

Early Resolution of EEO Complaints (EREC) Program

Purpose

These procedures are established in accordance with Title 29 Code of Federal Regulations, Part 1614 (Federal Sector Equal Employment Opportunity); the Administrative Dispute Resolution Act of 1996 (110 Stat. 3870); and the U.S. Equal Employment Opportunity Commission (EEOC) Management Directives 110 and 715.

EEOC's regulations require Federal agencies to make available an Alternative Dispute Resolution (ADR) program during both the informal (pre-complaint) process and the formal complaint process for Equal Employment Opportunity (EEO) complaints. 29 C.F.R. § 1614.102(b)(2). Accordingly, the U.S. Department of Labor (the Department or DOL) has established the Early Resolution of EEO Complaints (EREC) Program to provide ADR for EEO complaints.

Background

It is DOL's policy to provide equal employment opportunity for all employees and applicants for employment in accordance with applicable Federal statutes, regulations, executive orders and departmental policy; to prohibit discrimination in employment because of race, color, religion, national origin, sex (including sexual harassment, gender identity, pregnancy and gender-based wage discrimination), age (40 and up), disability (physical or mental, including failure to accommodate), genetic information, sexual orientation, parental status; and to prohibit retaliation for opposing any practice made unlawful by Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Equal Pay Act, the Rehabilitation Act, Executive Orders 11478 and 13145 or for participating in any stage of administrative or judicial proceedings under those statutes and Executive Orders. The DOL is committed to fostering a workplace that is free of unlawful discrimination and retaliation.

The EREC/ADR Program has been designed to support this commitment by DOL; to comply with applicable Federal statutes, regulations, and policies; and to advance DOL's efforts for "Proactive Prevention of Unlawful Discrimination," an element required by EEOC's model EEO program. (See EEOC Management Directive 715.) The EREC/ADR Program provides an additional option to the traditional EEO complaint process that focuses on resolving the issues in a complaint at its earliest stages.

ADR uses a variety of techniques, methods, or processes, usually involving a neutral third party, designed to address disputes in a manner that avoids cost, delay, and unpredictability of more traditional adversarial and adjudicatory processes, such as litigation.

ADR includes, but is not limited to, the following techniques:

- **Negotiation** – Parties and their attorneys or representatives attempt to resolve a dispute through direct discussions with one another.
- **Facilitation** – Involves the use of techniques to improve the sharing of information and communication between parties to a dispute. Facilitation focuses on providing procedural assistance to the parties to assist them in resolving a dispute.
- **Arbitration** – An authorized neutral party will review evidence, hear arguments, and issue a binding decision.
- **Mediation** – An informal process in which a trained mediator assists the parties in reaching a negotiated resolution of the dispute.
- **Mini-trial** – The use of a neutral evaluator to give opinions on each party's case and the likely court outcome.

ADR programs can offer efficient, cost effective, and less contentious methods to resolve disputes. ADR can avoid lengthy and unnecessary litigation by opening the lines of communication between employee and employer, which can, in turn, maintain or improve working relationships. Thus, ADR can reduce resources expended to process EEO complaints while also promoting greater workplace harmony.

EREC Program

The EREC Program utilizes mediation and facilitation as its ADR techniques to attempt resolution of EEO complaints. With mediation, a neutral third party, a mediator, helps to resolve a conflict by assisting the parties in communicating with each other, identifying issues, and finding mutually agreeable solutions. The mediator must be impartial, with no personal interest in the dispute. The mediator cannot authorize solutions, make decisions or declare a winning party. Rather, the mediator is expected to guide the negotiations and communications between the parties. In cases where the issues are clearly defined, the mediator may simply facilitate discussions. However, because mediators are specially trained and experienced in conflict resolution techniques, they are also able to help the parties work through strained or emotional communications, distrust and longstanding conflict.

With facilitation, the EREC Coordinator or other designated CRC staff will provide assistance to complainants, their representatives, AA-designated settlement officials and Agency EEO Managers to attempt resolution of EEO complaints. In lieu of actual formal or informal meetings, the EREC Coordinator or designated CRC staff will assist with the development of ideas and elements that could be used to settle/resolve the issues or allegations of a complaint and provide regulatory guidance, where necessary. The EREC Coordinator or other designated CRC staff will then ensure that these ideas and elements are shared with the parties involved with the complaint. The facilitation method of ADR can be very effective and save time where actual meetings may not be able to occur or scheduling conflicts arise. This process allows participants of the complaint to consider options and make decisions based on those options and guidance provided.

