

Unverified EEOC Filing Not Good Enough, Says Northern District Of Indiana

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As many employers know, before proceeding to court, Title VII discrimination lawsuits must first be filed with the Equal Opportunity Employment Commission (EEOC) or a parallel state agency. Aiming to protect employees by ensuring that a charging party is at least willing to make his or her claims subject to the penalties for perjury, federal statutory law further requires that the agency charge be filed “in writing under oath or affirmation[.]” 42 U.S.C. § 2000e-5(b).

It is this less well known requirement that recently tripped up a would-be plaintiff in the Northern District of Indiana. In *Gray v. Morrison Management Specialists, Inc.*, which can be [accessed here](#), the district court dismissed a federal complaint because the plaintiff failed to file a verified charge with the EEOC. Gray, a chef at Morrison’s, was terminated 18 days prior to beginning maternity leave. Gray alleged gender/pregnancy discrimination while Morrison’s asserted that Gray was let go because she licked and reused a spatula (a claim Gray denied). Attempting to file a discrimination charge with the EEOC, Gray printed and filled out an EEOC intake questionnaire from the internet. Although signed and dated, the questionnaire was not verified, meaning the claims were not subject to penalties of perjury. The EEOC later forwarded her a completed formal charge of discrimination and asked that it be signed and dated. Gray did sign and date the charge before a notary public, but the charge was never returned to the EEOC. Morrison was notified that a charge had been filed against it, but was never asked to respond to the charge. Two months later, the EEOC dismissed Gray’s case and issued a right to sue notice, resulting in a federal complaint being filed by Gray.

Notwithstanding the EEOC’s assertion that a proper charge had been filed via the intake questionnaire (which Morrison never saw until well after the federal lawsuit had be filed), the district court cited Third, Fourth, and Eleventh Circuit case law analyzing the issue, holding that “the verification requirement is a statutory prerequisite, and failure to meet it means the suit may not proceed.” Although Gray could have amended her charge for verification purposes while the suit was still pending at the EEOC, the dismissal of the case and issuance of the right to sue notice cut off that ability to amend. This case, which follows another blog post I made last month regarding [administrative exhaustion](#), serves as a good reminder of the procedural defenses available to employers in discrimination cases. While employers are often well-versed in the facts and ready to defend a case on its merits, good employment counsel may be able to develop additional defenses that may not be readily apparent.

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