



THE EEO COMPLAINT PROCESS IN TREASURY



For further information, contact
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OFFICE OF CIVIL RIGHTS
AND DIVERSITY



INTRODUCTION

As a Federal employee, or applicant for employment, you have certain protections against unlawful discrimination. You are protected from discrimination due to race, sex, national origin, color, religion,



age, physical or mental disability, or protected genetic information. The laws that protect

you from discrimination also protect you from retaliation for action taken to oppose or remedy discrimination. If you believe that you have been discriminated against on one of the bases cited here, you may file a complaint of discrimination.

Also, in keeping with certain Executive Orders, Treasury employees and applicants are protected from discrimination based on sexual orientation or parental status. Treasury has established an administrative procedure for processing these complaints.

WHAT IS DISCRIMINATION?

Illegal discrimination occurs when an employer intentionally treats one employee or applicant differently from another when the two are similarly situated ***and the treatment is based on a protected group status listed above.*** “Similarly situated” means that the same supervisors are involved and the facts surrounding the action are similar. Discrimination of this type is termed disparate treatment.

Discrimination can also occur when an employer makes an employment decision that is based on neutral factors, but the effect adversely impacts a protected group. This is called disparate impact discrimination.

DISCRIMINATION ON THE BASES OF SEX, RACE, COLOR, NATIONAL ORIGIN, OR RELIGION

Title VII of the 1964 Civil Rights Act, as amended, protects employees and applicants for employment from discrimination on the basis of sex, race, color, national origin, or religion. Sexual harassment and pregnancy or gender identity discrimination are considered forms of prohibited sex discrimination and are covered by Title VII.

In addition to protection from discrimination because of religion, Title VII also establishes the agency's duty to provide reasonable accommodation for an employee's religious beliefs unless doing so would impose an undue hardship on the employer. For example, if you need to take a day off for a religious observance, the agency would have to grant you leave (or compensatory time), unless doing so would be an undue hardship.

DISCRIMINATION ON THE BASIS OF AGE

The Age Discrimination in Employment Act (ADEA) of 1967 prohibits discrimination against Federal employees and applicants for employment who are 40 years of age or older.

DISCRIMINATION ON THE BASIS OF DISABILITY

The Rehabilitation Act of 1973 prohibits discrimination against Federal employees and applicants for employment, who have disabilities. A disability is defined as a physical or mental impairment that substantially limits a major life function. Only impairments that are permanent, episodic, in remission, or long-term conditions are considered to be disabling. Temporary, non-chronic impairments of short duration with little or no residual effects are not considered to be disabilities under the Act. The disability must substantially limit a major life activity (e.g., walking, speaking, seeing, hearing, breathing, learning, standing, eating, concentrating, bending, reading, caring for oneself, performing manual tasks) or major bodily functions (e.g., digestive, bowel, bladder, brain, respiratory, cardiovascular systems).

The law also requires that you be qualified for your position. If you cannot perform the essential functions of the job with or without reasonable accommodation, you are not qualified for the position. However, the Department will consider reassigning an employee to an existing vacant position at the same or lower level that the employee can perform with or without a reasonable accommodation.

The Federal goal is to become a model employer with respect to employing individuals with disabilities. Reasonable accommodation refers to the obligation to make adjustments to your work situation or environment so that you can perform your job, as long as the accommodation does not constitute an undue hardship to the agency.

As an employee, you have an obligation to notify management of the need for reasonable accommodation and to engage in an interactive process in determining what accommodations are needed.

DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION

The Genetic Information Nondiscrimination Act (GINA) of 2009 prohibits discrimination on the basis of genetic information. With limited exceptions, GINA makes it unlawful to use genetic information when making employment decisions, restricts acquisition of genetic information by employees, and limits the disclosure of genetic information. Genetic information includes an individual's or family member's genetic tests and family medical history.

EQUAL PAY

The Equal Pay Act of 1963 requires that men and women in the same workplace be given equal pay for equal work. The jobs need not be identical, but they must be substantially equal. An employer can avoid liability if it can show that the pay difference is justified pursuant to: 1) a seniority system; 2) a merit system; 3) a system that measures earnings by quantity or quality of production; or 4) a differential based on any other factor other than sex. The Lilly Ledbetter Fair Pay Act of 2009 clarified the time frame in which victims of discrimination may challenge and recover for discriminatory compensation decisions and applies the equal pay for equal work concept to all statutory bases.

