

The Boss Just Said What ?



Presented by: Jon A. Troyer, Esq.



What happens if your employer mandates COVID-19 vaccination, as a condition of employment, for all employees?
(including those who work remotely, as well as contractors, vendors, students, and volunteers)

If you have a vaccination deadline, do not hesitate filing for exemption. Consider time of the essence. There is no law that says an employer must respond to an application for exemption within a certain time frame.

Agenda

Is this even legal ?

What are my options ?

What is the best legal strategy ?

What are the steps in the process ?

How much will it cost and how long will it take ?



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COVID-19 VACCINE MANDATES

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This evening's agenda

Is this legal ?

Short Answer: Probably

1905 - U.S. Supreme Court
Jacobson v. Massachusetts



- States can compel vaccinations
- The legislature, and not the courts, should determine whether vaccination is, or is not, the best method to protect the public health
- The mode or manner in which those results are to be accomplished is within the discretion of the State



State Police Power - The Tenth Amendment to the Constitution gives states the rights and powers that are not delegated to the United States. We often refer to these rights and powers as “police power”. The police power has its origin and purpose in the general welfare of the state or, as it is sometimes expressed, the public health, public morals, and public safety. Courts have held that government may exercise its police powers to regulate land use as well.

In determining the validity of the exercise of police power, a two-pronged analysis is applied: (1) whether the object of the ordinance is one for which police power may be properly invoked and, if so; (2) whether there is a reasonable and substantial relationship between the existence of the police power invoked and the object to be attained.

It is worth noting that police power is very flexible, and courts have consistently declined to set any fixed limitations on the exercise of this power. For example, police power has been exercised in the following circumstances—

- alleviating the shortage of safe and sanitary dwelling accommodations for persons of low income in the state
- regulating the name that corporations may utilize to avoid fraud and misrepresentation.
- passing a statute that limits a person's ability to collect pension benefits as a public school retiree while simultaneously continuing to work in a public school

Ohio Constitution preamble - We, the people of the State of Ohio, grateful to Almighty God for our freedom, to secure its blessings and promote our common welfare, do establish this Constitution.

§34 Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees; and no other provision of the constitution shall impair or limit this power.

The United States Constitution contains two references to "the General Welfare", one occurring in the Preamble and the other in the Taxing and Spending Clause. The U.S. Supreme Court has held the mention of the clause in the Preamble to the U.S. Constitution "has never been regarded as the source of any substantive power conferred on the Government of the United States or on any of its Departments."^{[3][4]} The Supreme Court held the understanding of the General Welfare Clause contained in the Taxing and Spending Clause adheres to the construction given it by Associate Justice Joseph Story in his 1833 Commentaries on the Constitution of the United States.^{[5][6]} Justice Story concluded that the General Welfare Clause is not a grant of general legislative power,^{[5][7]} but a qualification on the taxing power,^{[5][8][9]} which includes within it a federal power to spend federal revenues on matters of general interest to the federal government.^{[5][10][11]} The Court described Justice Story's view as the "Hamiltonian position",^[5] as Alexander Hamilton had elaborated his view of the taxing and spending powers in his 1791 Report on Manufactures. Story, however, attributes the position's initial appearance to Thomas Jefferson, in his Opinion on the Bank of the United States.^[12] These clauses in the U.S. Constitution are an atypical use of a general welfare clause, and are not considered grants of a general legislative power to the federal government.^[13]

From Jacobson -

It is within the police power of a State to enact a compulsory vaccination law, and it is for the legislature, and not for the courts, to determine in the first instance whether vaccination is or is not the best mode for the prevention of smallpox and the protection of the public health.

There being obvious reasons for such exception, the fact that children, under certain circumstances, are excepted from the operation of the law does not deny the equal protection of the laws to adults if the statute is applicable equally to all adults in like condition.

The highest court of Massachusetts not having held that the compulsory vaccination law of that State establishes the absolute rule that an adult must be vaccinated even if he is not a fit subject at the time or that vaccination would seriously injure his health or cause his death, this court holds that, as to an adult residing in the community, and a fit subject of vaccination, the statute is not invalid as in derogation of any of the rights of such person under the Fourteenth Amendment.

This case involves the validity, under the Constitution of the United States, of certain provisions in the statutes of Massachusetts relating to vaccination.

