

**Equal Employment Opportunity Handbook  
National Oceanic and  
Atmospheric Administration**



**U.S. DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
Office of Finance and Administration  
Civil Rights Office**

## PREFACE

The laws of the United States Government prohibit discrimination in Federal employment based on one's race, color, sex, national origin, religion, mental or physical handicap, and age. These laws also require Federal agencies to ensure that their employees and applicants for employment are accorded Equal Employment Opportunity (EEO).

As a Federal employer, NOAA has the statutory responsibility for promoting and ensuring full compliance with all applicable EEO laws and regulations. Therefore, this Handbook has been developed to serve as a central, definitive source on Federal EEO and affirmative employment policies and practices in NOAA.

Although this Handbook is designed for managers and supervisors, it is also a useful resource for all employees.

The policies and practices discussed in this Handbook are in conformance with Federal laws, regulations and guidance issued by the Equal Employment Opportunity Commission, Office of Personnel Management and the United States Department of Commerce.

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## SECTION 1: INTRODUCTION

### 01. PURPOSE

This Handbook describes Federal EEO and affirmative employment laws, regulations and policies to NOAA management and employees.

### 02. LEGAL AND REGULATORY REQUIREMENTS

The information presented is based on the following laws and regulations.

a. Title VII of the Civil Rights Act of 1964, as amended, makes it unlawful for an employer to discriminate in all practices, conditions and terms of employment because of race, color, sex, national origin and religion. When Title VII was first made law, it covered only employees in the private sector. Federal employees are subsequently covered by Title VII through the Equal Employment Opportunity Act of 1972.

b. Age Discrimination in Employment Act of 1967, as amended, prohibits age discrimination against individuals 40 years of age or older based on the practices, terms and conditions of their employment.

c. Architectural Barriers Act of 1968, as amended, requires buildings and facilities to be accessible and usable by handicapped individuals.

d. Executive Order 11478 of 1969, as amended, requires EEO to be an integral part in executing personnel policy and practices in the Federal government. This includes delineation of affirmative action and upward mobility activities.

e. Rehabilitation Act of 1973, as amended, prohibits discrimination in Federal employment because of disability. It also requires the Federal government to provide reasonable accommodation to qualified handicapped employees and applicants.

f. Vietnam Era Veterans Readjustment Assistance Act of 1974 stipulates in Section 403 that each department, agency and appropriate unit must submit an affirmative action program plan for the hiring, placement and advancement of disabled veterans.

g. Executive Order 12067 of 1978 gave the Equal Employment Opportunity Commission (EEOC) lead coordinating responsibility for all Federal equal employment opportunity programs and activities.

- h. Civil Service Reform Act of 1978, Section 310, requires each agency and major operating component to develop a Federal Equal Opportunity Recruitment Program (FEORP). The Guidelines for FEORP are contained in Federal Personnel Manual Letter 720-2.
- i. Section 717 of Title VII of the Civil Rights Act, as amended, requires agencies to maintain affirmative employment programs to ensure enforcement of Federal equal employment opportunity standards. This became effective in 1972.
- j. Rehabilitation Act Amendments of 1986 (i.e., Public Law 99-506, Section 508) address electronic equipment accessibility in Federal procurement. These mandate compliance with accessibility guidelines in order that "handicapped individuals may use electronic office equipment with or without special peripherals."
- k. 29 Code of Federal Regulations 1614 provides the framework for processing complaints of employment discrimination filed against the Federal government. It also establishes the procedures for developing an EEO counseling system.
- l. EEO Management Directive 107, issued by the Equal Employment Opportunity Commission in 1987, contains guidance on processing discrimination complaints in the Federal sector.
- m. EEO Management Directive 712, issued by the Equal Employment Opportunity Commission in 1983, contains guidance to Federal agencies for comprehensive affirmative action programs for hiring, placement, and advancement of individuals with disabilities (or the handicapped).
- n. EEO Management Directive 713, issued by the Equal Employment Opportunity Commission in 1987, provides guidance to Federal agencies on preparing Affirmative Employment Program Plans for Handicapped Individuals.
- o. EEO Management Directive 714, issued by the Equal Employment Opportunity Commission in 1987, provides guidance on preparing Affirmative Employment Program Plans for Minorities and Women.

## SECTION 2: EEO ORGANIZATIONAL STRUCTURE AT NOAA

### 01. PURPOSE

EEO in NOAA is organized to assist management at all levels in administering EEO policies and practices. This includes:

- a. providing guidance on affirmative employment program planning;
- b. administering the discrimination complaint processing system; and
- c. training agency employees to have a better understanding of the entire EEO and affirmative employment process.

### 02. POSITIONS WITH EEO RESPONSIBILITIES

a. The Under Secretary is assigned ultimate responsibility for all equal employment opportunity programs within NOAA. These responsibilities include:

1. ensuring compliance with affirmative employment program instructions issued by the U.S. Department of Commerce and the Equal Employment Opportunity Commission;
2. establishing agency-wide objectives for meeting affirmative employment goals established in NOAA's affirmative employment program plans ensuring specific EEO elements are addressed in managers' and supervisors' performance plans providing incentives for each manager to become proactive in all major areas of a valid, working EEO program, and
3. delegating authority so that complaints of employment discrimination filed against NOAA are processed in accordance with the regulations.

b. Assistant Administrators and Staff Office Directors are responsible for:

1. exercising leadership and providing direction in the implementation of the EEO program throughout the Line Offices and Staff Offices;
2. assisting managers and supervisors in meeting their EEO responsibilities, including established goals and objectives of the affirmative employment program plans; and
3. ensuring coordination of Staff Office and Line Office EEO activities with the Civil Rights Division, Office of Administration.

Director, Office of Administration, is responsible for:

1. assisting the Under Secretary in overseeing EEO program administration for NOAA;
2. evaluating and monitoring the effectiveness of EEO programs, including affirmative employment programs and the discrimination complaint processing system; and
3. ensuring that there are ample staff resources for performing EEO and affirmative employment duties.

d. Director for Personnel and Civil Rights, is responsible for:

1. directing development of NOAA's affirmative employment policy, program plans and accomplishment reports;
2. ensuring that complaints of employment discrimination are processed within the purview of the regulations;
3. ensuring that NOAA employees and management are provided EEO training;
4. disseminating guidance on EEO policies, standards and procedures; and
5. coordinating affirmative employment program activities and other matters affecting equal employment with personnel officers in the Administrative Support Centers.

e. Chief, Civil Rights Division (Equal Employment Opportunity Officer) is responsible for:

1. selecting, training and appointing EEO Counselors;
2. ensuring that agency EEO Counselors are available to those NOAA employees or applicants for NOAA employment who perceive discrimination based on race, color, sex, national origin, religion, age, or handicap with respect to employment matters;
3. processing and adjudicating complaints of employment discrimination.
4. disseminating guidance on EEO policies, standards and procedures; and
5. coordinating affirmative employment program activities and other matters affecting equal employment with personnel officers in the Administration Support Centers.

f. EEO Coordinators for Line Offices are responsible for:



1. coordinating EEO program activities for the Line Offices;
  2. assisting in the development and implementation of affirmative employment plans at the Line Office level;
  3. providing direction to EEO Advisory Committees and Special Emphasis Program Coordinators to enhance communication between management and employees;
  4. providing direct input to immediate supervisors for work and accomplishments of EEO Advisory Committee members and Special Emphasis Program Coordinators; and
  5. providing direction to managers for personal involvement and the establishment of individual program plans.
- g. Personnel Officers are responsible for the following:
1. ensuring that personnel policies and practices are conducted in conformance with the laws and regulations;
  2. assisting managers and supervisors in meeting affirmative employment goals delineated in agency affirmative employment program plans;
  3. conforming with objectives established in NOAA's Federal Equal Opportunity Recruitment Program Plan;
  4. coordinating with the Civil Rights Division, NOAA, on prescribed EEO and affirmative employment program matters; and
  5. retaining and providing relevant personnel records to authorized EEO officials for discrimination complaint processing purposes.
  6. providing EEO data to assist line managers to achieve affirmative employment goals to ensure equal employment opportunity.

