANDBOOK FOR NON-LAWYERS**

This handbook is designed to assist individuals who have legal questions about their rights in the workplace. Work, of course, is the place where we spend the majority of our waking lives, and frequently individuals believe that they have been treated unfairly and seek redress.

Most of the time, individuals are able to resolve work problems at work, and have no need for the intervention of the courts or an administrative agency. However, sometimes individuals are simply unable to resolve their work place problems and believe they need some sort of intervention. This pamphlet is designed to provide a brief introduction to those individuals who feel they have a workplace problem and believe they require outside assistance.

Unfortunately for non-lawyers – and occasionally for lawyers as well – the field of labor and employment law can be extremely complex. The law of the work place is governed by a mixture of Federal, State, and City statutes, some of which over-lap, and some of which are mutually exclusive. An individual who believes that he or she has a problem at work has to determine a method for resolving the problem.

Among the questions that you will need to resolve in determining your rights are:

1. Do I work under a union contract, an individual employment contract, or am I an employee at will?
2. Am I a victim of discrimination in regard to race, sex, age, religion, disability, sexual orientation?
3. Is there an agency or court to which I can turn to resolve my problems? Is there more than one agency or court? What are the comparative advantages or disadvantages of choosing one forum over the other?

Because of the complexity of the issues, this handbook is largely limited to private sector employees. However, the appendix includes some information for public sector employees. See Appendix A.

While this handbook will not provide precise direction, we hope that this booklet can guide you toward making the appropriate decision.

### **SECTION I: AM I AN EMPLOYEE AT WILL OR AM I COVERED BY A UNION CONTRACT? DO I HAVE AN INDIVIDUAL CONTRACT OF EMPLOYMENT?**

Most employees in New York State are considered to be employees at will. Employees at will do not have individual written contracts with their

employers, nor are they working under a union contract. It sounds harsh, but employees at will may have the terms of their employment changed at any time. They may quit at any time and they can be disciplined or discharged for any reason or no reason. However, employees at will may not be discharged or disciplined for an illegal reason. As this handbook will demonstrate, there are a number of Federal, State and City statutes that protect your rights in the workplace. If you are an employee at will, in order to successfully assert the rights guaranteed by the statutes, you must be able to demonstrate that your employer in some way violated the law. There have been limited exceptions to the Employment-at-will doctrine, but they are extremely rare. (See Section III).

Employees who have individual written contracts of employment or who are covered by a union contract frequently have far greater protections. This is because their union contracts or individual employment contracts frequently contain restrictions placed on their employers' ability to impose discipline.

In order to enforce an individual contract of employment, you may have to sue in court. In addition, individual contracts and almost always collective bargaining agreements contain mechanisms for resolving disputes. Frequently individual employment contracts provide for some form of alternate dispute resolution, usually arbitration. Certain contracts provide that disputes arising under the contract will not be resolved in court, but instead submitted to an arbitrator or a panel of three arbitrators to resolve the dispute. Arbitrators are independent and neutral people selected by the parties to a contract to resolve disputes arising under the contract. There are several agencies that administer these proceedings including the American Arbitration Association, JAMS, and for the securities industry, the NASD and New York Stock Exchange. If you have an individual contract of employment, and a dispute arises that you cannot resolve, be sure to review your contract to determine if you are required to arbitrate your claims. Arbitration provisions are very common in the securities industry but may appear in any agreement. The decision of the arbitrator is final and binding, and there are only limited means of challenging an arbitrator's award.

If you work under a collective bargaining agreement and you feel that you have been improperly disciplined or discharged, or your employer has in some way violated the contract, your claim is almost always subject to the grievance and arbitration provisions of the collective bargaining agreement. You should be familiar with the grievance and arbitration provisions of your collective bargaining agreement, because they frequently contain very rigid time limits. You should also be aware because the collective bargaining agreement is between the union and your employer; the union is empowered to determine how to prosecute your grievance.

While the union has a well-enshrined duty to represent you fairly, it is not obligated to take every case to arbitration. The union may decide that the facts

and circumstances of a particular grievance merit settlement prior to arbitration.

In most cases the only recourse an individual covered by a collective bargaining agreement may have is the contract's grievance and arbitration procedures. The arbitrator's decision is almost always final and binding, and there are only limited means of challenging an arbitrator's award.

The only exception to this rule concerns victims of statutorily defined discrimination. If you contend that you are a victim of such discrimination, then you may pursue both a grievance under a collective bargaining agreement and - as we will demonstrate - file a charge of discrimination with an appropriate agency. This exception is made in the collective bargaining context because your union controls the grievance and arbitration procedure, but the statutory protections are given to the individual employee.

## **SECTION II: AM I A VICTIM OF EMPLOYMENT DISCRIMINATION IN REGARD TO RACE, SEX, SEXUAL ORIENTATION, AGE, RELIGION, OR DISABILITY?**

Discrimination on the basis of race, sex, age, religion, or disability is generally prohibited by federal, state, and local laws. However, one law may specifically cover a certain type of discrimination or group of people, while the others may not. As you read through this section, pay close attention to the important differences between each law. The distinctions may ultimately have a significant effect on where you file your discrimination claim.

### **Race Discrimination**

It is unlawful for your employer to discriminate against you because of your actual or perceived race. You may be a victim of race discrimination if you believe an employer chose not to hire you, promote you, or retain you on the basis of your race. An employer is also prohibited from making decisions about your hours or wages because of your race. Furthermore, it is illegal for an employer to harass you because of the color of your skin, or to print or circulate messages or advertisements that discriminate on the basis of race.

### **National Origin Discrimination**

An employer is also prohibited from discriminating against you because of your birthplace, ancestry, national culture, or because of an accent you may have. An employer may only require that you and other employees speak only English at work if he or she can prove that the requirement is necessary for conducting business. If the employer believes that the English-only rule is necessary, he or she must inform you when English is required and explain the

consequences for violating the rule.

### **Sex Discrimination: Gender Discrimination, Sexual-Orientation Discrimination and Sexual Harassment**

Sex discrimination can take many forms. First, you may be a victim of sex discrimination if your employer has made decisions about your employment on the basis of your gender. An employer is prohibited from considering your gender when hiring, firing, transferring, promoting, or setting wages or hours. Second, you may be the victim of discrimination if your employer discriminates against you on the basis of your sexual orientation. Sexual orientation is defined as heterosexuality, homosexuality, bisexuality, asexuality, whether actual or perceived. Third, sexual harassment is also a form of sex discrimination. If you have experienced unwelcome, unprovoked sexual advances from an employer, supervisor, manager or co-employee, you may be a victim of sex discrimination. It is unlawful for your employer to require you to engage in sexual relations as a basis for employment decisions or as a condition to keep your job.

You may also have grounds for a sex discrimination charge if your employer's sexual conduct interferes with your ability to perform your job or creates a work environment that is intimidating, hostile or offensive. The employer and the victim can be male or female and the behavior that may constitute harassment may take many forms. For example, you may have a sexual harassment claim if your employer makes physical sexual advances towards you, says or writes sexually inappropriate remarks, draws sexually charged pictures or sends you sexual photos. Even if the sexual harassment is not directed towards you, you may still be a victim if you are affected by your employer's unlawful sexual behavior.

You should be aware that not every form of sex discrimination is covered by Federal, New York State, and New York City law. Title VII is a federal law that prohibits gender discrimination and sexual harassment. Title VII also specifically prohibits pregnancy discrimination. Employment policies or practices that negatively affect female employees because of pregnancy, child birth, and related medical conditions constitute unlawful sex discrimination. Pregnancy, childbirth, and related medical conditions must be treated in the same way as other temporary illnesses or conditions. New York State Human Rights Law also prohibits pregnancy discrimination, but classifies it as disability discrimination not sex discrimination. New York City Law does not specifically prohibit pregnancy discrimination, but the law has been interpreted to protect victims of pregnancy discrimination.

Additionally, the Equal Pay Act is a federal law that requires that men and women receive equal pay for equal work in the same establishment. For you to make a claim under this Act, your job must be the same or substantially equal to that of an employee of the opposite sex. Two jobs are substantially equal if each

requires the same skills, effort, and responsibility and the jobs are performed in substantially equal working conditions in the same establishment. It is, however, lawful for an employer to pay different employees different amounts on the basis of seniority, merit, quantity or quality of production, or factors other than sex. If your employer is paying one employee less than another because they are of different sexes, both employees are entitled to the higher of the two's pay. (No employee's pay may be lowered.)

Sexual orientation discrimination is not covered by federal law. However, under the New York State Human Rights Law and the New York City Human Rights Law it is unlawful for an employer or labor organization to discriminate against you on the basis of your sexual orientation. Furthermore, under the New York City Human Rights Law and the New York State Human Rights Law you may be the victim of gender discrimination or "gender identity" discrimination, if you are discriminated against because of your actual or perceived sex, including your gender identity, self-image, appearance, behavior or expression, whether or not your gender identity, self-image or appearance, behavior or expression is different from that traditionally associated with legal sex assigned to that person at birth. Although an employer may not discriminate on the basis of gender or sexual orientation, the New York City Human Rights Law does not authorize or require employers to establish affirmative action quotas based on sexual orientation or ask or inquire about the sexual orientation of its employees or applicants. Finally, the New York City Law specifically prohibits your employer or union from discriminating against you because you have been a victim of domestic violence, stalking or sex offenses.

