VA

U.S. Department of Veterans Affairs

U.S. Department of Veterans Affairs

Executive Leader's GUIDE

Desk Reference to Equal Employment Opportunity Complaints

Office of Resolution Management — 2015

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A Message from the Deputy Assistant Secretary

Dear VA Executives:

Thank you for taking the time to review this guide. It has been developed for you, the executive leader, to provide information and reinforce your knowledge of the Equal Employment Opportunity (EEO) complaint process, as well as add some insight into complaint prevention and early resolution. As you know, one of the senior executive's critical performance elements is to ensure compliance with applicable EEO laws, regulations, Executive Orders, Management Directives, and VA policies. Executive leaders are to promptly address allegations of discrimination and retaliation, engage in early conflict management and alternative dispute resolution (ADR); and advance the goals of the VA Diversity and Inclusion Strategic Plan, including the Secretary's hiring goal for individuals with targeted disabilities.

Since its inception in 1998, the Office of Resolution Management (ORM) has made enormous progress in the delivery of EEO services for the Department. Only through innovation and partnership can we continue to improve. With your support and dedication to a workplace free of discrimination, we will model I Care Values and demonstrate VA core characteristics by creating an employer-of-choice environment that ultimately ensures quality customer service and care to America's Veterans.

Throughout this guide, you will find a sampling of what is available to you and your staff from ORM. Of particular importance is VA's achievement in ADR participation. The Department actively uses ADR as a tool to resolve workplace disputes and EEO complaints. We want all of our customers to consider ADR as the first opportunity to resolve their issues. ADR has proven to be highly effective, both in resolving complaints and reducing the costs associated with processing EEO complaints. Another intangible benefit is that ADR enables the parties to strengthen lines of communication. Such a benefit can only enhance VA's level of employee engagement and customer service.

We are here to assist you and your employees.

Catherine C. Mitrano
Deputy Assistant Secretary
for Resolution Management

Who We Are

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MISSION

To provide timely and high quality complaint processing while fostering a discrimination-free work environment through early resolution, education, training, and prevention methods.

VISION

ORM will be the best in government in the timely and confidential processing of all EEO complaints while remaining sensitive and compassionate to all we serve. We seek to maintain the trust and confidence of VA employees and others touched by our work.

VALUES

"I CARE" - **I**ntegrity, **C**ommitment, **A**dvocacy, **R**espect, and **E**xcellence.

VA Offices Responsible for Processing EEO Complaints

OFFICE OF RESOLUTION MANAGEMENT (ORM)

ORM's timely and high-quality EEO complaint processing services include counseling, procedural decisions, investigation, ADR, and training. ORM renders final agency decisions for breach of EEO settlement agreement claims. ORM is responsible for monitoring and assuring compliance of agency final orders where discrimination has been found and for Equal Employment Opportunity Commission (EEOC) appellate decisions. ORM carries out its responsibilities through its headquarters office and a nation-wide network of field and satellite offices. EEO complaints initiated by Senior Executives are handled by ORM's Senior Complaints Unit (SCU). More information on SCU is contained in the ORM Resources section of this guide.

OFFICE OF EMPLOYMENT DISCRIMINATION COMPLAINT ADJUDICATION (OEDCA)

OEDCA issues final decisions on the merits of discrimination complaints, including final decisions regarding attorneys' fees and compensatory damages. OEDCA also takes final action on complaints that have been decided by an EEOC Administrative Judge.

Federal EEO Laws and Regulations

ORM processes EEO complaints initiated by applicants for employment, current VA employees, and former employees who believe one or more of the following federal laws were violated:

Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment on the basis of race, color, religion, sex, and national origin. Also prohibited is retaliation for opposing discriminatory practices and participating in EEO-protected activities such as filing an EEO complaint or participating in the process as a witness.