03. EEO ADVISORY FUNCTIONS

- a. Special Emphasis Coordinators (e.g., Federal Women's Program Manager, Hispanic Program Coordinator, etc.)
1. function at the discretion of management;
  2. may assist with recruitment and outreach activities for their assigned program area (i.e., women, Hispanics, etc.); and
  3. are purely advisory in nature and do not perform EEO program and administrative duties. EEO program and administrative duties include providing technical advice, EEO training, EEO counseling, discrimination complaint processing, and affirmative employment program plan development.

**b. EEO Advisory Committees**

1. are established, maintained or discontinued at the discretion of each Assistant Administrator, Staff Office Director, as well as the head of a subordinate field headquarters, or their designee;
2. perform purely advisory duties, mainly on affirmative employment matters. They do not perform program management or administrative functions as identified above under Section 03; and
3. assist the Line Office EEO Coordinators in meeting affirmative employment goals and objectives.

### SECTION 3: AFFIRMATIVE EMPLOYMENT PROGRAM PLANNING

#### 01. BACKGROUND

##### a. Definition

1. Affirmative employment law requires Federal agencies to make additional efforts to recruit, employ and promote qualified women, minorities and disabled individuals who were formerly excluded from these types of opportunities. This applies even if that exclusion does not stem from discriminatory actions on part of the agency.

2. The EEOC has determined that affirmative employment programs cover the following EEO groups: White women, Blacks, Hispanics, Asian Americans/Pacific Islanders, American Indians/Alaskan Natives, and individuals with disabling conditions.

##### b. Legality of Affirmative Employment Programs

1. Affirmative employment in the Federal sector is required by the following laws: the Equal Employment Opportunity Act of 1972 (Section 717 of Title VII of the Civil Rights Act, as amended), the Civil Service Reform Act (i.e., the Minority Recruitment Amendment), the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans Readjustment Act of 1974.

2. To comply with these laws, Federal agencies are required to prepare affirmative employment program plans.

#### 02. AFFIRMATIVE EMPLOYMENT PROGRAM PLANS

a. In developing affirmative employment program plans, each agency must determine if its employment practices exclude minorities, women, or disabled individuals from jobs or advancement opportunities. If so, the agency must determine why this is occurring.

##### b. Affirmative employment measures need to be used:

1. if employment practices have or tend to have an adverse impact on minorities, women, and disabled individuals so that they are not receiving employment or promotional opportunities;

2. if employment practices fail to correct the effects of prior discrimination; or

3. if employment practices favor one EEO group over another EEO group which eventually results in disparate treatment.

c. Long and short range goals should be established to correct the above problems. Such goals may include:

1. a recruitment program targeting those groups who are not adequately represented in particular positions or grade levels in the work force;

2. personnel and EEO officials ensuring that qualified individuals of underrepresented EEO groups are referred to selecting officials for consideration; and

3. managers and supervisors redesigning jobs so that persons who lack certain skills, knowledge, and abilities can, through training and education, obtain the necessary skills to progress in a career field.

d. Managers need to work with their servicing personnel offices to assist them in establishing long and short range goals, including participation in recruitment activities.

03. AFFIRMATIVE EMPLOYMENT PROGRAM PLANNING AT NOAA

a. Purpose

1. In conformance with the regulations, NOAA's Affirmative Employment Program Plans have two major objectives:

(a) to identify affirmative employment problems; and

(b) to set goals and timetables for resolving those problems.

2. Ultimately, NOAA Affirmative Employment Program Plans seek to eliminate underrepresentation of targeted EEO groups.

b. Affirmative Employment Program Plan Guidance

1. EEOC disseminates guidance to Federal agencies and departments on the development of affirmative employment plans.

2. The Office of Civil Rights, U.S. Department of Commerce, then issues guidance to the Civil Rights Division, NOAA, on the preparation of the various plans.

3. The Personnel and Civil Rights Office, NOAA, provides guidance and necessary information to the Line Offices and Staff Offices on preparation of these plans.

4. NOAA-wide Plans and Plans for the Staff Offices of the Under Secretary are written by the Civil Rights Division, NOAA. Line Offices have the responsibility for writing their own plans and submitting them to the Civil Rights Division, NOAA, for review.

5. Completed NOAA-wide, Line Office and Staff Office plans are submitted to the Under Secretary or his/her designee for approval and signature. Signed plans are then forwarded to the Office of Civil Rights, U. S. Department of Commerce and ultimately to the EEOC.

c. The Different Types of Affirmative Employment Program Plans

1. Multi-Year Affirmative Employment Program Plans for Minorities and Women are generally issued every five years. Multi-Year Plans are developed NOAA-wide, for each Line Office and the Staff Offices of the Under Secretary. They include the following information:

(a) EEO Policy Statement--Affirms the Agency's commitment to equal employment opportunity;

(b) Sexual Harassment Policy Statement--Prescribes NOAA's policy on dealing with sexual harassment;

(c) Program Analysis--Requires a thorough analysis of the Agency's work force, discrimination complaint processing system, recruitment and hiring practices, employee development programs, promotions, separations, and program evaluation. Of particular concern is the identification of those EEO groups who are manifestly imbalanced or conspicuously absent from the Agency's major occupations and in the senior grade levels;

(d) Problem/Barrier Analysis--Identifies problems that the agency is having in recruiting, hiring and advancing qualified women and minorities;

(e) Report of Objectives and Action Items--Identifies objectives to overcome problems and barriers and then provides action items to meet these objectives; and

(f) Numerical Objectives--Provide numerical goals for correcting the manifest imbalances and conspicuous absences of women and minorities in the major occupations and the major occupational categories.

2. Affirmative Employment Plan Updates for Minorities and Women update the Multi-Year Plans and are issued on an annual basis. The Plan Updates provide additional information to supplement the Multi-Year Plan.

3. **Accomplishment Reports** detail the progress made in recruiting, hiring and advancing women and minorities for the past fiscal year. The Personnel and Civil Rights Office, NOAA, has responsibility for reporting on NOAA and the Staff Offices. The Line Offices write their own Accomplishment Reports and submit them to the Civil Rights Division, NOAA, for review.

4. **Accomplishment Reports and Affirmative Employment Plans for Handicapped Individuals** are prepared annually by the Civil Rights Division, NOAA, based on information from the Line Offices and the Staff Offices. This results in one consolidated NOAA-wide Report/Plan. The primary objectives of the Report and Plan are to:

(a) identify numerical goals to increase the work force representation rate for qualified disabled individuals;

(b) provide new or updated recruitment strategies for disabled individuals;

(c) analyze the accessibility of NOAA facilities. Strategies for removing barriers that impede accessibility are addressed; and

(d) list alternatives to personnel or management policies, practices and procedures which restrict hiring, placement, and advancement of individuals with disabilities.

5. **Accomplishment Reports and Affirmative Action Plans for Disabled Veterans** fall within the purview of the Office of Personnel Management. Guidance on their preparation is contained in the Federal Personnel Manual, Chapter 720. One consolidated NOAA-wide Report/Plan is prepared annually by the Civil Rights Division, NOAA, based on information from the Line Offices and the Staff Offices. These reports/plans:

(a) analyze the percentage representation of disabled veterans in the work force;

(b) identify problems and methods used in recruiting disabled veterans; and

(c) devise goals and report on progress of the recruitment, hiring and internal advancement of disabled veterans.

04. FEDERAL EQUAL OPPORTUNITY RECRUITMENT PROGRAM (FEORP)

a. Introduction

1. FEORP requires Federal agencies to establish targeted recruitment programs predicated on underrepresentation determinations of minorities and women, pursuant to the Civil Service Reform Act of 1978.