### **Discrimination against individuals with Disabilities**

An employer or labor organization is prohibited from discriminating against you on the basis of your physical or mental disability or medical condition. Under Federal, New York State, and New York City law it is generally unlawful for an employer or union to discriminate on the basis of your disability, but the protection provided by each law varies.

The Americans with Disabilities Act of 1990 is a federal law that prohibits an employer in the private sector or a state or local government or agency from discriminating against an employee or applicant on the basis of an individual's disability when hiring, firing, promoting, setting wages, training, and when considering other terms and conditions of your employment. The ADA's non-discrimination policies also apply in the federal sector under Section 501 of the Rehabilitation Act. You may have a disability under the ADA if you have a physical or mental impairment that substantially limits one or more major life activities, have a record of your impairment, or are regarded as having a disability. If you are using illegal drugs you are not protected by the ADA and the employer can make a job-related determination on the basis of your illegal use of

drugs. Tests for illegal drugs are not subject to the ADA's restrictions on medical examinations.

The New York State Human Rights Law prohibits an employer or labor organization from discriminating against you because of (a) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or (b) a record of such an impairment or (c) a condition regarded by others as such an impairment. New York State law specifically protects you from "genetic discrimination" on the basis of predisposing genetic characteristics. Genetic characteristics are "any inherited gene or chromosome, or alteration of a [gene or chromosome], [that] are determined by a genetic test or inferred from information derived from an individual or family member that is scientifically or medically believed to predispose an individual or the offspring of that individual to a disease or disability, or to be associated with a statistically significant increased risk of development of a physical or mental disease or disability. "

Under New York State law, it is unlawful for an employer or labor organization to require you to take a genetic test or solicit information about your genetic characteristics as a condition of your employment. However, an employer may require a specified genetic test as a condition of employment where such a test is shown to be directly related to the work environment. For example, individuals with a specific genetic condition may be at an increased risk of disease if exposed to a certain working environment and thus, an employer may be able to test applicants and employees for that specific genetic condition. Finally, for some purposes an employer may administer genetic tests to employees who request the test and provide informed consent in writing. This applies in the case of a worker's compensation claim, other civil litigation, or to determine whether the employee is at risk of disease if exposed to certain dangerous chemicals as long the employer does not subsequently fire, transfer, or demote the employee.

The New York City Human Rights Law prohibits discrimination on the basis of a physical, medical, mental, or psychological impairment, or a history or record of such impairment. New York City Law defines disability as "an impairment of any system of the body; including, but not limited to: the neurological system; the musculoskeletal system; the special sense organs and respiratory organs, including, but not limited to, speech organs; the cardiovascular system; the reproductive system; the digestive and genito-urinary systems; the hemic and lymphatic systems; the immunological systems; the skin; and the endocrine system; or (2) a mental or psychological impairment." In the case of alcoholism, drug addiction or other substance abuse, New York City law only protects an employee or applicant who (1) is recovering or has recovered and (2) currently is free of such abuse. New York City Law will not protect you if your employer makes a decision about your employment in response to your

illegal use of drugs.

If you have a protected disability, federal, state and city law require your employer to take reasonable steps to accommodate your needs and allow you to adequately perform the requirements of the job. You must inform your employer if you have a disability that impairs your ability to perform a current or prospective job. In response, your employer may be required to reasonably accommodate your disability by providing you with an accessible worksite, different or modified equipment or special services if your hearing or vision is impaired. An employer may also need to restructure the job to accommodate your disability, find you another available position, or modify training materials or examinations. Keep in mind, however, that an employer must only provide you with *reasonable* accommodations. Therefore, an employer is not required to make changes or additions that are unreasonably costly or that generally cause undue hardship for the employer's business or organization. Furthermore, you must have the required education, skills, experience and ability to the extent that these qualifications are required of non-disabled employees and applicants. You must be able to "reasonably perform" the job which requires that you reasonably meet the employer's needs to achieve his or her business goals.

### **Age Discrimination**

It is illegal for an employer to discriminate against you because of your age when making decisions about your employment, including hiring, firing, promotions, layoffs, compensation, benefits, job assignments, and training. It is also unlawful for the employer to include age preferences, limitations, or specifications in job notices or advertisements.

On rare occasions, age or gender may be a "bona fide occupational qualification," known as a "BFOQ." An employer's age requirement is only a "BFOQ," if it is reasonably necessary to the operation of the employer's business. Also, if you are applying for a job, the employer is permitted to ask you your age or date of birth.

The Age Discrimination in Employment Act of 1967 is a federal law that prohibits private employers having **20 or more employees** from discriminating against their employees and job applicants who are **at least 40 years old** on the basis of age. The law also applies to federal, state and local governments, employment agencies and labor organizations with **25 or more members**. The ADEA also applies to labor organizations that operate a hiring hall or office that recruits potential employees or obtains job opportunities. Additionally, the Older Workers Benefit Protection Act of 1990 prohibits employers from denying benefits to older employees. Notably, New York State and New York City Law also prohibit age discrimination and these laws do not have a minimum age requirement. Thus, an employee of any age may have a legitimate age discrimination claim, and need not be 40 in order to assert an age discrimination

claim.

### **Discrimination on the basis of Religion**

It is unlawful for an employer to force you to violate or abstain from observance of your religion, including the observance of any holy day, Sabbath day, religious custom or usage. An employer must reasonably accommodate your religious needs. Your employer is not required to make an accommodation that will cause an undue burden on his or her business.

An employer may not fire or transfer you or refuse to hire or promote you because you are unable to work on certain religious days. However, your employer is not required to pay for the time you take off for religious observance and the employer may require you to make up the time you missed.

### **Discrimination for Union Activity and for Engaging in Concerted Activity**

The National Labor Relations Act is a federal law that provides in part that employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representation of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities ..." (Emphasis supplied).

While the National Labor Relations Act is the primary statute governing relationships in the private sector between unions and employers, and is, therefore, beyond the scope of this pamphlet, certain key points have to be made. If an employer or union violates the National Labor Relations Act ("NLRA"), a charge may be filed at the National Labor Relations Board. Under the NLRA, it is an "unfair labor practice for an employer - to interfere with, restrain or coerce employees in the exercise of the rights guaranteed [by the statute]". While many violations of the NLRA arise in the context of a union organizing campaign, individual employees covered by the statute - even in the absence of a union organizing campaign - who are disciplined for taking steps on behalf of their fellow employees are protected by the National Labor Relations Act. For example, an employer would not be permitted to discharge or discipline an employee merely because that employee asked for a raise on behalf of his/her colleagues or protested an employer's policy concerning discipline or leave. Such activity must be on behalf of his or her fellow employees or it will not be considered concerted activity and protected by the statute.

One other aspect of the National Labor Relations Act that is relevant to this handbook concerns a union's Duty of Fair Representation ("DFR"). As mentioned above, most union contracts contain a grievance and arbitration

mechanism for resolving disputes under the contract. If your employer disciplines or discharges you, and you contend that the employer violated the collective bargaining agreement, you must follow the contractual procedures and file a grievance. At this point the union is required to represent you. (You need not be an actual member of the union to receive representation. You need only be an employee covered by the collective bargaining agreement.)

The union is obligated to investigate your grievance to determine its merits, evaluate the facts, and determine your likelihood of success. You should be aware that not every grievance is meritorious and the union is not obligated to pursue each case to arbitration. However, if you have both a meritorious grievance, and the union has treated your grievance in an arbitrary and capricious manner or unlawfully discriminated against you and refused to process your grievance, then you may have a claim that the union breached its Duty of Fair Representation to you. At that point, you may file an unfair labor practice charge against both your union and your employer at the National Labor Relations Board. You also have the option of commencing a lawsuit in either state or federal court. In either case you must file your charge or commence your lawsuit within six months of the violation.

### **Retaliation**

Federal, New York State, and New York City law prohibit an employer or labor organization from retaliating against you in any manner for reporting an employment discrimination incident or for filing a discrimination claim. For example, it is unlawful for your employer to fire, transfer, or demote you because you have revealed a discrimination incident that occurred at work. It is also unlawful for an employer to retaliate against you for testifying or assisting in legal proceeding related to employment discrimination. Even if you have not been directly discriminated against, you may still have a retaliation claim if you have complained about discrimination affecting others. Finally, your employer is prohibited from retaliating against you for engaging in concerted activity or for reporting an unfair labor practice.

### **SECTION III: AM I WHISTLE BLOWER PROTECTED BY A STATUTE?**

It has been recognized that employees are often torn by loyalty to their employers, and the duty to report improper, illegal or dangerous conditions to public authorities. As a limited exception to the Employee-at-will Doctrine certain so-called whistle blowers are protected under particular statutes.

