



United States Department of the Interior

BUREAU OF LAND MANAGEMENT



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November 6, 2007

In Reply Refer To:
1400-713 (NM914/AZ910) P

EMS Transmission – 11/29/2007
Instruction Memorandum No. AZ-2008-009
Instruction Memorandum No. NM-2008-007
Expires: 9/30/2009

To: All Employees, Arizona, New Mexico, Oklahoma, Texas, and Kansas

From: State Directors, Arizona and New Mexico

Subject: The Equal Employment Opportunity (EEO) Counseling Process

To better serve our customers—you, the employees and/or applicants of the BLM Arizona and New Mexico organizations—a decision has been made to have all Title VII discrimination and sexual harassment EEO complaints handled solely by the Arizona/New Mexico Office of EEO, AZ (910)/NM (914). Collateral-duty EEO counselors within BLM Arizona will no longer be used. The EEO collateral-duty counselor role has been replaced with a full-time EEO counselor/EEO Specialist located at the Arizona State Office and the already existent EEO counselor/Specialist position located at the New Mexico State Office. Lillian Robinson, located at the Arizona State Office, can be reached at 602-417-9218; Hector Mendoza, located at the New Mexico State Office, can be reached at 505-438-7641. Rita Montoya, 505-438-7687/cell 505-670-5967, will continue to serve as the BLM Arizona/New Mexico Complaints Manager and will assist in EEO counselor duties and/or procure an outside contractor if there is a need. Howard Harrell, 940-262-4030/cell 505-630-2782, is the BLM Arizona/New Mexico EEO Manager who will review and accept formal EEO complaints, as well as recommend dismissals of formal complaints to our BLM Washington Office of Civil Rights (OCR) staff for approval. The EEO staff must be contacted directly if an employee/applicant for employment, believes that he/she has been discriminated against based on race, color, religion, sex, national origin, age, physical or mental disability, and/or reprisal (for prior EEO activity participation).

The decision to have full-time EEO counselors was made in accordance with the Equal Employment Opportunity Commission (EEOC) Management Directive (MD) 110, which encourages the use of full-time counselors whenever possible, and through prior experience working with a full-time EEO counselor in the New Mexico State Office for the past 7 years. This decision allows the Office of EEO to contribute to workforce planning initiatives which enables the previous collateral-duty counselors to concentrate on their primary jobs and natural resources. Because each BLM manager and employee has been asked to do more with less, the Office of EEO must do the same.

The decision to have all complaints processed by the Arizona/New Mexico State Office of EEO will not only expedite the processing time, but will also serve as the confidential focal point for all informal/formal complaints, as each member of the EEO staff will:

- Explain the informal complaint process to the employee/applicant and advise him/her in writing of his/her rights and responsibilities.
- Listen and help the employee/applicant specifically identify his/her claims of employment discrimination.
- Inform the employee/applicant about the Alternative Dispute Resolution (ADR)/Early Intervention Program (EIP)/Conflict Action and Dispute Resolution (CORE PLUS) Program in an attempt to resolve the employee's/applicant's complaint.
- Conduct a **limited** inquiry.
- Discuss the employee's/applicant's concerns with an appropriate official who has authority to resolve the employee's/applicant's claims, but will only disclose his/her name with his/her permission as the employee/applicant has the right to remain anonymous.
- Attempt to resolve the employee's/applicant's concerns informally at the lowest level possible.
- Meet with the EEO Manager on a regular basis to discuss progress, activity of the employee's/applicant's complaint, and a possible resolution.

The following complaint process is being provided to employees/applicants for information purposes. This will be posted on the BLM Arizona/New Mexico EEO webpage along with other Departmental EEO policy.