According to settled principles, the police power of a State must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety. It is equally true that the State may invest local bodies called into existence for purposes of local administration with authority in some appropriate way to safeguard the public health and the public safety. The mode or manner in which those results are to be accomplished is within the discretion of the State, subject, of course, so far as Federal power is concerned, only to the condition that no rule prescribed by a State, nor any regulation adopted by a local governmental agency acting under the sanction of state legislation, shall contravene the Constitution of the United States or infringe any right granted or secured by that instrument. [Those rights aren't granted by the Constitution!]**

The defendant insists that his liberty is invaded when the State subjects him to fine or imprisonment for neglecting or refusing to submit to vaccination; that a compulsory vaccination law is unreasonable, arbitrary and oppressive, and, therefore, hostile to the inherent right of every freeman to care for his own body and health in such way as to him seems best, and that the execution of such a law against one who objects to vaccination, no matter for what reason, is nothing short of an assault upon his person. But the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis, organized society could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others.

In *Crowley v. Christensen*, 137 U. S. 86, 137 U. S. 89, we said:

"The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community. Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's own will. It is only freedom from restraint under conditions essential to the equal enjoyment of the same right by others. It is then liberty regulated by law."

So what gives private employers the right to mandate vaccines? Ohio, and most other states, are "at will employment" states. Private enterprises can fire you for almost any reason, or no reason; they just can't fire you for illegal reasons (race, religion, sex, etc.) (protected class status).

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VACCINE MANDATES

Call Your State Representatives !

THE OHIO HOUSE OF REPRESENTATIVES
134TH GENERAL ASSEMBLY

MEMBERS COMMITTEES SESSION LEGISLATION NEWS ABOUT RESOURCES MY OHIO LEGISLATURE

House Bill 248 - 134th General Assembly

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Primary Sponsors [Summary](#) | [Status](#) | [Votes](#) | [Committee](#)



Jennifer Gross
District 52 | R

Enact Vaccine Choice and Anti-Discrimination Act [Long Title +](#)



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    graph LR
      subgraph House
        H1[Introduced In House] --> H2[In House Committee]
        H2 --> H3[Reported By Committee]
        H3 --> H4[Passed By House]
      end
      subgraph Senate
        S1[Introduced In Senate] --> S2[In Senate Committee]
        S2 --> S3[Reported By Committee]
        S3 --> S4[Passed By Senate]
      end
      H4 --> G[Sent To The Governor]
      S4 --> G
  
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Currently still in Health Committee - had 6th hearing 8/24/21.

Contact your state representatives first, then your state senator.

Bills to prohibit mask mandates in schools:

HB 400 - Introduced 8/24/21

SB 209 - Introduced 7/13/21

What Are My Options ?



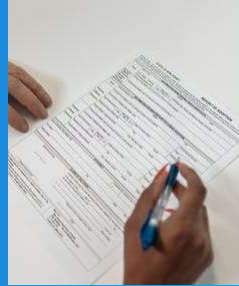
Quit

Facing this same issue at another employer is likely to increase.



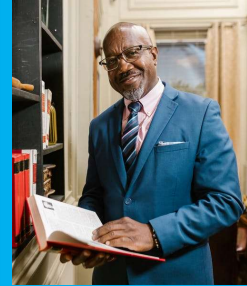
Get Vaccinated

Subject to resulting risk and violations of sincere religious beliefs.



Apply for Exemption

Current exemptions only for medical/disability or religious conviction.



Stand Your Ground

Engage in a methodical approach designed to prevail legally.

If a religious exemption is offered, you generally must follow that process first. Also, if alleging discrimination, you must file a complaint with OCRC and/or EEOC, and only if that process fails, can you file suit on any kind of discrimination grounds.

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The way to
get started
is to quit
talking and
begin
doing.

Walt Disney

Best Legal Strategy

Applying for Religious Exemption

- Title VII of Civil Rights Act prohibits religious discrimination in employment
- Ohio R.C. Chapter 4112 prohibits religious discrimination in employment
- Request and complete the religious exemption form, stating your “sincerely held religious belief”

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COVID-19 VACCINE MANDATES

Know Your Rights



EQUAL EMPLOYMENT OPPORTUNITY IS THE LAW

The Ohio Civil Rights Act protects applicants and employees of private employers, state, county and local government, educational institutions, labor organizations, employment agencies and personnel placement services from unlawful discriminatory employment practices.