Section 740 of New York's Labor Law prohibits an employer from taking retaliatory personnel action against an employee because such employee:

- (a) discloses, or threatens to disclose to a supervisor or to a public

body an activity, policy or practice of the employer that is in violation of law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety;

(b) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by such employer; or

(c) objects to, or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation.

In order to be protected by this statute, an employee must first bring the violation to the attention of a supervisor, and provide his or her employer an opportunity to correct the violation. If an employer is able to demonstrate that it took action against an employee for reasons other than a violation of Section 740 then the employer may have a defense to the action.

An action under Section 740 must be brought in New York State Supreme Court within one year of the violation. If the employee is successful, the Court may order: (1) an injunction to restrain the continued violation of Section 740; (2) the reinstatement of the employee; (3) back pay, and (4) payment of reasonable costs and attorneys' fees.

You should be aware that if the Court determines that an action brought by an employee under Section 740 is without basis in law or fact, it may award attorneys' fees to the employer.

Employees in the health care industry are protected by Section 741 of the Labor Law.

Although it is beyond the scope of this handbook, it is worth noting that a number of Federal statutes provide whistle blower protections. These statutes include:

- (a) Sarbanes Oxley Act, 18 USC Section 1514(A): protects employees of publicly traded companies who disclose information relating to a wide range of accounting fraud.
- (b) Water Pollution Control Act, 33 USC Section 1367: protects employees who disclose information relating to unlawful water pollution.
- (c) Clean Air Act, 42 USC Section 7622: protects employees who disclose information relating to unlawful air pollution.
- (d) Toxic Substance Control Act 15 USC Section 2622: protects employees who disclose information pertaining to unlawful toxic substance (asbestos) pollution.

#### **SECTION IV: WHERE DO I GO AND WHAT DO I DO IF I AM A VICTIM OF DISCRIMINATION?**

Do you think you have experienced race, sex, age, disability, or religious discrimination at work? Has your employer or union committed an unfair labor practice? In addition to filing a lawsuit in court, there are several agencies here in New York that can help you. This section will describe the functions of four different agencies at the city, state, and federal level and provide you with a step-by-step guide for filing an employment discrimination or unfair labor practice claim against an employer or union. Finally, this section will attempt to highlight the benefits and disadvantages of each of the agencies and hopefully point you in the appropriate direction.

#### **NEW YORK CITY COMMISSION ON HUMAN RIGHTS**

The New York City Commission on Human Rights is a city agency that has the power to eliminate and prevent employment discrimination. The Commission specifically enforces New York City Human Rights Law Section 8-107. Under New York City's Human Rights Law it is an illegal discriminatory practice for an employer to hire or fire you because of your actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation, citizenship status, arrest or conviction record, or status as a victim of domestic violence, stalking or sex offenses. Your employer cannot ask you discriminatory or prejudicial questions during an interview, circulate advertisements or publications that suggest a discriminatory preference, or make generally discriminatory statements. New York City's Human Rights Law does have boundaries and limitations and thus it is essential that you pay close attention to the information and instructions provided in this section.

You are protected by the New York City Human Rights Law if you are one of **4 or more employees** at your place of employment. Public and private employers must follow this law, as well as employment agencies and labor organizations. If you believe that you are the victim of employment discrimination you can file a complaint with the Law Enforcement Bureau of the New York City Commission on Human Rights. The Commission is located at 40 Rector Street, 9<sup>th</sup> Floor, in lower Manhattan. Complaints can also be filed at any of the Commissions Community Service Centers. (See Appendix B for more contact information).

#### **How do I file a complaint with the New York City Commission on Human Rights?**

##### *The Complaint*

If you are the victim of employment discrimination you may, by yourself, sign and

file a verified written complaint with the Commission. The complaint must include:

- The name of the person-employer who you believe discriminated against you and the person-employer's address.
- A detailed explanation of the discriminatory incident that you may have experienced or may be experiencing.
- Any further information required by the Commission

### *Processing Your Complaint*

#### **Step 1: Intake**

After you have provided the necessary information to the Commission, an investigator or attorney will conduct an interview with you and will try to resolve the issue before filing an official complaint. You must file your complaint within **1 year** of the alleged act of discrimination. Furthermore, you cannot file a complaint with the Commission if:

You have previously sued in civil court alleging the same discriminatory practice, unless the action was dismissed without prejudice or withdrawn without prejudice,<sup>1</sup> or if you have filed the same complaint with another administrative agency or with the State Division of Human Rights and a final determination has been made.

*\*As you read through this handbook and learn more about the other agencies that handle employment discrimination claims, keep in mind that you may not be able to file a claim with a different agency or court at a later date.*

#### **Step 2: Filing of the Complaint:**

If the Commission accepts your complaint after intake, the Commission's Office of Docketing will file and serve your complaint upon the Respondent. This means that a copy of your complaint will be sent to the employer or labor organization that you are charging with discrimination.

#### **Step 3: The Answer**

Within **30 days** after a copy of the Complaint is served on the employer by the Commission, the employer must file a written answer with the Commission. The Commission will then send you and other necessary parties a copy of the

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<sup>1</sup> If an action or proceeding is dismissed or withdrawn without prejudice, it may be recommenced. If it is dismissed with prejudice, it constitutes a final disposition.

employer's answer.

At this point, the parties may also choose to go to mediation to resolve the dispute. It is highly recommended that the parties attempt to resolve the dispute through the Human Rights Commission's mediation program. Mediation is a less formal alternative to the traditional litigation process. If you choose mediation, a neutral third party will help you and the employer or union reach a voluntary agreement that resolves the discrimination dispute. Your mediation session will be private and confidential and will not be disclosed publicly. The final agreement, however, will be made public unless you and the respondent ("the employer you have complained against") agree otherwise and if the Commission decides disclosure is not necessary.

#### **Step 4: Investigation**

An attorney or investigator for the Human Rights Commission will then investigate your charge by interviewing witnesses and reviewing relevant documents that may reveal evidence of the employment discrimination.

If the investigation reveals that there is "probable cause" to prosecute the employer for discrimination, the Commission will assign an attorney to prosecute your case. The investigator will only find that there is "probable cause" if the investigator determines that there is sufficient evidence to establish that discrimination took place. If the claim is dismissed for lack of probable cause, you may appeal the dismissal to the Commission.

#### **Step 5: The Hearing**

If your dispute is not settled at a pre-trial conference and the claim has not been dismissed for lack of probable cause, you and the employer must attend a formal hearing held by an administrative law judge of the New York City's Office of Administrative Trials and Hearings.

After the hearing, the judge will issue a report and recommendation about your case. A panel of Commissioners will then review the judge's report and the panel will issue a final Decision and Order.

#### **Step 6: Remedies**

If the New York City Human Rights Commission finds that an employer has discriminated against you, the Commission can order a number of different remedies. You may be hired, reinstated to the job you lost or equivalent position, or promoted to a higher position. Your employer may be also be ordered to "reasonably accommodate" your disability or religious observance. Additionally,

the Commission may mandate that the employer implement anti-discrimination policies or special anti-discrimination training programs. Finally, you may also be entitled to a financial award if the Commission determines that you have been the victim of employment discrimination. Pay close attention to the following information because forms of compensation do vary depending on the agency you file your claim with.

You may receive a financial award for damages and back pay for wages. In some circumstances you may also receive front pay. According to the New York City Administrative Code § 8-502, the Commission may award you uncapped compensatory damages for physical injury, pain and suffering, mental anguish, and shock and discomfort you may have suffered because of your employer's discriminatory conduct. Notably, a claim of "emotional distress" may not be successful if there are no "physical manifestations of your emotional distress." Punitive Damages may be available to punish the employer for extreme or outrageous conduct or to deter or prevent the employer from committing future acts of discrimination.

### **NEW YORK STATE DIVISION OF HUMAN RIGHTS**

The State Division of Human Rights is another alternative for resolving employment discrimination disputes. The Division enforces the New York State Human Rights Law (Executive Law, Article 15), by preventing and eliminating employment discrimination and investigating and resolving employment discrimination claims. Under New York State Human Rights Law, it is unlawful for an employer, licensing agent, employment agency, or labor organization to fire you or refuse to hire you because of your age, race, creed, color, national origin, sexual orientation, military status, or sex. Furthermore, an employer cannot publish discriminatory job advertisements or ask you discriminatory questions on a job application or during an interview. Like the New York City Human Rights Law, the New York State Human Rights Law has its limitations and requirements. Again, please read the following procedural instructions carefully.

Like the New York City law, the New York State Human Rights Law only protects you if you work for an employer with **4 or more** employees. If you believe you are a victim of employment discrimination you should first contact your nearest regional office of the Division of Human Rights. (See Appendix B for contact information)

### **How do I file a complaint with the New York State Division of Human**

## **Rights?**

### *The Complaint*

If you are the victim of employment discrimination you may, by yourself, sign and file a verified written complaint with the Commission. You must file the complaint within **1 year** from the date of the incident of employment discrimination. You may file the complaint in person or by mail and there is no filing fee. The complaint must include:

- The name of the employer who you believe discriminated against you and the employer's address;
- Any further information required by the Division (See Appendix F for a copy of the Commission's questionnaire).

