Procedures – EEO Complaints

A. *Whom do I contact if I believe that I have been discriminated against?*

You may contact an EEO Counselor regarding incidents of alleged discrimination. EEO counseling is required prior to filing a formal EEO complaint. An EEO Counselor may be contacted eeo@gsa.gov or 202-501-4571. Employees should identify themselves as employees of a board or commission. You may also contact the EEO Officer at kellyann.williams@gsa.gov or 215-284-7341.

B. *When should I start the EEO process?*

You must start the EEO process within 45 calendar days of the incident of alleged discrimination. You may start the informal stage of the process by contacting an EEO Counselor or the EEO Officer. You may also ask the EEO Officer or EEO Counselor questions about the process.

C. *Do I have a choice of EEO Counselors?*

No. EEO Counselors are assigned based on availability and to avoid conflicts of interest for the complainant and the EEO Counselor.

D. *How confidential is the EEO process?*

EEO counseling is confidential and complainants may ask to remain anonymous during EEO counseling. Once a formal complaint is filed, information about you and your complaint will be disclosed during the investigation.

E. *What happens during EEO counseling?*

An EEO Counselor provides information to you about how the federal-sector EEO process works, including time frames and appeal procedures. The Counselor conducts a limited inquiry into your dispute and attempts an informal resolution by facilitating communication between you and the other individuals involved in the complaint. The individual(s) involved in the complaint have the right to know they have been implicated in alleged discrimination, but the employee alleging discrimination has the right to remain anonymous during the counseling stage. The
Counselor also explains the Board's alternative dispute resolution ("ADR") program and the benefits of ADR for resolving EEO problems.

F. What happens if my EEO issue is settled?

If you and the Board settle your EEO issue, the parties will execute a written agreement that summarizes the settlement terms and spells out the obligations of the parties. The agreement is a legal and binding contract between the parties.

G. What happens if my EEO issue is not resolved?

If your EEO issue is not resolved at the informal stage, you may file a formal complaint within 15 calendar days of receipt of notice issued by the EEO Counselor of your right to file a formal complaint. You must sign and date the formal complaint and submit it to the Board's EEO Officer. If the EEO Officer accepts your complaint for investigation, the Board generally has 180 calendar days to complete the investigation. If the EEO Officer dismisses your complaint in whole or in part, the EEO Officer will notify you of your right to appeal the decision dismissing your complaint.

H. What happens during an investigation?

The investigative process is non-adversarial. That means that the EEO Investigator is obligated to collect evidence regardless of the parties' positions with respect to the items of evidence. An EEO Investigator interviews you and other witnesses, including supervisory officials, to collect testimony about your complaint. The Investigator prepares affidavits for you and other witnesses. The Investigator also collects relevant documents and information and prepares a report of investigation. When the investigation is completed, the EEO Officer will send you a copy of the report. The agency representative will also receive a copy of the report on behalf of the accused. Within 30 calendar days from receipt of the report, you must choose between requesting a hearing before an administrative judge at the EEOC or a final decision from the EEO Officer. If you do not make a selection, the EEO Officer will issue a decision within 60 calendar days. More information about the hearing process and your rights after a decision is issued is available from the EEO Officer and www.eeoc.gov.

I. What are the rights of the alleged discriminating employee?

The person against whom allegations of harassment are made shall be treated like any other witness, consistently and fairly, and shall have access to information to respond to allegations and give evidence. The agency shall determine what information may be released in accordance with the Privacy Act. The person against whom allegations are made has the right to have the claims investigated by an independent and impartial factfinder that considers the evidence and witness testimony provided by both parties. The person against whom allegations have been
made also will be provided a copy of the investigation report by the agency representative at the completion of the investigation.

J. What if something else happens to me while my complaint is pending?

You may amend a complaint at any time prior to the conclusion of the investigation to include issues or claims that are like or related to those raised in the original complaint. After you request a hearing, you may file a motion with the administrative judge and ask to amend your complaint.

