

HHS STATEMENT OF THE REVISED RIGHTS AND RESPONSIBILITIES OF AGGRIEVED PERSONS IN THE EEO COMPLAINT PROCESS

November 9, 1999, marked the effective date of the Equal Employment Opportunity Commission's (EEOC) revised regulations governing the processing of complaints of employment discrimination by current and former federal employees and applicants. [Agencies were required to establish or make available an Alternative Dispute Resolution (ADR) program effective January 1, 2000.] The Department of Health and Human Services (DHHS) Equal Employment Opportunity (EEO) Complaint Process covers individual and class complaints of discrimination based on **race, color, national origin, religion, sex, physical or mental disability, age (40 years of age and older), and reprisal for previous EEO activity.**

** A disabled person is defined as one who has a physical or mental impairment which substantially limits one or more major life activities, has a record of impairment, or is regarded as having such an impairment.*

You have the right to:

1. Anonymity in the counseling phase of the complaint process unless waived. You relinquish this right if you file a formal complaint. Anonymity should be requested from the EEO counselor, if desired.
2. A representative of your choice at any stage in processing the complaint, provided the choice of a representative does not involve a conflict of interest and/or position, or unreasonably impact on the work of the Agency. You must immediately inform the Agency and/or the EEOC in writing of such representation (i.e.: name, address, phone number), or any change in representation.
3. Choose between EEO counseling and ADR. Unless you agree in writing to extend the 30 day time frame for counseling, or choose ADR, you will receive a termination notice with instructions on how to file a formal EEO complaint. In either case, the maximum processing time frame is 90 days.
4. Receive a written acknowledgment of receipt from the agency after filing a formal EEO complaint or an amendment to a complaint.
5. Amend a formal complaint with issues that are "like or related" to the original complaint, prior to the conclusion of the investigation, or, after requesting a hearing, without the need for additional counseling.
6. Receive a copy of the Report of Investigation (ROI) within either 180 days after the original complaint filing date/the last amendment filing date/the last consolidated complaint filing date, or, 360 days from the original filing date, whichever comes

first. If you elect a hearing before an EEOC Administrative Judge (AJ) (in a non-mixed case or on consolidated complaints), or a final agency decision based on the ROI, you should receive a final order or decision within 40 days from the agency's receipt of the AJ's decision, or within 60 days from electing a decision on the record, respectively.

7. File a notice of intent to sue with the EEOC when age is alleged as a basis for discrimination, and the right to file a lawsuit under the Age Discrimination in Employment Act (ADEA) instead of an administrative complaint of age discrimination.
8. File a civil action in the appropriate U.S. District Court 90 days after receipt of the agency's final action if no appeal has been filed, or, receipt of EEOC's final decision on appeal; 180 days after filing a formal complaint if no appeal has been filed and no final action has been issued, or, after filing an appeal with the EEOC and no final decision has been issued.
9. You may appeal to the US District Court for appointment of an attorney to represent you in the court proceeding if you elect to file a civil action under Title VII or the Rehabilitation Act. The Court may appoint an attorney to represent you and may permit commencement of the civil action without payment of fees, costs, or security.
10. Go directly to U.S. District Court on claims of sex-based wage discrimination under the Equal Pay Act (EPA) within 2 years (3 years if the violation is willful) of the alleged violation, even though such claims are also able to be heard under Title VII. Individuals who believe themselves so aggrieved may, thus, claim violations of both statutes simultaneously. In connection with an EPA claim, be advised of the availability of liquidated damages for a willful violation.
11. Use a reasonable amount of official time in preparing and presenting the complaint of discrimination. Such official time must be requested in advance from the appropriate supervisor.
12. Present and pursue a complaint free from reprisal, restraint, interference, coercion, or harassment against an aggrieved person or their representative.

You have the responsibility to:

1. Contact an EEO counselor within 45 days of an alleged discriminatory action.
2. File a complaint within 15 days of receipt of the counselor's Notice of Right to File a Formal Complaint in the event you wish to file a formal complaint at the conclusion of counseling. You may be required to choose between a negotiated grievance procedure**, the EEO complaint procedure, and filing an appeal with the Merit Systems Protection Board (MSPB)***.
3. Make any request for a hearing before an EEOC AJ (in a non-mixed case and on consolidated complaints) in writing to EEOC, and provide the agency with a copy of the request, within 30 days of receipt of the ROI and election notification.

4. File any motion to amend a complaint with the EEOC AJ, once a request for a hearing has been made, and provide the agency with a copy.
5. File any appeal of an agency dismissal or final action to the OFO within 30 days of receipt, and provide the agency with a copy.
6. File any statement or brief in support of an appeal filed with the OFO within 30 days of filing the notice of appeal, and provide the agency with a copy.
7. Serve any opposition brief on the agency within 30 days of receipt of the brief in support of the appeal, or if no brief has been filed, within 60 days of receipt of the appeal.
8. Notify the agency of acceptance of a written resolution offer within 30 days of receipt. Your rejection of an agency's offer of resolution made pursuant to §1614.109(c) may limit the amount of attorney's fees or costs you can recover.
9. Mitigate damages (e.g., those interim earnings or amounts which could be earned by the individual with reasonable diligence). Generally, such earnings must be deducted from an award of back pay. You must also seek treatment for any injury you claim.
10. Keep the agency and EEOC informed of your current mailing address.
11. Fully cooperate with the presentation of information (including the scheduling of meetings or conferences, responding to correspondence, and providing requested material or information) in the processing of the complaint.

NOTE: Only matters raised at the counseling stage, or matters "like or related" to matters raised at the counseling stage, may be the subject of a formal complaint. Class complaint procedures and the responsibilities of a class agent will be provided upon request. The time frames in this notification are stated in calendar days.

*** Where an Agency is covered by 5 U.S.C. section 7121(d) and where the negotiated procedure and the statute cover the alleged discrimination, the aggrieved individual would be required to elect either 1) the statutory procedure for discrimination (the internal Agency EEO process) or 2) the negotiated grievance procedure, but not both.*

**** The aggrieved person has 20 calendar days from the date of the alleged discriminatory act to file a mixed case appeal with the Merit Systems Protection Board (MSPB) or 15 calendar days from the date of a counselor's notice of final interview or 30 calendar days after the initial EEO counselor contact to file a formal mixed case EEO complaint. S/he may not file both an MSPB appeal and an EEO complaint on the same matter. The process selected first is deemed the elected process.*

This is to acknowledge that a copy of this handout was provided to me.

Signature of Aggrieved Person

Date

Signature of EEO Counselor

Date

Last Updated: November 21, 2003