Race and Color

Ohio law prohibits discrimination on the basis of race or color in hiring, promotion, tenure, discharge, pay, fringe benefits, job training, classification, referral, terms, conditions and privileges of employment, or any other matter directly or indirectly related to employment.

In addition, any facially neutral employment policy or practice that results in a discriminatory impact on the basis of race or color is a prohibited form of discrimination unless such policy or practice is job-related and based upon business necessity.

National Origin and Ancestry

Ohio law prohibits discrimination on the basis of national origin or ancestry in hiring, promotion, tenure, discharge, pay, fringe benefits, job training, classification, referral, terms, conditions and privileges of employment, or any other matter directly or indirectly related to employment.

In addition, any policy or practice tending to preclude the use of any language in the workplace is a prohibited form of discrimination unless such limitation or prohibition is job-related and based upon business necessity.

Military Status

Ohio law prohibits discrimination on the basis of military status in hiring, promotion, tenure, discharge, pay, fringe benefits, job training, classification, referral, terms, conditions and privileges of employment, or any other matter directly or indirectly related to employment.

In addition, employees who leave employment to perform military service, which includes the performance of duty, on a voluntary or involuntary basis, in a uniformed service, under competent authority, must be reemployed upon conclusion of such service.

Harassment

Ohio law prohibits harassment in the workplace on any basis set forth herein, which includes the creation of a racially or sexually hostile work environment, verbally or physically abusive treatment, and requiring submission to sexual advances as a condition of employment, continued employment or promotion.

In addition, all reasonable steps should be taken to prevent and promptly correct harassment in the workplace, which includes the establishment of a policy against harassment and a procedure for receiving, investigating and remedying complaints of workplace harassment.

The Ohio Civil Rights Commission (OCRC) investigates complaints of discrimination and harassment in employment. Complaints must be filed with the OCRC within six months of the last act of discrimination or harassment.

Sex and Pregnancy

Ohio law prohibits discrimination on the basis of sex or pregnancy in hiring, promotion, tenure, discharge, pay, fringe benefits, job training, classification, referral, terms, conditions and privileges of employment, or any other matter directly or indirectly related to employment.

In addition, women affected by pregnancy, childbirth or related medical condition must be afforded leave for a reasonable period of time and may not be discharged under a policy providing insufficient or no leave.

Disability

Ohio law prohibits discrimination on the basis of disability in hiring, promotion, tenure, discharge, pay, fringe benefits, job training, classification, referral, terms, conditions and privileges of employment, or any other matter directly or indirectly related to employment.

In addition, applicants and employees must be provided with a reasonable accommodation for their disability, except when the accommodation imposes an undue hardship.

Age

Ohio law prohibits discrimination against persons 40 years of age or older on the basis of age in hiring, promotion, tenure, discharge, pay, fringe benefits, job training, classification, referral, terms, conditions and privileges of employment, or any other matter directly or indirectly related to employment.

Religion

Ohio law prohibits discrimination on the basis of religion in hiring, promotion, tenure, discharge, pay, fringe benefits, job training, classification, referral, terms, conditions and privileges of employment, or any other matter directly or indirectly related to employment.

In addition, applicants and employees must be provided with a reasonable accommodation for religious beliefs and practices, except when the accommodation imposes an undue hardship.

Retaliation

Ohio law prohibits retaliation against any person because that person has opposed any unlawful discriminatory practice, or because that person has made a charge, testified, assisted or participated in any manner in any investigation, proceeding or hearing.

ENFORCEMENT

For assistance in filing a complaint, or for any other information on the Civil Rights Act, please call 1-888-278-7188 or (614) 752-2395 (TTY), or visit our website at: ocrc.ohio.gov

Publication Date: 01-2014, Issue: 04-2014

Pfizer received full FDA approval 8/23/21. Others expected within weeks. On 9/2/21, Moderna said it initiated its submission to the U.S. Food and Drug Administration for the evaluation of a booster dose of its Covid-19 vaccine.

Most lawsuits challenging mandatory vaccines on grounds related to constitutional rights and personal liberties, have failed, or are failing. However, all employers with 15 or more employees are subject to most provisions of Title VII of the Civil Rights Act. Title VII prohibits discrimination on the basis of race, color, religion, sex and national origin.

Ohio law actually has more limitations for employers than Title VII. Ohio requires a “bona fide occupational qualification (this is also provided for in the administrative rules to Title VII, but, in Ohio, you can likely trigger a civil rights complaint if you don’t have a pre-certified BFOQ - which has to be posted with the job).