DISCRIMINATION ON THE BASES OF SEXUAL ORIENTATION AND PARENTAL STATUS

Executive Orders rather than Federal laws prohibit discrimination on these bases.

Executive Orders 13087 and 11478 prohibit discrimination against Federal employees and applicants on the basis of sexual orientation, i.e., homosexuality, bisexuality, or heterosexuality, whether such orientation is actual or perceived, and includes association with another individual of a particular sexual orientation.

Executive Order 13152 prohibits discrimination against Federal employees and applicants on the basis of parental status, such as a parent caring for a child under age 18 (or age 18 and over if the child is incapable of self-care because of a disability).

These non-statutory claims of discrimination are processed through an administrative procedure. You will receive a final agency decision but there is no right to a hearing by, or an appeal to, the Equal Employment Opportunity Commission.



PROTECTION AGAINST REPRISAL OR RETALIATION

The laws listed above protect you from reprisal or retaliation for exercising your rights under those laws. Protected activities may include filing a complaint, requesting accommodation, giving evidence or testimony to an investigator or in a hearing, or complaining about or protesting perceived discrimination against you or another employee.

WHAT IS HARASSMENT?

Employees have the right to a workplace free of harassment that is based on any protected basis listed above, not just sex. Harassment is verbal or physical conduct that has the purpose or effect of creating an intimidating, hostile or offensive working environment. The harassment must be so severe or pervasive as to alter the conditions of your employment. Unless the conduct is very severe, a single or several isolated incidents of offensive conduct or remarks generally will not create a hostile work environment. Although we strive for a model workplace in Treasury, the laws prohibiting discrimination do not protect you from harsh or even unfair treatment unless it is shown to be based on your protected group status.

WHAT DO I DO IF I BELIEVE I HAVE BEEN DISCRIMINATED AGAINST?

If you believe you have been discriminated against, and you decide you want to file a complaint, you **must** contact an EEO counselor within **45 days** from when you first become aware of the discriminatory action. However, this time limit may be extended if there is a sufficient reason for a late contact. You should contact an EEO counselor in the Treasury bureau where your complaint arose. If you don't know the name of a counselor, you should contact the EEO Officer.

The counselor's job is to define the issues and bases of the claim and attempt resolution, but the counselor does not conduct an investigation. If you meet bureau requirements, the counselor may also refer you to an alternative dispute resolution (ADR) program. If you do not participate in ADR, the counselor may do a limited inquiry into the circumstances giving rise to your allegations and attempt resolution of the complaint.

If your claims are not resolved at this stage or in ADR, the counselor will provide you with a Notice of Right to File a Complaint. This Notice provides you with the time frame for filing a formal complaint and the address of the Treasury Complaint Center where your complaint must be filed. Your complaint must be filed within **15 days** from receipt of the Notice. However, this time limit may also be extended if there is a sufficient reason for the late filing.

If you file a complaint, the Treasury Complaint Center will acknowledge your complaint and issue an acceptance or dismissal letter on your claims. Accepted claims should be investigated within **180 days** from the date the claim is filed, although this time frame may be extended.



Investigations may be conducted by telephone, by interrogatory, or by an investigator doing an on-site investigation. The Center determines the best method for conducting the investigation based on a number of factors, including the type of claim filed.

The Center will also try to resolve your complaint. The Center may ask you if you want to participate in a resolution conference with management to reach resolution on the issues. This will normally occur after the complaint has been investigated so that both parties have the benefit of the information gathered during the investigation.

After the investigation, you will be provided with your rights to a hearing or to a final agency decision based on the record.



If you elect a hearing, an Administrative Judge (AJ) from the Equal Employment Opportunity Commission (EEOC) will schedule your complaint for a hearing. Either you or the agency may request that discovery be done if information is missing from the Investigative File. During the hearing, questions will be asked under oath, and the proceedings will be recorded by a court reporter who will prepare a transcript

for both parties. The decision whether to hold a hearing will be the AJ's. If there are no material facts in dispute, the AJ may notify you that a hearing is not necessary. If that is the case, the AJ will issue a summary judgement.

