

Discrimination

Employment discrimination is the practice of disparate treatment, harassment, denial of a reasonable accommodation, or retaliation of a person or group of people because of their membership in a legally protected category. Examples of protected categories are: race, color, creed, religion, sex, ancestry, disability, or national origin. Each state has passed laws and rules to protect your workplace rights: this page covers South Dakota employment discrimination. One of the purposes of the South Dakota Human Relations Act is to protect workers in South Dakota from unlawful discrimination in employment. Read below to learn more about South Dakota employment law and how the law protects you.

What kinds of discrimination are against state law in South Dakota?

South Dakota's Human Relations Act makes it illegal for an employer to refuse to hire a person, to discharge or lay off an employee, harass or to treat persons differently in the terms and conditions of employment because of race, color, creed, religion, sex, ancestry, disability or national origin.

How do I file a discrimination claim in South Dakota?

Discrimination claims can be filed with the South Dakota Department of Labor and Regulation Division of Human Rights (SDDHR). If a claim involves the employment practices of an entity employing 15 or more persons, the claim is also filed by SDDHR with the Federal Equal Employment Opportunity Commission (EEOC) under Title VII of the Civil Rights Act or the Americans With Disabilities Act. Filing a claim with both agencies is unnecessary. Doing so will create a duplication of claims. The SDDHR is under contract with the EEOC to conduct investigations on such claims. The SDDHR and EEOC share jurisdiction if the alleged discrimination has taken place in the past 180 days. The two agencies have what is called a "work-sharing

agreement,” which means that the agencies cooperate with each other to process claims. If more 180 days have passed and the alleged discrimination has taken place in the past 300 days, you can file a claim with EEOC through SDDHR. Your claim will then be transferred to EEOC for processing. Filing a claim with both agencies is unnecessary.

More information about filing a claim with the SDDHR can be found [here](#).

What are my time deadlines?

Do not delay in contacting the SDDHR or EEOC to file a claim. There are strict time limits in which charges of employment discrimination must be filed. If you are making a charge under South Dakota Law, the SDDHR must receive your notarized Charge of Discrimination within **180 days** of the last instance of discrimination against you. If your case falls under both state and federal law jurisdiction, the SDDHR will automatically let the EEOC and your charge will be dual-filed (as a state and federal charge). If your charge is past **180 days**, your federal deadline is 300 days from the last date of discrimination. This means that if your charge is more than 180 days but less than 300 days old, the SDDHR can help you in making your formal charge, but will transfer the case directly to the EEOC. Because age discrimination is not prohibited in South Dakota SDDHR will help you in filing a case with the EEOC. Your formal charge must be received by SDDHR within 180 days of the last instance of discrimination against you. After SDDHR receives your notarized Charge of Discrimination, your case will be transferred to the EEOC for processing. However, as you might have other legal claims with shorter deadlines, do not wait to file your claim until your time limit is close to expiring. You may wish to consult with an attorney before filing your claim, if possible. Yet if you are unable to find an attorney who will help you, it is not necessary to have an attorney to file your claim with the state and federal administrative agencies.

How many employees must a company in South Dakota have to be subject to anti discrimination laws?

The South Dakota Human Relations Act applies to everyone with very few exceptions. Under federal law, an employer must have a certain number of employees to be covered by the law enforced by the EEOC. That number depends

on the employer and the kind of discrimination. For example, companies with 15 or more employees are covered by three Federal laws: Title VII of the Civil Rights Act of 1964 (Title VII), which is the primary law prohibiting employment discrimination; the Americans with Disabilities Act of 1990 (ADA), which prohibits discrimination from disability; and the Genetic Information Nondiscrimination Act of 2008 (GINA), which prohibits discrimination based on genetic information.

