

United States Department of Agriculture



Natural Resources Conservation Service
P.O. Box 2890
Washington, D.C. 20013

MAY - 7 2007

SUBJECT: EOP – Official Time Policy

TO: All NRCS Employees

File Code: 230

As Chief, I am firmly committed to ensuring that the Natural Resources Conservation Service (NRCS) complies with the Equal Employment Opportunity (EEO) Commission and the Department of Agriculture guidance on representation and official time for employees engaged in the EEO complaint process.

The purpose of this policy statement is to clarify “official time” for the purposes of pursuing an EEO complaint.

A handwritten signature in black ink, appearing to read "Arlen L. Lancaster".

Arlen L. Lancaster
Chief

Helping People Help the Land

An Equal Opportunity Provider and Employer



NATURAL RESOURCES CONSERVATION SERVICE OFFICIAL TIME POLICY STATEMENT

This policy is intended to provide the Natural Resources Conservation Service (NRCS), and employees working for NRCS, with clarity regarding the use of official time and Agency resources by employees pursuing administrative equal employment opportunity (EEO) complaints against NRCS before the Equal Employment Opportunity Commission (EEOC). Also, the policy is intended to provide clarity regarding the use of official time by NRCS employees who are designated as representatives of other NRCS employees in employment discrimination matters. However, this policy is limited solely to clarification of the process for requesting official time regarding administrative complaints of employment discrimination and use of Agency resources to pursue such complaints.

The Agency's general policy is to grant, deny, or reschedule leave based upon a balanced consideration of the needs of the employee's work unit and the circumstances surrounding the employee's request for leave.

This policy becomes effective May 21, 2007, and will apply to all pending complaints that have not yet proceeded to hearing.

Purpose

The following constitutes the Agency's policy with respect to requests by complainants, their representatives, and witnesses for official time during the pre-complaint and formal stages of the process for administrative complaints of employment discrimination.

Authority

The regulations of the United States Equal Employment Opportunity Commission (EEOC) at 29 C.F.R. § 1614.605(b), address the rights of complainants, their representatives, and witnesses to a reasonable amount of official time to prepare a complaint, and to respond to Agency and EEOC requests for information.

Eligibility

The following individuals are to be granted a reasonable amount of official time:

- A complainant and his/her representative, who are employees of the Agency and when otherwise in a pay status, to present a complaint or an appeal, participate in mediation, or when their presence is authorized or required by the Agency or EEOC during the investigation, resolution, or settlement attempts, or hearing on a complaint of employment discrimination brought by the complainant; and

- An Agency employee, who is a witness in a complaint, regardless of whether the complaint is in the employee's Agency or another Department of Agriculture (USDA) agency. The employee must be in a duty status and his/her presence must be authorized or required by EEOC or Agency officials in connection with a complaint.

Official Time for Employee as Complainant

For purposes of this policy, "official time" is time granted to an NRCS employee without charge to leave or loss of pay, when the employee would otherwise be in a duty status.

For purposes of this policy, "duty status" means the NRCS employee's or representative's normal hours of work at NRCS.

An employee may have a reasonable amount of official time, if otherwise in duty status, to prepare his or her complaint of employment discrimination against NRCS, to respond to requests for information from the Agency or from the Administrative Judge of the EEOC, assigned to hear the employee's complaint of employment discrimination against NRCS, to meet with Agency officials, to prepare for meetings with Agency officials, to prepare for the hearing of his or her complaint of employment discrimination against NRCS, and to present his or her case before the EEOC. The Agency is required only to grant an employee reasonable time consistent with the actual business necessities of the Agency.

Pre-complaint (Informal Complaint) of Employment Discrimination

A reasonable amount of official time will be allowed for an employee to make contact, discuss, and meet to attempt resolution of pre-complaint issues with EEO counselors, human resources specialists, and/or other officials. A reasonable amount of time may be granted for an employee to prepare for an initial pre-complaint contact, including time to discuss issues with the employee's representative.

Preparation and Presentation of Complaint of Employment Discrimination

A reasonable amount of official time will be allowed for an employee to prepare and present an EEO complaint. Official time for such purposes will typically include time to assemble documents to be submitted in conjunction with the complaint, time spent meeting or consulting with the employee's representative to assist in complaint preparation, and time to draft the complaint. A reasonable amount of official time will be allowed for an employee to prepare responses to questions or information requests from government officials responsible for processing or attempting to resolve EEO complaints and pre-complaints. Employees are also afforded a reasonable amount of official time to prepare any appeals that may be filed with the Commission, even though no meetings or hearings are involved.