### *Processing Your Complaint*

#### **Step 1: Intake**

When you file a discrimination claim with the Division, an intake officer will evaluate your complaint and decide whether the New York State Human Rights Law protects you and applies to your situation. You will be asked to identify witnesses that may have seen or heard the discrimination incident. The intake officer will also request that you provide information about other employees that may have experienced the same type of discrimination scenario that you dealt with or are currently dealing with.

#### **Step 2: Filing the Complaint**

If the intake officer determines that your situation is covered by New York State Human Rights Law, the intake officer will write and file an official complaint. You must sign and notarize this complaint. You will be able to use the Division's notary services free of charge. A copy of the complaint will then be sent to the employer and other necessary parties.

- You may have to wait up to 180 days for the Division to decide whether it has the authority to decide your particular case.
- It may take up to 270 days for your complaint to be officially filed, but after the employer receives a copy of the complaint he or she must respond to the allegations within 5 to 15 days.

#### **Step 3: Investigation**

If the Division does have the authority to evaluate your case, an investigator will then conduct an investigation and gather facts and evidence about the employment discrimination that you experienced. The investigator will decide whether there is “probable cause” to continue pursuing your claim.

- If the Division decides that your case lacks probable cause, your claim will be dismissed.
- The Division may also dismiss your claim for “administrative convenience<sup>2</sup>.”

#### **Step 4: Investigation Conference**

The Division may hold a conference while the investigation is going on to try to resolve the dispute between you and the employer. If you are required to attend an investigation conference, you will receive a notice in the mail stating the date, time, and location of the conference. At the conference, the Division will determine whether you and the employer can work out the discrimination dispute and reach a settlement agreement. If an agreement is reached, the Division will issue an official order. If you and the employer cannot reach a settlement agreement at the investigation conference, the Division will continue to investigate your claim.

#### **Step 5: Pre-Hearing Settlement Conference**

If the claim is not dismissed for lack of probable cause, you and the employer may also have the option of appearing before an administrative law judge. At this meeting, you will also have the opportunity to reach a settlement agreement with the employer.

#### **Step 6: Public Administrative Hearing**

If you and the employer do not reach a voluntary settlement agreement at the Pre-Hearing Conference, your case will be heard by an administrative law judge at a more formal administrative hearing. You can expect to receive a notice about the hearing at least 1 week before the hearing date. A Division lawyer will represent you at the hearing if you choose not to hire your own attorney. The hearing may only take one day, but it may require more days if necessary. After your employment discrimination case has been presented at the hearing, the administrative law judge will recommend an order to the Commissioner at the Division. Finally, the Commission will review the judge’s

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<sup>2</sup> The Division has the discretion to dismiss your claim for “administrative convenience,” as long as testimony has not yet been taken at a public hearing before an administrative law judge. According to Part 465.5, Subtitle J of the New York State Human Rights Law, the Division may dismiss your complaint for administrative convenience, if, for example, your objections to a settlement agreement lack substance, you are unavailable or unwilling to participate in conciliation, investigation, or go to a hearing, or if processing your complaint will not further New York State’s human rights goals.

recommendation and issue a final decision.

### **Step 7: Remedies**

If the Commissioner of the New York State Division of Human Rights concludes that you are the victim of employment discrimination, the Division may order the employer to stop committing the discrimination and hire, re-hire, or promote you. The Division may also order a union that has discriminated against you to restore your membership. The employer may also be ordered to reasonably accommodate your disability or religion as required by the New York State Human Rights law.

You may also receive a financial award for damages and back pay for wages. You may also receive front pay. The Division will only award you with compensatory damages, not punitive damages. Note, that under the New York City Human Rights Law, punitive damages are available and uncapped.

### **Can I Appeal the Division's Order to Court for Judicial Review?**

Yes. If you are unsatisfied with the Division's order, you will have 60 days to appeal the Division's decision to the New York State Supreme Court. Finally, the Supreme Court's decision can then be appealed to an appellate court.

### **WHAT ARE THE ADVANTAGES AND DISADVANTAGES OF FILING MY CLAIM WITH THE STATE DIVISION OF HUMAN RIGHTS OR THE NEW YORK CITY COMMISSION ON HUMAN RIGHTS, RATHER THAN GOING DIRECTLY TO STATE COURT?**

While you can certainly file your complaint directly in state court, the State Division and City Commission specialize in preventing discrimination and enforcing New York State's and New York City's Human Rights laws. Furthermore, if you do not have a lawyer or cannot afford one, either the Division or Commission is a good option because the services are free.

As previously explained, you only have **1 year** from the date of the discriminatory incident to file your discrimination claim with either the State Division or City Commission. However, you have up to **3 years** to file your claim in state court. Please note that you cannot file your discrimination complaint both with the State Division or City Commission and in state court.

### **UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

As discussed in Section II of this handbook, several Federal laws also prohibit an employer from discriminating against you when hiring, firing, setting wages, transferring, promoting and laying-off and other terms and conditions of employment. It is also unlawful discrimination if your employer harasses you about your race, color, religion, sex, national origin, disability, or age.

The Equal Employment Opportunity Commission (EEOC) enforces the following federal Laws: Title VII of the Civil Rights Act of 1964; as amended, the Age Discrimination in Employment Act of 1967, as amended (ADEA), the Equal Pay Act of 1963, as amended (EPA), Title I of the American Disabilities Act of 1990, as amended (ADA), and the Civil Rights Act of 1991 (CRA). (See *Section II* for a more detailed explanation of each federal law.)

For an employer to be covered by Title VII and the ADA, it must have at least fifteen employees. However, under the ADEA, it must have at least twenty employees.

### **How do I file a discrimination charge with the EEOC?**

Any individual who believes that his or her employment rights have been violated may file a discrimination charge with the EEOC. Also, an individual, organization, or agency may file a charge on behalf of another person so as to protect the victim's identity. A charge may be filed by mail or in person at the nearest EEOC office (see appendix D for contact information). If you are employed at a federal agency and you believe you have been discriminated against you should contact your agency's EEO counselor before filing a formal complaint<sup>3</sup>.

#### *Your Complaint*

If you file a complaint with the EEOC you must include:

- Your name, address, and telephone number on the complaint
  - The employer, employment agency, or union that allegedly committed the discrimination and the number of employees [or union members] employed by that employer, business, or union.
  - A short description of the alleged violation/event that occurred that caused the complaining party to believe that his or her rights were violated; and
  - Date(s) of the alleged violation(s)
- See Appendix F for a copy of the EEOC's questionnaire.

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<sup>3</sup> 29 C.F.R. Section 1614.105 provides that you must contact the counselor within 45 days of the date of the alleged discrimination. Your EEO counselor will inform you about the federal sector complaint process and may help you to resolve the dispute. After you contact the EEO counselor, this preliminary stage must be completed within 30 days. If the counselor does not successfully resolve your dispute within this period, you then have the right to file a formal complaint with the agency that allegedly discriminated against you.

## *Processing Your Complaint*

### **Step 1: Filing the Complaint**

All the federal laws explained in Section II, except the Equal Pay Act, require you to file your discrimination charge with EEOC before a private lawsuit may be filed in court. A charge must be filed with the EEOC in New York within **300 days** of date of the discriminatory incident. These time limitations do not apply to claims under the Equal Pay Act, because under that Act you do not have to first file a charge with the EEOC in order to have the right to go to court. You should still try to file your complaint within the 300 day period because many Equal Pay Act claims also raise Title VII sex discrimination issues and these are still subject to the EEOC's time limitations. The EEOC will send a copy of the complaint to the employer at least 10 days after you file your claim.

### **Step 2: Investigation**

After the complaint has been filed and sent to the employer, the EEOC will begin investigating your discrimination claim. If after investigation the EEOC concludes that there is no "reasonable cause" to believe that the discrimination occurred, your charge will be dismissed.

If the EEOC determines that there is in fact "reasonable cause" to believe that you are the victim of employment discrimination, the EEOC will try to resolve your dispute with the employer informally. In fact, you may be required to attend a pre-hearing conference or a mediation session.

If after 30 days (from the date the complaint was filed), the EEOC is unable to resolve your dispute and stop the unlawful discrimination, the EEOC may file a lawsuit against your employer. If, however, your employer is the government or a government agency, your case will be handed over to the Department of Justice who will sue the employer on your behalf in federal court.

### **Step 3: Mediation or Judicial Proceedings**

The EEOC provides mediation as an alternative to traditional investigation or litigation. An EEOC representative will contact you and the employer and request that you come in for a mediation session. If you and the employer agree, you will meet together with a trained mediator. You do not need to have an attorney to participate in the EEOC's mediation program. The mediation is free of charge and ultimately may save you money if you and the employer resolve the dispute at this stage. You, the respondent, and the mediator will sign a confidentiality agreement and the information disclosed during your mediation session will be kept confidential. If your dispute is not resolved through

mediation, the EEOC will continue to investigate your charge of discrimination and pursue in rare instances your claim in federal court on your behalf. Even if the EEOC believes you were a victim of discrimination, it will not always pursue your claim. Furthermore, unlike the state and city agencies there is no administrative tribunal to seek relief.