2. Since FEORP is a recruitment program, the Personnel Programs and Organization Analysis Division, Personnel and Civil Rights Office, NOAA, has the responsibility for developing a NOAA-wide FEORP Plan.

b. What Does the FEORP Plan Contain?

1. The FEORP Plan first identifies those minority/sex groups who are underrepresented in:

(a) the various broad occupational groupings (i.e., Professional, Administrative, Technical, Clerical, Other, and Wage-Grade/Blue-Collar (PATCOB);

(b) agency mission-related occupations (e.g., Fishery Biologist, Meteorologist, etc.); and

(c) the following grade groupings: GS 1-4, GS 5-8, GS 9-12, and GS/GM 13-15.

2. Underrepresentation is determined by comparing the percentage of a particular minority/sex group in a category of Federal employment and the percentage of that same group in the civilian labor force.

(a) A comparison should be made with the appropriate civilian labor force data--national or local.

(b) Severe underrepresentation occurs when an EEO group in the Federal work force has a representation rate that is 50% or less than the corresponding percentage rate in the civilian labor force.

3. To correct underrepresentation, agencies are required to take special efforts to recruit in minority communities and in educational institutions where large numbers of women and minorities are enrolled.

05. SPECIAL EMPHASIS PROGRAMS

a. Background

1. Special Emphasis Programs were developed to assist Agency management in attempting to improve the status of minorities and women in Federal employment.

2. Some of the most common programs are the Federal Women's Program, the Hispanic Employment Program, the Black Employment Program, the Disabled Persons Employment Program and the Selective Placement Program for Disabled Persons.

b. Special Emphasis Programs at NOAA

1. Collateral-duty Special Emphasis Program Coordinators exist in the Line Offices at the discretion of management.

2. These Program Coordinators assist management and provide suggestions in meeting affirmative employment program goals.

3. NOAA Civil Rights Division staff is responsible for addressing special issues for all minority/sex groups and for those individuals with disabling conditions.



SECTION 4: FACILITY ACCESSIBILITY AND REASONABLE ACCOMMODATION FOR DISABLED INDIVIDUALS

01. INTRODUCTION

a. NOAA is required under law to make its facilities accessible by disabled persons and to make reasonable accommodation to the known physical or mental limitations of a qualified disabled applicant or employee, unless the accommodation would pose an undue hardship on the operation of the NOAA program.

b. The U. S. Department of Commerce requires all Agency components to have its facilities accessible and to provide accommodations for the general public and qualified program participants. The regulation states that, "No person shall be subject to discrimination or excluded from participation in any Department program or activity because of the person's disability."

02. QUALIFIED DISABLED PERSON

a. A disabled person is one who:

1. has a physical or mental impairment/disorder which substantially limits one or more major life activities. Major life activities are functions such as seeing, hearing, walking, learning, working, speaking, breathing, caring for one's self and performing manual tasks;
2. has a record of such an impairment that substantially limits major life activities; or
3. is regarded by the employer as having such an impairment.

b. A disabled person qualified for employment is one who:

1. with or without reasonable accommodation, can perform the essential functions of the position without endangering the health and safety of self or others; and
2. meets the experience and education requirements of the position or the criteria for appointment under one of the special hiring authorities.

03. PHYSICAL AND MENTAL LIMITATIONS

a. A physical limitation means a physiological disorder, condition, cosmetic disfigurement, or anatomical loss affecting one or more of the major body systems (i.e.,

cardiovascular, musculoskeletal, neurological, special sense organs, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and endocrine systems).

b. A mental limitation means a mental or psychological disorder such as emotional or mental illness, mental retardation, specific learning disabilities and organic brain syndrome.

c. A limitation may also include such conditions as alcoholism, drug abuse, and the disease, Acquired Immune Deficiency Syndrome (AIDS). Refer to Sections 4.07 and 4.08 for further information on these subjects.

#### 04. FACILITY ACCESSIBILITY

a. Facility accessibility requires Federal agencies to make their buildings accessible and usable by individuals with disabling handicapping conditions.

b. Examples of this include but are not limited to:

1. ensuring that buildings owned by NOAA and those buildings that NOAA leases through the General Services Administration are easily accessible by disabled persons;

2. designating doorways and water fountains that are accessible by those in wheelchairs, installing braille markers near elevator buttons for use by the blind, and having Telecommunications Devices for the Deaf (TDDs) which should be accessible to the hearing impaired;

3. ensuring that conference rooms, cafeterias, and restrooms can be used by disabled individuals; and

4. ensuring that training facilities are accessible by handicapped participants and that accommodations will be provided for them, if needed. NOAA training announcements must include a statement to the following effect that "with two weeks notice, accommodations will be provided at training courses attended by disabled individuals."

#### 05. REASONABLE ACCOMMODATION

a. Reasonable accommodation involves making a change or modification to either the work station, work schedule, or work equipment so that those with disabling conditions can perform the duties of their jobs.

b. Examples of reasonable accommodation include, but are not limited to:

1. acquiring TDD devices for hearing impaired employees; adjusting the desk/work area to accommodate wheelchairs;
2. obtaining the services of readers, interpreters and personal assistants;
3. providing accessible parking locations for disabled employees with mobility problems; and
4. acquiring special peripherals for computer systems.

c. The Agency is required under law to provide accommodations to qualified disabled employees.

1. If a person with a disabling condition is being hired or there is a disabled person in the office, it is acceptable for Agency management to ask that person if accommodation is needed for his/her condition.
2. Once disabled employees and applicants present their problem to the Agency, Agency management must take steps to provide reasonable accommodation.
3. The responsibility for acquiring and providing accommodations and special equipment for disabled persons rests with the Agency.
4. When taking steps to provide accommodations, managers must consult regularly with the employee who needs the accommodation. They should take into consideration the job, the disability, the work environment and the reasonableness of the accommodation.
5. All accommodations must be considered on a case-by-case basis. Accommodations are highly individualized and what is appropriate for one person may not be appropriate for another.

06. UNDUE HARDSHIP

a. NOAA is required under law to provide reasonable accommodation to disabled persons unless doing so constitutes an undue hardship on the Agency.

b. To determine if the accommodation would cause an undue hardship, the following factors need examining:

1. the overall size of the Agency's program with respect to the number of employees, and number and type of facilities;
2. size of the budget;

3. type of agency operation, including composition and structure of the work force; and

4. the nature and cost of the accommodation.

c. Violations of the Rehabilitation Act

1. Failure of management to take positive action in attempting to accommodate the known needs of a disabled employee or applicant constitutes a violation of the Act, unless it can be shown that accommodation would cause an undue hardship on the agency.

2. Agency management must examine options to provide the accommodation before it can come to the conclusion that such accommodation would cause an undue hardship on the agency.

07. ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

a. AIDS is a virus that damages the body's natural immune defenses against diseases. People who have AIDS develop unusual, life-threatening illnesses that do not affect people with normal immune systems.

b. AIDS is considered a handicap under the provisions of the Rehabilitation Act of 1973, as amended. An employee/applicant who has AIDS, or tests positive with the AIDS Human Immunodeficiency Virus (HIV) is entitled to protection under the equal employment opportunity laws and regulations.

c. Guidelines for Dealing with Employees and Applicants for Employment Infected with the AIDS Virus

1. It is not acceptable to refuse to hire an applicant or to refuse to select or promote an employee solely on the basis of having AIDS or who test positive with the AIDS HIV virus. Selection and advancement for Agency positions should be determined solely on the basis of one's skills, knowledge and abilities.

2. Requests for reassignment or physical separation based on the fear of contracting the AIDS HIV virus from a co-worker shall not be granted. The AIDS virus cannot be transmitted through casual contact in the workplace.

3. Managers and supervisors have an affirmative duty to stop any harassment of employees who have AIDS or who are infected with the AIDS HIV virus. Harassment includes expressions of hostility and also refusal of other employees to perform job duties which require interaction with employees affected with the virus.

4. Employees requiring leave for treatment of the AIDS virus and associated illnesses shall be treated in the same manner as other employees requiring leave for other illnesses.

