

THE USE OF OFFICIAL TIME FOR WORK ON EEO COMPLAINTS

The issue of utilizing official government time for work on equal employment opportunity (EEO) complaints can be complex and confusing for complainants, witnesses, representatives, and management officials. Therefore, the guidance below, from the Equal Employment Opportunity Commission's (EEOC) Management Directive (MD)-110 is provided for both managers and employees.

Section 29 C.R.F. § 1614.605 provides that complainants are entitled to a representative of their choice during all stages of the complaint process. Both the complainant and the representative, if they are employees of the agency where the complaint arose and was filed, are entitled to a reasonable amount of official time to present the complaint and to respond to agency requests for information, if otherwise on duty. Former employees of an agency who initiate the EEO process concerning an adverse action relating to their prior employment with the agency are employees within the meaning of 29 C.R.F. § 1614.605, and their representatives, if they are current employees of the agency, are entitled to official time. Witnesses who are federal employees, regardless of whether they are employed by the respondent agency or some other federal agency, shall be in a duty status when their presence is authorized or required by Commission or agency officials in connection with the complaint. However, 29 C.R.F. § 1614.605 also states that the agency is not obligated to change work schedules, incur overtime wages, or pay travel expenses to facilitate the choice of a specific representative or to allow the complainant and representative to confer.

The Washington Headquarters Services' (WHS) Administrative Instruction (AI) Number 9 implements the provisions of EEOC MD-110 and provides procedures for processing complaints of discrimination in employment. This AI should be used as reference by all employees when requesting or deciding reasonable time for work on EEO complaints. This AI applies to all civilian employees within the organizational entities of the Office of the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, the Defense Agencies, and the DoD Field Activities serviced by WHS.

The following are questions and answers designed to help complainants, witnesses, representatives, and management officials understand the use of official time for work on equal employment opportunity complaints.

Q. What is a reasonable amount of official time?

A. "Reasonable" is defined as whatever is appropriate, under the particular circumstances of the complaint, in order to allow a complete presentation of the relevant information associated with the complaint and to respond to agency requests for information. (Examples: **Meeting and hearing time; Preparation time; Aggregate time spent on EEO matters**) The actual number of hours to which complainant and his/her representative are entitled will vary, depending on the nature and complexity of the complaint and considering the mission of the agency and the agency's need to have its employees available to perform their normal duties on a regular basis. The complainant and the agency should arrive at a mutual understanding as to the amount of official time

to be used prior to the complainant's use of such time. Time spent commuting to and from home should not be included in official time computations because all employees are required to commute to and from their federal employment on their own time.

Q. What is considered as meeting and hearing time?

A. Most of the time spent by complainants and their representatives during the processing of a typical complaint is spent in meetings and hearings with agency officials or with EEOC Administrative Judges. Whatever time is spent in such meetings and hearings is automatically deemed reasonable. Both the complainant and the representative are to be granted official time for the duration of such meetings or hearings and are in a duty status regardless of their tour of duty. If a complainant or representative has already worked a full week and must attend a hearing or meeting on an off day, that complainant or representative is entitled to official time, which may require that the agency pay overtime.

Q. What is considered as preparation time?

A. Since presentation of a complaint involves preparation for meetings and hearings, as well as attendance at such meetings, conferences, and hearings, complainants and their representatives are also afforded a reasonable amount of official time, as defined above, to prepare for meetings and hearings. They are also to be afforded a reasonable amount of official time to prepare the formal complaint and any appeals that may be filed with the Commission, even though no meetings or hearings are involved. However, because investigations are conducted by agency or Commission personnel, the regulation does not envision large amounts of official time for preparation purposes. Consequently, "reasonable," with respect to preparation time (as opposed to time actually spent in meetings and hearings), is generally defined in terms of hours, not in terms of days, weeks, or months. Again, what is reasonable depends on the individual circumstances of each complaint.

Q. What is considered as aggregate time spent on EEO matters?

A. The Commission considers it reasonable for agencies to expect their employees to spend most of their time doing the work for which they are employed. Therefore, an agency may restrict the overall hours of official time afforded to a representative, for both preparation purposes and for attendance at meetings and hearings, to a certain percentage of that representative's duty hours in any given month, quarter, or year. Such overall restrictions would depend on the nature of the position occupied by the representative, the relationship of that position to the mission of the agency, and the degree of hardship imposed on the mission of the agency by the representative's absence from his/her normal duties. The amount of official time to be afforded to an employee for representational activities will vary with the circumstances.

Moreover, 29 C.R.F. § 1614.605(c) provides that in cases where the representation of a complainant or agency would conflict with the official or collateral duties of the representative, the Commission or the agency may, after giving the representative an opportunity to respond, disqualify the representative. At all times, the complainant is

responsible for proceeding with the complaint, regardless of whether s/he has a designated representative.

The Commission does not require agencies to provide official time to employee representatives who are representing complainants in cases against other federal agencies. However, the Commission encourages agencies to provide such official time.

Q. How do I request official time?

A. The request must be in writing and presented to an official in your chain of command who can grant or deny the request. The amount of time being requested, the purpose of the request (for example, whether to meet with an agency official or your representative), and whether travel time is included should be noted. (However, please note that official time for travel to meet with your representative must be charged to leave.) As much notice as possible should be provided to allow agency officials to review and make a decision regarding the request. Supervisors may request verification of the meeting and length of time.

Q. What should I do if the Agency denies my request for official time?

A. If the agency denies a request for official time, either in whole or in part, the agency must include a written statement in the complaint file noting the reasons for the denial. If the agency's denial of official time is made before the complaint is filed, the agency shall provide the complainant with a written explanation for the denial, which it will include in the complaint file if the complainant's subsequently files a complaint. If a request cannot be granted, efforts should be made by agency officials to offer alternatives as to when official time may be granted.

Q. What if the requested official time is not during my normal work hours or duty status/tour of duty?

A. It is expected that the agency will, to the extent practical, schedule meetings during the complainant's normal working hours and that agency officials shall provide official time for complainants and representatives to attend such meetings and hearings.

If meetings, conferences, and hearings are scheduled outside of the complainant's or the representative's normal work hours, agencies should adjust or rearrange the complainant's or representative's work schedule to coincide with such meetings or hearings, or grant compensatory time or official time to allow an approximately equivalent time off during normal hours of work. The selection of the appropriate method for making the complainant or representative available in any individual circumstance shall be within the discretion of the agency.

Any reasons for an agency's denial of official time should be fully documented and made a part of the complaint file.

Witnesses who are federal employees, regardless of their tour of duty and whether they are employed by the respondent agency or another federal agency, must be in a duty

status when their presence is authorized or required by Commission or agency officials in connection with a complaint.

Q. Can I use government property to work on my complaint?

A. The complainant's or complainant's non-attorney representative's use of government property (copiers, telephones, word processors) must be authorized by the agency and must not cause undue disruption of agency operations. Postage paid Government envelopes may not be used by a complainant or complainant's representative to mail information pertaining to an EEO complaint.

Q. If I have additional questions concerning the use of "Official Time" who can I contact?

A. You may contact the Equal Employment Opportunity Programs Office at 703-699-1805.

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