K. When can I file a lawsuit in court?

EEOC regulations provide that you may file a civil lawsuit in U.S. District Court at the following stages:

1. Within 90 calendar days after receiving the final action where no administrative appeal has been filed;

2. After 180 calendar days from the date of filing a complaint if an administrative appeal has not been filed and final action has not been taken;

3. Within 90 calendar days after receiving the EEOC’s final decision on an appeal; or

4. After 180 calendar days from the filing of an appeal with EEOC if there has been no final decision by the EEOC.

L. May I pursue my complaint in court and through the Board’s EEO process?

No. Court and the EEO process are exclusive. You may not begin the Board’s EEO process after filing a lawsuit on the same issue. Also, filing a lawsuit after you have begun the Board’s EEO process terminates the Board’s EEO process.

M. How much time may I spend on EEO matters?

You are entitled to a reasonable amount of official time during duty hours to present your complaint and to respond to Board requests for information. Witnesses who are federal employees are in duty status when their presence is authorized or required in connection with the complaint. The amount of time that is reasonable depends on the stage and the particular circumstances of the complaint. You and your supervisor should agree how much official time you will be allowed to spend on EEO matters. If your supervisor denies your request for official time for EEO matters, your supervisor must put the denial in writing and send a copy to the EEO Officer where the denial will become part of your complaint file.
N. How much time may the accused spend on EEO matters?

The accused is entitled to a reasonable amount of official time during duty hours to respond to Board requests for information. If the individual accused in an EEO complaint is a federal employee, he or she will be in duty status when their presence is authorized or required in connection with the complaint. The amount of time that is reasonable depends on the stage and the particular circumstances of the complaint.

O. Do I need a lawyer to file a formal EEO complaint?

No. At any stage of the process, you are entitled to be represented by whomever you wish. Your representative does not have to be a lawyer. If the representative whom you choose is a Board employee, that person may not represent you if doing so would be a conflict of interest with his or her official duties. If your representative is a Board employee, that person is entitled to a reasonable amount of official time to represent you. The Board is not obligated to change work schedules, incur overtime costs, or pay any expenses to facilitate your choosing a representative or to allow you and your representative to confer.

Procedures – Alternative Dispute Resolution

A. Background

The Board encourages all staff to participate in efforts to resolve workplace disputes through the ADR program. ADR is available at every stage of the EEO process. At the initial counseling session, the EEO Counselor will explain how and when you and the other party may participate in ADR. If the matter is not resolved in ADR within 90 calendar days, you will be issued a notice of right to file a formal EEO complaint.

B. What is mediation?

Mediation is a process in which a neutral third party, a mediator, helps you and the other persons involved in your EEO dispute find a solution that is acceptable to both parties. Mediation is an alternative to a formal complaint and litigation. Mediation is voluntary and no one can force the parties to enter mediation or to reach an agreement. Mediation differs from other methods of dispute resolution and is focused on finding a mutually acceptable solution to a problem or dispute as quickly as possible. Mediation allows you to talk in a confidential setting to find out whether you and the other party can resolve your problem without the time and expense of litigation. You retain control and may agree only to those things that you believe are in your best interest.
C. Who are the mediators?

Mediators are individuals from outside the Board with training and skills in communication and solving problems. Mediators do not judge, assign blame, or impose solutions. Mediators are not investigators, fact-finders, or judges. Mediators create a safe, noncombative, confidential forum for you and the individuals involved in your dispute to discuss your conflict openly and to find ways to resolve it.

D. What happens in mediation?

First, the mediator will explain the mediation process and answer your questions. Each party in the EEO dispute will have a chance to tell their side of the story. The mediator helps the parties identify and prioritize shared concerns and find lasting solutions. As a final step, the mediator helps the parties to draft a written agreement. You control what happens in mediation. You make your own decisions about what is best. The mediator does not impose personal views or solutions.

E. Do I need an attorney or other representative?

No. Representation is not necessary for mediation. You may bring to the mediation an attorney, or another representative who meets EEO requirements regarding conflicts of interest.

F. Will mediation prevent me from pursuing my EEO claim under the Board’s EEO process or in court?

If you settle your EEO claim in mediation, you cannot pursue your EEO claim under the EEO process or in court. If you do not settle your EEO claim in mediation, you may resume the EEO process at the point where it stopped for mediation.