5. Managers and supervisors shall not reveal to co-workers and others in the workplace about an employee's AIDS condition, unless that employee gives his/her permission.

08. ALCOHOLISM AND DRUG ABUSE

a. Rehabilitated alcoholics/drug addicts and those who are undergoing treatment for alcoholism or drug addiction may be considered disabled under the Rehabilitation Act of 1973, as amended, if they can perform the essential functions of their job.

b. The agency has an affirmative duty to provide reasonable accommodation to its employees and applicants who are rehabilitated alcoholics/drug abusers or in treatment for alcoholism and drug abuse, provided that these individuals can still perform the essential functions of their job.

c. Accommodations may include, but are not limited to, authorizing time from work for participation in treatment programs, doctors visits, etc.

d. The Rehabilitation Act makes clear that if a person's use of alcohol or drugs prevents the disabled from performing the duties of their job, then they are not disabled within the meaning of the Rehabilitation Act. Therefore, such individuals are not entitled to accommodation under EEO laws and regulations.

e. Those disabled employees/applicants whose addiction to alcohol and drugs constitutes a direct threat to the health and safety of themselves or others would also not be protected under the EEO laws and regulations.

09. ELECTRONIC EQUIPMENT ACCESSIBILITY

a. Disabled employees are to be provided with equivalent access to electronic office equipment in compliance with the Rehabilitation Act Amendments of 1986.

b. Agencies are to acquire and assume the cost of special electronic office equipment for those employees who are disabled. This includes providing special peripherals on computer equipment for those employees who are visually, hearing or motor impaired.

c. In supplying electronic equipment to assist disabled individuals, NOAA managers and supervisors are responsible for assuring:

1. assessment of the person's special requirements in the context of his/her job or duties;
2. acquisition of resources (e.g., hardware, software);
3. installation of equipment;
4. integration with other equipment and access/use of the same application programs and data bases;
5. training on how to use the equipment; and
6. follow-up support to the employee.

d. The Information Resource Management Staff, Information Systems and Finance Office (ISFO), Office of Administration, NOAA, has developed a program to assist in supplying computer equipment and services to disabled employees within NOAA. The program includes an assessment of employees' work duties, their skills and their disabilities. The recommendation(s) of the assessment will determine what accommodation is required. Also, there is assistance in the acquisition, installation and integration of the equipment as well as providing training and user support. For further information, the Information Resource Management Staff, ISFO, should be contacted.

## SECTION 5: REASONABLE ACCOMMODATION OF RELIGION

### 01. BACKGROUND

a. It is the policy of the United States Government to prohibit discrimination in employment based on one's religion or religious practices.

b. It is also unlawful for a Federal employer to fail to reasonably accommodate the religious practices of employees or prospective employees, unless the employer can demonstrate that the accommodation would result in an undue hardship.

### 02. DEFINITION OF RELIGIOUS PRACTICES

a. The regulations have defined religious practices to include "moral or ethical beliefs as to what is right and wrong and which are sincerely held with the strength of traditional religious views."

b. According to the regulations, religious observances would also be considered a religious practice as well.

### 03. REASONABLE ACCOMMODATION OF RELIGIOUS PRACTICES AND RELIGIOUS OBSERVANCES

a. Reasonable accommodation is defined as affirmative measures to satisfy an employee's or a prospective employee's religious practices without hindering the rights of other employees or causing an undue hardship on the Agency.

1. After an employee or prospective employee notifies the Agency of his/her need for a religious accommodation, the Agency has an obligation to reasonably accommodate the individual's practices.

2. Employees most frequently request an accommodation because their religious practices conflict with their work schedules (e.g., an employee may request not to work on Friday evenings or Saturdays due to Sabbath observance).

b. The following methods may be used by agencies to reasonably accommodate an employee's request for leave to practice or observe his/her religion.

1. Management may allow other qualified employees to substitute or swap shifts with the employee who will miss work for religious observances. Securing substitutes is the Agency's responsibility, not the employee's.

2. Management may also want to consider flexible scheduling alternatives to accommodate an employee's request for time off due to religious observances/practices.

3. A Federal employee may elect to work compensatory overtime instead of taking leave for purposes of religious observance. An agency may deny an employee's request for compensatory overtime to meet one's religious observations, if this would interfere with the efficient operation of the Agency's mission. For further information, please read Federal Personnel Manual Letter 550-71.

4. Accommodation may also be effected by transferring the employee to another department or a comparable job where the duties do not conflict with the present work schedule.

04. GUIDELINES FOR DETERMINING IF AGENCIES HAVE PROVIDED REASONABLE ACCOMMODATION

a. Agency officials must show at least one of the following:

1. That they met on at least several occasions with the employee in order to resolve the problem;

2. That agency management had previously accommodated employee's observance of religious beliefs;

3. That the agency authorized alternative work shifts with other employees in order to accommodate the employee; and

4. That the agency attempted to find the employee another comparable job.

b. Employees have a responsibility to accommodate their own religious needs.

1. Bilateral cooperation requires the employee/prospective employee to make good faith efforts to satisfy his/her own needs as offered by the agency.

2. The agency is not always required to accommodate the employee/prospective employee in the exact manner requested.

3. Employees and prospective employees may have to bear costs in order to reasonably accommodate their religious needs.

05. UNDUE HARDSHIP

a. Federal agencies have the right to deny an employee's request for religious accommodation if it imposes an undue



hardship on the agency's program. Undue hardship occurs when accommodation would adversely impact upon the agency. Examples of this may include the following:

1. Loss of job efficiency would result if the employee was granted time away from work to practice his/her religious needs;
  2. There is no other qualified employee who can substitute for the employee on days/shifts where (s)he is absent for religious purposes;
  3. Regular payment of premium wages to employee's substitute would result in a financial constraint on the agency; and
  4. Senior employees would be deprived of their seniority rights as part of a bona fide seniority system in order to accommodate a junior employee's religious practices.
- b. In instances where accommodation of the religious practice would result in the agency bearing only minor, insignificant costs, then an undue hardship would not occur. Such minor costs are referred to as de minimis costs.
- c. An agency cannot deny religious accommodation simply because other employees may be displeased or inconvenienced.

SECTION 6: IDENTIFYING AND PREVENTING SEXUAL HARASSMENT  
IN THE WORKPLACE

01. BACKGROUND

- a. Sexual harassment is in violation of Section 703, Title VII of the Civil Rights Act of 1964, as amended.
- b. It is considered a form of sex discrimination.

02. DEFINITION

a. EEOC policy states that unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- 1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- 2. submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual; or
- 3. such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

03. PREVENTING SEXUAL HARASSMENT

- a. Policy on the prohibition of sexual harassment must be enforced by agency officials.
  - 1. According to EEOC regulations, an employer is responsible for the conduct of its agents and supervisory employees with respect to sexual harassment.
  - 2. It is NOAA's position that sexual harassment is a form of employee misconduct which undermines the integrity of the employee relationship, debilitates morale and interferes in the work productivity of an organization.
  - 3. Instances of sexual harassment must be addressed swiftly, fairly and effectively.
- b. NOAA officials must create a proper work environment in order to prevent sexual harassment from occurring in the workplace.

1. Managers and supervisors should monitor the workplace for comments and conduct that could give rise to sexual harassment. Prevention is the best tool for the elimination of sexual harassment in the workplace.
2. NOAA managers and employees shall maintain, through training and other development tools, an awareness of what constitutes sexual harassment and what can be done to most effectively address this issue.
3. Managers, supervisors and employees should not hesitate to affirmatively raise the subject.
4. Agency officials must develop and enforce appropriate sanctions for those who engage in sexual harassment.
5. Employees should be informed of their right to raise allegations of sexual harassment under Title VII of the Civil Rights Act of 1964, as amended.