Companies with 20 or more employees are subject to the Age Discrimination in Employment Act of 1967 (ADEA), which is the federal law that prohibits discrimination against employees 40 years or older. Companies with four or more employees must follow the employment discrimination provisions of the Immigration Reform and Control Act of 1968, which prohibits discrimination from national origin and citizenship status. And all companies covered by the Fair Labor Standards Act, which is virtually all employers, must pay men and women equally for doing equal work, under the Equal Pay Act of 1963 (EPA). In South Dakota, companies with one or more employees are subject to the state's antidiscrimination law.

How is workplace discrimination regulated in South Dakota?

The Equal Employment Opportunity Commission (EEOC) is the federal agency that regulates workplace discrimination. You can contact the Equal Employment Opportunity Commission by calling 800-669-4000 or go to its **EEOC PUBLIC PORTAL** at <https://publicportal.eeoc.gov/>;

The Division of Human Rights enforces state antidiscrimination law in South Dakota. You can contact the Division of Human Rights at 605-773-3681.

What happens after I file a charge with the EEOC?

When your charge is filed with the EEOC and it is not dual filed, the EEOC will give you a copy of your charge with your charge number. Within 10 days, the EEOC will also send a notice and a copy of the charge to the employer. At that point, the EEOC may decide to do one of the following:

- Ask both you and the employer to take part in a mediation program
- Ask the employer to give a written answer to your charge and answer questions related to your claim, then your charge will be given to an investigator

- Dismiss the claim if your charge was not filed in time or if the EEOC does not have jurisdiction

If the EEOC decides to investigate your charge, the EEOC may interview witnesses and gather documents. Once the investigation is complete, they will let you and the employer know the result. If they decide that discrimination did not occur then they will send you a “Notice of Right to Sue.” This notice gives you permission to file a lawsuit in a court of law. If the EEOC determines that discrimination occurred, then they will try to reach a voluntary settlement with the employer. If a settlement cannot be reached, your case will be referred to the EEOC’s legal staff (or the Department of Justice in certain cases), who will decide whether, if the agency should file a lawsuit. If the EEOC decides not to file a lawsuit then they will give you a “Notice of Right to Sue.”

How long the investigation takes depends on a lot of different things, including the amount of information that needs to be gathered and analyzed. On average, it takes the EEOC nearly 10 months to investigate a charge. A charge is often able to settle faster through mediation (usually in less than 3 months).

How can I or my attorney pursue a claim in court in South Dakota?

If your case is successfully resolved by the SDDHR, it may not be necessary to hire an attorney or file a lawsuit (to resolve your case, you probably will be required as to sign a release of your legal claims). If your case is not resolved by the SDDHR or EEOC, you may need to pursue your claim in court. A federal employment discrimination case cannot be filed in court without first going to the EEOC, as discussed above, and having the EEOC dismiss your case. This process is called “exhaustion” of your administrative remedy. Exhaustion is not required to go ahead with your state discrimination claim, although going to the SDDHR may help you get more information about your case and your employer's position.

Because South Dakota law does not limit or cap the punitive damages (damages intended to punish the employer), many South Dakota attorneys choose to file employment discrimination cases in state court under state law only. It has been considered easier in South Dakota state court to prevent summary judgment (a dismissal of the case before trial after presenting disputed and undisputed facts to a judge), according to some attorneys. Because of recent changes in the state judiciary, it is unclear whether this will continue to be true.

Once the EEOC issues the document known as “Dismissal and Notice of Rights” or “Notice of Right to Sue” (Form 161), only then can you file a case based on your federal claim. A suit based upon your federal discrimination claim must be filed in federal or state court within 90 days of the date you receive the notice. (Be sure to mark down that date when you receive the notice.). A suit based upon your state discrimination claim must be filed within 2 years of the last instance of discrimination against you. These deadlines are called the “statute of limitations.”

If you have received one of these EEOC notices, do not delay consulting with an attorney. If your lawsuit is not filed by the deadline, then you may lose your ability to pursue a discrimination case.

Content credit to the South Dakota Department of Labor. For more more information visit: https://dlr.sd.gov/human_rights/default.aspx

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