

**Equal Employment Opportunity Comm.**

**§ 1601.28**

or used as evidence in a subsequent proceeding without the written consent of the persons concerned. This provision does not apply to such disclosures to the representatives of Federal, State or local agencies as may be appropriate or necessary to the carrying out of the Commission's functions under title VII, the ADA, or GINA: *Provided, however,* That the Commission may refuse to make disclosures to any such agency which does not maintain the confidentiality of such endeavors in accord with this section or in any circumstances where the disclosures will not serve the purposes of the effective enforcement of title VII, the ADA, or GINA.

(b) Factual information obtained by the Commission during such informal endeavors, if such information is otherwise obtainable by the Commission under section 709 of title VII, for disclosure purposes will be considered by the Commission as obtained during the investigatory process.

[42 FR 55388, Oct. 14, 1977, as amended at 56 FR 9625, Mar. 7, 1991; 74 FR 63982, Dec. 7, 2009]

**PROCEDURE CONCERNING THE  
INSTITUTION OF CIVIL ACTIONS**

**§ 1601.27 Civil actions by the Commission.**

The Commission may bring a civil action against any respondent named in a charge not a government, governmental agency or political subdivision, after thirty (30) days from the date of the filing of a charge with the Commission unless a conciliation agreement acceptable to the Commission has been secured: *Provided, however,* That the Commission may seek preliminary or temporary relief pursuant to section 706(f)(2) of title VII, according to the procedures set forth in §1601.23 of this part, at any time.

**§ 1601.28 Notice of right to sue: Procedure and authority.**

(a) *Issuance of notice of right to sue upon request.* (1) When a person claiming to be aggrieved requests, in writing, that a notice of right to sue be issued and the charge to which the request relates is filed against a respondent other than a government, governmental agency or political subdivision,

the Commission shall promptly issue such notice as described in §1601.28(e) to all parties, at any time after the expiration of one hundred eighty (180) days from the date of filing of the charge with the Commission, or in the case of a Commissioner charge 180 days after the filing of the charge or 180 days after the expiration of any period of reference under section 706(d) of title VII as appropriate.

(2) When a person claiming to be aggrieved requests, in writing, that a notice of right to sue be issued, and the charge to which the request relates is filed against a respondent other than a government, governmental agency or political subdivision, the Commission may issue such notice as described in §1601.28(e) with copies to all parties, at any time prior to the expiration of 180 days from the date of filing of the charge with the Commission; provided that the District Director, the Field Director, the Area Director, the Local Director, the Director of the Office of Field Programs or upon delegation, the Director of Field Management Programs has determined that it is probable that the Commission will be unable to complete its administrative processing of the charge within 180 days from the filing of the charge and has attached a written certificate to that effect.

(3) Issuance of a notice of right to sue shall terminate further proceeding of any charge that is not a Commissioner charge unless the District Director; Field Director; Area Director; Local Director; Director of the Office of Field Programs or upon delegation, the Director of Field Management Programs; or the General Counsel, determines at that time or at a later time that it would effectuate the purpose of title VII, the ADA, or GINA to further process the charge. Issuance of a notice of right to sue shall not terminate the processing of a Commissioner charge.

(4) The issuance of a notice of right to sue does not preclude the Commission from offering such assistance to a person issued such notice as the Commission deems necessary or appropriate.

(b) *Issuance of notice of right to sue following Commission disposition of charge.* (1) Where the Commission has found

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reasonable cause to believe that title VII, the ADA, or GINA has been violated, has been unable to obtain voluntary compliance with title VII, the ADA, or GINA, and where the Commission has decided not to bring a civil action against the respondent, it will issue a notice of right to sue on the charge as described in § 1601.28(e) to:

(i) The person claiming to be aggrieved, or,

(ii) In the case of a Commissioner charge, to any member of the class who is named in the charge, identified by the Commissioner in a third-party certificate, or otherwise identified by the Commission as a member of the class and provide a copy thereof to all parties.

(2) Where the Commission has entered into a conciliation agreement to which the person claiming to be aggrieved is not a party, the Commission shall issue a notice of right to sue on the charge to the person claiming to be aggrieved.

(3) Where the Commission has dismissed a charge pursuant to § 1601.18, it shall issue a notice of right to sue as described in § 1601.28(e) to:

(i) The person claiming to be aggrieved, or,

(ii) In the case of a Commissioner charge, to any member of the class who is named in the charge, identified by the Commissioner in a third-party certificate, or otherwise identified by the Commission as a member of the class, and provide a copy thereof to all parties.

(4) The issuance of a notice of right to sue does not preclude the Commission from offering such assistance to a person issued such notice as the Commission deems necessary or appropriate.

(c) The Commission hereby delegates authority to District Directors, Field Directors, Area Directors, Local Directors, the Director of the Office of Field Programs, or Director of Field Management Programs or their designees, to issue notices of right to sue, in accordance with this section, on behalf of the Commission. Where a charge has been filed on behalf of a person claiming to be aggrieved, the notice of right to sue shall be issued in the name of the per-

son or organization who filed the charge.

(d) *Notices of right to sue for charges against Governmental respondents.* In all cases where the respondent is a government, governmental agency, or a political subdivision, the Commission will issue the notice of right to sue when there has been a dismissal of a charge. The notice of right to sue will be issued in accordance with § 1601.28(e). In all other cases where the respondent is a government, governmental agency, or political subdivision, the Attorney General will issue the notice of right to sue, including the following cases:

(1) When there has been a finding of reasonable cause by the Commission, there has been a failure of conciliation, and the Attorney General has decided not to file a civil action; and

(2) Where a charging party has requested a notice of right to sue pursuant to § 1601.28(a)(1) or (2). In cases where a charge of discrimination results in a finding of cause in part and no cause in part, the case will be treated as a “cause” determination and will be referred to the Attorney General.

(e) *Content of notice of right to sue.* The notice of right to sue shall include:

(1) Authorization to the aggrieved person to bring a civil action under title VII, the ADA, or GINA pursuant to section 706(f)(1) of title VII, section 107 of the ADA, or section 207 of GINA within 90 days from receipt of such authorization;

(2) Advice concerning the institution of such civil action by the person claiming to be aggrieved, where appropriate;

(3) The charge;

(4) The Commission’s decision, determination, or dismissal, as appropriate.

[42 FR 55388, Oct. 14, 1977, as amended at 44 FR 4669, Jan. 23, 1979; 45 FR 73037, Nov. 4, 1980; 47 FR 46275, Oct. 18, 1982; 48 FR 19165, Apr. 28, 1983; 49 FR 13024, Apr. 2, 1984; 49 FR 13874, Apr. 9, 1984; 52 FR 26959, July 17, 1987; 54 FR 32061, Aug. 4, 1989; 56 FR 9624, 9625, Mar. 7, 1991; 71 FR 26829, May 9, 2006; 74 FR 63982, Dec. 7, 2009; 85 FR 65218, Oct. 15, 2020]

§ 1601.29 Referral to the Attorney General.

If the Commission is unable to obtain voluntary compliance in a charge involving a government, governmental agency or political subdivision, it shall