University students have somewhat weaker protections, but that equation changes if a student has a work-study program, and can be considered an employee of the university. Military service members face the biggest hurdles, but there is some ground being gained there (insofar as avoiding dishonorable discharge).

When requesting a religious exemption, the sincerity of an employee’s stated religious belief is usually not in dispute and is generally presumed or easily established. Nor are the motives or reasons for a person’s belief at issue. Even newly adopted beliefs should not be called into question. Further, religious belief is broadly interpreted. An employer must have an “objective basis” for calling into question the sincerity of an employee’s religious belief.

Fetal Cell Lines

All currently available COVID-19 vaccines were developed with, produced by, or tested on, fetal cell lines grown from cells taken from aborted babies several years ago.



Pfizer/BioNTech

Moderna

Johnson & Johnson

AstraZeneca

Sputnik V

Vaxart

Altimmune

COVAXX/United Bio-medical

Medicago

Novavax

PittCoVacc

Rega

Walter Reed

Sanofi/Translate Bio

Inovio

Arcturus

Imperial College

Providence

CoronoVac

CanSino

ImmunityBio/
NantKwest

Institut Pasteur/
Themis/Merck

Anhui Zhifei

Clover

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The most straight forward religious belief pertaining to these vaccines is that of being pro-life, and opposed to abortion.

Not the Only Approach

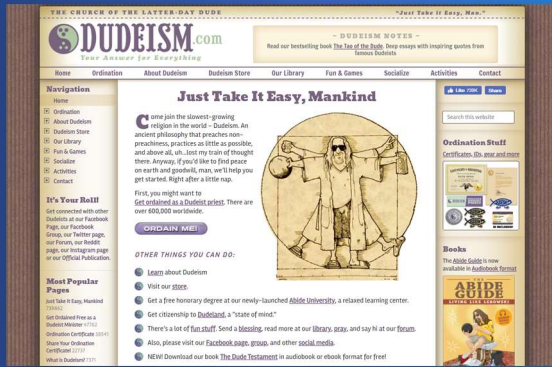
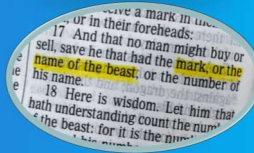


Image of God



- Genesis 1:26-27
- 1 Corinthians 11:7

Mark of the Beast



- Revelation 13:17
- Acts 4:12

Fear Not



- Isaiah 41:10
- 2 Timothy 1:7
- 1 John 4:18
- Proverbs 29:25
- Galatians 6:7-8

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**from an exemption application:

"In this country, we have freedoms and rights [given to us by God]. I have the freedom to make sound choices, which is my [God-given] right, especially regarding my own body. Again, it is my sincerely held religious belief to make the choice of not accepting the [...] vaccine. Without these freedoms, there can be no ethical [religious] decision making."

Image of God - mask mandates

Mark of the Beast - The Mask is the Mark of the Beast in Larval Form

Do Not be a Fear-Monger!

OSHA Instruction STD 1-6.5 June 20, 1994 Directorate of Compliance Programs

Subject: Exemption for Religious Reasons from Wearing Hard Hats

Religious Freedom Restoration Act of 1993, P.L. 103-141 (RFRA)

c. Under RFRA, Federal, State and local governments may not substantially burden a person's exercise of religion unless they demonstrate that application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

5. OSHA has decided to grant an exemption from citations to employers of employees who, for reasons of personal religious convictions, object to wearing hard hats in the workplace. There may be, however, circumstances in the future that would involve a hard hat hazard sufficiently grave to raise a compelling governmental interest for requiring the wearing of hard hats, notwithstanding employee personal religious convictions.

I. Guidelines. OSHA staff shall adhere to the following guidelines.

a. There shall be no citations or other enforcement actions against employers for violations of hard hat

standards when their employees fail to wear hard hats due to personal religious convictions.

d. All instances of an employee's refusal to wear a hard hat, or any other personal protective equipment, due to the employee's personal religious conviction, shall be reported to the Regional Office so that such instances of refusal can be monitored.

e. Whenever a citation is being considered because of an employee's refusal to use personal protective equipment (other than a hard hat) due to a personal religious conviction, the National Office shall be contacted prior to the issuance of the citation.