04. GUIDANCE IF SEXUAL HARASSMENT OCCURS

- a. Employees who are subjected to sexual harassment should let the perpetrator know that such conduct is offensive and unwanted.
- b. Employees who believe they have been subjected to sexual harassment should notify their supervisors. Employees also have the right to complain about the problem through the agency discrimination complaint processing system.
- c. Managers and supervisors should promptly make inquiry into alleged charges of sexual harassment.
- d. Managers and supervisors are expected to speak to the person who reported the problem and the alleged harasser.
- e. If necessary, management must take corrective action immediately. Failure to do so may adversely impact upon the Agency. Efforts to informally resolve allegations of sexual harassment discrimination should reflect actions that:
  - 1) take immediate steps to prevent the reoccurrence,
  - 2) develop appropriate sanctions that reflect the severity of the prohibited conduct, and
  - 3) restore any employment related benefits and/or opportunities denied the complainant.

f. Managers and supervisors should keep all records and documents that they have concerning incidents of sexual harassment.

05. INSTANCES WHERE MANAGEMENT MAY BE HELD LIABLE

a. It is not acceptable under the regulations for Agency officials to say that they were not aware of incidents of sexual harassment. Lack of knowledge on the matter of sexual harassment is no excuse and the Agency may incur liability because of this.

b. Conduct of subordinates should not be ignored. The Agency may be held liable for the conduct of subordinates and non-employees with respect to sexual harassment in the workplace. This applies where either the agency knew or should have known of the conduct and failed to take corrective action.

c. Where employment opportunities or benefits are granted because of an individual's submission to sexual advancement or favors, the Agency may also be liable for unlawful sex discrimination against other persons who were qualified but denied the same benefit or opportunity.

## SECTION 7: DISCRIMINATION COMPLAINT PROCESS

### 01. INTRODUCTION

Effective October 1, 1992, the Equal Employment Opportunity Commission (EEOC) issued regulations at Title 29 Code of Federal Regulations Part 1614 to govern the processing of discrimination complaints in the Federal sector. Part 1614, of which the major components are outlined below, replaces the former discrimination complaint processing regulations found under Part 1613.

### 02. EQUAL EMPLOYMENT OPPORTUNITY (EEO) COUNSELING

a. Individuals who believe that they have been discriminated against with respect to a NOAA employment matter because of their race, color, sex, national origin, religion, age, mental or physical disability, or in retaliation for participating in protected EEO activity, must contact a NOAA EEO Counselor for counseling if they want to pursue the alleged discriminatory matter. The EEO regulations require aggrieved individuals to receive counseling on their allegations of discrimination before filing a formal complaint on the matter.

1. Time frames for contacting an EEO Counselor. The EEO regulations stipulate that EEO Counselors must be contacted within 45 calendar days of the alleged discriminatory incident, or in the case of a personnel action, within 45 calendar days of its effective date.

2. How to contact an EEO Counselor. EEO counseling services are provided by Equal Employment Specialists with NOAA's Civil Rights Staff. To reach a Counselor, call the Civil Rights Staff for a referral.

3. Objectives of counseling. The primary purpose of EEO counseling is to facilitate an informal resolution between the aggrieved person and management. The EEO Counselor approaches resolution by conducting inquiries with the aggrieved person and agency management as well as reviewing pertinent records on the allegations presented. Throughout this process, the EEO Counselor is an objective, neutral party who does not represent either the aggrieved person or management.

b. EEO Counselors are charged with carrying out the following responsibilities as required by Part 1614.

1. At the initial interview, Counselors must advise aggrieved individuals in writing of the following rights and responsibilities.

(a) Aggrieved individuals have the right to be represented by an individual of their own choosing throughout the entire complaint process, including counseling. The representative may be an attorney, law firm, a union official, a coworker or any other person desired by the aggrieved individual. However, agency EEO Counselors, EEO Program Managers, and EEO Officers may not serve as representatives. During EEO counseling, any designation of a representative must be placed in writing and forwarded to the EEO Counselor.

(b) Individuals have the right to keep their identities anonymous during the counseling process. However, aggrieved individuals may request waiver of their right to anonymity.

(c) For those who are covered by a collective bargaining agreement, they must elect to raise their allegations of discrimination by filing either a discrimination complaint or a grievance under the negotiated grievance procedure, but not both. The counseling process does not count as an election of forum.

(d) Those who raise issues that may be appealed to the Merit Systems Protection Board (MSPB) will be informed of their right to file a complaint under the agency's discrimination complaint processing procedures, or present an appeal directly to MSPB. However, they may not file both.

(e) Employees and applicants who allege either sex-based wage discrimination or age discrimination have the right to bypass the administrative complaint process and file a civil action in the appropriate U.S. District Court.

2. EEO Counselors are expected to interview appropriate agency officials who are required to fully cooperate during resolution efforts. This includes making available to Counselors all personnel and other agency records on the matter.

3. EEO Counselors have 30 calendar days from the initial date of contact in which to resolve the matter. At the end of that time period, aggrieved individuals and the agency's EEO Officer may agree, in writing, to extend counseling for an additional period of up to 60 calendar days.

4. If a resolution is agreed upon by the aggrieved person and management, the EEO Counselor will prepare an informal resolution agreement to record the terms and conditions of settlement. All agreements must contain the required clearances before they are presented to management and aggrieved persons for review and signature. By entering into settlement, the agency puts forth a legitimate, good faith offer to resolve the matter and its execution does not imply any impermissible discrimination on the part of the agency or its agents.

5. If a resolution is not attained, counseling will terminate and the EEO Counselor will issue the Notice of Right to File (sample attached) which contains instructions on how to file a discrimination complaint.

### 03. FILING COMPLAINTS OF DISCRIMINATION

a. Aggrieved individuals (hereinafter referred to as Complainants) have 15 calendar days, upon receipt of the Notice of Right to File, to file a written complaint of discrimination against the agency.

b. Complaints must be filed with NOAA's EEO Officer or the Director of Civil Rights, U.S. Department of Commerce, by submitting a completed CD-498 (blank form attached) or by writing a letter containing the same information requested in the CD-498. All complaints must be personally signed by the Complainant or Complainant's representative and dated.

c. Complainants who are in an active duty status shall have a reasonable amount of official time to write, file and present information on their complaint. What is defined as a "reasonable amount of time" will vary on a case-by-case basis depending on the nature and complexity of the complaint.

d. To designate a representative after a formal complaint has been filed, the Complainant must provide written notification to the Compliance Division, Office of Civil Rights, U.S. Department of Commerce.

e. All Complainants will receive a letter from the Office of Civil Rights, U.S. Department of Commerce, which acknowledges receipt of the complaint.

f. After the complaint is received, a copy of the EEO Counselor's Report will be sent to the Complainant or where applicable, the designated representative.

g. Management officials will be notified, in writing, when a complaint has been filed against their Line Office/Staff Office (sample attached). This notification will summarize the allegations contained in the complaint.

### 04. ACCEPTANCE AND DISMISSAL OF COMPLAINTS

a. The Office of Civil Rights, U.S. Department of Commerce, has the authority to accept and dismiss complaints filed against the agency.

b. Complaints may be accepted if:

1. they have been filed within the 15-calendar-day time limit. Timeliness is determined by the postmark on the envelope in which the complaint is mailed. If there is no postmark on the envelope or the complaint is hand delivered, timeliness is determined by the date in which the EEO Officer or Director of Civil Rights receives the complaint;

2. the Complainant has received EEO counseling on the issues raised in the complaint within 45 calendar days of the date the problem occurred or within 45 calendar days of when the Complainant was made aware of the problem; and

3. the issues raised in the complaint fall within the purview of the EEO regulations. This means that allegations raised are based on one's race, color, sex, religion, national origin, age, mental or physical handicap, or reprisal for engaging in prior EEO activity.

c. Complaints may be dismissed if they:

1. fail to state a claim of discrimination based on race, color, sex, national origin, religion, age, handicap, or reprisal for previous engagement in EEO activity;

2. allege that NOAA is proposing to take an action that is discriminatory or the issues raised are moot;

3. are the basis of a pending civil action in a United States District Court in which the Complainant is a party to the suit;

4. are untimely filed or the issues therein were not timely brought to the attention of an EEO Counselor, unless the Complainant demonstrates that:

(a) he or she was not notified of the time limits and was not otherwise aware of them,

(b) prevented by circumstances beyond his/her control from filing the complaint within the time limit, or

(c) for other reasons considered sufficient by the agency;

5. have issues in them that are being pursued under the negotiated grievance system or through the Merit Systems Protection Board; or

6. are not prosecuted in an expeditious manner by the Complainant. Before a complaint is canceled for this



reason, the Complainant will be served a written request, including a notice of proposed cancellation, to provide necessary information or be directed to proceed with the complaint.