Official Time for Employee as Designated Representative

According to EEOC regulations, an employee has the right to a representative of his or her choice during the EEO process. An NRCS employee may designate another NRCS employee as his or her representative in an administrative complaint of employment discrimination. An NRCS employee representative may have a reasonable amount of official time, if otherwise in duty status, to assist in preparation of a complaint, to assist in responding to requests for information from the Agency, or from the EEOC Administrative Judge, to meet with Agency officials, to prepare for meetings with Agency officials, to prepare for the hearing, and to present the case before the EEOC.

Designation of Representative

Any NRCS employee may serve as another employee's representative during the course of an EEO complaint, provided that a written designation has been submitted and that the representational functions do not constitute a conflict or apparent conflict of interest with the employee representative's official or collateral duties (29 C.F.R. 1614.605(C)). Both the complainant and the employee he or she seeks to designate as a representative must notify their first-line and second-line supervisors, and NRCS' Civil Rights Director, in writing, of the proposed designation of representation. No request for official time of an employee representative will be granted until the supervisor and the Civil Rights Director have received the written designation of representation.

Restrictions on Representatives

No Conflict with Official or Collateral Duties of Representative

As stated above, a representative may be disqualified from representing an NRCS employee if the representational functions constitute a conflict or apparent conflict of interest with the representative's official or collateral duties (29 C.F.R. 1614.605(C)).

Majority of Duty Hours Working for Agency

Agency employees are expected to spend the majority of their duty hours working for the Agency. It is not unreasonable for the Agency to restrict the total amount of representational time granted to an employee to a certain percentage of his or her time. The process for such restriction, if necessary, is outlined below.

Official Time Limited to Representation of NRCS Employees

If an Agency employee serves as an EEO representative for an individual who is not employed by NRCS or represents an applicant for employment who is not an NRCS employee, the representative is not entitled to official time. The granting of official time for purposes of this policy applies only to representation of Agency employees.

No Change in Schedules, Wages, or Travel Expenses

The Agency is not obligated to change work schedules, incur overtime wages, or pay travel expenses to facilitate an employee's choice of a specific representative or to allow the complainant and representative to confer.

Official Time for Employee as Witness in Administrative Proceeding before EEOC

An NRCS employee who is a witness, either in person before the EEOC, by deposition in an administrative employment discrimination proceeding, or by sworn affidavit or declaration in an administrative employment discrimination proceeding, shall be in duty status and afforded official time when his or her testimony is authorized or required by Agency officials or by the EEOC. Employees who are witnesses may have a reasonable amount of official time for the time spent preparing to testify. Further, any employee testifying at an administrative employment discrimination hearing is entitled to a reasonable amount of official time for travel to and from the hearing.

Official Time to Prepare for Title VII Litigation in United States District Court

While EEOC regulations require the granting of reasonable official time for preparation of an administrative EEO complaint, the Commission defers to the policies of the Agency with respect to granting official time to prepare for Title VII litigation in a United States District Court. The policy of NRCS is that **no official time will be granted for preparation for Title VII litigation in District Court**. In the event that an employee has filed an EEO action in Federal court and requested time to prepare and present his or her case in court, a supervisor may only approve annual leave or leave without pay. The Office of Personnel Management and the Human Resources Management Division provide guidance on granting official time for court leave. An NRCS employee called as a witness, who is served with a subpoena or asked to attend by an appropriate USDA official, to attend a trial or other event in Title VII litigation against NRCS, is entitled to official time for attendance at such trial or event.

Determining Reasonable Amount of Official Time

The amount of official time that is reasonable for a given activity in any given matter must be considered on a case-by-case basis. NRCS will not reject the amount of official time requested as unnecessary without making efforts to ascertain why the employee believes the time is required. "Reasonable" is defined as whatever is appropriate, under the particular circumstances of the complaint, in order to allow a complete presentation of the relevant information associated with the complaint and to respond to Agency requests for information, EEOC Management Directive 110 (MD-110), Chap. 6, Sec. VIII(C)(1). The actual number of hours to which a complainant and his or her representative will be entitled will vary, depending upon the nature and complexity of the complaint, and considering the mission of the Agency and the Agency's need to have its employees available to perform their normal duties on a regular basis. The complainant and the Agency should arrive at a mutual understanding as to the amount of official time to be used prior to use of such time.