What is the Process ?



Ohio Civil Rights Commission
<https://crc.ohio.gov/>



Initiating civil rights complaints, both Federally and for Ohio, are extremely easy to do, you do not need a lawyer to do that. A lawyer can assist you, but one is not needed. By filing a civil rights complaint, you buy extra time to stay in your job. Only if a civil rights complaint does not succeed, or if you are terminated, would you need to consider filing a lawsuit.

<https://www.crc.ohio.gov/FilingaCharge/ChargeFilingProcedure.aspx>

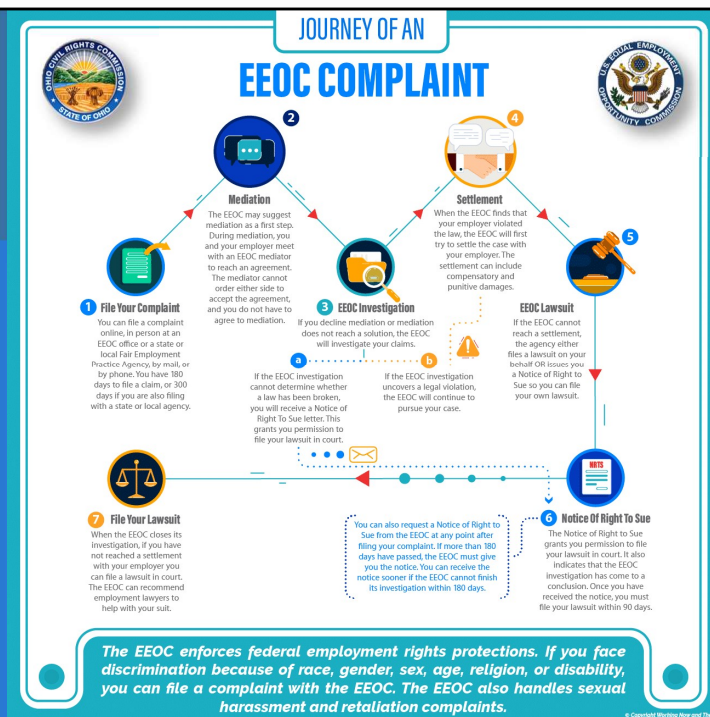
If your complaint includes a federal law violation, OCRC will file your complaint with the EEOC, but OCRC usually keeps and processes the complaint. If you have any doubt about whether to file your complaint with a federal or state agency, we recommend that you file your complaint with both.

Ohio law now generally (but not always) requires you to file a complaint with the OCRC and receive a notice of right to sue before you can file a lawsuit in state court.

An employer generally should not say “you can’t discuss this.” Prohibiting employee discussions of an ongoing investigation is allowed only if the employer can show that it has a legitimate business justification outweighing the employees’ rights. So long as it doesn’t interfere with work, or intrudes on another employee’s rights, an employer really can’t enforce a blanket “no talking” policy. In fact, the government frowns on this from as far back as the days when unions were trying to organize workers, and companies tried to shut people up.

What is the Process ?

1. File Complaint
2. Mediation
3. Investigation
4. Settlement
5. EEOC Lawsuit
6. Notice of Right to Sue
7. State or Federal Lawsuit



If you've faced discrimination, sexual harassment, or retaliation at work, you can file an EEOC complaint for free. This guide walks through the steps of filing an EEOC complaint, including the EEOC investigation and what to do if the EEOC declines your complaint.

1. File Your Complaint

The EEOC enforces federal employment rights protections. If you face discrimination because of race, gender, sex, age, religion, or disability, you can file a complaint with the EEOC. The EEOC also handles sexual harassment and retaliation complaints.

The EEOC makes it easy to file a complaint. You can file your complaint online or in person at an EEOC office. You can also file at any state or local Fair Employment Practice Agency, by mail, or by phone. You have 180 days to file a claim, or 300 days if you are also filing with a state or local agency.

2. Mediation

Before investigating your complaint, the EEOC may suggest mediation between you and your employer. The process aims to resolve the dispute without an investigation or lawsuit.

During mediation, you and your employer meet with an EEOC mediator to work toward an agreement. The mediation is not legally binding in the same way as a lawsuit. The mediator cannot order either side to accept the agreement.

