

## ***DHHS Fact Sheet: Revisions to 29 CFR 1614 Regulations***

### **Revised Equal Employment Opportunity Complaint Processing Regulations**

The revised 29 CFR Part 1614 of the federal sector equal employment opportunity (EEO) complaint processing regulations became effective November 9, 1999 [Alternative Dispute Resolution (ADR) processes are to be in place effective January 1, 2000]. The objective of the revisions is to speed up the process and make it more efficient.

### **Statutes Covered by 1614 Regulations**

[Title VII of the Civil Rights Act of 1964](#) makes it illegal to discriminate based on race, color, national origin, religion, or sex.

[Section 501 of the Rehabilitation Act of 1973](#) makes it illegal to discriminate based on physical or mental disabilities. Federal agencies are required to make reasonable accommodations to the known physical and mental limitations of qualified employees or applicants with disabilities. Section 501 also requires affirmative action for hiring, placement, and promotion of qualified individuals with disabilities.

[The Equal Pay Act](#) makes it illegal to discriminate on the basis of sex in the payment of wages where substantially equal work is performed under similar working conditions.

[The Age Discrimination in Employment Act](#) protects people 40 years of age and older by prohibiting age discrimination in hiring, discharge, pay, promotions, and other terms and conditions of employment.

### **Retaliation/Reprisal and Representation**

A person who files a complaint, participates in an investigation, or opposes an employment practice made illegal by any of the above statutes is protected from retaliation.

The complainant is permitted representation of their choice at any stage in the processing of their complaint, provided their choice does not involve a conflict of interest and/or position. The complainant, their representative, and witnesses shall be free from reprisal in the processing of the complaint at all phases.

### **Filing a Complaint**

The first step for an employee, former employee, or applicant who feels s/he has been discriminated against by an agency is to contact an EEO Counselor at the agency where the alleged discrimination took place within 45 days of the discriminatory action. S/he will have to choose either traditional counseling, or to participate in the agency's ADR process, but not both. There is a maximum of 90 days in either process to attempt

resolution of the allegations. If resolution is unsuccessful, at the conclusion of counseling or ADR, a written notice will be issued terminating the process and instructing the complainant on how and where to file a formal EEO complaint. The EEO counselor will prepare a report of counseling and will forward copies to the complainant, their representative, and the agency.

The complainant has 15 days from receipt of the notice of right to file a formal complaint to file in writing on the issues raised. The effective date of filing the complaint is the date on which it is received in the appropriate agency EEO office. The complainant may amend his/her complaint in writing with additional issues that are "like or related" to the original complaint issues, with no additional EEO counseling required. The agency will acknowledge in writing receipt of the original complaint and any amendments. If the complainant wishes to amend a complaint after requesting a hearing before an Equal Employment Opportunity Commission (EEOC) Administrative Judge (AJ), s/he must send a written "motion to amend" directly to the appropriate AJ.

Investigations are contracted out to private firms, and the investigation should be completed within either 180 days from the original complaint file date/the last amendment file date/the last consolidated complaint file date, or, 360 days from the original file date, whichever is earlier. At the conclusion of the investigation, the complainant has 30 days to review the Report of Investigation (ROI) and either request a hearing and decision from the EEOC AJ (on issues not appealable to the Merit Systems Protection Board (MSPB), or an immediate final agency decision on the record. The AJ must process the request for a hearing and issue a decision within 180 days of receipt of the request. The agency must issue a final decision on the record within 60 days where a request for an immediate decision has been made, or, where no election has been made, the end of the 30-day election period. The agency must issue a final order within 40 days of receipt of the hearing file and the AJ's decision.

The agency is required to consolidate two or more complaints filed by the same complainant, and the same time frames apply for investigation. The complainant can request a hearing from the AJ on consolidated complaints anytime after 180 days from file date of the first complaint.

### **Filing an Appeal with the EEOC or a Civil Action**

If the agency dismisses all or part of a complaint, or the complainant disagrees with other aspects of the agency's decision, s/he may file an appeal with the EEOC Office of Federal Operations (OFO) within 30 days after receipt of the agency dismissal or final agency action. The complainant then has an additional 30 days to file a statement or brief in support of the appeal. (If the complaint is on a matter appealable to the MSPB, the complainant may appeal to the MSPB within 30 days of receipt of the agency dismissal or final agency action, or go to the U.S. District Court within 30 days.) If the agency will not fully implement the AJ's decision, it must file an appeal with the EEOC within 40 days of receipt of the AJ's decision, and file a brief within the following 20 days. Opposition briefs must be served on the opposing party within 30 days of receipt

of the brief in support of the appeal, or if no brief is filed, within 60 days of receipt of the appeal.

The complainant may elect to file a civil action under Title VII, the Age Discrimination in Employment Act (ADEA), or the Rehabilitation Act with an appropriate United States District Court within 90 days of receipt of the agency's final action or within 180 days after filing a formal complaint if no appeal has been filed and no final action issued; within 90 days after receipt of EEOC's final decision on appeal or within 180 days after filing an appeal and no final decision is issued from EEOC. Under the Equal Pay Act, whether or not administrative processing of a complaint occurs, the complainant may file a civil action within two years (three years for a willful violation) of the alleged violation of the Act.

### **Remedies/Resolutions**

If the complainant has an attorney, the agency may make settlement offers anytime after s/he has filed a complaint, but no later than the date the AJ is appointed for the hearing. Whether the complainant has an attorney or not, the agency may make settlement offers anytime after the complainant and attorney have received notification that the AJ has been appointed, but no later than 30 days prior to the hearing.

The agency's offer must be written and explain the consequences of failing to accept the offer. The complainant has 30 days from receipt of an offer to notify the agency of any acceptance in writing. Where the AJ finds discrimination, the decision and order of remedy and relief must be issued within 180 days of receipt of the file from the agency.

The payment and amount of attorney's fees are to be made by the AJ. The agency is not required to pay attorney's fees accrued during informal complaint processing unless a hearing is requested, the AJ issues a cause finding, the agency issues a final order disagreeing and appeals, and the EEOC upholds the AJ's cause finding on appeal.

The agency is required to provide the complainant with interim relief while an agency appeal is pending, in limited circumstances.