Procedures During the Informal Complaint Process: An employee/applicant for employment who feels he/she has been discriminated against based on race, color, religion, sex, national origin, age, physical or mental disability, and/or reprisal must contact the Office of EEO **within 45 calendar days of the date of the incident that gave rise to the complaint or, if it is a personnel action, within 45 calendar days of its effective date.**

The EEO counselor has 30 calendar days from the time the employee/applicant reports the issue to attempt an informal resolution of the matter. The 30-day period for EEO counseling may extend up to a maximum of 60 days if the employee/applicant agrees in writing to such an extension. The goal of an EEO counselor is to facilitate an informal resolution of the matter between the parties when possible. If, at the end of this time (including any extensions), the matter is not resolved, the employee/applicant will be advised in writing of his/her right to file a formal complaint as specified in the Formal Complaint Process as described below.

An employee/applicant has the right to be represented at any stage of the process in presenting his/her complaint of discrimination, including the informal counseling stage. The employee/applicant may select any person (except EEO officials) to represent him/her, including an attorney. The employee/applicant and his/her representative are entitled to a reasonable amount of official time in preparing and presenting the employee's/applicant's complaint. The employee/applicant has a right to remain anonymous during the informal counseling period.

If the employee/applicant elects to resolve the informal complaint by participating in the ADR/EIP/CORE PLUS, the precomplaint processing period will be 90 days. Rita M. Montoya, Chair for the Federal Executive Board's Shared Neutrals Program, will contact mediators and arrange for an ADR/EIP/CORE PLUS session.

The Formal Complaint Process: If attempts to informally resolve the employee's/applicant's complaint is unsuccessful, he/she will be notified by the counselor, in writing, of his/her right to file a formal complaint. **If the employee/applicant decides to file a formal complaint, he/she or his/her representative has 15 calendar days from the date of receipt of this notice to submit his/her formal complaint in writing. It is important to know that if the employee/applicant does not file his/her formal complaint within the 15-day time limit, the agency may dismiss his/her complaint.**

Although it is not the duty of the EEO counselor to file the employee's/applicant's complaint for him/her, the counselor can answer the employee's/applicant's questions concerning the filing of his/her complaint. If the employee/applicant wishes, his/her representative may file the complaint for him/her. The employee's/applicant's written complaint must be specific and must be limited to the matters discussed with the EEO counselor. The formal complaint must be filed by the employee/applicant or his/her representative, using Department of the Interior (DOI) Form DI-1892, with the EEO Manager. Form DI-1892 may be obtained from any one of the

Office of EEO staff. The Office of EEO will then identify the employee's/applicant's claims and notify him/her of the claims to be investigated. If the EEO Manager accepts a claim for processing but dismisses one or more of the claims, only the accepted claims will be investigated. The EEO Manager will document the employee's/applicant's EEO file with the reasons why some claims have not been accepted. There is no immediate right to appeal the nonaccepted claims at this stage. However, if the EEO Manager determines not to accept any of the claims in the employee's/applicant's complaint, the EEO Manager will refer the complaint to the DOI Director, OCR, for a final agency decision on the dismissal of a complaint. If the DOI Director finds that the dismissal of the complaint is not supported, he/she may remand the complaint back to the BLM for further processing. If the employee's/applicant's complaint is dismissed, he/she will be given appeal rights to the EEOC. Once the employee's/applicant's formal complaint is accepted, it will be investigated by an impartial investigator as defined by EEOC regulations located in 29 CFR 1614.108 and the guidance in EEOC MD 110, Chapter 6.

A thorough investigation will be conducted. The investigation will encompass all the information relevant to the accepted claims and may, when appropriate, include comparative data on other individuals who were similarly situated. The investigation may be conducted by verbatim statements, interrogatories, position papers, or by other forms of fact-finding information. During the investigation, the employee/applicant will have an opportunity to present all the facts which he/she believes show unlawful discrimination.