You have the right to refuse mediation. If you decline to participate, the EEOC will open an investigation

3. EEOC Investigation

If you decline mediation or the mediation process does not reach a solution, the EEOC will open an investigation. During this step, the EEOC will investigate your claims. They may interview your employer, visit your workplace, and interview witnesses. The EEOC can also request personnel files, company policies, and

other documents that may prove your case.

If the EEOC investigation cannot determine whether a law has been broken, you will receive a Notice of Right to Sue letter. This letter lets you file a lawsuit in court against your employer. In this case, your case skips to step 6.

If the EEOC investigation uncovers a legal violation, the EEOC will pursue a settlement for your case.

4. Settlement

During the investigation, the EEOC may uncover evidence that your employer broke the law. The EEOC can then pursue a settlement with your employer. The settlement can include compensatory and punitive damages.

5. EEOC Lawsuit

The EEOC may not be able to reach a settlement with your employer. In this case, the EEOC can file a lawsuit on your behalf. Even though the EEOC files the suit, you may benefit from having your own lawyer to help you navigate the process.

The EEOC can also choose to issue you a Notice of Right to Sue so that you can file your own lawsuit.

6. Notice of Right to Sue

After the EEOC investigation, the EEOC will issue you a Notice of Right to Sue. This letter gives you permission to file your lawsuit in court. The notice also acts as the end of the EEOC's investigation of your claim.

A Notice of Right to Sue says nothing about the strength of your case. It simply means the EEOC will not be able to conclude the case itself.

Once you have received the notice, you must file your lawsuit within 90 days. For that reason, it's a good idea to reach out to employment lawyers by the time you file the EEOC complaint.

You can also request a Notice of Right to Sue from the EEOC at any point after filing your complaint. If more than 180 days have passed, the EEOC must give you the notice. You can receive the notice sooner if the EEOC cannot finish its investigation within 180 days.

7. File Your Lawsuit

At the close of the EEOC investigation, you can choose to file your own lawsuit. EEOC investigations may end with a settlement negotiated during mediation or by the EEOC after its investigation. If neither of these options works, you can file a lawsuit.

An employment lawyer can help you navigate the process of filing an EEOC claim and then filing a lawsuit. The EEOC can also recommend employment lawyers to help with your suit.

How Much, and How Long ?

It depends . . .



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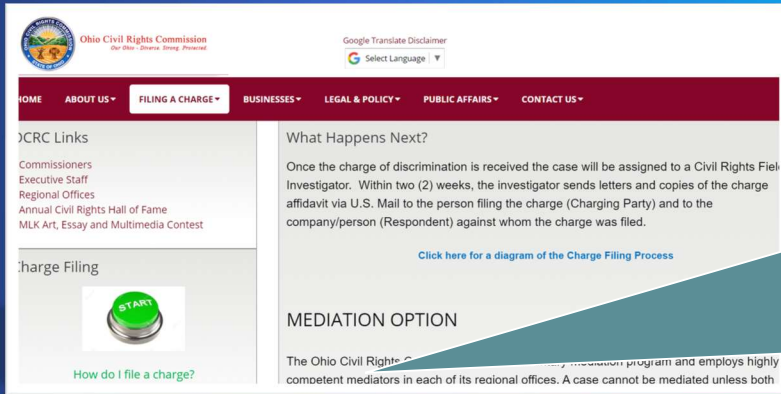
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Civil Rights lawsuits contain provisions in the law for recovering attorneys' fees if you prevail. Therefore, some firms will take cases on a contingency basis. However, many firms still require clients to cover out of pocket expenses, or ask for a hybrid contingency arrangement.

Given the rapidly developing law in this area, some firms are convinced that the likelihood of prevailing is extremely low. We are optimistic though, about the strategy outlined in this presentation.

How long can it take? As in all litigation, you can't control the other side.

How Much, and How Long ?



Based on analyses of the information collected, the OCRC will issue a written recommendation as to whether there is a violation of Ohio's Laws Against Discrimination.

The Ohio Civil Rights Commission has one year to complete the investigation.

Within two (2) weeks, the investigator sends letters and copies of the charge affidavit via U.S. Mail to the person filing the charge (Charging Party) and to the company/person (Respondent) against whom the charge was filed.

How Much, and How Long ?



How long the investigation takes depends on many factors, including the amount of information that needs to be gathered and analyzed.

On average, we take approximately 10 months to investigate a charge.

Within 10 days of the filing date of your charge, we will send a notice of the charge to the employer.

Thank You

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