Procedures - Harassment

A. What are the categories of harassment?

1. Hostile work environment harassment includes, but is not limited to, epithets, slurs, negative stereotyping, intimidating acts, and written or graphic materials that belittle an individual or group because of membership in a protected EEO category. Examples: Jokes or anecdotes based on ethnic stereotypes; racial or ethnic slurs and epithets; derogatory words or phrases used to describe people’s race, gender, or sexual orientation; cartoons, graffiti, pictures, or diagrams that make fun of a person’s sex, race, color, religion, national origin, age, disability, or sexual orientation; and oral or written communications that contain degrading comments about race, disabilities, age, or religion.
2. Tangible job action harassment occurs when a supervisor’s harassing conduct results in an individual losing job benefits or suffering a concrete change in job status, such as demotion.

B. What is sexual harassment?

1. Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964, as amended. Sexual harassment may affect an individual’s job, pay, or career; may create an intimidating, offensive, and hostile work environment; or may interfere with an individual's job performance. The victim, as well as the harasser, may be a woman or a man; the victim does not have to be of the opposite sex.

2. Examples: A supervisor or manager requires sexual favors as a condition of employment; obscene or lewd sexual comments, jokes, or suggestions; displaying sexual pictures, cartoons, or suggestive (female and/or male) calendars; suggestive squeezes or pinches; “accidentally” brushing against someone’s body; using slang names or labels with lewd sexual connotations; using the internet, telephone, or other work tools for accessing or distributing pornographic or sexually explicit material.

C. Is every offensive incident that happens at work harassment?

No. Petty slights and isolated incidents of harassment, such as occasional rude comments, are not severe enough to be unlawful harassment. Civil rights statutes are not civility codes, but are intended to protect individuals from discrimination that is so severe or offensive as to alter the working conditions of the victim.

D. How can I prevent harassment in the workplace?

Whether conduct rises to the level of unlawful harassment under civil rights laws depends on the totality of the circumstances. By attending training every 2 years, you can ensure that you are familiar with the different types of harassment and what to do if harassment happens.

E. What are my responsibilities for reporting harassment?

You must report harassment to a supervisor within your chain of command, a supervisor in the alleged harasser's chain of command, or a supervisor who may have witnessed or otherwise be aware of the conduct. You are not responsible for making sure that the reported conduct is unlawful harassment at the time that you report the conduct. If you believe that reporting the conduct to a supervisor is inappropriate or pointless, you must contact the EEO Officer, an EEO Counselor, the General Counsel, or the Deputy General Counsel. The Board will keep reports of offensive conduct confidential to the extent possible.
F. What are supervisors’ responsibilities for reporting harassment?

Every supervisor must promote and maintain a work environment that is free from intimidation and harassment, communicate the Board’s policy on harassment, and ensure that staff is free from reprisal for reporting allegations of harassment. Supervisors must respond promptly to allegations of harassment and treat such complaints seriously and fairly. Supervisors must also take appropriate action when they observe harassment by Board staff or other supervisors, including referring observations of harassment to a more senior employee for corrective action. If the Board determines that harassment or unlawful harassment occurred, the Board must initiate appropriate corrective action, which may include proposing disciplinary action.

G. What are my rights if I believe that I have been harassed?

If you believe that you have been harassed, you have the right to file a formal complaint. You must contact an EEO Counselor or the EEO Officer within 45 calendar days from the last incident of harassment to start the EEO process.

H. How will the Board handle harassment involving visitors and other non-employees?

1. If you believe that you have been harassed by a visitor or other non-employee, you must report the allegation immediately to your supervisor or, if your supervisor cannot be reached, to an available supervisor. You should provide details about the conduct and a description of the person whom you believe harassed you.

2. If you are accused of harassment by a visitor or other non-employee, supervisors must take appropriate action to correct the alleged conduct. You will be provided the opportunity to respond to the allegations, and must cooperate with the Board in any investigation of the allegations.

3. You must not comment on the appearance or dress of a visitor or other non-employee, ask for personal information unrelated to work purposes, or make lewd comments or gestures.
APPENDIX A: References

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e) et seq.


Equal Employment Opportunity Management Directive, MD 715, Model Agency Title VII and Rehabilitation Act Programs