

EEO Complaint Process

Informal EEO Counseling

Discrimination

If you are an employee or job applicant, you are protected by law from discrimination based on race, color, national origin, sex (including sexual harassment), religion, age (40 years old or older), mental or physical handicap, or reprisal for your participation in the EEO process. Federal statutes and regulations—Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Rehabilitation Act, the Fair Labor Standards Act (Equal Pay Act), and 29 C.F.R. Part 1614—are in place to offer relief, if you are the victim of discrimination. Additionally, in the Department of the Interior, sexual orientation discrimination is counseled under the EEO process.

An allegation of discrimination may result from any employment issue or action—hiring, promotion, time and attendance, work environment, training, appraisal, discipline, firing, layoffs, or other terms, privileges, conditions, and benefits of employment.

What You Have To Do

If you believe you have been discriminated against, you must first contact an EEO Counselor in order to try to resolve the matter, informally. EEO Counseling provides channels of communication through which you may raise questions, discuss allegations, get timely information, and seek solutions. You have **45** calendar days following alleged discriminatory action or, if the matter concerns a personnel action, from the effective date of the action contact an EEO Counselor.

What Counselors Do

- Determine the issue (actions the agency has taken that cause you to believe you have been discriminated against) and the basis (race, color, sex, religion, national origin, age, sexual orientation, handicap or reprisal) of the matter.
- Conduct an inquiry in the **30** calendar days following the initial interview.
- Seek resolution. A reasonable and timely solution acceptable to both you and management is the best outcome of the counseling process.
- Document the resolution or advise you of your right to file a formal discrimination complaint.

What Counselors DO NOT Do

- Act as advocates either for you or for management.
- Determine if discrimination has occurred.

Alternative Dispute Resolution

The counseling period may be extended up to an additional 60 days, if you have agreed in writing to participate in an established agency alternative dispute resolution procedures.

When Counseling Doesn't Resolve the Matter

If the problem has not been resolved by the end of the counseling period, the Counselor must hold a final interview with you and issue a Notice of Final Interview. The Notice provides information on how to file a formal complaint along with the names and addresses of persons authorized to receive complaints. You then have **15** days to file a written formal complaint with the appropriate official.

Alternative Dispute Resolution – Mediation

There are times when people have honest disagreements. These disagreements can generate more heat than light and cause tension and bad feelings to escalate. Confrontations often produce more losers than winners; they can be a waste of everyone's time and money. They can damage important, ongoing relationships.

Alternative Dispute Resolution (ADR), an umbrella term for any one of several approaches to settling disputes without going to court, is a strategy for producing winners on both sides of a conflict. Anytime people find themselves in conflict, ADR can help bring them together to create a sensible outcome.

In the BLM, ADR can be used, with a few exceptions, to resolve both informal and formal EEO matters. You should know that when you choose ADR, your rights to traditional administrative redress and due process systems are preserved, if ADR fails.

Why Choose ADR

- It promotes the early resolution of EEO disputes;
- It reduces disruptions resulting from interpersonal conflicts the work place;
- It promotes lasting solutions and reducing the potential for future conflict, by facilitating the active participation of the parties to the conflict in the problem solving process;
- It fosters an environment of teamwork and cooperation among employees, supervisors, and managers.

What ADR Can NOT Be Use For:

- Allegations of discrimination involving removal from Federal Service.
- Allegations of discrimination involving a class of employees or applicants, i.e., a Class Complaint.

Mediation

Mediation is a type of Alternative Dispute Resolution, is a confidential problem-solving process conducted in a neutral environment. Mediators are trained to facilitate communication and address difficult issues. They guide individuals in reaching mutually-agreeable solutions to disputes using a process which ensures that the concerns of all parties are understood and considered.

Who Uses Mediation?

Depending upon the issues and circumstances involved, mediation may be available to employees of the BLM. Mediation can be appropriate where disputing parties want to resolve conflict and take responsibility for implementing agreed-upon solutions, and where the primary relationship between the disputants extends beyond the conflict at hand. Mediation can help you to attain a better understanding of the issues. It fosters dignity and respect through effective communication.

Who Are the Mediators?

Since mediation is now widely used throughout the public and private sectors, mediators may be BLM or other-agency employees, private-sector practitioners, or qualified persons from other sources. Mediators act as facilitators; they do not take sides with either party, and they do not render judgment or decision.

What Are the Benefits of Mediation?

Mediation can be a timely, cost-effective and less stressful alternative to other processes. Mediation levels the playing field between disputants and demonstrates a commitment to resolve issues in a positive manner. Mediation encourages people to sit down and talk and listen to each other. The ultimate goal is to have everyone agree on a course of action that is fair and workable. Common sense, persuasion, and good-faith compromise are the keys to reaching a solution.

Formal Complaints

If you are an employee or applicant, who believes you have been discriminated against because of your race, color, national origin, religion, sex, age, physical or mental handicap, or as reprisal for your participation in protected EEO activity, you **must** first seek relief through the informal counseling process. If resolution is not reached during pre-complaint counseling, you may then choose to file a formal complaint of discrimination.

The complaint of discrimination must:

- be submitted in writing;
- be filed **within 15 days** of receipt of the EEO Counselor's Notice of Right to File a Discrimination Complaint;
- be specific and limited to matters discussed during informal counseling;
- should state to the complainant's best knowledge, information, and belief what personnel matter or action occurred in which they were treated differently from others not in their protected group (e.g., race, sex, age) and when it occurred; and
- be signed by the complainant or their attorney.