#### **Step 4: Remedies**

As provided by Section 102 of the Civil Rights Act of 1990, if an employer or labor organization intentionally discriminated against you, you may potentially receive any relief authorized by section 706(g) of the Civil Rights Act of 1964 and the following damages:

If your employer violated Title VII:

- You may recover compensatory and punitive damages:

You may recover punitive damages against an employer (not including the government, government agency or political subdivision) if you prove that the employer engaged in discrimination towards you with malice or reckless indifference to your civil rights. You may also receive compensatory damages in addition to back pay, interest on back pay, reinstatement etc.

There is a maximum amount of compensatory damages and punitive damages you can receive for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.

- If the employer has more than 14 but less than 101 employees every week for 20 weeks or more (in the current or preceding calendar year) you may receive up to \$50,000.
- If the employer has more than 100 employees, but less than 201 employees every week for 20 weeks or more (in the current or preceding calendar year), you may receive up to \$100,000.
- If the employer has more than 200, but less than 501 employees every week for 20 weeks or more (in the current or preceding calendar year), you may receive up to \$200,000.
- If the employer has more than 500 employees every week for 20 weeks or more (in the current or preceding calendar year), you may receive up to \$300,000.

## **NATIONAL LABOR RELATIONS BOARD**

The National Labor Relations Board is an independent federal agency that investigates and remedies unfair labor practices committed by employers and unions in the private sector. The National Labor Relations Board enforces the National Labor Relations Act, the federal law described in Section II.

### **How do I file an unfair labor practice charge with the National Labor Relations Board?**

An unfair labor practice charge may be filed by an employee, an employer, a labor organization, or any other person. Charge forms are available at the NLRB's Regional Offices, must be signed, sworn to or affirmed under oath, and filed with the appropriate Regional Office. The appropriate Regional Office is in the area where the unfair labor practice took place. See attached appendix for contact information. (See Appendix E for Regional Office contact information and copies of the appropriate charge forms.) You only have **6 months** from the date of the unfair labor practice to file your charge. Your charge will be dismissed if you try to file it after the 6 month period.

#### *Your Unfair Labor Practice Charge*

On the Charge form you must include:

- your name and current address
- the name and address of the employer or union against whom you are filing the charge
- A description of the unfair labor practice that your employer or union committed.
- See Appendix F for copies of the NLRB charge forms

#### *Processing Your Charge*

##### **Step 1: Filing Your Complaint**

After you have completed the charge form, the appropriate Regional Office will process your complaint. Although the charging party is responsible for the service of the charge, the Regional Office will process your charge and as a courtesy will send a copy of the charge to the employer or union who has allegedly committed the unfair labor practice.

## **Step 2: Intake**

After your charge is filed, the NLRB will request evidence supporting your claim. “Evidence” usually will include sworn statements and other information gathered during interviews with the parties and witnesses.

## **Step 3: Investigation**

If there is sufficient evidence supporting your charge, the NLRB will initiate an investigation of the alleged unfair labor practice. Generally, the Board agent will start the investigation within 7 days. The Regional Board agent will contact witnesses and others who may have information regarding your case.

The Regional Officer will seek to determine if there is “reasonable cause” to believe that an unfair practice has occurred. This determination is generally made within **45 days** from the time you file the charge.

If after the investigation and review of the evidence gathered, the Regional Office determines that no unfair labor practice has occurred, you will be asked to withdraw your charge. If you refuse to withdraw your charge, the Regional office will dismiss your complaint. If you wish to continue pursuing your claim, you can appeal the Region’s dismissal to the General Counsel’s Office of Appeals in Washington, D.C. (See appendix E for contact information.)

If the Regional Office finds that there is “reasonable cause” to believe that an unfair labor practice has occurred, they will first go to the employer or union and ask them to remedy your situation. At this point, you and the employer or union may be able to reach a voluntary settlement. If the charged employer or union refuses to provide a remedy, the Regional Office will issue a formal complaint against the charged party.

## **Step 4: The Hearing**

After the Regional Office issues the complaint, your case will be scheduled for a formal hearing before an Administrative Law Judge. An NLRB lawyer will represent your interests at the hearing. The Administrative Law Judge will then issue a decision and determine whether the discrimination occurred and if so, what remedy you are entitled to.

You may then appeal the ALJ’s decision to National Labor Relations Board’s Main Office in Washington D.C. (See Appendix E for contact information) The Board’s decision may then be appealed to the U.S. Court of Appeals.

## **SECTION IV: WHAT OTHER STATUTES GOVERN EMPLOYMENT**

Although we cannot cover them all, some other statutes governing employment are worth noting:

### **A. The Family Medical Leave Act**

Employers of 50 or more employees are required to grant employees who have 1,250 hours of service during the previous 12 months, up to 12 work weeks of unpaid leave during any 12 month period for one or more of the following reasons:

- (i) for the birth and care of the newborn child of the employee;
- (ii) for placement with the employee of a son or daughter for adoption or foster care;
- (iii) to care for an immediate family member (spouse, child or parent) with a serious health condition; or
- (iv) to take medical leave when the employee is unable to work because of a serious health condition.

If the employer violates this provision, an employee may commence an action in State or Federal Court or file a charge with the United States Department of Labor.

### **B. Fair Labor Standards Act**

Workers covered by the United States Fair Labor Standards Act are entitled to a minimum wage of \$5.15 an hour. However, workers in New York State are entitled to a minimum wage of \$6.75 an hour. (In New York the minimum wage will increase to \$7.15 an hour as of January 1, 2007. Any increase in the federal wage above the state rate will result in an increase in the state's minimum.)

Under the FLSA, employees covered by the statute are entitled to overtime pay at a rate of not less than one and a half times their regular rate of pay after 40 hours of work in a work week. Determining who is covered by the FLSA can be very complicated. The Department of Labor has issued a series of regulations concerning workers to determine if they are covered by the statute or not. Generally, professional, management and supervisory employees are exempt from the coverage of the act and may be required to work over 40 hours a week without additional compensation.

If you believe your employer has violated the FLSA you may file a charge with the US Department of Labor Wage and Hour Division or the New York State Department of Labor or file a lawsuit in the US District Court or State Court.

### **C. Occupational Safety and Health Act of 1970**

The Occupational Safety and Health Act of 1970 (OSH Act) requires your employer to provide you with a workplace that is “free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.” The Occupational Safety and Health Administration (OSHA) is the federal agency that establishes and enforces the OSHA. Under OSHA, your employer must establish a “written communication program,” to provide you with extensive information about the chemicals that you are exposed to at work and train you how to protect yourself from harm. Furthermore, you have the right to request and review information and specific records from your employer pertaining to OSHA’s standards, worker injuries and illnesses, job hazards and workers’ rights. You also may ask your employer to fix hazardous working conditions, even if they are not violations of OSHA’s specific standards.

If you believe that your employer is violating OSHA’s standards or you are working in hazardous conditions, you may file a complaint with OSHA and request that OSHA inspect your workplace. You can file your complaint online, in writing, by fax or phone. To request a field inspection, please send your request in writing to New York’s Regional office.

Office of Occupational Safety and Health Administration, Region 2  
Regional Office  
201 Varick Street, Room 670  
New York, New York 10014. (212) 337-2378(212) 337-2371 FAX

If OSHA inspects your workplace, you are entitled to be involved in the inspection process. You have the right to have an authorized employee representative, like a union steward, escort the OSHA compliance officer during the workplace investigation. The OSHA officer, however, cannot select the employee representative. If there is no union representative or employee representative present, the OSHA official must speak confidentially with a “reasonable number of workers during the course of the investigation.” If you know of workplace hazards and illnesses and injuries that have occurred as a result, you have the right to approach the officer and inform him during the inspection. After the investigation is conducted, you are entitled to find out what the results are and request a review of the inspection if OSHA chooses not to issue a citation. You can also file an appeal of the deadlines that OSHA establishes for your employer to remedy any workplace hazards. Finally, you may file a discrimination complaint with OSHA if you are punished or discriminated against for exercising your safety and health rights. You can also file a complaint if you are discriminated against or penalized for refusing to work due to imminently hazardous working conditions, but this right is not guaranteed by the OSHA. You should be aware that under the OSHA you do not have the right to walk off the job because of unsafe conditions. OSHA may not be able to

protect you if you decide to walk off the job and you are subsequently fired or disciplined.

**D.     Unemployment**

You may be eligible for temporary unemployment insurance if you are unemployed through no fault of your own and you are “ready, willing and able to work.” The New York State Department of Labor will determine whether you qualify for unemployment benefits. For more information about how to file a claim for unemployment insurance in New York, please see <http://www.labor.state.ny.us/> or see below information the New York State Department of Labor’s contact information.

