

THE EEO COMPLAINT PROCESS IN TREASURY



INTRODUCTION

As a Federal employee, or applicant for employment, you have certain protections against unlawful discrimination. You are protected against discrimination due to race, sex, national origin, color, religion, age, and physical or mental disability. The statutes that protect you from discrimination also protect you from retaliation for action taken to oppose or remedy discrimination. If you believe that you have been discriminated against on one of the bases cited here, you may file a complaint of discrimination.



Also, in keeping with certain Executive Orders, Treasury employees and applicants are protected against discrimination based on sexual orientation, parental status, and protected genetic information. Treasury has established an administrative procedure for processing these complaints.

WHAT IS ILLEGAL DISCRIMINATION?

Illegal discrimination occurs when an employer intentionally treats one employee differently from another employee when the two are similarly situated *and the treatment is based on protected group status (race, color, age, national origin, religion, sex, disability or EEO activity)*. Similarly situated means that the employees occupy the same or similar positions, report to the same supervisor, and the facts surrounding the action are similar. Discrimination of this type is termed disparate treatment.

Discrimination can also occur when an employer makes an employment decision that is based on neutral factors, but the effect adversely impacts a protected group. This is called disparate impact discrimination.

DISCRIMINATION ON THE BASIS OF SEX, RACE, COLOR, NATIONAL ORIGIN, OR RELIGION

Title VII of the 1964 Civil Rights Act, as amended, protects employees and applicants for employment from discrimination on the basis of sex, race, color, national origin, or religion. Sexual harassment and pregnancy discrimination are considered forms of prohibited sex discrimination and are protected by Title VII.

In addition to protection against discrimination because of religion, Title VII also establishes the agency's duty to provide reasonable accommodation for an employee's religious beliefs unless doing so would impose an undue hardship on the employer. For example, if you need to take a day off for a religious observance, the agency would have to grant you leave (or compensatory time), unless doing so would be an undue hardship.

DISCRIMINATION ON THE BASIS OF AGE

The Age Discrimination in Employment Act (ADEA) of 1967 prohibits discrimination against Federal employees and applicants for employment who are 40 years of age or older. The Act was designed to protect older employees from false stereotypes or stigmas associated with age.



DISCRIMINATION ON THE BASIS OF DISABILITY

The Rehabilitation Act of 1973 prohibits employment discrimination against Federal employees, or applicants for employment, who have disabilities. A disability is defined as a physical or mental impairment that substantially limits a major life function. Only permanent, chronic, or long-term conditions are considered to be disabling. Temporary or short-term illnesses are not considered to be disabilities under the Act. The disability must substantially limit your major life activities (e.g., walking, speaking, seeing, hearing, breathing, learning, performing manual tasks). Also, you may be disabled if your impairment affects your ability to work a broad class of jobs (e.g., if your disability prohibited you from doing any type of jobs involving manual labor). However, you are not disabled if you are unable to work in only one type of job, or for one particular supervisor, or in one location.

The law also requires that you be qualified for your position. If you cannot perform the essential functions of the job with or without reasonable accommodation, you are not qualified for the position.

The law requires that the Federal government be a model employer with respect to employing individuals with disabilities. Reasonable accommodation refers to the obligation to make adjustments to your work situation or environment so that you can perform your job, as long as the accommodation does not constitute an undue hardship to the agency. The agency is not required to eliminate the essential functions of your position or to create a job that does not currently exist.

As the employee, you have an obligation to notify management of the need for reasonable accommodation and to engage in an interactive process in determining what accommodations are needed.

PROTECTION AGAINST REPRISAL OR RETALIATION

The Civil Rights Act (Title VII), the Age Discrimination in Employment Act (ADEA), and the Rehabilitation Act protect you from reprisal or retaliation for exercising your rights under those Acts. Protected activities may include filing a complaint of discrimination, requesting reasonable accommodation, giving evidence or testimony to an investigator or in a hearing, or complaining about or protesting perceived discrimination against you or another employee.

WHAT IS HARASSMENT?



Employees have the right to a workplace free of harassment that is based on a protected basis (race, color, sex, religion, disability, national origin, age or reprisal). Harassment is verbal or physical conduct that has the purpose or effect of creating an intimidating, hostile or offensive working environment. The harassment must be so severe or pervasive as to alter the conditions of your employment. Unless the conduct is very severe, a single or several isolated incidents of offensive conduct or remarks generally will not create a hostile work environment. Although we strive for a model workplace in Treasury, the laws prohibiting discrimination do not protect you from harsh or even unfair treatment unless it is shown to be based on your protected group status.

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WHAT DO I DO IF I BELIEVE I HAVE BEEN DISCRIMINATED AGAINST?

If you believe you have been discriminated against, and you decide you want to file a complaint, you *must* contact an EEO counselor within *45 days* from when you first become aware of the alleged discriminatory action. You should contact an EEO counselor in the Treasury bureau where your complaint arose. If you don't know the name of a counselor, you should contact the EEO Officer.



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The counselor's job is to define the issues and bases of the claim and attempt resolution. If you meet the bureau requirements, the counselor may also refer you to the bureau's alternative dispute resolution (ADR) program. If you do not participate in ADR, the counselor may do a limited inquiry of the circumstances giving rise to your allegations and attempt resolution of the complaint.