Policy:

1. DOL will offer ADR for disputes raised in EEO informal (pre-complaint) or formal complaints of discrimination filed by DOL employees or applicants for DOL employment, consistent with its obligations under both 29 C.F.R. Part 1614 and with the Administrative Dispute Resolution Act of 1996, 5 U.S.C. §571, *et seq.*
2. As part of this program, DOL will attempt to resolve EEO complaints, whether informal or formal, using the ADR techniques of mediation or facilitation.
3. It is CRC policy that, where ADR may be used to resolve a complaint, ADR shall be employed with limited exception; however, CRC reserves the right to determine, on a case-by-case basis following consultation with the Agency EEO Manager, that a complaint is not appropriate for ADR.
4. Agency participation in ADR is required when the election for ADR is requested by the aggrieved individual or complainant, unless the EEO Manager can provide additional information to CRC demonstrating that the case is inappropriate for ADR at the time requested. The Agency EEO Manager will petition the CRC for this purpose.
5. If it is determined by CRC that a complaint, whether informal or formal, is not appropriate for ADR the complainant will be notified in writing, informed of their rights, and provided further instruction to continue in the EEO process.
6. While generally a complainant must request ADR, CRC reviews all complaints to assess whether resolution is possible. If CRC determines that resolution is a possibility, CRC will contact the parties and determine parties' interest in resolving the complaint through mediation or facilitation. While the complaint may be shared with the EEO manager at this time to enable effective consideration of terms of resolution, EEO Managers always have access to CRC's complaint tracking database. This access provides the EEO Manager with the ability, at any time, to review complaint information for any case filed against their Agency.
7. Participation in ADR by a complainant is voluntary and can be withdrawn at any time. Additionally, willingness to resolve a complaint is voluntary and the terms by which to resolve a complaint are negotiable and subject to approval by all parties.
8. When mediation is used, a mediator who is not a DOL employee is utilized, thereby underscoring the neutrality and impartial nature of this process. Towards this end, DOL will obtain mediators from the Federal Sharing Neutrals Program (SNP) of the U.S. Department of Health and Human Services, the United States Postal Services' (USPS) National EEO Investigative Services Office (NEEOISO), or other appropriate mediator sources.
9. When facilitation is used, the EREC Coordinator or other designated CRC staff will serve as the intermediary providing assistance and guidance as well as ensuring that relevant information is shared with the parties. The EREC Coordinator will also ensure that all regulatory time limits are met.

ADR Process

DOL employees applicants for DOL employment may request ADR in writing to resolve an allegation(s) of employment discrimination raised in either the informal (pre-complaint) or formal EEO complaint process.

A. Informal (pre-complaint) Process

1. During the initial counseling session, the EEO Counselor will advise the aggrieved person of his/her rights and responsibilities in the EEO process, including the option to elect ADR via the EREC program. Should the aggrieved individual choose to participate in the EREC/ADR program, s/he must inform the EEO Counselor during the initial 30 calendar day counseling period.
2. The CRC will promote the use of ADR to resolve conflicts while still proceeding with EEO counseling. However, CRC will ensure that the aggrieved individual is aware that ADR may be performed as mediation or facilitation and that CRC reserves the right to determine, on a case-by-case basis, that a complaint is not appropriate for either technique at the time of the request.
3. If a conflict is not appropriate for ADR via facilitation or mediation, the Chief of the Office of Internal Enforcement or his/her designee will provide written notification to the aggrieved person that DOL will not conduct ADR at that time. In such a case, the EEO Counselor will continue to process the informal complaint in accordance with existing EEO Counseling procedures.
4. Each DOL Agency will designate one or more management official(s) authorized to serve as settlement official(s) to participate in mediations or facilitations to attempt to settle/resolve EEO complaints. Once CRC, in consultation with the EEO Manager, determines that an EEO complaint is appropriate for ADR, the proper DOL official assigned by the Agency EEO Manager will participate in one of the two ADR techniques.
5. As discussed more fully below, if mediation is utilized, the EREC Coordinator or other designated CRC staff will be responsible for obtaining a mediator; ensuring that logistical arrangements and scheduling have been set; providing the mediator with appropriate documents (i.e., Agreement to Mediate, settlement template); and notifying the appropriate officials regarding the outcome of the mediation. Likewise, the EREC Coordinator or other designated CRC staff will be responsible for the facilitation process of ADR where appropriate.
6. Each mediation session may last up to an average of three (3) hours. However, if the mediator recommends that an additional session(s) would be beneficial, and the parties agree, more than one mediation session may be used.
7. ADR, in any form, has no daily time limit; however, the informal process cannot exceed 90 calendar days from the date the aggrieved person contacts an EEO Counselor or CRC requesting to file a complaint of discrimination. Therefore, attempts to resolve cases through ADR continue until the complaint resolves, the complaint fails to resolve, or the complainant requests to withdraw from ADR; regardless of the complaint's progress in the complaint process, which continues, independent of resolution attempts.