7. Complaints may also be dismissed if the Complainant refuses to accept an agency offer of full relief as contained in a valid informal resolution agreement.

d. A Final Agency Decision will be issued if a complaint is dismissed, and the Complainant will be advised of applicable appeal rights should that occur. Appropriate management officials will receive courtesy copies of the Final Agency Decision.

e. Complaints that are accepted will be assigned for investigation. Appropriate management officials will receive written notification of which issues in the complaint will be investigated.

#### 05. EEO INVESTIGATIONS

a. EEO investigations are conducted under the authority of the Office of Civil Rights, U.S. Department of Commerce, by EEO Investigators with the Office of Civil Rights or under contract with the Department.

b. Employees who are contacted by an EEO Investigator must cooperate to the fullest extent possible. This includes providing any relevant information to the Investigator.

1. Complainants who do not cooperate with the Investigator are subject to having their complaint canceled for failure to prosecute.

2. Management officials and Personnel Officers, where applicable, will receive a Request for Retention of Records (sample attached). These officials are expected to cooperate by providing relevant records and any other pertinent information (including sworn affidavits) to the Investigator. Failure to comply may result in a finding against the agency because it was unable to carry its burden of proof due to lack of documentary evidence.

3. Other agency employees may also be required to provide information in connection with the complaint matter. This may include providing sworn affidavits or supplying documents to the EEO Investigator.

c. The Agency must complete its investigation within 180 calendar days of the date when the complaint was filed. The

regulations also provide that, upon written agreement from the Complainant, the investigation may be extended for an additional period not to exceed 90 calendar days.

1. Information collected during the investigation is compiled into a Report of Investigation. The report includes affidavits from the Complainant, agency officials and witnesses, memoranda, personnel documents, and other information relating to the allegations in the complaint.

2. Upon completion of the investigation, a copy of the Report of Investigation will be furnished to the Complainant. Within 30 calendar days of receipt of the report, the Complainant has the right to request a hearing before an Administrative Law Judge with the EEOC or request an immediate Final Agency Decision.

3. If the agency does not furnish a copy of the report to the Complainant within the 180-calendar-day time period, he/she may request an EEOC hearing.

#### 06. RECOMMENDED DECISIONS FROM EEOC

a. Upon receipt of the Complainant's written request, an Administrative Law Judge employed with the EEOC will be assigned to conduct a hearing on the complaint. Both the agency and Complainant are allowed to provide evidence and witnesses on their behalf.

b. The Administrative Law Judge must complete the hearing and issue a Recommended Decision to the Office of Civil Rights, U.S. Department of Commerce, within 180 calendar days of when EEOC received the request for hearing. Based upon the merits of the case, the Administrative Law Judge will recommend a finding of discrimination or no discrimination to the agency. If discrimination is found, appropriate relief will be recommended.

#### 07. FINAL AGENCY DECISIONS

a. Within 60 calendar days of receipt of the Recommended Decision, the U.S. Department of Commerce may adopt, reject, or modify the findings of the EEOC by issuing a Final Agency Decision. Complainants will receive copies of the Final Agency Decision as well as the hearing transcript and Recommended Decision from EEOC. Management officials will receive a courtesy copy of the Final Agency Decision.

b. If the U.S. Department of Commerce does not issue a Final Agency Decision within the 60-calendar-day time period, the Recommended Decision from EEOC shall become the final decision of the agency.

c. If a Complainant waives his/her right to a hearing and requests a Final Agency Decision, such decision must be issued within 60 calendar days of the request. The Final Agency Decision will make a determination on the merits of the case and issue a finding of discrimination or no discrimination. Appropriate relief will be ordered in those cases where a finding of discrimination is rendered.

d. Final Agency Decisions are also issued for those complaints that have been dismissed by the U.S. Department of Commerce for jurisdictional reasons. (Refer to Subsection 04c. for a listing of those circumstances in which a complaint may be dismissed). Final Agency Decisions that dismiss complaints do not make findings of discrimination or no discrimination.

#### 08. APPEALING FINAL AGENCY DECISIONS

a. If Complainants are dissatisfied with the Final Agency Decision, they have 30 calendar days upon receipt of that decision to file an appeal with the Office of Federal Operations, EEOC.

b. Depending on the issues in the complaint, the Final Agency Decision may be appealed to the Merit Systems Protection Board (MSPB) instead of EEOC. Complainants will be notified, in writing, if they are eligible to appeal to MSPB.

#### 09. APPEALS TO U.S. DISTRICT COURT

a. If discrimination is alleged based on race, color, sex, religion, national origin, handicap or retaliation, Complainants may file a civil action:

1. after 180 days from the date of filing the complaint if an appeal has not been filed and a Final Agency Decision has not been issued;

2. within 90 days of receipt of the Final Agency Decision provided that an appeal has not been filed with EEOC;

3. within 90 days of receipt of a final decision from the EEOC's Office of Federal Operations (this is different from EEOC's Recommended Decision); or

4. after 180 days from filing an appeal with EEOC if it has not issued a final decision.

b. If a complaint contains an allegation of sex-based wage discrimination under the Equal Pay Act, a civil action must be filed within two years of the alleged incident. If the matter

is a willful violation, a civil action must be filed within three years of the perceived discriminatory event. These time limits apply whether or not the matter has been pursued under the administrative complaint process.

c. If discrimination is alleged based on age, Complainants have the right to bypass the administrative complaint process and file a civil action in an appropriate U.S. District Court. However, if such Complainants proceed through the Federal discrimination complaint process, they are then held responsible for exhausting all administrative remedies before filing a civil action. For purposes of this section, administrative remedies are exhausted when:

1. an appeal has not been filed and a Final Agency Decision has not been issued within 180 calendar days from the date the complaint was filed;
2. the Final Agency Decision has been issued, yet an appeal to the Office of Federal Operations, EEOC, has not been filed;
3. the Office of Federal Operations, EEOC, has issued its final decision; or
4. the Office of Federal Operations, EEOC, has not issued its final decision within 180 calendar days from the date in which the appeal was filed with that Office.