The BLM has 180 calendar days from the date the employee/applicant files his/her complaint and to notify the employee/applicant that the investigation has been completed. After the investigation is completed, a Report of Investigation (ROI) and a summary of the ROI will be sent to the employee/applicant. By written agreement between the employee/applicant and the BLM within those time periods, the time period may be extended an additional 90 days. The employee's/applicant's complaint may also be amended with like or related claims raised before the completion of the investigation. If the employee's/applicant's complaint is amended, the time period will be extended by 180 days from the date of the amendment. Once the ROI is issued to the employee/applicant, he/she will have 30 days from the date of his/her receipt of the ROI to exercise his/her right either (1) to request a hearing before an EEOC Administrative Judge (AJ); or (2) to request a decision without a hearing by the DOI Director, OCR. This notice is called "The Notice of Your Right to an Election."

If an employee/applicant has a claim that is also appealable to the Merit Systems Protection Board (MSPB), he/she is not entitled to a hearing by the EEOC. A final agency decision will be issued by the DOI Director, OCR, and the employee/applicant will be given appeal rights to the MSPB.

The employee's/applicant's request for a **hearing** will be sent directly to the appropriate EEOC Field Office with a copy to the Field Solicitor. Once the employee/applicant has elected a

hearing, the AJ will have full and complete authority over his/her complaint. The employee/applicant will be allowed to present witnesses and evidence on his/her behalf. **The hearing is recorded and transcribed verbatim. The AJ will have 180 days from the date the EEOC receives his/her request for a hearing to conduct the hearing, issue findings and conclusions, and make a decision on his/her complaint. The time frame may be extended by the AJ.** The employee/applicant should be advised, however, that there may be circumstances where the AJ may decide that a hearing is not necessary.

The AJ will issue a decision on the employee's/applicant's complaint which will become the final action of the Department, if the Department does not appeal the AJ's decision within 40 days of the date the decision was received.

If a hearing has been conducted, the AJ will send the employee/applicant a copy of the decision with a copy to the Department. **The DOI Director, OCR, will have 40 days to issue a final order after receipt of the AJ's decision.** If the Department rejects the AJ's decision, it must simultaneously be appealed to the EEOC. A copy of the appeal will be sent to the employee/applicant.

If the employee/applicant does not ask for either a hearing or a decision without a hearing within 30 calendar days after he/she receives the notice of election described above, the DOI Director, OCR, may issue an immediate final agency decision based upon the evidence in the ROI. The employee/applicant will be given appeal rights if he/she is dissatisfied with the final decision.

The DOI Director, OCR, as the designee of the Secretary, will issue the employee/applicant a final agency decision on his/her complaint within 60 calendar days from (1) the date of his/her request for an immediate decision; or (2) the end of the 30-day period after he/she received the notice of election. The final agency decision may include an analysis on the merits of each claim accepted in the employee's/applicant's complaint or a decision to dismiss some or all of his/her claims. If a finding of discrimination is made, the final decision will also identify the corrective action to which the employee/applicant is entitled.

If the employee/applicant is dissatisfied with the Department's final decision, he/she may, within 30 calendar days of the date of which he/she received the decision or notice of dismissal, appeal the decision to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 19848, Washington, DC 20367. The employee/applicant must also send a copy of the appeal to the DOI.

The BLM Arizona/New Mexico Office of EEO staff will continue to visit each District, Field, and Division Office to provide on-site and/or computer-based training on the EEO Complaint Process, Sexual Harassment, and other EEO topics. Please direct all questions concerning the EEO Complaint Process to the EEO staff. Telephone numbers are listed on page 1.

The BLM Arizona/New Mexico managers, supervisors, and employees are directed to adhere to this Instruction Memorandum and to comply with the attached DOI EEO Policy memoranda related to zero tolerance of discrimination, zero tolerance of sexual harassment, and maintaining a diverse workforce.

Signed by:

Elaine Y. Zielinski

State Director, Arizona

Linda S.C. Rundell

State Director, New Mexico

Authenticated by:

Rita M. Montoya

EEO Specialist, NM (914)

4 Attachments:

1 - Memorandum dated 2/28/07 (1 p)

2 - IB No. 2007-079 (2 pp)

3 - IB No. 2007-080 (2 pp)

4 - IM No. 2008-018 (3 pp)

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