B. Formal Complaint Process

The aforementioned procedures are applicable at the formal phase of EEO processing with the following caveats:

1. A complainant may elect ADR at any time following the filing of a formal complaint.
2. The request to participate in ADR following the filing of a formal complaint should be made in writing to the Chief of Internal Enforcement.
3. CRC in consultation with the Agency EEO manager, reserves the right to determine, on a case-by-case basis, that a complaint is not appropriate for ADR.
4. CRC also reserves the right to determine when to schedule ADR. Generally, ADR will not be scheduled until completion of an investigation unless ADR was requested during the informal stage and is pending at the time the formal complaint is filed.
5. If the formal complaint has been accepted for investigation, the investigative process may not exceed the regulatory 180 day time period from the filing of the formal complaint. However, when a formal complaint has been amended, the investigation shall be completed within the earlier of 180 days after the last amendment or 360 days after the filing of the original complaint.
6. At the conclusion of an investigation, a complainant is generally given two options: to request a hearing before an Administrative Judge (AJ) of the Equal Employment Opportunity Commission (EEOC) or to request a Final Agency Decision prepared by DOL. If a complainant elects a hearing before an AJ of the

EEOC, ADR will generally not be scheduled or conducted by the CRC. Rather, the AJ may engage in settlement negotiations.

C. Mediator

The mediator's role is to be a neutral third party who leads and manages the discussion between the disputing parties without making decisions or judgments.

1. Generally, the mediator will not be employed by DOL.
2. The mediator will be a member in good standing of a recognized mediation program.
3. The mediator must have a working knowledge of EEO laws and regulations, which includes but is not limited to:
 - a. 29 C.F.R. Part 1614
 - b. EEOC Management Directive 110
 - c. The laws enforced by CRC
4. At the outset of the mediation, the mediator will:
 - a. Make introductions;
 - b. Set the ground rules for the session;
 - c. Explain that each party's representative may remain throughout the mediation process;
 - d. Explain the purpose of mediation;
 - e. Explain the role of the mediator;
 - f. Remind the parties that all information revealed during mediation is confidential and cannot be used as evidence in any subsequent litigation or administrative process;
 - g. Inform the parties that mediation may be terminated upon request by either party, or at the mediator's discretion, anytime during the mediation session; and

If a resolution is reached by the parties, the mediator will ensure that the agreement is:

1. Put into writing;
2. Reviewed by all parties involved in the mediation; and
3. Voluntarily signed, with copies provided to each party;
4. The mediator will immediately provide the original signed agreement to the EREC Coordinator;
5. If an agreement is not reached at the conclusion of the mediation session, the mediator will inform the EREC Coordinator of the outcome of mediation.

D. EEO Counselors

1. In accordance with 29 CFR Part 1614 and MD-110, the EEO Counselor will provide the following information to the aggrieved person:
 - a. Letter covering rights and responsibilities of the aggrieved person;
 - b. Waiver of anonymity;
 - c. Right to representation;
 - d. "Benefits to EREC/ADR" handout;
 - e. Informal Complaint of Discrimination form. (The aggrieved person will fill out the Informal Complaint of Discrimination form.)
2. The EEO Counselor will discuss both the traditional EEO counseling and ADR options.

