

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

HOW TO FILE YOUR EMPLOYMENT DISCRIMINATION CASE

(Check the Western District's web site at www.nywd.uscourts.gov for copies of many of the Court's forms and other useful information.)

IMPORTANT: This packet includes the employment discrimination complaint forms and the additional materials you have requested. You must fill out accurately the correct number of forms and submit them to the Court. If you fill out the forms incorrectly and/or send the wrong number of forms, they will be returned to you.

Please be aware that pursuant to the conversion of Federal Courts to electronic filing, all material filed in this Court is available for review via the INTERNET to anyone who has a PACER account. Please take this into consideration in the manner in which you file your case.

I. COMPLAINT

1. To start an action, you must file an original and one copy of your complaint for each defendant you name. Keep one copy of the complaint for your own personal file.
2. Fill out the complaint form completely, supplying all requested information in the spaces provided. *All copies of the complaint must be identical to the original.*
3. Your complaint must be legibly handwritten or typewritten. If you need additional space to answer a question, you should add an additional blank page. *However, additional pages should be used only if absolutely necessary; your complaint should be specific but as brief as possible. See Fed.R.Civ.P. 8(a).*
4. You will note that you are required to give facts. *The complaint should not contain legal arguments or citations to cases.* Just tell your story.
5. Attach to each completed complaint one copy of **each** of the following documents:
 - (a) Original complaint filed with the Equal Employment Opportunity Commission (EEOC);
 - (b) Notice of the Right to Sue Letter from the EEOC;
 - (c) Determination made by the New York State Division of Human Rights and/or the EEOC on your charges.

Note: Failure to attach these documents will result in delay in the initiation of your action.
6. Sign each complaint before a notary public, if possible. If not, affirm the truth of the allegations and sign under "penalty of perjury."

II. FILING FEES AND "POOR PERSON" STATUS 28 U.S.C. § 1915(e)

1. In order to file the completed complaint and other necessary papers, you must pay a filing fee by personal check, money order, certified check, or official check made out to "Clerk, United States District Court". The fee can be located on our public web site or provided to you by a member of the Clerks Office. You may also file a request that the Court direct service by the U.S. Marshal at your expense (\$8.00 per complaint). You may ask the Clerk's Office for the form for making such a request.
2. If you are unable to pay this filing fee, fill out the "Application to Proceed *In Forma Pauperis*" and submit the original to the Court and retain a copy for your files. The Court will evaluate the information you submit, and then advise you by order whether or not you will have to pay the fee. Your complaint will not be served on the defendants by the U.S. Marshal until the Court has granted you *in forma pauperis* status. If such status is denied, you will be given several weeks to pay the filing fee.

III. SUMMONS

Fill out the "Summons for a Civil Action" (one original and one copy for each defendant) as follows:

- (a) Print your name as plaintiff above the "v."; print the names of all defendants below the "v.";
- (b) Print **one** defendant's name and address after the "To." You must complete a **separate** summons for **each** defendant, if there are more than one defendant in your case.
- (c) Print: (1) your own name; (2) "Pro Se" and (3) your address in the line following, "You are hereby summoned and requested to serve upon"
- (d) Cross out "Plaintiff's Attorney" and write "Pro Se" after your name
- (e) Put the proper number in the space before "days after service of this summons"; defendants generally have **20** days to file an answer after they are served with the complaint; United States government agency and/or U.S. employee defendants have **60** days.

IV. UNITED STATES MARSHAL'S SERVICE FORMS

Fill out one United States Marshal's form for each defendant, according to these instructions. Do not make any entries other than those indicated below:

- (a) Do not detach or remove any of the copies from this form;
- (b) Plaintiff: print or type your name;
- (c) Defendant: print or type all of the defendant's name;
- (d) Court number: leave blank
- (e) To the right of the large black arrow: print or type the name of **one** of the defendants on each form. A separate form must be filled out for **each** defendant. Thus, if you have one defendant, you will fill out one form, if you have more than one defendant, you will fill out one additional form for each additional defendant.
- (f) Type of writ: print or type "Summons and Complaint";
- (g) In block marked "Send Notice of Service Copy to Name and Address below", print or type your name and address; and
- (h) In block marked "Name and Signature of Attorney or Other Originator", sign your name, followed by "Pro Se", provide your telephone number and date the form.

