

# The “Playbook” - What To Do When An Employee Has Filed A Discrimination Case With The EEOC Or The DCR

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If your business has ever been the target of a complaint from the Division on Civil Rights (“DCR”) or Equal Employment Opportunity Commission (“EEOC”) you may be familiar with defending yourself or your business before the DCR or EEOC. Generally, the DCR and at times the EEOC are charged with enforcement of the New Jersey Law Against Discrimination. As you may know, the Law Against Discrimination is a broad statute that protects individuals and employees from discrimination in employment, among other arenas.

## **How is a complaint commenced in the DCR?**

As an alternative to filing a lawsuit in the Superior Court, employees can bring a complaint against employers (individuals or companies) in the DCR by filing a sworn complaint. Complaints are usually prepared on a standard form including the names and addresses of the parties involved, the facts upon which the claim against the employer is based, and the section of the Law Against Discrimination that was allegedly violated.

## **Can an employee file a complaint in the Superior Court at the same time?**

Once an employee files a complaint with the DCR, the employee cannot simultaneously file a complaint in the superior court. The employee temporarily waives his or her right to bring an action in the Superior Court unless and until he receives a right to sue letter from the DCR. If a final decision as to the legitimacy of the employee’s claim is made by the DCR, a subsequent civil suit is not permitted.

## **The Step to take if your company has been served by the Division of Civil Rights:**

## **What to do if you have been served with a complaint in the DCR?**

You should contact your attorney. If you have been served with a complaint (usually by certified or overnight delivery), you, as the employer, has twenty (20) days to file an answer and affirmative defenses. You may request an initial ten (10) day extension to file and answer and if that is not sufficient, a second extension has requested, not to exceed thirty (30) days.

## **Can the DCR make me answer interrogatories or produce documents?**

The answer to this question is a resounding yes! The DCR has broad discretion for discovery of facts and will usually begin this process by requesting answers to interrogatories and documents when serving the employer with the complaint. I always advise clients that cooperation with the DCR is the best course of action given their broad discretion and in order to complete an investigation as quickly as possible. Frequently, these claims are brought by current employees and the claims can interrupt your business and create an uncomfortable environment for supervisors and colleagues of the complainant. Answers to discovery requests are usually provided by the employer at the same time that the answer is filed.

## **Can the DCR make me testify?**

The DCR may request oral depositions of employers and subpoena documents and witnesses. Frequently, the DCR will request a fact-finding conference. A fact-finding conference is an informal hearing conducted by an investigator when questions are asked of the employer, the complainant, or other representatives. Any party being questioned at the conference may be represented by an attorney or representative.

## **What happens after the investigation is completed?**

After the investigation is completed, the investigator submits findings which are provided to the Director of the DCR. If the Director does not find “probable cause” of a violation of the Law Against

Discrimination, the matter is dismissed. If a finding of “probable cause” is made, the DCR proceeds with what is called conciliation, which is an effort to resolve the matter before it proceeds in the administrative courts.

### **What happens if the matter cannot be resolved by settlement?**

If the matter cannot be resolved, it is transferred to the Office of Administrative law for a hearing. Prior to the hearing, the parties may engage in yet another round of discovery. The DCR’s file becomes discoverable by the employer. The parties may move to summarily dismiss the matter without a formal hearing. Otherwise, the parties proceed with a hearing before an administrative law judge. Testimony is taken under oath and documents may be admitted into evidence.

### **Who decides the merits of the hearing?**

There are no juries in the administrative courts. After a hearing, the judge makes findings of fact and conclusions of law. The judge must file these finding with the DCR Director within 45 days after the hearing closes. The Director may adopt, reject or modify the decision of the judge. The Director makes the final decision.

### **What powers does the DCR have if they find in favor of the employee?**

The DCR can order that the employer cease and desist from engaging in certain conduct. The DCR can order hiring, reinstatement, promotion, back pay, fines or any other reasonable form of remedy.

### **What happens if they find in favor of you, the employer?**

If the DCR finds in favor of the employer, the employee is barred from any other action with respect to the facts alleged in the complaint. Although the decision can be appealed, the case is otherwise concluded and the employee cannot file suit in the Superior Court.

The DCR process can be time consuming and confusing. If your employee files a complaint in the DCR or EEOC, you should immediately contact an attorney to assist you in defending yourself or your business. In addition, you need to know how to handle employees who are still employed at your business while the DCR proceedings are ongoing.

Now that you know the game, you need to pick the rights plays.