3. The EEO Counselor will notify the aggrieved person that an election should be made as soon as possible during the 30 day counseling period.
4. This election will extend the counseling period for an additional 60 calendar days; but will not exceed a total of 90 calendar days from the date the aggrieved person contacts an EEO Counselor or CRC requesting to file a complaint of discrimination
5. The EEO Counselor should address any questions or concerns the aggrieved party may have concerning the process. After doing so, both the aggrieved person and the EEO Counselor will sign the "Benefits to EREC/ADR" handout, confirming that the EEO Counselor has explained the ADR process and the aggrieved person understands his or her rights.
6. The ADR process begins immediately upon the aggrieved person's election. The EEO Counselor will alert the CRC immediately of the election of ADR and complete the fact-finding inquiries with involved parties (including relevant management officials). Upon election of ADR, resolution will be attempted through EREC using the mediation process or facilitation.
7. The EEO Counselor will complete the following tasks:
 - a. Request that the aggrieved person sign the Agreement to Extend the Pre-Complaint Period, in accordance with 29 C.F.R. Part 1614.405(f);
 - b. Alert CRC of the election of ADR;
 - c. Inform the aggrieved person that he or she will be notified when the mediation session is scheduled or if ADR will be attempted via facilitation;
 - d. Provide (via hand delivery, email, or facsimile) the Informal Complaint of Discrimination Form, the Agreement to Extend the Pre-Complaint Period, and the signed "Benefits to EREC/ADR" handout to the EREC Coordinator immediately upon the aggrieved person's election to use ADR; and
 - e. If facilitation or mediation does not result in a resolution, the EREC Coordinator will issue the complainant a Notice of Right to File a Formal Complaint.

E. EREC Coordinator

1. The Director of CRC and Chief of Internal Enforcement will designate an EREC Coordinator, who will assist the mediators and track the progress of the mediations.
2. The EREC Coordinator is responsible for addressing inquiries from the parties during the mediation or facilitation process.
3. When facilitation is used, the EREC Coordinator or other designated CRC staff will serve as the intermediary providing assistance and guidance, as well as ensuring that all relevant information is shared with the parties. The EREC Coordinator will also ensure that all regulatory time limits are met.
4. The EREC Coordinator will coordinate and consult with the Chief of Internal Enforcement and Agency EEO Managers in determining those cases which may not be appropriate for EREC/ADR, as described above.
5. The EREC Coordinator will coordinate with SNP, USPS-NEEOISO or other appropriate mediators to set up a time and location for mediation that is conducive for all parties involved within the 90-day counseling period timeframe.
6. The EREC Coordinator will contact the parties in the dispute with the tentative time and location of the mediation. Once the parties agree to the time and location of the mediation, the EREC Coordinator will e-mail the parties with logistical information for the mediation and the mediator's contact information. The EREC Coordinator will also inform the mediator by e-mail of the official time and location of the mediation and provide him/her with the parties' contact information.

7. The EREC Coordinator will ensure that the mediator has a template of the settlement agreement.
8. The EREC Coordinator will work with the mediator to provide the necessary logistical arrangements for the mediation, including a telephone, fax machine, copier, computer, and any reasonable accommodations, as appropriate.
9. Once the ADR attempt has concluded, the EREC Coordinator will log the outcome of the ADR process into the tracking system. The EREC Coordinator will notify the EEO Counselor about the outcome of EREC/ADR.
10. If there is a resolution of the dispute, the EREC Coordinator will place the original signed agreement in the complainant's file. Soon after receiving the settlement agreement, the EREC Coordinator will inform the complainant in writing that, in the event of the Agency's failure to comply with the agreement, he or she must notify CRC of such noncompliance within 30 calendar days of the date when he or she knew, or should have known, of the noncompliance.
11. If resolution is not achieved during ADR, the EREC Coordinator will immediately instruct the EEO Counselor to submit a Counselor's Summary Report to the CRC (if a report has not been previously submitted to the CRC by the Counselor) and issue the complainant a notice of right to file a formal complaint (if in the informal process).

Last updated: August 12, 2014