NYS Department of Labor  
W. Averell Harriman State Office Campus  
Building 12 Albany, NY 12240  
Phone: 518-457-9000  
e-mail: [nysdol@labor.state.ny.us](mailto:nysdol@labor.state.ny.us)  
TTY/TDD 1-(800)-662-1220 Voice 1-(800)-421-1220

## **Appendix A**

### **Public Employees**

**A. Employees of the United States Government** Certain employees of the United States Government are given the right to bargain collectively. The agency that administers labor management relations in the Federal Government is the Federal Labor Relations Authority ("FLRA"). The Regional Office is located at:

Federal Labor Relations Authority  
99 Summer Street  
Suite 1500  
Boston, MA 02110  
Telephone: (617) 424-5730

The main office is located at:

Federal Labor Relations Authority  
1400 K Street NW  
Washington, DC 20424  
Telephone No.: (202) 218-7770

Employees of the United States who are disciplined may challenge their discipline and the Merit Systems Production Board (MSPB). In New York, the field office is located at:

Merit Systems Production Board  
3137A Federal Building  
26 Federal Plaza  
New York, New York 10278  
(212) 264-9372

The main office is located at:

Merit Systems Production Board  
1615 M Street NW  
Washington, DC 20036  
(202) 653-7200

Employees of the United States who believe they are victims of discrimination may have recourse through the procedures of the Equal Employment Opportunity Commission.

## **B. Employees of the State of New York**

Certain employees of the State of New York are given the right to bargain collectively. The Public Employment Relations Board ("PERB") resolves disputes involving union representation, and improper practices. PERB is located at:

Public Employment Relations Board ("PERB")  
80 Wolf Road, 5<sup>th</sup> Floor  
Albany, New York 12205  
(518) 457-2578

Disciplinary and Promotional Examination matters are also covered in part by the Department of Civil Service which is located at:

Department of Civil Services,  
W.A. Harriman State Office Building Campus,  
Building 1, Albany, New York 12239  
(518) 457-9375

Employees of New York State who believe they are victims of discrimination may utilize the U.S. Equal Employment Opportunity Commission (See Appendix D) or the New York State Division of Human Rights. (See Appendix C).

## **C. Employees of the City of New York**

Certain employees of the City of New York are given the right to bargain collectively. The New York City Office of Collective Bargaining provides procedures including certification of collective bargaining representatives, mediation, impasse panels and arbitration for the resolution of labor relations disputes and controversies between the City and its employee organizations and employees. The Office of Collective Bargaining is located at:

Office of Collective Bargaining  
40 Rector Street, 7<sup>th</sup> Floor  
New York, New York 10006  
(212) 306-7160

Civil Service Rules and Regulations for New York City Employees including the scheduling of examinations are administered by the Department of Citywide Administrative Services ("DCSA") which is located at:

Department of Citywide Administrative Services  
Municipal Building  
One Centre Street, 17<sup>th</sup> Floor  
New York, New York 10007  
(212) 669-7000

New York City employees who are disciplined may contest their discipline at the Office of Administrative Trials and Hearings (“OATH”):

Office of Administrative Trials and Hearings  
40 Rector Street, 6<sup>th</sup> Floor  
New York, New York 10006  
(212) 422-4900

New York City employees who believe they are victims of discrimination may file charge with the U.S. Equal Employment Opportunity Commission, the New York State Division of Human Rights, or the New York City Commission on Human Rights. (See Appendix B).

**D. Employees of Public Authorities**

Employees of public authorities such as Port Authority of New York and New Jersey or the Metropolitan Transit Authority should refer to the relevant regulations of their employers.

## **Appendix B**

### **New York City Commission on Human Rights**

<http://www.nyc.gov/html/cchr/>

#### **Manhattan**

40 Rector Street, 10<sup>th</sup> Floor  
New York, NY 10006  
Phone: (212) 306-5070

#### **Brooklyn**

275 Livingston Street, 2<sup>nd</sup> Floor  
Brooklyn, NY 11217  
Phone: (718) 722-3130

#### **Bronx**

1932 Arthur Avenue, Room 203A  
Bronx, NY 10457  
Phone: (718) 579-6900

#### **Queens**

136-56 39<sup>th</sup> Avenue, 3<sup>rd</sup> Floor  
Flushing, NY 11354  
Phone: (718) 886-6162

#### **Staten Island**

60 Bay Street, 7<sup>th</sup> Floor  
Staten Island, NY 10301  
Phone: (718) 390-8506

## **Appendix C**

### **New York State Division of Human Rights Offices**

[www.dhr.state.ny.us/](http://www.dhr.state.ny.us/)

#### **Headquarters**

New York State Division of Human Rights  
One Fordham Plaza, 4th Floor  
Bronx, New York 10458  
Phone: (718) 741-8400

#### **Albany**

New York State Division of Human Rights Empire State Plaza, Agency Building  
#2, 18th Floor, Albany, New York 12220, Phone: (518) 474-2705

#### **Binghamton**

New York State Division of Human Rights, 44 Hawley Street, Room 603,  
Binghamton, New York 13901, Phone: (607) 721-8467

#### **Brooklyn**

New York State Division of Human Rights, 55 Hanson Place, Room 304,  
Brooklyn, New York 11217, Phone: (718) 722-2856

#### **Buffalo**

New York State Division of Human Rights, The Walter J. Mahoney State Office  
Building, 65 Court Street, Suite 506, Buffalo, New York 14202, Phone: (716) 847-  
7632

#### **Manhattan**

New York State Division of Human Rights, 20 Exchange Place, 2nd Floor, New  
York, New York 10005, Phone: (212) 480-2522  
New York State Division of Human Rights, Adam Clayton Powell State Office  
Building, 163 West 125th Street, 4th Floor, New York, New York 10027, Phone:  
(212) 961-8650

**Long Island**

New York State Division of Human Rights  
175 Fulton Avenue, Hempstead, New York 11550, Phone: (516) 538-1360

New York State Division of Human Rights, State Office Building, Veterans  
Memorial Building, Hauppauge, New York 11787, Phone: (516) 952-6434

**Rochester**

New York State Division of Human Rights, One Monroe Square, 259 Monroe  
Avenue, 3rd Floor, Rochester, New York 14607, Phone: (585) 238-8250

**Syracuse**

New York State Division of Human Rights, 333 E. Washington Street, Room 401,  
Syracuse, New York 13202, Phone: (315) 428-4633

**Peekskill**

New York State Division of Human Rights, 8 John Walsh Blvd., Suite 204,  
Peekskill, New York 10566, Phone: (914) 788-8050

**Office of Sexual Harassment**

New York State Division of Human Rights, Office of Sexual Harassment, 55  
Hanson Place, Suite 347, Brooklyn, New York 11217, Phone: (718) 722-2060

**Office of AIDS Discrimination**

New York State Division of Human Rights, Office of AIDS Discrimination,  
20 Exchange Place, 2nd Floor, New York, New York 10005, Phone: (212) 480-  
2522

**Office of Case Review and Special Projects**

New York State Division of Human Rights, Office of Case Review and Special  
Projects, One Fordham Plaza, 4th Floor, Bronx, New York 10458, Phone: (718)  
741-8400

## **Appendix D**

### **Equal Opportunity Employment Commission**

[www.eeoc.gov](http://www.eeoc.gov)

#### **EEOC National Headquarters**

U.S. Equal Employment Opportunity Commission, 1801 L Street,  
N.W. Washington, D.C. 20507 Phone: (202) 663-4900

#### **EEOC's [National Contact Center](#) (NCC) customer service**

Mail to:

U.S. Equal Employment Opportunity Commission,  
P.O. Box 7033, Lawrence, Kansas 66044  
Phone: 1-800-669-4000  
TTY: 1-800-669-6820  
Fax: 703-997-4890

E-mail: [info@ask.eeoc.gov](mailto:info@ask.eeoc.gov) (include your zip code and/or city and state so that the EEOC NCC will send your information to the appropriate office.)

