



U.S. Department
of Transportation
Maritime
Administration

MANUAL OF ORDERS

MARITIME ADMINISTRATIVE ORDER

REVOKES

MAO 770-713 dated
2/25/97

NO.

770-713

EFFECTIVE DATE

April 30, 2001

SUBJECT

EQUAL EMPLOYMENT OPPORTUNITY

Section 1. Purpose and Coverage: This order sets forth the policy, responsibility, and procedures with respect to equal employment opportunity (EEO) within the Maritime Administration (MARAD). It supplements Department of Transportation (DOT) Order 1000.2B, Equal Opportunity Policy, and applies to all employees of MARAD and applicants for employment with MARAD, except aliens employed or applying for employment outside the limits of the United States.

Section 2. Policy: It is MARAD policy to provide each employee and applicant equal opportunity in employment in MARAD; to prohibit discrimination in employment against any employee or applicant because of race, color, religion, sex, national origin, physical/mental disability, age, sexual orientation, status as a parent or reprisal; and to promote and implement a positive and continuing program of equal opportunity in all areas of employment. Any complaint arising from these matters will be processed in accordance with DOT Order 1000.8A, DOT Procedures for Processing Complaints of Discrimination in Employment Practices, or adverse action appeal procedures, as appropriate, in accordance with Maritime Administrative Order (MAO) 770-751, Disciplinary and Adverse Actions. MARAD employees claiming entitlement to file a grievance must file in accordance with the procedures described in MAO 770-771, Administrative Grievance System.

Section 3. Designation of Equal Employment Opportunity Officers and Special Emphasis Program Managers:

3.01 The Maritime Administrator designates MARAD's EEO Officer, who, in turn, designates the Deputy EEO Officer and field EEO Officers, if deemed necessary. The Deputy EEO Officer shall assist the EEO Officer in performing the functions assigned in 4.05 of this order.

3.02 The EEO Officer shall designate individuals to serve as Hispanic Employment Program Manager, Federal Women's Program Manager and Alternative Dispute Resolution Program Manager. The duties and responsibilities of these positions are prescribed, respectively, in DOT Order 1000.15A, Departmental Hispanic Employment Program, DOT Order 1000.16, Departmental Federal Women's Program and DOT Order 1010.1A, Procedures for the One DOT Sharing Neutrals Equal Employment Opportunity Alternative Dispute Resolution Program.

3.03 Field special emphasis representatives may also be designated by the EEO Officer, if deemed appropriate.

Section 4. Program Responsibilities:

4.01 The Director, Office of Personnel shall:

- 1 Develop and maintain overall programs, plans and procedures to actively promote EEO in all aspects of employment policy and practice in MARAD.

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- 2 Provide current and continuing statistical employment information on MARAD employees according to Office of Personnel Management and DOT requirements.
- 3 Make available to employees, upon request, a copy of pertinent regulations issued to carry out the EEO program.
- 4 Assure that EEO policies and programs are affirmatively implemented in all aspects of employment and personnel operations, make periodic reviews of results as determined appropriate, and publicize the progress made.

4.02 Region Directors and the Superintendent, U.S. Merchant Marine Academy (USMMA), shall develop supplemental plans of action and procedures as necessary to carry out the EEO program in their respective areas.

4.03 Associate Administrators, Region Directors, Superintendent, USMMA, Independent Office Directors, managers, and supervisors at all levels shall:

- 1 Exercise personal leadership in establishing, maintaining, and carrying out a continuing affirmative program designed to promote EEO in every aspect of personnel policy and practice in the employment, development, advancement, and treatment of employees in their organizations.
- 2 Conduct a continuing campaign among subordinate supervisors to remove every form of prejudice or discrimination based upon race, color, religion, sex, national origin, physical/mental disability, age, sexual orientation, status as a parent or reprisal, in applying personnel policies and practices and in working conditions within their functional and organizational jurisdictions; promote continuous supervisory orientation, training, and advice to assure that supervisors understand and carry out EEO policy; review and evaluate the performance of subordinate supervisors to ensure continuing enforcement of the EEO policy; recommend recognition of those who achieve superior results in providing EEO; and take disciplinary action against those who engage in discriminatory practices.
- 3 Provide the maximum feasible opportunity to employees to enhance their skills through on-the-job training, work-study programs, and other training measures so that they may perform at their highest potential and advance in accordance with their abilities.

4.04 As prescribed, the EEO Committee shall perform the functions outlined in MAO 770-713-1 and EEO Counselors shall perform the functions outlined in DOT Order 1000.8A.

