

Dissemination of Information to the Public About EEOC Cases in Litigation¹

A. Legal Restrictions on Disclosure

Title VII, the ADA, the PWFA, and GINA prohibit disclosure to the public of charges filed with the EEOC, and of information obtained in the agency's investigation of charges, prior to the institution of a proceeding under these statutes involving such information. *See* 42 U.S.C. §§ 2000e-5(b), 2000e-8(e) (incorporated into the ADA, GINA, and PWFA by 42 U.S.C. §§ 12117, 2000ff-6, 2000gg-2). These statutes also prohibit the EEOC from making public, and all persons from using as evidence in a subsequent proceeding (absent written consent of the other persons concerned), anything said or done during and as a part of conciliation. *Id.* at § 2000e-5(b). The Privacy Act contains additional limits on the disclosure of charge files and other government records under all statutes enforced by the EEOC. *See* 5 U.S.C. § 552a. The EEOC has promulgated rules to implement the confidentiality provisions of Title VII and the Privacy Act, explaining the circumstances and procedures under which disclosure of charge material is permitted. *See* 29 C.F.R. § 1610.17 (FOIA rule); § 1611.13 (Privacy Act rule on charge files); EEOC Compl. Man., Sec. 83 (charge file disclosure procedures). Information on the Privacy Act and the EEOC's System of Record Notices can be found on the EEOC's [privacy page](#).

B. Ethical Restrictions on Disclosure

After a lawsuit has been filed, professional ethics rules impose limitations on publicity regarding the case. American Bar Association Model Rule of Professional Conduct (ABA MRPC) 3.6, Trial Publicity, addresses the type of information appropriate to disclose about a case in litigation. In sum, the rule provides that a lawyer participating in litigation of a matter should refrain from making extrajudicial statements that the lawyer knows or reasonably should know will become public information and will have a substantial likelihood of materially prejudicing an adjudicative proceeding. The ethical rules on disclosure apply to both written and oral comments about a case and include statements on social media or other electronic platforms. All jurisdictions have adopted some version of the ABA MRPC. EEOC attorneys adhere to the rules applicable in the jurisdictions in which they are admitted or litigate.

C. Statements to the Press

The EEOC is a government agency charged with litigating in the public interest, and its litigation activities are carried out in the public domain. To enhance transparency and fulfill its responsibility to inform the public about its litigation activities, it is EEOC policy to issue a press release each time the EEOC files a case in court, resolves a lawsuit, or experiences other

¹ This document was created on May 21, 2024.

significant litigation developments. The EEOC will give appropriate attention to the privacy concerns of the charging party and other individuals affected by the alleged discriminatory conduct when drafting a press release. Unless the express consent of the individual has been obtained, the individual's name or other personally identifying characteristics are not included in a press release.