IMPORTANT: If you cannot pay the filing fee and are applying for permission to proceed as a poor person, no papers will be served upon the defendants until the District Judge has granted you permission to proceed as a poor person and directed the United States Marshal to serve the complaint.

V. CIVIL COVER SHEET

Fill out the "Civil Cover Sheet" according to these instructions:

- I.(a) Print your name as Plaintiff in the box provided; to its right print all of the defendants' names as Defendants;
- I.(b) Print your county of residence in the space provided; to its right print the county of residence of the first named defendant;
- I.(c) Print "Pro Se" under Plaintiff's Attorney; to its right leave the Defendant's Attorney box blank;
- II. Basis for Jurisdiction: check Box No. 3: Federal Question;
- III. Citizenship of Principal Parties: leave blank;

- IV. Cause of Action: print "42 U.S.C. § 2000e-5" and "Title VII";
- V. Nature of Suit: fill in Box No. 442, "Civil Rights", "Employment";
- VI. Origin: check Box No. 1: Original Proceeding;
- VII. Requested in Complaint: leave blank;
- VIII. Related Case(s) if any: if you have ever filed another federal lawsuit relating to employment discrimination, write the name of the court and the docket number; and
- IX. Date and sign your name followed by "Pro Se" on the last line.

VI. GENERAL INFORMATION

1. Your complaint can be brought in this court only if one or more of the named defendants is located in this district. *See* 28 U.S.C. § 1391. Further, you must file a separate complaint for each claim that you have unless they are all related to the same issue or incident.
2. Except for your complaint, you **must** send a copy of every legal paper that you send to the Court to the defendant's attorney as well. The Court will serve only your complaint, not any subsequent papers.
3. After your complaint has been filed, all legal papers submitted to the Court in your case must include your case number and a signed statement that you have sent a copy of your pleading to each defendant or the defendant's attorney. The Clerk's Office and the Western District Court web site can provide you with instructions and forms for completing the Affidavit of Service which must accompany every paper you wish to file in the Court.
4. All papers filed with the Court, and all correspondence regarding your case, should bear the file number and initial of the assigned judge.
5. Other than the documents described above in Section I(5), you do not need to attach "exhibits" to your original complaint. If you do, however, you must submit enough copies for all the copies of the complaint. Otherwise, they will not be served on the defendants.
6. Requests for assigned counsel may be made pursuant to 42 U.S.C. § 2000e-5(f)(1). However, assignment of counsel is within the discretion of the judge and will generally only be made where the judge believes a lawyer is absolutely necessary. *See, e.g., Jenkins v. Chemical Bank*, 721 F.2d 876 (2d Cir. 1983). The Clerk's Office and the Western District Court web site can provide you with instructions and forms for bringing a motion for counsel.

7. You **must** notify the Clerk's Office and all defendants (or their attorneys) of any address changes. **Failure to do so may result in dismissal of your complaint pursuant to Local Rule of Civil Procedure 5.3(d).**
8. The Clerk of Court will not file your complaint unless it conforms to these instructions and to these forms pursuant to Local Rules of Civil Procedure 5.2 and 5.3.
9. If there is more than one plaintiff, each and every plaintiff must submit a Motion to Proceed *In Forma Pauperis*, and each plaintiff must sign the complaint individually. After the complaint has been filed, one plaintiff may submit a document to be filed on behalf of all the plaintiffs **only** if **all** of the other plaintiffs have signed a statement giving that plaintiff the authority to submit documentation on their behalf. Otherwise, each plaintiff must sign all documents submitted to the court.

VII. MAILING INSTRUCTIONS

Finally, bring or mail all of the above papers to either one of the addresses below:

United States District Court Clerk
200 U.S. Courthouse
2 Niagara Square
Buffalo, New York 14202-3498
(716) 551-1500 or (716) 551-1700

United States District Court Clerk
2120 U.S. Courthouse
100 State Street
Rochester, New York 14614-1387
(585) 613-4000

VIII. PRO SE STAFF ATTORNEYS

If you have general questions about procedures, you may contact the Pro Se Staff Attorneys at one of the above addresses for information. You may also ask the Pro Se Staff Attorneys for current information about how to obtain forms from the Court web site and how to access the Federal Rules and other legal information on the Internet. (Most public libraries now offer Internet access to library patrons.)

NOTE: The Pro Se Staff Attorneys can only provide technical and procedural information and certain forms such as for filing motions and affirming service; they cannot assist you with the substantive law governing your lawsuit or give you legal advice about your case.