After the hearing, the AJ will issue a decision and the Department has 40 days from receipt of the decision and hearing record to issue a final order either implementing or appealing the decision.



If you do not elect a hearing, you have the right to a final agency decision. The Department has *60 days* to issue a decision.

MIXED CASE ISSUES

In cases where the Treasury Complaint Center has determined that your complaint contains mixed issues (such as a demotion or removal), there is no right to a hearing before an EEOC AJ. The Department issues a final agency decision and any appeal is filed with the Merit Systems Protection Board. Some time frames are different. Your EEO Counselor will provide you with more information on this process.

WHAT IS MY BURDEN OF PROOF?

In order to prevail on your claim, you must prove, by a preponderance of the evidence, that discrimination occurred. Evidence can be direct or circumstantial. Direct

evidence would be statements by managers or supervisors that directly tie the action against you to your protected class status. For example, if a manager said a female applicant did not get a law enforcement position because women should not carry weapons, that would be direct evidence of discrimination. Direct evidence can be in the form of verbal comments or written statements. Evidence of racist, sexist or ethnic epithets or remarks might also constitute direct evidence. Most cases, however, do not involve direct evidence of discrimination.

You can establish discrimination through circumstantial evidence. In these cases, the courts have established a three-part framework for establishing discrimination. Generally, you must first show that you were treated differently from other similarly situated individuals. For example, if you were over age 40 and on the best-qualified list for a position, and a younger applicant was selected, you would establish an inference, or *prima facie* case, of discrimination.

If you meet this test, the agency must advance a legitimate, non-discriminatory reason for its actions. For example, in a non-selection claim, the agency must explain why the selectee was chosen over you.

You then have the opportunity to rebut this reason or to show it is not the true reason for the agency's decision. The law requires that you show not only that the agency's reason or articulation is false, but that ***your protected status*** was the real reason for the agency's action. The burden of proof is on you to convince the fact-finder, by a preponderance of the evidence, that a discriminatory reason motivated the agency.

WHAT ARE MY RIGHTS TO APPEAL THE DECISION?

Whether the agency issues a final agency decision on the record or a final order after an AJ decision, you have the right to appeal the decision. The agency decision will give you appeal rights and the appropriate appeal form. You will have **30 days** to appeal the decision to the EEOC or **90 days** to file in Federal district court.

Once EEOC issues a decision on appeal, either you or the agency has the right to request reconsideration.

WHAT HAPPENS IF DISCRIMINATION IS FOUND?

If discrimination is found, you are entitled to “make-whole” relief, including back pay with interest, benefits, and correction of personnel records when applicable. The objective is to make you “whole” as if the discriminatory action did not occur.

Compensatory damages *may* be available. Compensatory damages may be for pecuniary damages (actual expenses you incurred for medical bills, moving expenses, etc.) and non-pecuniary damages (pain and suffering). If you claim compensatory damages, additional information relating to your claim will be gathered. You must show how you were harmed and establish a nexus to the discriminatory conduct.

Reasonable attorney's fees are also available when an attorney represents you. However, neither attorney's fees nor compensatory damages are available in the administrative process for age discrimination cases.

OFFICIAL TIME

If you are a Treasury employee, you are entitled to a reasonable amount of official time (hours, not days) to prepare and present your claim. Official time must be requested in advance.

WHERE DO I GO FOR MORE INFORMATION?

Each Treasury bureau has an EEO Officer who will provide you with information on the complaint process and your options. EEO Officers should also provide you with information on ADR. It is incumbent on Treasury managers and supervisors to ensure that employees and applicants are treated fairly so these types of disputes will not arise. However, if they do occur, early resolution of the complaint will allow all parties to focus on the agency's mission.

You should also be aware that EEO Officers, EEO counselors, and EEO investigators are neutrals. They do not serve as your representative in the process. Their role is to help ensure fair and equitable treatment for all individuals. You are entitled to have your own representative in all stages of the EEO process.

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