Attachments

# COMPLAINT OF DISCRIMINATION AGAINST THE U.S. DEPARTMENT OF COMMERCE BECAUSE OF RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, AGE, PHYSICAL OR MENTAL HANDICAP OR RETALIATION

DEPARTMENT NUMBER

FILING DATE

1. COMPLAINANT'S NAME	2. NAME OF COMMERCE ORGANIZATION THAT DISCRIMINATED AGAINST YOU
COMPLAINANT'S STREET ADDRESS	STREET ADDRESS OF OFFICE
CITY STATE ZIP CODE	CITY STATE ZIP CODE
TELEPHONE (INCLUDE AREA CODES) HOME: WORK:	4. DO YOU WORK FOR THE FEDERAL GOVERNMENT? <input type="checkbox"/> NO <input type="checkbox"/> YES. MY MOST RECENT TITLE AND GRADE IS (OR WAS):
3. GIVE THE DATE ON WHICH THE MOST RECENT DISCRIMINATION TOOK PLACE: MONTH DAY YEAR	NAME AND ADDRESS OF ORGANIZATION WHERE YOU WORK (OR APPLIED)

5. (A) DESCRIBE HOW YOU WERE TREATED DIFFERENTLY THAN OTHER EMPLOYEES OR APPLICANTS BECAUSE OF YOUR RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, AGE, HANDICAP OR RETALIATION. (B) DESCRIBE THE ACTION TAKEN AGAINST YOU THAT YOU BELIEVE WAS DISCRIMINATORY. (C) GIVE THE DATES WHEN THIS ACTION OCCURRED. (D) WHAT HARM, IF ANY, CAME TO YOU IN YOUR WORK SITUATION AS A RESULT OF THIS ACTION? (YOU MAY ATTACH EXTRA SHEETS)

6. ANSWER BELOW WHY YOU BELIEVE YOU WERE DISCRIMINATED AGAINST:

<input type="checkbox"/> RACE (STATE RACE) _____	<input type="checkbox"/> AGE (STATE DATE OF BIRTH) _____
<input type="checkbox"/> COLOR (STATE COLOR) _____	<input type="checkbox"/> PHYSICAL HANDICAP (DESCRIBE IT) _____
<input type="checkbox"/> RELIGION (STATE RELIGION) _____	<input type="checkbox"/> MENTAL HANDICAP (DESCRIBE IT) _____
<input type="checkbox"/> SEX (STATE YOUR SEX) _____	<input type="checkbox"/> RETALIATION (EXPLAIN YOUR PRIOR CONNECTION WITH THE EEO PROCESS) _____
<input type="checkbox"/> NATIONAL ORIGIN (STATE NATIONAL ORIGIN) _____	
(STATE COUNTRY OF BIRTH) _____	

7. DID YOU DISCUSS ALL MATTERS REPORTED IN NO. 5 WITH AN EEO COUNSELOR? <input type="checkbox"/> NO <input type="checkbox"/> IF YES, COUNSELOR'S NAME _____	8. DID YOU FILE A GRIEVANCE <input type="checkbox"/> NO <input type="checkbox"/> YES OR AN MSPB APPEAL <input type="checkbox"/> NO <input type="checkbox"/> YES ON THE MATTER (S) DESCRIBED IN NO. 5? IF YES, GIVE DATE (S) _____
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9. THE REMEDY I SEEK IS:

I CERTIFY THAT, TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL OF MY STATEMENTS ARE TRUE, CORRECT, COMPLETE AND MADE IN GOOD FAITH.

10. COMPLAINANT'S SIGNATURE (Sign in dark ink)	11. DATE OF SIGNATURE
_____	MONTH DAY YEAR
<i>Signature</i>	

S A M P L E

Jane Q. Doe  
100 Main Street  
Anytown, State 10000

Re: Notice of Right to File a Discrimination  
Complaint within 15 Calendar Days (#95-54-0000)

Dear Ms. Doe:

On January 4, 1995, you contacted me for equal employment opportunity counseling during which time you alleged discrimination, based on your age (55), with respect to the following matter.

<u>Date</u>	<u>Agency Action</u>
12/5/94	You alleged that you were denied a career-ladder promotion to the GS-9 level.

Since the matters you raised in EEO counseling have not been resolved in accordance with 29 C.F.R. 1614.105(d), I am required to give you this Notice:

You have the right to file a discrimination complaint within 15 calendar days of your receipt of this letter by using the enclosed Complaint Form CD-498, or writing a letter containing the same information.

The complaint must be filed in person or by mail with either:

Director of Civil Rights  
Herbert C. Hoover Building, Room 6010  
U.S. Department of Commerce  
Washington, DC 20230

or

Equal Employment Opportunity Officer, NOAA  
1315 East-West Highway, Room 13345  
Silver Spring, MD 20910

2

You must notify the Compliance Division, Office of Civil Rights, U.S. Department of Commerce, at the above address, immediately if you decide to retain counsel or a representative for your formal complaint. The name, address, and telephone number of such person must be provided, in writing, along with your signature and date.

Sincerely,

EEO Counselor

Enclosure

cc: Chief, Compliance Division, OCR

S A M P L E

MEMORANDUM FOR: Office Director

FROM: Equal Employment Opportunity Officer

SUBJECT: Discrimination Complaint Filed by  
Jane Q. Doe (#95-54-0000)

The Civil Rights Staff recently received a discrimination complaint from Jane Q. Doe, a Computer Technician, GS-8, with the Computer Supplies Branch, Computer Operations Division, Office of Systems Planning and Evaluation. Ms. Doe alleges that because of her age (55), she was denied a career-ladder promotion to the GS-9 level on December 1, 1993.

The Office of Civil Rights, U.S. Department of Commerce, will decide whether to accept or dismiss Ms. Doe's complaint. Once that decision is made, you will be notified. If you have questions, please contact me on (301) 713-0500.



S A M P L E

MEMORANDUM FOR: Personnel Officer  
FROM: Equal Employment Opportunity Officer  
SUBJECT: Request for Retention of Records

The Civil Rights Staff recently received a discrimination complaint from Jane Q. Doe, a Computer Technician, GS-8, with the Computer Supplies Branch, Computer Operations Division, Office of Systems Planning and Evaluation. Ms. Doe alleges that because of her age (55), she was denied a career-ladder promotion to the GS-9 level on December 1, 1993.

Please retain all records you may have on this matter until notified by this Office that the case has been closed. If the complaint is accepted for investigation, relevant documentation must be furnished to the EEO Investigator for inclusion in the Report of Investigation.

Failure to provide records may result in a finding that the Agency was unable to carry its burden of proof due to lack of documentary evidence.

SECTION 8: COMMONLY ASKED EEO AND AFFIRMATIVE EMPLOYMENT  
QUESTIONS AND THEIR ANSWERS

01. EMPLOYMENT OF DISABLED INDIVIDUALS

Q. Is the Federal government covered by the Americans With Disabilities Act (ADA)?

A. The ADA does not cover the executive branch of the Federal Government. The executive branch continues to be covered by Title V of the Rehabilitation Act of 1973, which prohibits discrimination in services and employment on the basis of handicap and which is a model for the requirements of the ADA. The ADA, however, does cover Congress and other entities in the legislative branch of the Federal Government.

Q. May an agency deny a qualified disabled individual employment solely because the building is not accessible by the disabled person?

A. No. An agency cannot deny employment to a qualified disabled individual solely because the facilities are inaccessible. Appropriate building adjustments are to be made to accommodate the person's disabling condition.

Q. Are recreational and/or social alcohol and drug users protected under the Rehabilitation Act of 1973, as amended?

A. No. Recreational or social users of alcohol or drugs are not protected under the Act. The Rehabilitation Act of 1973, as amended, protects rehabilitated alcoholics and rehabilitated drug abusers as well as those who are undergoing rehabilitation, provided that such individuals can still perform the functions of their job.

Q. If, for pregnancy-related reasons, an employee is unable to perform the functions of her job, does the employer have to provide reasonable accommodation?

A. Yes. Pregnancy is treated as a temporary disabling condition. If other employees who are temporarily disabled and cannot perform the functions of their job are reasonably accommodated, then the same treatment should be accorded to pregnant employees.

Q. May pregnancy be used as a basis to refuse to hire?

A. No. An employer cannot refuse to hire a woman because of her pregnancy-related condition so long as she can perform the necessary functions of the job.

**02. EEO ADVISORY COMMITTEES**

Q. If an EEO Advisory Committee member is approached by a person who wants to present an EEO complaint matter, what then is the responsibility of that Committee member?

A. EEO Advisory Committee members do not have the authority to handle EEO complaint matters. Therefore, the person who wants to present an EEO complaint matter should be referred to the Civil Rights Division, NOAA, or an agency-certified EEO Counselor for information and assistance.

**03. NATIONAL ORIGIN DISCRIMINATION**

Q. May an office rule be established requiring employees to speak only English at all times?

A. No. Prohibiting employees at all times, in the workplace, from speaking their primary language disadvantages an individual's employment opportunities on the basis of national origin. However, an office may have a rule requiring that employees speak only English at certain times where justified by business necessity.