The complaint then may be mailed or delivered in person to the state/center EEO Manager or Director; the Bureau Deputy Assistant Director, EEO; the BLM Director; the Director of the Interior Office of Civil Rights; or the Secretary of the Interior.

Investigation of Complaints

If the agency decides accept your complaint, they have 180 days to process the complaint. The agency assigns an investigator, who compiles a case file that includes witness statements and relevant documents. Within the 180 day period the Department will provide the complainant with a copy of the Record of the Investigation. Settlement attempts will continue during this period.

You then have 30 days to request either an immediate decision by the Department, which will be made within 60 days, or a hearing before an Administrative Judge from EEOC. If a hearing is requested, the Administrative Judge will issue findings of fact and conclusions within 180 days and provide the Department with a recommended decision. The Department has 60 days to reject or modify or use the recommended decision.

If you are dissatisfied with the Department's decision, you may appeal it to the EEOC within 30 calendar days of receipt of the decision.

Age Discrimination Complaints

For complaints based on age, you may choose to forego the complaint process and go directly to court. When the complainant intends to sue in District Court, they must advise the EEOC 30 days before such filing.

Freedom From Retaliation

The complainant, representatives, witnesses, EEO Officers, investigators, and counselors are to be free from restraint, interference, coercion, discrimination, or retaliation at all stages of an EEO complaint. If any of these persons allege retaliation, they may file an individual complaint of discrimination.

Administrative Grievance Procedures

DOI Administrative Grievance Procedure, Part 370 DM, Chapter 771

Applicability – the grievance procedure is available to non-bargaining unit employees of the Department of the Interior and those bargaining unit employees who are not covered by a negotiated procedure or contract. Bargaining unit employees who are represented by a Union and covered under negotiated procedures should follow the grievance process contained within their respective contract.

Grievance – a request by an employee for personal relief in a matter of concern or dissatisfaction relative to their employment and which is subject to the control of management.

Procedure – with certain limited exceptions, employees must first seek informal adjustment or resolution via supervisory channels prior to filing a formal grievance.

Informal Procedure – employees must submit an informal grievance **within 15** days (all references to “days” means calendar days) of the particular act or occurrence giving rise to the grievance, or **15** days from the employee gaining knowledge of the event. An informal grievance may be oral or written and is usually submitted to the immediate supervisor. Within 7 days of receipt of an informal grievance, a supervisor or manager is required to issue, in writing, a summary of the grievance and their decision on the matter, i.e., to grant, deny, or partially grant the personal relief requested.

Formal Procedure – If an employee is not satisfied with the response provided during the informal grievance stage, they may elect to initiate/file a formal grievance. The formal grievance must be filed within 5 days of receipt of the informal grievance response. A formal grievance must be filed in writing, contain the signature of the grievant, be of specific and sufficient detail as to identify the basis of the grievance, and request relief that is specific and personal to the grievant.

Formal grievances are submitted to the servicing Human Resources (HR) Office for a determination of acceptability and, if accepted, referral to a deciding official. The HR Office will make the acceptability determination and referral within 7 days of receipt of the formal grievance. The assigned deciding official is generally an official in the next higher organizational level than that level which provided the informal grievance response.

A deciding official is allotted 20 days from their receipt of the referred formal grievance to determine the appropriate action on the grieved matter and to communicate, in writing, their decision to the grievant. A deciding official may conclude that the appropriate action is to grant full relief, partial relief, proposal of an alternative remedy, or a denial of all relief requested. In any case, the decision must be transmitted to the grievant within 20 days of the deciding official’s receipt of the formal grievance.

If the deciding official concludes that no adjustment, or relief requested, is possible, a written “negative determination” is issued and the grievant is provided further appeal rights consisting of requesting that the matter be referred to a Hearings Examiner from the Department of the Interior’s Office of Hearings and Appeals (OHA). Employees must request this review from OHA within 7 days of their receipt of a negative determination.

If requested, the matter is referred to the DOI Office of Hearings and Appeals and a Hearings Examiner is assigned the case. From this point, a Hearings Examiner will schedule a hearing, after which a recommended decision will be provided for consideration by the Agency.

Sexual Harassment Quick Reference Guide for Employees

If you are a victim of sexually harassing behavior, you have several courses of action:

- Indicate to the harasser that the behavior is unwelcome.
- Ask co-workers if they observed the behavior or are aware of similar behavior.
- Indicate to your supervisor that the behavior is unwelcome.
- Keep a record of any instances of harassment and follow-up actions.
- Talk to your supervisor, someone in the chain of command, an EEO Counselor or the EEO Manager in your office about the behavior and courses of action available to you.

If you are an observer of questionable behavior:

- Ask the affected employee if it's a problem.
- Mention the incident or situation to your supervisor.
- Talk to the harasser about any behavior that bothers you personally.

Is it or isn't it sexual harassment? Here's an easy guideline. It's sexual harassment when:

- It goes beyond the point of comfort and is pervasive and severe.
- It's unwelcome and repeated.
- It interferes with a person's ability to work.
- It creates a hostile environment for an employee whether the harasser agrees or not.
- It includes same sex harassment and non-employee harassment.
- Employment opportunities or benefits are granted because of submission to sexual requests or favors.