

The EEO Complaint Process

The Office of Civil Rights (OCR) manages the Department of Commerce's Equal Employment Opportunity (EEO) complaint process, with oversight from the Equal Employment Opportunity Commission (EEOC) -- an independent Federal agency. This fact sheet provides an overview of how individual complaints of discrimination are processed. Procedures differ in mixed case complaints, which raise issues that may be appealed to the Merit Systems Protection Board (MSPB). See the fact sheet: *OCR Quick Facts: Mixed Case Complaints* for more information.

Q. What is the EEO complaint process?

A. The EEO complaint process is a legal process designed to safeguard the rights of Commerce employees and job applicants under Federal EEO laws. Any Commerce employee or job applicant can use the process.

Q. What types of discrimination can be raised?

A. Issues of job discrimination based on race, color, sex, national origin, religion, age or disability, as well as claims of retaliation for opposing a prohibited practice or participating in an equal employment opportunity matter may be raised in the EEO complaint process.

EEO Counselors can provide information about avenues of redress for other types of discrimination, such as discrimination based on sexual orientation, status as a parent, marital status, political affiliation, and conduct that does not adversely affect the performance of an employee.

Q. How is an EEO complaint initiated?

A. The first step is to see an EEO Counselor within 45 days of the action believed to be discriminatory, the effective date of a personnel action, or the date that the individual has enough information to reasonably suspect that s/he has a valid EEO claim.

The Counselor will try to help the complainant and management find a way to resolve the issues in the complaint. Complainants may also have the opportunity to use the Alternative Dispute Resolution (ADR) process if the dispute is suitable for mediation. In most cases, counseling must be completed within 30 days and ADR within 90 days.

Q. What if the complaint is not resolved during the informal complaint process?

A. The complainant may file a formal complaint. After counseling is completed, a Notice of the Right to File a Formal Complaint is provided, along with a com-

plaint form, filing instructions, and a summary of the unresolved issues. The formal complaint must be filed within 15 days of receipt of this notice.

Q. What happens after a formal complaint is filed?

A. If the complaint is accepted for processing, the Department must conduct an investigation of the issues raised. Investigations must ordinarily be completed within 180 days.

After the investigation, the complainant can request a hearing before an EEOC Administrative Judge (AJ) or an immediate final decision from the Department. If a report of investigation is not issued within 180 days, the complainant may request a hearing directly from the EEOC.

Q. Is ADR available in the formal EEO complaint process?

A. Yes. If the issues are suitable for ADR, complainants are advised of the procedures for requesting ADR in the formal complaint process.

Q. How is a decision issued in an EEO Complaint?

A. After a hearing, the EEOC AJ issues a decision within 180 days. If the agency does not issue a final order within 40 days after receiving the decision, it becomes the final action of the agency. If the agency issues an order notifying the complainant that the agency will not fully implement the decision of the administrative judge, the Department must file an appeal with the EEOC at the same time.

When a complainant chooses an immediate final decision or fails to choose a hearing, the Department must issue a final decision in 60 days.

Decisions issued by the EEOC AJ or the Department are based on the legal merits of the case.

Q. Can a decision by an EEOC AJ or a FAD issued by the Department be appealed?

A. Yes. Complainants who are dissatisfied with the agency's final action in their complaint may appeal it to the EEOC within 30 days of receipt. The Department may appeal a decision by an EEOC AJ within 40 days of receipt of the decision.

Q. What remedies are available where discrimination is found?

A. Remedies are tailored to the particular circumstances of the case. They may include:

- notice to all employees of their rights under the EEO laws, including freedom from retaliation;
- actions to correct the source of the identified discrimination such as stopping the specific discriminatory practices involved;
- placement of the complainant in the position s/he would have occupied if the discrimination had not occurred;
- compensatory damages for actual and future monetary losses, as well as non-monetary harm (Compensatory damages are limited to \$300,000);
- back pay (with interest if applicable) and lost benefits;
- other actions that will make the individual "whole" (in the condition s/he would have been but for the discrimination); and
- payment of attorneys' fees and costs.

Punitive damages are not available in EEO claims against the Federal government.

Q. When can an EEO claim be raised in court?

A. Generally, a person must file an EEO complaint before going to court. Exceptions are Equal Pay Act (EPA) and age discrimination claims. However, a complainant may file a suit in court if a decision has not been issued in the complaint 180 calendar days from the date it was filed, or if the EEOC has not issued a decision on appeal after 180 days from the date the appeal was filed.

Complainants may also bring their claim to court within 90 calendar days of receiving a final decision or an EEOC decision on appeal. A law suit is not an appeal of the Department's decision or the EEOC's decision. It is a new review of the case.

Reasonable Accommodations: Individuals who need an accommodation to participate in the EEO complaint processes (e.g., sign language interpreter, print materials in accessible format) should inform the bureau EEO Office or OCR so appropriate arrangements can be made.

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