4.05 The MARAD EEO Officer shall:

- 1 As necessary, assume jurisdiction of any complaint under this order pending before a Region or at the USMMA and proceed with the processing of the complaint in accordance with DOT Order 1000.8A.

- 2 Maintain records and files and prepare and submit reports for MARAD relating to the counseling activities, status, and disposition of complaints.
- 3 Review and evaluate on a continuing basis MARAD EEO programs and operations and order any improvements or corrective actions necessary. In carrying out this function, personnel may be drawn from other MARAD components.
- 4 Plan, develop, and manage a MARAD-wide affirmative action plan program in accordance with the requirements of DOT Order 1100.28B, Affirmative Action Plans to Assure Equal Employment Opportunity for Minorities and Women in the Department of Transportation.
- 5 Inform employees at least annually of the EEO policy, program, and plan of action designed to accomplish the objectives, and enlist their support.
- 6 Publicize to MARAD employees the names and addresses of the EEO Counselors and Special Emphasis Program Managers.
- 7 Advise employees periodically that counselors are available and the requirement for consulting with a counselor before a formal complaint of discrimination is filed.
- 8 Approve the appendix to this order, periodically to transmit a current listing of MARAD's EEO Counselors, in accordance with the requirement in 29 CFR 1614.102(b)(4) and (7), to provide written material to all employees informing them of the equal employment opportunity administrative and judicial remedial procedures available to them, and the names and addresses of EEO Counselors.

Section 5. EEO Complaints:

5.01 The Maritime Administrator shall ensure that:

- 1 Trained EEO Counselors are available to counsel any aggrieved person who feels that he or she has been discriminated against because of race, color, religion, sex, national origin, physical/mental disability, age, sexual orientation, status as a parent or reprisal, in accordance with the provisions of the Equal Employment Opportunity Commission's (EEOC) regulation, 29 CFR 1614, and the Department of Transportation EEO policies and procedures.
- 2 All management officials, supervisors and other relevant employees fully cooperate with EEO personnel involved with the processing and resolution of pre-complaint and formal complaint matters within MARAD.
- 3 All management officials, supervisors and employees are aware that EEO Counselors, persons seeking counseling, persons seeking to file a complaint, and their representatives and witnesses, shall be free from restraint, interference, coercion, discrimination or reprisal at any stage in the presentation and processing of a complaint, including the counseling stage, or anytime thereafter.
- 4 EEO Counselors have sufficient duty time to perform their counseling duties in an expeditious manner, i.e., scheduling interviews with the parties involved, preparing required documents for the aggrieved person, and attempting to negotiate resolutions.

5.02 Pre-Compliant Counseling: Pre-complaint counseling is the initial stage of processing alleged discriminatory matters. EEO Counselors carry out the functions as prescribed in DOT Order 1000.8A. The opportunity for informal resolution at an early stage is the important feature of the counseling process. A person who believes he or she has been discriminated against on the basis of race, color, religion, sex, national origin, physical/mental disability, age, sexual orientation, status as a parent or reprisal, must contact an EEO Counselor within 45 calendar days of the date the alleged discriminatory event occurred or the effective date of the alleged discriminatory action in order to attempt to informally resolve the matter.

5.03 The EEO Counselor is the first stop and often the last stop for an employee who believes he or she has been discriminated against in some aspect of his or her employment. EEO Counselors resolve most of the problems brought to them by employees, frequently because they are able to suggest corrective action which is appropriate and practicable to help resolve misunderstandings and improve communications between individuals in the same work environment. Government-wide, only one person out of every 10 who consult EEO Counselors goes on to file a formal discrimination complaint. Once approached by an aggrieved person, the EEO Counselor:

- 1 Must advise the aggrieved person, in writing, of his or her rights and responsibilities (i.e., the right to anonymity during the counseling phase); the right to elect either the traditional EEO counseling process (30 days of counseling) or the Alternate Dispute Resolution (mediation) process (extends counseling an additional 60 days) at the initial counseling session.
- 2 Must determine the issues (alleged discriminatory action or event) and basis(es) [if the aggrieved person believes that the reason for the action or event is on the basis of race, color, religion, sex, national origin, physical/mental disability, age, sexual orientation, status as a parent or reprisal].
- 3 Must meet with the aggrieved person, the responsible management official(s) (RMO), and designated witnesses, in order to attempt a resolution of the alleged discriminatory matter within 30 days.
- 4 Must schedule a final interview and give the aggrieved person their "Notice of Right to File a Discrimination Complaint," if a resolution has not been reached at the end of the 30-day period, unless both parties agree, in writing, to an extension of not more than 60 calendar days at which time the notice is to be issued.
- 5 Must prepare and submit an EEO Counselor's Report to the MARAD EEO Officer (Director of Civil Rights) within 10 calendar days of notice that the aggrieved person has filed a formal complaint.