Q. Do ethnic slurs constitute harassment on the basis of race and/or national origin?

A. Yes. Ethnic slurs constitute harassment when it creates an offensive work environment, or interferes with an individual's work performance or equal employment opportunities. Harassment on the basis of national origin and race is in violation of Title VII of the Civil Rights Act of 1964, as amended.

**04. DISCRIMINATION COMPLAINT PROCESSING**

Q. A NOAA employee believes that (s)he has been discriminated against because of race, sex, age, color, national origin, religion, mental or physical disability, or reprisal for previous EEO activity, and wants to pursue it. Who should the employee contact?

A. The employee should contact a NOAA EEO Counselor. If an EEO Counselor is not available, the employee should contact the NOAA Civil Rights Division for a referral. The EEO Counselor will try to informally resolve the matter. If this is not possible, counseling will be concluded and the Counselor will issue the Notice of Right to File a Discrimination Complaint.

Q. May an agency EEO Counselor serve as a representative for an aggrieved individual at any time during the discrimination complaint process?

A. No. Agency EEO Counselors cannot serve as personal representatives for aggrieved individuals whose EEO matters are against the U.S. Department of Commerce. However, aggrieved individuals do have the right to representation of their choosing at any stage in the complaint process. EEO Counselors and the Civil Rights Division, NOAA, will provide potential complainants and complainants with instructions on their right to designate a representative.

Q. What is the role of an EEO Investigator?

A. The EEO Investigator collects information and evidence on formal complaints. However, the Investigator does not review the merits of this information. That responsibility is initially assigned to the NOAA Civil Rights Division for purposes of settling complaints and writing Proposed Dispositions. The Office of Civil Rights, U.S. Department of Commerce, reviews the Reports of Investigation as well.

Q. Do managers and supervisors automatically receive copies of Reports of Investigation on discrimination complaints?

A. No. Managers and supervisors are not routinely provided with copies of Reports of Investigation. Management officials generally receive a complaint analysis which summarizes the major findings in the Report. A Report of Investigation may be forwarded to a management official who has the authority to review and resolve complaints.

#### 05. AFFIRMATIVE EMPLOYMENT PROGRAMS

Q. Are the Administrative Support Centers required to prepare their own Affirmative Employment Program Plans?

A. No. The Administrative Support Centers (ASCs) are not required by the U.S. Department of Commerce to have their own Affirmative Employment Program Plans. However, each ASC is expected to contribute information for inclusion in the Staff Offices Plans and the NOAA-wide Plans.

Q. In preparing Federal affirmative employment plans, are numerical objectives for increasing the representation rates of minorities and women the same as quotas?

A. No. Numerical objectives are not the same as quotas. Quotas are court-enforced numerical requirements which must be met at the end of a specified period. On the other hand, numerical objectives are not absolute requirements. They are devised by management only as targets or goals for increasing the representation rates of minorities and women who are underrepresented in a major occupation or occupational category.

Q. Are agencies required to establish numerical objectives?

A. No. Agencies may establish reasonable numerical objectives for an occupational category or major occupation when there is an underrepresentation of minorities and/or women. In determining numerical objectives, the following factors need examining: (1) the extent of the underrepresentation; (2) the availability of candidates; and (3) the number of vacancies.

Q. What is the difference between Affirmative Employment Plans and the Federal Equal Opportunity Recruitment Program (FEORP) Plan?

A. Affirmative Employment Plans identify which EEO groups are underrepresented by major occupations, occupational categories and grade levels.

FEORP Plans, on the other hand, develop specific recruitment strategies. These strategies are designed to increase the representation rates of EEO groups who are underrepresented in the Affirmative Employment Plans. Since FEORP is a recruitment program, the Personnel Programs and Organizational Analysis Division, Personnel and Civil Rights Office, Office of Administration, has the responsibility for its development. The Personnel Operations Division, Personnel and Civil Rights Office, Office of Administration, has responsibility for implementing FEORP.

## GLOSSARY

**Affirmative Employment** requires managers, supervisors and personnelists to take additional efforts to recruit, employ and promote qualified minorities, women and disabled individuals who have been excluded from receiving these benefits due to past and present employment practices.

**Affirmative Employment Plans** are required by Section 717 of the Equal Employment Opportunity Act of 1972, Section 501 of the Rehabilitation Act of 1973 and the Vietnam Era Veterans Readjustment Assistance Act of 1974. These documents state strategies and goals for recruiting, hiring and advancing minorities, women, and the disabled.

**Civilian Labor Force** represents the number of persons sixteen years of age or older employed or seeking employment. Civilian labor force statistics are developed by the Bureau of the Census, U.S. Department of Commerce.

**Complainant** is an individual who has filed a formal, written complaint of employment discrimination.

**Discrimination** means making differences and distinctions among people, ideas, places and things. Treating people differently with respect to employment because of their race, color, sex, national origin, age, religion, or disability is considered illegal discrimination.

**Disparate Impact** is an employment policy or practice, while neutral on its face, adversely impacts against a particular racial, ethnic or sex group. A neutral policy or practice may have an adverse effect on disabled individuals or religious groups.

**Disparate Treatment** occurs when people are treated differently with respect to the terms and conditions of employment because of their race, color, sex, national origin, religion, age or mental or physical disability.

**Diverse Work Force** was first used as a phrase in the Civil Service Reform Act of 1978. This means that the Federal government should make a conscientious effort to hire and retain individuals with varying racial and ethnic backgrounds which reflect our nation's diversity.

**Equal Employment Opportunity (EEO)** embodies the principle of fair treatment in Federal employment and personnel matters without regard to race, color, sex, religion, national origin, age or physical or mental disability.

**Equal Employment Opportunity Commission (EEOC)** provides guidance on affirmative employment program planning and discrimination complaint processing to Federal agencies.

**EEO Groups** are defined under the regulations as White males, White females, Black males, Black females, Hispanic males, Hispanic females, Asian American/Pacific Islander males, Asian American/Pacific Islander females, American Indian/Alaskan Native males, and American Indian/Alaskan Native females. Disabled males and disabled females are also considered EEO groups.

**Facility Accessibility** under Federal law requires buildings owned and leased by the Federal government to be accessible and usable by disabled individuals. This includes entrances into buildings, elevators, restrooms, water fountains, cafeterias, conference rooms and office equipment.

**Federal Equal Opportunity Recruitment Program (FEORP) Plan** states objectives and strategies for the recruitment of minorities and women. It is aimed at eliminating underrepresentation of minorities and women in the Federal work force.

**Final Agency Decision** is a document issued by the U.S. Department of Commerce which makes the agency's final determination on a complaint of discrimination.

**Major Occupations** are mission-oriented occupations or those occupations with 100 or more employees. Major occupations at NOAA include Cartographer, Fishery Biologist, Meteorologist, Computer Specialist and Oceanographer.

**Numerical Objectives** are quantifiable goals designed to eliminate a manifest imbalance or conspicuous absence of women and minority groups. These are not the same as mandatory quotas.

**Occupational Categories** are major employment categories for white collar and wage board pay systems. Specifically, these include professional, administrative, technical, clerical, other, and blue collar occupational categories (often referred to by the acronym PATCOB).

**Proposed Disposition** is a document issued by the NOAA EEO Officer when a formal discrimination complaint is not resolved after an investigation has occurred. This document proposes a finding of discrimination or no discrimination based on the merits of the complaint.

**Reasonable Accommodation** is a change made by management to the terms and conditions of an individual's employment. Such changes are usually required to accommodate an employee's or applicant's known disability or religious beliefs, unless this would create an undue hardship on the agency.

**Sexual Harassment** constitutes unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such an individual; or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

**Underrepresentation** exists when the percentage of employees in the Federal work force for a given occupational category or grade level is less than the corresponding percentage representation in the civilian labor force. Also refer to the terms manifest imbalance and conspicuous absence.



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