#### **New York Regional Offices**

##### **New York District Office**

33 Whitehall Street  
New York, NY 10004  
Phone: (212) 336-3620  
TTY: (212) 336-3622  
Director: Spencer H. Lewis, Jr.  
Regional Attorney: Elizabeth Grossman

##### **Federal Sector Information**

Contact: Kenneth W. Chu, Supervisory Administrative Judge  
Phone: (212) 336-3740  
TTY: (212) 336-3622  
E-mail: [Kenneth.chu@eeoc.gov](mailto:Kenneth.chu@eeoc.gov)

##### **Mediation Contact Information**

Michael Bertty, ADR Program Coordinator  
Phone: (212) 336-3645  
TTY: (212) 336-3622  
E-mail: [michael.bertty@eeoc.gov](mailto:michael.bertty@eeoc.gov)

**Newark, NJ area Office**

One Newark Center, 21<sup>st</sup> Floor  
Raymond Blvd at McCarter Hwy (Rt.21)  
Newark, NJ 07102-5233  
Phone: (973) 645-6383, TTY: (973) 645-3004  
Director: Corrado Gigante  
Regional Attorney: Elizabeth Grossman

**Buffalo Local Office**

6 Fountain Plaza, Suite 350  
Buffalo, NY 14202  
Phone: (716) 551-4441  
TTY: (716) 551-5923  
Director: Elizabeth Cadle  
Regional Attorney: Elizabeth Grossman

**Federal Sector Information**

Contact: Kenneth W. Chu, Supervisory Administrative Judge  
Phone: (212) 336-3740  
TTY: (212) 336-3622  
E-mail: [Kenneth.chu@eeoc.gov](mailto:Kenneth.chu@eeoc.gov)

**Mediation Contact Information**

David Ging, Mediator  
(716) 551-3035  
TTY: (716) 551-5923  
E-mail: [david.ging@eeoc.gov](mailto:david.ging@eeoc.gov)

**Appendix E**  
**National Labor Relations Board Contact Information**

[www.NLRB.gov](http://www.NLRB.gov)

**NLRB Headquarters:**

**Washington, D.C. - Main Office**

National Labor Relations Board  
1099 14<sup>th</sup> Street, N.W.  
Washington, D.C. 20570-0001  
Phone: (202) 273-1000

**New York City Headquarters**

Joel P. Biblowitz, Associate Chief Administrative Law Judge  
120 West 45th Street, 11th Floor  
New York, New York 10036-5503  
Phone: (212) 944-2940

**New York's Regional Offices:**

**Manhattan – Region 2**

26 Federal Plaza, Room 3614  
New York, NY 10278-0104  
Phone: (212) 264-0300

**Buffalo – Region 3**

111 West Huron Street, Room 901  
Buffalo, NY 14202-2387  
Phone: (716) 551-4931

**Brooklyn - Region 29**

One Metro Tech Center (North)  
Jay Street and Myrtle Avenue, 10<sup>th</sup> Floor  
Brooklyn, NY 11201-4201  
Phone: (718) 330-7713

**Newark, NJ – Region 22**

20 Washington Place, 5<sup>th</sup> Floor  
Newark, NJ 07102-3110  
Phone: (973) 645-2100

## **Appendix F**

### **Forms**

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
New York District Office

## INTAKE QUESTIONNAIRE

<b>Investigator:</b> [Please enter Investigator name]	<b>Date:</b> 10/24/06
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### **General**

(Filling out this form does not constitute filing a charge.)

You have alleged that you were illegally discriminated against by your employer. We need the following information from you. Please note that whatever basis you are alleging in your charge, show that same basis for other individuals and your witnesses. For example, if you allege that you were discriminated against because of your sex, identify the sex of other individuals and witnesses. If you allege that you were discriminated against because of your age and race, identify the age and race of other individuals and witnesses. **If you need more space to answer any of these questions, you may attach additional sheets. Please print or type all information.**

**(Please think carefully before answering each question because you are asked at the end of the questionnaire to declare under penalty of perjury that your answers are correct. A false statement on any part of this questionnaire may be grounds for the Commission to dismiss your charge.)**

\*This form is affected by the Privacy Act of 1974; see Privacy Act statement on the last page before completing this form.

**Your name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Address:** \_\_\_\_\_ **City:** \_\_\_\_\_

**County:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_

**Home phone:** ( ) \_\_\_\_\_ **Best time to call:** \_\_\_\_\_

**Work phone:** ( ) \_\_\_\_\_ **Best time to call:** \_\_\_\_\_

**Social Security No:** \_\_\_\_\_

**Email** \_\_\_\_\_

**Name of employer or organization that discriminated against you:**

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_ **City:** \_\_\_\_\_

**State:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_ **Phone (with area code):** \_\_\_\_\_

**Name of the head of the organization:** \_\_\_\_\_

**Title of the head of the organization:** \_\_\_\_\_

**Your date of birth:** \_\_\_\_\_ **Age:** \_\_\_\_\_ **Sex:** \_\_\_\_\_ **Race:** \_\_\_\_\_

**National origin:** \_\_\_\_\_ **Religion:** \_\_\_\_\_

**What type of business does the employer engage in?**

**Number of employees:** ( ) 1 to 14 ( ) 15 to 100

( ) 101 to 200 ( ) 201 to 500 ( ) More than 500

**Provide the name of an individual at a different address who we can contact if we are unable to reach you:**

**Name:** \_\_\_\_\_ **Relationship:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Address:** \_\_\_\_\_

1. **How have you been harmed?**

( ) Not hired

( ) Discharge

( ) Demotion

( ) Promotion

( ) Layoff

( ) Other terms of

( ) Transfer

( ) Retirement

employment (specify)

( ) Leave

( ) Benefits

( ) Pay

( ) Harassment

( ) Accommodation

( ) Discipline

( ) Sexual harassment

of a disability

2. **Date of Harm:** \_\_\_\_\_

3. What was the thing about you that motivated the employer or union to take whatever action it took against you?

- |  |                                    |  |
|--|------------------------------------|--|
| <input type="checkbox"/> Race  | <input type="checkbox"/> Pregnancy | <input type="checkbox"/> National Origin |
| <input type="checkbox"/> Color   | <input type="checkbox"/> Religion  | <input type="checkbox"/> Age             |
| <input type="checkbox"/> Sex   |                                    | <input type="checkbox"/> Disability      |
| <input type="checkbox"/> Retaliation for having complained about discrimination. |                                    |  |

4. If you believe you were discriminated against because of a disability, indicate:

Brief description of disability:

How long the disability will last:

How the disability limits you in important daily activities (such as breathing, concentrating, sleeping, seeing, walking, lifting, and so on)

5. Explain the facts that lead you to believe that your employer or union discriminated against you:

\_\_\_\_\_6.

(Attach copies of any documents which you believe would support your discrimination claim.)

**\*\*\*ATTACH ADDITIONAL SHEETS AS NECESSARY\*\*\***

**(Complete as many of the following questions as apply)**

Job title: \_\_\_\_\_ Date hired:

Salary:

Name of immediate supervisor:

Supervisor's Title:

Unit, department or division:

Number of employees in department or division:

Number of employees with the same job title:

**Provide the following information for any witnesses who will provide evidence to support your allegations:**

Name: _____	Name: _____
Home phone: (    ) _____	Home phone: (    ) _____
Work phone: (    ) _____	Work phone: (    ) _____
Address: _____	Address: _____

Nature of the evidence they will provide: _____	Nature of the evidence they will provide: _____
--	--

**Have you sought assistance from any other government agency, union, attorney or other source? ( ) yes ( ) no**

Name of source of assistance:

Results, if any:

**Have you filed an EEOC charge in the past?    No \_\_\_ Yes**

If yes, provide:    Date filed \_\_\_\_\_    Charge number \_\_\_\_\_

Organization charged \_\_\_\_\_

How did you hear about the EEOC? \_\_\_\_\_

[E.g., newspaper article, attended EEOC seminar, radio/t.v. story (when, what station), friend/relative, my lawyer, my union, another agency referred me:

\_\_\_\_\_ (give agency name), etc.]

I declare (certify, verify or state) under penalty of perjury that the foregoing is true and correct to the best of my knowledge. (Filling out this form does not constitute filing a charge.)

Date: \_\_\_\_\_    Signature: \_\_\_\_\_

**PRIVACY ACT STATEMENT**

(This form is covered by the Privacy Act of 1974, Public Law 930579. Authority for requesting the personal data and the uses thereof are given below.)

FORM NUMBER/TITLE/DATE: EEOC FORM 233, INTAKE QUESTIONNAIRE, AUGUST 1987

AUTHORITY: 42 U.S.C. 2000e-5(b), 29 U.S.C. Section 626.

PRINCIPAL PURPOSE: The purpose of this questionnaire is to solicit information to enable the Commission to avoid the intake of matters not within its jurisdiction.

ROUTINE PURPOSES: Information provided on this form will be used by Commission employees to determine the existence of facts relevant to a decision as to whether the Commission has jurisdiction over potential charges, complaints or allegations of employment discrimination and to provide such pre-charge filing counseling as is appropriate. Information provided on this form may be disclosed to other state, local and federal agencies as may be appropriate or necessary to carry out the Commission's functions. This would include employment practices laws. Information may also be disclosed to Charging Parties in consideration of or connection with litigation.

WHETHER DISCLOSURE IS MANDATORY OR VOLUNTARY AND EFFECT ON INDIVIDUAL FOR NOT PROVIDING INFORMATION: The providing of this information is voluntary but the failure to do so may hamper the Commission's investigation of a charge of discrimination. It is not mandatory that this form be used to provide the requested information.