5.04 If the person wishes to file a formal complaint at the conclusion of counseling, he or she must file the complaint within 15 calendar days of receipt of the EEO Counselor's "Notice of Right to File a Discrimination Complaint." Only matters raised at the counseling stage (or matters like or related to matters raised at the counseling stage) may be the subject of the formal complaint. The person has the right to representation throughout the complaint process, including the counseling stage.

5.05 Formal Complaint Process - Once the formal complaint is filed, the respective Departmental Office of Civil Rights Regional Office (DOCRR) processes it as follows:

- 1 DOCRR will acknowledge receipt of the formal complaint in writing.

- 2 DOCRR will review all of the allegations in the complaint and determine if they will be accepted for investigation or dismissed (i.e., for untimely EEO Counselor contact or filing of formal complaint and/or failure to state a claim). The complainant will be informed in writing of the DOCRR determination.
- 3 DOCRR will conduct a complete and fair investigation of the complaint within 180 days of the date filed, unless DOCRR and the complainant agree to an extension of up to 90 days. An investigator will be assigned to investigate the issues of the complaint that were brought to the attention of the EEO Counselor.
- 4 The investigator will develop a complete and impartial factual Report of Investigation (ROI) upon which to make findings on the matters raised in the written complaint. The complainant will be provided a copy of the ROI and advised that, within 30 days of receipt of the ROI, he or she has the right to request a hearing before an EEOC Administrative Judge (EEOC AJ) [except in the case of sexual orientation] or to request an immediate final decision from the DOCRR on the merits of each issue in the complaint. The DOCRR decision shall be issued within 60 days. If the DOCRR finds discrimination, appropriate remedies and relief are identified.
- 5 If the complainant requests a hearing, the EEOC AJ will adjudicate the claim(s) of discrimination (usually within 180 days of the request). The hearing is a proceeding which completes the investigation by ensuring that the parties have a fair and reasonable opportunity to explain and supplement the record and to examine and cross-examine witnesses. The EEOC AJ will acknowledge receipt of the request in writing, notify the parties of the right to seek discovery (reasonable development of evidence on matters relevant to the issues raised in the complaint), and issue discovery orders as appropriate. A hearing is usually conducted and the EEOC AJ then issues findings of fact and conclusions of law on the merits of the complaint and orders appropriate relief where discrimination is found with regard to the matter.
- 6 Within 60 days of receipt of the EEOC AJ's findings and conclusions, the DOCRR may reject or modify the findings and conclusions or relief ordered by the EEOC AJ, but must issue a final decision. If DOCRR does not reject or modify the findings and conclusions of the EEOC AJ, those findings and conclusions and the relief ordered become the final agency decision and the complainant is so notified.

5.06 Rights of Appeal:

- 1 The complainant has the right to appeal to the EEOC for reinstatement of any issue of the complaint that was dismissed by the DOCRR.
- 2 The complainant has the right to appeal to the EEOC for reconsideration of the DOCRR's final decision on any issue, except sexual orientation, or to immediately file a civil court action regarding the DOCRR's final decision.
- 3 The complainant has the right to file a civil court action to appeal EEOC's decision within 90 days of receipt of the decision; or, if EEOC fails to render a decision within 180 days of receipt of the appeal, the complainant may file a civil court action.

- 4 The complainant has the right to appeal the DOCRR final decision on sexual orientation to the Departmental Director of Civil Rights under a motion for reconsideration. Although the Department of Transportation has a policy that no civilian employee shall be discriminated against on the basis of his or her sexual orientation, EEOC's regulation, 29 CFR 1614, does not apply to complaints of discrimination based on sexual orientation. The Department of Transportation, however, has adopted provisions that are similar to EEOC's regulations in that they allow for pre-complaint counseling, investigation and issuance of a final agency decision. The differences are that the complainant has no right to request a hearing before an EEOC AJ, and has no right to be awarded compensatory damages if a finding of discrimination is made. (Note: Employees covered under exclusive bargaining unit agreements may not pursue a complaint under the Department's sexual orientation complaint procedures unless and until the procedures have been negotiated with the unions.)



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