Meeting and Hearing Time

Most of the time spent by complainants and their representatives during the processing of a typical complaint is spent in meetings requested by Agency officials or EEOC Administrative Judges and in the hearing. Whatever time is spent in such meetings and hearings is automatically deemed reasonable. EEOC MD-110, Chap. 6, Sec. VIII(C) (2). NRCS will, to the extent practical, schedule meetings and request hearing times during the complainants' working hours.

Preparation Time

Because presentation of a complaint of employment discrimination involves preparation for meetings and hearings, as well as attendance at such meetings and hearings, complainants and their representatives are also afforded a reasonable amount of official time, as defined above, to prepare for such meetings and hearings. However, because investigations are not conducted by Agency or Commission personnel, the regulation entitling employees and their representatives to official time "does not envision large amounts of official time for preparation purposes" (EEOC MD-110, Chap. 6, Sec. VIII(C)(3)). Consequently, "reasonable," with respect to preparation time, is generally defined in terms of hours, not in terms of days, weeks, or months.

Employee's Consultation with Representative

Although an employee is entitled to a reasonable amount of time to consult with his or her representative, the employee is not necessarily entitled to official time to meet personally with the representative. NRCS may restrict reasonable official time to telephone contact with the representative if the circumstances are warranted.

Aggregate Time Spent on EEO Matters

EEOC considers it reasonable for the Agency to expect its employees to spend most of their time doing the work for which they are employed. Therefore, NRCS may restrict the overall hours of official time afforded to a representative, for both preparation purposes and for attendance at meetings and hearings, to a certain percentage of that representative's duty hours in any given month, quarter, or year. Such overall restrictions will depend on the nature of the position occupied by the representative, the relationship of that position to the mission of the Agency, and the degree of hardship imposed on the mission of the Agency by the representative's absence from his or her normal duties. The Agency will notify each of the complainants who have designated the representative of any overall restrictions on the amount of official time to be utilized by the representative.

Procedure for Requesting Official Time for Complainants and Representatives

In order to receive official time for participation in the EEO process, an NRCS employee must properly request official time. The Agency cannot be deemed to have denied a request that it never received. Supervisors must contact the NRCS Civil Rights Staff Director upon receipt of any request for official time to ensure that the employee has an ongoing complaint and to be apprised of the status of the complaint.

Request to Supervisor

An NRCS employee seeking official time, to pursue his or her own administrative complaint of employment discrimination, or to represent another NRCS employee in this pursuit, must make a request for official time with their supervisor, at least 48 hours prior to the need for such official time. Such requests should include the specific time needed, the date of such official time, the reasons for the requested official time, and any further information the NRCS employee deems necessary for the Agency to make a determination of whether such official time is authorized, and whether it is reasonable under guidance from EEOC.

When official time has been requested, the attached Request for Official Time form should be completed by the employee who is requesting official time.

Determination by Supervisor to Civil Rights Director

Within 24 hours from receipt of the written request for official time, the supervisor will make a determination as to whether such time is approved or disapproved, or modified in any way. The determination of whether the request for official time is "reasonable" will be made based upon guidance as set forth above, which will include the complexity of the complaint of employment discrimination. As stated above, the amount of official time for preparation of a complaint of employment discrimination is generally defined in terms of hours, not in terms of days, weeks or months. The determination is made on a case-by-case basis, as mandated by EEOC. The

supervisor will work with the Civil Rights Director to come to an agreement on the amount of reasonable official time to be afforded.

Process if Request for Official Time is Denied

If the Agency denies a request for official time, either in whole or in part, the Agency will include a written statement in the complaint file noting the reason for the denial. If the Agency's denial of official time is made before the complaint is filed, the Agency will provide the complainant or his/her representative with a written explanation for the denial, which it will include in the complaint file if the complainant subsequently files a formal complaint of employment discrimination.

Use of Government Property

An employee's use of government property (i.e. telephones, computers, supplies, etc.) in the processing of a complaint must be authorized by the Agency. The employee should be informed that privacy during the use of such forms of communication cannot be guaranteed.

**EEO COMPLAINT
REQUEST FOR OFFICIAL TIME**

Name: _____

Area: _____

Address: _____

Telephone: _____ **Fax:** _____ **E-mail:** _____

Approved Working Hours (Example: 8:00am to 4:30pm)

Request for _____ **hours for:** _____

_____ **Preparation/Meeting with Counselor**

_____ **Preparation/Meeting with EEOC, Attorney, Agency Official, etc.**

Statement:

Approved: _____ **Denied:** _____
 Name **Name**

If denied, please state reasons:

May 2007