If your claims cannot be resolved at this stage or in ADR, the counselor will provide you with a Notice of Right to File a Complaint. This Notice provides you with the time frame for filing a formal complaint of discrimination and the address of the Treasury Complaint Center where your complaint must be filed. Your complaint must be filed within *15 days* from receipt of the Notice.

If you file a complaint, the Treasury Complaint Center will acknowledge your complaint and issue an acceptance or dismissal letter on your claims. Accepted claims will be investigated within 180 days from the date the claim is filed, although this time frame may be extended. Investigations may be conducted by telephone, by interrogatory, or by an investigator doing an on-site investigation. The Complaint Center determines the best method for conducting the investigation based on a number of factors, including the type of claim filed.

The Center will also try to resolve your complaint. The Center may ask you if you want to participate in a resolution conference with management to reach resolution on the issues. This will normally occur after the complaint has been investigated so that both parties have the benefit of the information gathered during the investigation.

After the investigation, you will be provided with your rights to a hearing, unless you have a mixed case complaint (one based on an action appealable to the Merit Systems Protection Board (MSPB) such as demotion or removal), or to a final agency decision based on the record.

If you elect a hearing, an Administrative Judge (AJ) from the Equal Employment Opportunity Commission (EEOC) will schedule your complaint for a hearing. Either you or the agency may request that discovery be done if information is missing from the Investigative File. During the hearing, questions will be asked under oath, and the proceedings will be recorded by a court reporter who will prepare a transcript for both parties. The decision whether to hold a hearing will be the AJ's. If there are no material facts in dispute, the AJ may notify you that a hearing is not necessary. If that is the case, the AJ will issue a summary judgement.

After the hearing, the AJ will issue a decision and the Department has 40 days from receipt of the decision and hearing record to issue a final order either implementing or appealing the decision.

WHAT ARE MY RIGHTS TO APPEAL THE DECISION?

Whether the agency issues a final agency decision on the record or a final order after an AJ decision, you have the right to appeal the decision. The agency decision will give you appeal rights and the appropriate appeal form. You will have 30 days to appeal the decision to the EEOC or 90 days to file in Federal district court.

Once EEOC issues a decision on appeal, either you or the agency has the right to request reconsideration.

WHAT IS MY BURDEN OF PROOF?



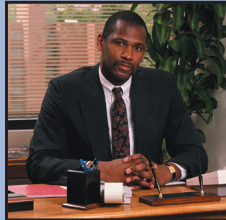
In order to prevail on your claim, you must prove, by a preponderance of the evidence, that discrimination occurred. Evidence can be direct or circumstantial. Direct evidence would be statements by managers or supervisors that directly tie the action against you to your protected class status. For example, if a manager said a female applicant did not get a law enforcement position because women should not carry weapons, that would be direct evidence of discrimination. Direct evidence can be in the form of verbal comments or written statements. Evidence of racist, sexist or ethnic epithets or remarks would also constitute direct evidence. Most cases, however, do not involve direct evidence of discrimination.



You can establish discrimination through circumstantial evidence. In these cases, the courts have established a three-part framework for establishing discrimination. First, you must show that you were treated differently from other similarly situated individuals. For example, if you were over age 40 and on the best-qualified list for a position, and a younger applicant was selected, you would establish an inference, or *prima facie* case, of discrimination.

If you meet this test, the agency must advance a legitimate, non-discriminatory reason for its actions. For example, in a nonselection claim, the agency must explain why the selectee was chosen over you.

You then have the opportunity to rebut this reason or to show it is not the true reason for the agency's decision. The law requires that you show not only that the agency's reason or articulation is false, but that *your protected status* was the real reason for the agency's action. The burden of proof is on you to convince the fact-finder, by a preponderance of the evidence, that a discriminatory reason motivated the agency.



WHAT HAPPENS IF DISCRIMINATION IS FOUND?

If discrimination is found, you are entitled to make-whole relief, including back pay with interest, benefits, and correction of personnel records when applicable. The objective is to make you “whole” as if the discriminatory action did not occur.

Compensatory damages *may* be available. Compensatory damages may be for pecuniary damages (actual expenses you incurred for medical bills, moving expenses, etc.) and non-pecuniary damages (pain and suffering). If you claim compensatory damages, additional information relating to your claim will be gathered. You must show how you were harmed and establish a nexus to the discriminatory conduct.

Reasonable attorney's fees are also available when an attorney represents you. However, neither attorney's fees nor compensatory damages are available in the administrative process for age discrimination cases.

Punitive damages are not available to Federal employees.

WHERE DO I GO FOR MORE INFORMATION?

Each Treasury bureau has an EEO Officer who will provide you with information on the complaint process and your options. EEO Officers should also provide you with information on alternative dispute processes. It is incumbent on Treasury managers and supervisors to ensure that employees and applicants are treated fairly so these types of disputes will not arise. However, if they do occur, early resolution of the complaint will allow all parties to focus on the agency's mission.

You should also be aware that EEO Officers, EEO counselors, and EEO investigators are neutrals. They do not serve as your representative in the process. Their role is to help ensure fair and equitable treatment for all individuals. You are entitled to have your own representative in all stages of the EEO process.





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For further information, contact
the Office of Equal Opportunity
and Diversity at:

202-622-1160
202-622-0367 (Fax)