

## **Army ADR Use in EEO Complaints in FY 2009**

On Monday, July 26, the U.S. Equal Employment Opportunity Commission released its annual report on the federal workforce for FY 2009. This comprehensive report assesses the state of EEO in federal agencies, including data concerning the trends in composition of the federal workforce, the bases and issues alleged in complaints, and compliance with procedures for processing and resolving complaints, including the use of ADR processes in both informal and formal complaints. The [full report](#) is available on EEOC's website at [www.eeoc.gov](http://www.eeoc.gov).

For Army practitioners, the ADR report is mixed. At the informal, pre-complaint stage, the Army offered ADR to the aggrieved in 1,100 of its reported 2,342 counselings, or 47%. Of these, the offer of ADR was accepted in 555 cases, for an ADR participation rate of 23.7% (555 out of 2,342 counselings). In contrast, the pre-complaint ADR offer rate for all federal agencies was 78.1% (30,475 offers out of 39,038 counselings), and the ADR participation rate was 49.3% (19,261 offers were accepted by the aggrieved). Thus, the Army's ADR offer rate and participation rate in informal pre-complaints, where ADR is an express alternative to traditional counseling, were substantially below the rest of the federal government. They were also lower than the offer and participation rates of the Air Force (71% and 42.5%, respectively, and the Navy (100% and 42.8%.<sup>1</sup> However, the Army had comparable success in using ADR to resolve pre-complaints, achieving resolution in 62.7% of the pre-complaint cases in which it was used, compared to 52.6% for Air Force, 65% for Navy, and 66.9% for the federal government as a whole.

At the formal complaint stage, the Army's performance is substantially better. It offered ADR in 25.5% of formal complaints, compared to a government-wide average of only 16.6%. Its participation rate of 17.8%, while lower than Air Force's 26.5%, was substantially higher than the Navy's (4.6%) and government-wide (6.8%) rates. Finally, resolution rates were higher in formal complaints than in pre-complaints, with Army achieving resolution in 65% of the cases in which ADR was employed, compared to 84% for Air Force, 48% for Navy, and 50% government-wide.

Finally, the report again confirms what is already widely known: ADR resolutions at the informal pre-complaint stage save agencies money; not only are average monetary payouts much smaller at the informal stage; many processing costs, including the cost of investigation and administrative litigation in formal complaints, are avoided. In FY

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<sup>1</sup> Direct comparison of ADR offer rates is not possible because different agencies may define "offer" differently. EEOC management Directive 110 requires all aggrieved parties to be informed of the availability of ADR as an alternative to traditional counseling, but also acknowledges the agency's right to decline ADR if found to be inappropriate for the particular dispute. Some agencies count the initial information regarding availability of ADR as an "offer," subject to a determination of appropriateness, while other agencies count only those "offers" of ADR made after ADR has been found appropriate. The Army does not count an "Offer" of ADR as an offer unless the dispute has been found appropriate for ADR. This may provide a partial explanation as to why the Army ADR offer rate in pre-complaints is not higher.

2009, the average payout for an Army pre-complaint settlement was \$626. At the formal stage, the average payout for ADR settlements was \$3,716 per resolution; for all formal complaints closed in FY 2009, the average payout was \$4,725. Average cost of investigating an Army formal complaint was \$6,552. From these data, we can readily see that resolving an EEO complaint at the informal stage yields considerable cost savings over having to deal with them at the formal complaint stage.

Table 1 below captures the comparative data.

**Table. Comparative ADR Offer, Participation, and Resolution Rates; Investigation Costs and Monetary Payouts in EEO Cases, FY 2009.** (Source: EEOC FY 2009 Annual Report on the Federal Workforce, Individual Agency Profiles)

Process Stage	Army	AF	Navy	Gov't-Wide
<b>Informal Pre-Complaints</b>				
ADR Offer Rate	47%	71%	100%	78.1%
ADR Acceptance Rate	50.5%	60%	42.8%	63%
ADR Participation Rate	23.7%	42.5%	42.8%	49.3%
ADR Resolution Rate <sup>2</sup>	62.7%	52.6%	65%	66.9%
Monetary Payouts (Avg)	\$437	\$2268	\$494	\$5286
<b>Formal Complaints</b>				
ADR Offer Rate	25.5%	46%	5.3%	16.6%
ADR Acceptance Rate	70%	58%	88%	41%
ADR Participation Rate	17.8%	26.6%	4.6%	6.8%
ADR Resolution Rate	65%	84%	48%	50%
Investigation Costs (Avg)	\$6,552	\$8,327	\$9,130	\$3,682
Monetary Payouts (ADR Avg)	\$3,716	\$3,333	\$3,135	\$5,353
Monetary Payouts (All Avg)	\$4,725	\$11,091	\$5,947	\$11,734

<sup>2</sup> ADR Resolution Rate is not the same as a settlement rate. A settlement rate is the percentage of cases resulting in a negotiated settlement agreement (NSA) signed by the parties. In FY09, the Army reported 202 settlements in the 555 pre-complaint cases that went to ADR, for a settlement rate of 36.4%. The resolution rate is broader, including not just settlements, but also cases that did not result in the filing of a formal complaint. In FY09, the Army reported 146 such cases. When these 146 cases are added to the 202 settlement cases, the total (348), when divided by the total number of ADR cases (555), yields the resolution rate of 62.7% shown in the Table. The same methodology is used to report Air Force, Navy, and Government-wide resolution rates.