NYS DHR

THIS FORM IS NOT A DHR VERIFIED COMPLAINT  
FOR INFORMATIONAL PURPOSES ONLY

TIME ARRIVED \_\_\_\_\_ TIME TAKEN \_\_\_\_\_ DATE \_\_\_\_\_

INFORMATION ABOUT YOU

NAME \_\_\_\_\_

SOCIAL SECURITY NO. \_\_\_\_\_

ADDRESS \_\_\_\_\_  
\_\_\_\_\_

TELEPHONE NO. HOME ( ) \_\_\_\_\_ WORK ( ) \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

DATE OF BIRTH: \_\_\_\_\_

SEX: MALE \_\_\_\_\_ FEMALE \_\_\_\_\_

MARITAL STATUS: MARRIED \_\_\_\_\_ UNMARRIED \_\_\_\_\_ DIVORCED \_\_\_\_\_  
SEPARATED \_\_\_\_\_ WIDOWED \_\_\_\_\_

ETHNICITY: BLACK (NON-HISPANIC) \_\_\_\_\_ HISPANIC \_\_\_\_\_ ASIAN PACIFIC \_\_\_\_\_  
AMERICAN INDIAN OR ALASKAN \_\_\_\_\_ WHITE (NON-HISPANIC) \_\_\_\_\_

EDUCATION (CIRCLE HIGHEST YEAR COMPLETED) PRIMARY 1 2 3 4 5 6 7 8

HIGH SCHOOL 1 2 3 4 COLLEGE 1 2 3 4 GRADUATE SCHOOL 1 2  
MASTER \_\_\_\_\_ DOCTORATE \_\_\_\_\_ OTHER SPECIFY \_\_\_\_\_

IF EMPLOYMENT RELATED, CURRENT OCCUPATION \_\_\_\_\_

TITLE HELD AT TIME OF DISCRIMINATION \_\_\_\_\_

APPROXIMATE NUMBER OF EMPLOYEES \_\_\_\_\_

DATES OF EMPLOYMENT: FROM \_\_\_\_\_ TO \_\_\_\_\_

\*MOST RECENT DATE OF VIOLATION/DISCRIMINATION \_\_\_\_\_

HAVE YOU FILED A COMPLAINT WITH ANOTHER AGENCY? IN COURT? IF SO, NAME AGENCY OR COURT \_\_\_\_\_

PERSON OF ANOTHER ADDRESS WHO WILL KNOW YOUR WHEREABOUTS (THIS IS VERY IMPORTANT)

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE NUMBER: ( ) \_\_\_\_\_

**INFORMATION ABOUT RESPONDENT**

WHO DISCRIMINATED AGAINST YOU? \_\_\_\_\_

NAME OF EMPLOYER, LABOR ORGANIZATION, HOUSING OWNER, REAL ESTATE AGENCY OR PUBLIC  
ACCOMMODATION \_\_\_\_\_  
(COMPANY NAME)

NAME AND TITLE OF CONTACT PERSON \_\_\_\_\_  
(DIRECTOR OF PERSONNEL, GENERAL COUNSEL OR EEO OFFICER)

ADDRESS OF WORK SITE \_\_\_\_\_

TELEPHONE NUMBER ( ) \_\_\_\_\_

ADDRESS OF MAIN OFFICE \_\_\_\_\_

TELEPHONE NUMBER ( ) \_\_\_\_\_

FAX NUMBER ( ) \_\_\_\_\_

TYPE OF INDUSTRY \_\_\_\_\_

NAME AND TITLE OF PERSON(S) WHO DISCRIMINATED AGAINST YOU \_\_\_\_\_

**TYPE OF DISCRIMINATION**

EMPLOYMENT \_\_\_\_\_ HOUSING \_\_\_\_\_ PUBLIC ACCOMMODATIONS \_\_\_\_\_  
(RESTAURANTS, HOTELS, STORES, ETC.)

BASIS OF DISCRIMINATION (CHECK THE REASON(S) YOU BELIEVE YOU WERE DISCRIMINATED AGAINST)

RACE/COLOR \_\_\_\_\_ NATIONAL ORIGIN \_\_\_\_\_ SEX \_\_\_\_\_ AGE \_\_\_\_\_  
DISABILITY \_\_\_\_\_ MARITAL STATUS \_\_\_\_\_ CREEP \_\_\_\_\_ RETALIATION \_\_\_\_\_  
SEXUAL ORIENTATION \_\_\_\_\_ MILITARY STATUS \_\_\_\_\_  
PRIOR ARREST OR CONVICTION RECORD \_\_\_\_\_

\*INITIAL DATE OF VIOLATION/DISCRIMINATION \_\_\_\_\_

\*MOST RECENT DATE OF VIOLATION/DISCRIMINATION \_\_\_\_\_

\*SITE/COUNTY OF ALLEGED DISCRIMINATION \_\_\_\_\_

PROVIDE A BRIEF EXPLANATION OF THE ACT OF DISCRIMINATION: (DESCRIBE WHAT HAPPENED TO YOU AND THE REASON GIVEN FOR THE ACT OF DISCRIMINATION, AND THE NAME(S), TITLE(S), EMPLOYER(S) OF INDIVIDUAL(S) WHO COMMITTED ACT OF DISCRIMINATION, AND GIVE THE DATE (S) OF OCCURRENCE(S).

[illegible]

**SUPPLEMENTAL INFORMATION FOR INVESTIGATION OF COMPLAINT**

DATE \_\_\_\_\_

COMPLAINANT NAME \_\_\_\_\_

1. INTERESTED IN CONCILIATION (AMICABLE RESOLUTION OF COMPLAINT)?  
YES \_\_\_\_\_ NO \_\_\_\_\_

2. REMEDY YOU SEEK \_\_\_\_\_

3. WITNESSES TO DISCRIMINATION:

NAME

TEL. NO.

_____	( )	_____
_____	( )	_____
_____	( )	_____

EXPLAIN WHAT THE WITNESS(ES) WOULD TESTIFY TO

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(NOTE: IF MEDICAL RECORDS ARE TO BE SECURED OR PRESENTED AS EVIDENCE, YOU WILL NEED TO SIGN A HIPAA FORM)

4. SIMILAR ACTS DONE TO OTHER WORKERS?

NAME

TITLE

TEL. NO.

_____	_____	( )	_____
_____	_____	( )	_____
_____	_____	( )	_____
_____	_____	( )	_____

**5. COMPARATIVE DATA**

**LIST WORKERS IN YOUR DEPARTMENT**

**NAME**

**TITLE**

**COMPARATIVE BASIS**  
**(EXAMPLE: BLACK, IF YOU ARE CLAIMING  
DISCRIMINATION BASED ON YOUR RACE/COLOR)**


**6. WHAT RESPONDENT RECORDS WOULD BE USEFUL IN INVESTIGATING YOUR COMPLAINT?**


**NYSDHR**

**TO BE COMPLETED BY DHR STAFF ONLY**

**NAME:** \_\_\_\_\_

**NATURE OF CONTACT:** \_\_\_\_\_ **PHONE CALL:** \_\_\_\_\_ **WALK IN:** \_\_\_\_\_

**APPOINTMENT GIVEN:** \_\_\_\_\_ **ACCEPTED:** \_\_\_\_\_ **NOT ACCEPTED:** \_\_\_\_\_

**REFERRED TO:** \_\_\_\_\_

**SUPERVISOR ASSISTANCE:** \_\_\_\_\_ **HRS:** \_\_\_\_\_

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**CHARGE AGAINST LABOR ORGANIZATION  
OR ITS AGENTS**

DO NOT WRITE IN THIS SPACE

## Case

Date Filed
------------

**INSTRUCTIONS:** File an original and 4 copies of this charge and an additional copy for each organization, each local, and each individual named in item 1 with the NLRB Regional Director of the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name

b. Union Representative to contact

c. Telephone No.

d. Address (street, city, state and ZIP code)

e. The above-named organization(s) or its agents has *(have)* engaged in and is *(are)* engaging in unfair labor practices within the meaning of section 8(b), subsection(s) *(list subsections)* \_\_\_\_\_ of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

3. Name of Employer

4. Telephone No.

5. Location of plant involved (street, city, state and ZIP code)

6. Employer representative to contact

7. Type of establishment (factory, mine, wholesaler, etc.)

8. Identify principal product or service

9. Number of workers employed

10. Full name of party filing charge

11. Address of party filing charge (street, city, state and ZIP code)

12. Telephone No.

### 13. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By \_\_\_\_\_  
(signature of representative or person making charge)

(title or office, if any)

Address

(Telephone No.)

(date)

**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 1001)**

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**CHARGE AGAINST EMPLOYER**

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

**INSTRUCTIONS:**

File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT		
a. Name of Employer		b. Number of Workers Employed
c. Address (street, city, State, ZIP, Code)	d. Employer Representative	e. Telephone No.
		Fax No.
f. Type of Establishment (factory, mine, wholesaler, etc.)	g. Identify Principal Product or Service	
h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a), subsections (1) and (list subsections) _____ of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.		
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices.)		
By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.		
3. Full name of party filing charge (if labor organization, give full name, including local name and number)		
4a. Address (street and number, city, State, and ZIP Code)		4b. Telephone No.
		Fax No.
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)		
6. DECLARATION		
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.		
By _____ (Signature of representative or person making charge)		_____ (Title, if any)
Address _____		Fax No. _____
		(Telephone No.) _____
		Date _____

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

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\*Chair of the Subcommittee that prepared the Handbook.

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