



United States
Department of
Agriculture

Office of the
Assistant
Secretary for
Civil Rights

Corporate
Services
Division

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TRADITIONAL EEO COUNSELING

The EEO Counselor serves as a neutral party whose primary function is to mediate and conciliate the issues presented in an informal manner, as quickly as possible and with the minimum possible interference with the operations of the workplace. The Counselor's role does not include a determination of either the existence or non-existence of illegal discrimination nor the making of value judgments.

If traditional counseling is elected, the aggrieved person meets with an EEO Counselor. Counseling should normally be completed within 30 calendar days. During that time, an EEO counselor will conduct an informal inquiry, acquire pertinent information, interview the aggrieved and management witnesses, explore settlement options, and prepare a report. This time period for counseling may be extended for an additional 60 days upon the written request of the employee and the agreement of the agency. If resolution is reached, a negotiated settlement agreement will be signed. If resolution is not reached, the counselor will furnish the aggrieved individual information for filing a formal complaint of discrimination.

ALTERNATIVE DISPUTE RESOLUTION (ADR)

The terms "alternative dispute resolution" or "ADR" are used to describe a variety of non-adversarial techniques to resolving conflict. When non-adversarial approaches are used, the parties in the conflict decide what techniques they want to use to resolve their own problems. The ADR techniques used at USDA include mediation, consultation, fact-finding, facilitation, and group dynamic problem solving to help employees at all levels of the organization address and/or resolve disputes.

By participating in ADR, the pre-complaint counseling period can be extended from 30 to 90 calendar days, focusing primarily on resolving the dispute. The primary ADR technique used by most USDA ADR Programs is mediation. Mediation is an informal process in which a neutral third party assists the parties in the conflict in reaching a voluntary, mutually agreeable settlement. It gives the parties the opportunity to discuss the issues, clear up misunderstandings, determine the parties' underlying interests or concerns, find areas of agreement, and, ultimately, to incorporate those areas of agreement into resolutions. The mediator does not determine the resolution for the parties, but rather, helps the parties to agree to their own mutually acceptable resolution of the conflict. By agreeing to mediate, you do not give up your right to file a formal EEO complaint or a grievance. If mediation does not result in a mutual agreement, you may pursue more formal avenues to resolve your issue.

AGE DISCRIMINATION IN EMPLOYMENT ACT (ADEA) NOTICE

If you alleged discrimination because of age, you have two important options:

To file a formal EEO complaint under 29 CFR, Part 1614; or

To bypass the administrative EEO complaint process in Part 1614 and file a civil action directly in an appropriate U.S. District Court after giving the EEOC not less than thirty (30) days notice of intent to file such action. Such notice must be filed within 180 days after the date of the alleged discrimination. The notice may be mailed to EEOC Headquarters at the following address:

Equal Employment Opportunity Commission
Office of Federal Operations
Federal Sector Programs
P.O. Box 19848
Washington, D.C. 20036

Hand delivered to:

Equal Employment Opportunity Commission
Office of Federal Operations
Federal Sector Programs
1801 L Street, NW
Washington, D.C. 20507

Or sent by facsimile to:

(202) 663-7022

Because it is not clear which statute of limitations applies, an aggrieved person choosing to bypass the administrative process should initiate the civil action as soon as possible after the expiration of the 30-day waiting period that follows the notice of intent to sue.

EQUAL PAY ACT NOTICE (EPA)

If you alleged sex-based wage discrimination in employment.

You may file a civil action in U.S. District Court within two years, or three years if the violation is willful, from the date of the alleged violation, regardless of whether you pursued an administrative action against the agency. The filing of an EEO complaint under Part 1614 alleging a violation of the Equal Pay Act (EPA) does not toll the time for filing a civil action.

If you seek to allege a violation of Title VII's prohibition against sex discrimination based on the same allegation, you must raise the Title VII allegation in the administrative process even if you file a civil action on the EPA allegation.

Notwithstanding the two/three-year limitations period applicable to the current action under the EPA, in order to present an administrative EPA claim, the aggrieved person must contact an EEO Counselor within forty-five (45) calendar days of the date the aggrieved person becomes aware of or reasonably suspects a violation of the EPA.

MIXED CASE NOTICE

A “mixed case” is a complaint of employment discrimination filed with a federal agency based on race, color, religion, sex, national origin, age, disability, or reprisal related to or stemming from an action that may be appealed to the Merit Systems Protection Board (MSPB). There is no right to a hearing before an EEOC Administrative Judge on a mixed-case complaint.

Two determinations must be made to decide if the mixed case regulations apply:

The employee must have standing to file an appeal with the MSPB; and

The claim that forms the basis of the discrimination complaint must be appealable to the MSPB.

If it appears that your allegation of discrimination meets both criteria, you must choose to proceed in one of two forums:

Filing a formal EEO complaint under 29 CFR 1614; or

Filing a mixed case appeal with the MSPB.

Whichever action you file first is considered an election to proceed in that forum.

An election to proceed under 29 CFR Part 1614 is made when you file a formal EEO complaint in writing. Contacting an EEO Counselor or receiving EEO counseling does not constitute an election.

If you file an MSPB appeal and timely seek EEO counseling, counseling may continue pursuant to 29 CFR 1614, §1614.105, at the option of the parties. In any case, counseling must be terminated with notice of rights pursuant to 29 CFR 1614, §1614.105 (d), (e), or (f).

If you elect to file a mixed case complaint under 29 CFR Part 1614, the agency must process the complaint in the same manner as it would any other discrimination complaint, except that:

Within 45 calendar days following the investigation, the agency must issue a final decision without a hearing before an EEOC Administrative Judge.

Upon filing a complaint, the agency must advise you that if a final decision is not issued within 120 days of the date of filing the mixed case complaint, you may appeal the claim to the MSPB at any time thereafter or may file a civil action, but not both.

MIXED CASE NOTICE, *continued*

Upon filing a complaint, the agency must notify you that if you are dissatisfied with the agency's final decision on the mixed case complaint, you may appeal the claim to the MSPB (not to the EEOC) within 30 days of receipt of the agency's final decision.

Upon completion of the investigation, the agency must notify you that a final decision will be issued within 45 days without a hearing before an EEOC Administrative Judge.

Upon issuance of the agency's final decision on a mixed case complaint, the agency must advise you of the right to appeal the claim to the MSPB (not EEOC) within 30 days of receipt of the notice and of the right to file a civil action.