

Part 2: EEOC and the Federal Complaint Process

Deaf in Government (DIG)
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When to seek EEO Counseling?

- ▶ An individual has 45 calendar days from the date of the alleged discriminatory event to contact an EEO counselor.

How does traditional EEO Counseling work?

- ▶ 30 calendar days to complete.
- ▶ Information on rights and responsibilities is provided.
- ▶ The complaint process is explained.
- ▶ The basis for the discrimination claims are determined.
- ▶ A limited inquiry is conducted.
- ▶ Resolution is sought.

Alternative Dispute Resolution (ADR)

- ▶ Agencies are required to have in place an Alternative Dispute Resolution (ADR) program during pre-complaint and formal complaint process.

ADR Programs

- ▶ Agencies are free to determine when to offer ADR.
- ▶ Agencies may not preclude from ADR entire bases (for example, race, sex, disability, etc.)

Formal complaint

- ▶ **Must be signed by complainant or their attorney.**
- ▶ **Must be sufficiently precise to identify the complainant and the agency and to describe generally the actions or practices that form the basis of the complaint.**
- ▶ **The agency must acknowledge in writing receipt of the complaint.**

Reasons for dismissing complaints

- ▶ Failure to state a claim
- ▶ States the same claim as a pending or previously resolved matter
- ▶ MSPB appeal or grievance previously filed
- ▶ Untimely or moot
- ▶ Proposed action
- ▶ Failure to cooperate
- ▶ Abuse of EEO process
- ▶ “Spin-off” complaint

Addressing and resolving spin-off complaints

- ▶ Agency EEO office shall advise the complainant to bring concerns to the appropriate individual and address it with the underlying complaint.
- ▶ Appropriate individuals are:
 - Agency EEO office
 - Agency EEO Counselor/Investigator
 - Administrative Judge
 - EEOC on appeal or for systemic problems

Partial dismissals

- ▶ Partial dismissals may not be appealed until final action has been taken.
- ▶ Final decision from the agency shall address all claims in the complaint, including the reasons for partial dismissal.

Investigations

- ▶ An impartial, appropriate factual record upon which to make findings on the claim(s) raised is developed.
- ▶ “Appropriate” factual record allows the fact finder to determine whether discrimination has occurred.
- ▶ Must be completed within 180 days from when the complaint was filed.
- ▶ The agency must provide the complainant with a copy of the investigative report.

Requesting a hearing

- ▶ Complainant must send written request directly to the appropriate EEOC District or Field office.
- ▶ Complainant must notify the agency of the request.
- ▶ Agency must forward the complaint file to the EEOC District or Field Office within 15 days of the request.
- ▶ If the request is mistakenly sent to the agency, it must forward the request and complaint file to the appropriate EEOC District or Field office.

Responsibilities of the Administrative Judge

- ▶ Administrative Judge (AJ) assumes full responsibility for the complaint.
- ▶ AJ presides over any supplementation of complaint file.

Dismissals during the hearing process

- ▶ AJ may dismiss complaints on their own initiative, after notice, or upon the agency's motion to dismiss.
- ▶ The agency's authority to dismiss the complaint ends once a hearing requested.

Administrative Judge decisions

- ▶ AJ will issue a decision after hearing or on summary judgment.
- ▶ Agency has 40 calendar days to issue a final order, which either:
 - Implements the AJ's decision; or
 - Does not implement the AJ's decision and the agency appeals to EEOC.
- ▶ AJ's decision becomes an agency final action if the agency does not issue a final order within 40 calendar days.

Appeals

- ▶ If either party opts to appeal:
 - The complainant must appeal within 30 calendar days of receipt of either agency dismissal or final action.
 - Agency must appeal within 40 calendar days of receipt of decision if not fully implementing AJ decision.

Interim relief

- ▶ Interim relief is required when:
 - AJ finds discrimination;
 - Restores complainant to position; and
 - Agency appeals.
- ▶ Agency must conditionally place complainant in position during appeal.

Interim relief: exception

- ▶ Agency may decide not to restore complainant to position if unduly disruptive.
- ▶ Agency must provide prospective pay and benefits.

Sanctions in the appellate process

- ▶ The EEOC will draw adverse inference or take other evidentiary action where either party fails, without good cause, to comply with the appellate provision in Part 1614.

Reconsideration

- ▶ EEOC has discretion to grant or deny reconsideration.
- ▶ The requesting party must show:
 - Clearly erroneous interpretation of materials fact or law; or
 - Substantial impact on the policies, practices, or operations of the agency.

Civil actions

- ▶ Within 90 calendar days of receipt of final decision of agency or on appeal decision from EEOC.
- ▶ After 180 calendar days of the **filing of formal complaint** if no decision has been issued.
- ▶ After 180 calendar days of the **filing of an appeal with EEOC** if no decision has been issued.

Official time

- ▶ Agency must provide a reasonable amount of official time to prepare a complaint and to respond to agency and EEOC requests for information when:
 - Complainant is an agency employee o
 - Complainant's representative is an agency employee.
- ▶ Official time shall also be granted for presence at the investigation of and at a hearing on the complaint.

Settlement agreements

- ▶ Disputes may be settled at any time during the complaint process with a written settlement agreement signed by both parties.
- ▶ If a complainant alleges a breach of the settlement agreement, they may request specific enforcement of the agreement or a reopening of the EEO complaint.

Where can I find more information?

- ▶ www.eeoc.gov
- ▶ Click on the tab – **EEOC Coronavirus Resources**
 - How EEOC is Serving the Public
 - Coronavirus and Employment Discrimination Laws
- ▶ Click on the tab – **Federal Sector**
- ▶ Click on the tab – **Contact Us to find your nearest EEOC office**

ASL Video Phone: (844) 234-5122

- ▶ EEOC enforces federal laws against job discrimination.
- ▶ If you have suffered workplace discrimination or harassment as an applicant or employee, file a complaint with us.
- ▶ We can investigate, mediate, litigate and educate.
- ▶ Our services are free.
- ▶ Email: info@eeoc.gov
- ▶ Voice calls: (800) 669-4000

Questions?

Thank You!

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