Rehabilitation Act of 1973, as amended, charges Federal agencies with becoming model employers of individuals with disabilities. Agencies shall give full consideration to the hiring, placement, and advancement of qualified individuals with mental and physical disabilities. An agency shall not discriminate against a qualified individual with a physical or mental disability. This includes providing applicants and employees with disabilities reasonable accommodations unless doing so would impose an undue hardship on the organization.

Age Discrimination in Employment Act of 1967, as amended, protects applicants and employees (40 years or older) from discrimination on the basis of age in hiring, promotion, discharge, compensation, terms and conditions, and privileges of employment.

Equal Pay Act of 1963, as amended, prohibits discrimination based on sex in payment of wages to women and men performing substantially equal work.

Genetic Information Nondiscrimination Act of 2008 prohibits discrimination based on an employee's genetic information including, requesting and using genetic information in making employment decisions.

Bases for Filing EEO Complaints

An individual who contacts ORM to engage in the EEO pre-complaint process is referred to as the aggrieved person. To have standing in the EEO process, the aggrieved person must identify a legally-protected basis for the alleged discrimination. The following are bases of discrimination that can be identified under the federal EEO laws.

RACE:
Group or class with common characteristics, interests, appearance, or habits derived from a common ancestor.

COLOR:
Separate identifiable type of discrimination because of the color of an individual's skin; can occur in conjunction with race discrimination.

RELIGION:
Violation of fundamental precept of individual's religion; adverse treatment due to religious belief that can be traditional, non-traditional, or non-belief.

SEX:
An individual's gender to include one's sexual orientation, gender identity, or transgender status. Discrimination related to pregnancy is also a form of sex discrimination.

NATIONAL ORIGIN:
An individual's or their ancestor's country of origin; possessing the physical, cultural, or linguistic characteristics of a particular national origin group.

AGE:
Individuals age 40 and over.

DISABILITY:
An individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of or is regarded as having such impairment.

RETALIATION:
Opposing discriminatory practices, filing a complaint of discrimination or participating in the EEO complaint process.

GENETIC INFORMATION:
Information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about the manifestation of a disease or disorder in an individual's family members (i.e. family medical history).

Executive Orders Protecting Federal Employees from Discrimination

In addition to the above-referenced anti-discrimination laws enforced by the EEOC, Executive Orders further prohibit discrimination in the federal government. Executive Orders afford federal employees protection from discrimination. However, complaints of discrimination raised under these Orders are processed within VA and not subject to adjudication before the EEOC or in Federal District Court.

Executive Order 13152 prohibits discrimination based on parental status. Parental status refers to the status of an individual who, with respect to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is a/an: (1) Biological parent; (2) Adoptive parent; (3) Foster parent; (4) Stepparent; (5) Custodian of a legal ward; (6) In loco parentis over such an individual; or (7) Actively seeking legal custody or adoption of such an individual.

How Could Anyone Believe That I Would Discriminate?

Many managers and supervisors ask themselves this question and become angered at the prospect of having their integrity questioned. Most do understand that if a claim of discrimination in the workplace arises, the best policy is to get involved in the process and try to resolve the issues as quickly as possible. The process is driven by a complainant's belief that he or she has been wronged, whether that belief is true or not. We have found that the failure to address issues promptly often leads to discrimination complaints.

While the manager or supervisor may consider such complaints baseless or frivolous, it is the employee who is experiencing the feelings and perceptions of harm. The melding of unique cultural and social values in a diversified workforce can, at times, contribute to these feelings of discrimination and the need to take action.

Managers are often perplexed as to why an employee would even consider claiming that they intentionally discriminated. They often have feelings of anger, bewilderment, and betrayal when one of their employees alleges that they have discriminated against them. Just as the complainant may have strong feelings that they have been discriminated against, managers are also likely to believe fervently that they have done nothing wrong. Sometimes, managers do not realize that their words or actions may be seen as manifestations of illegal discrimination.

Even when no one has intentionally discriminated against another, illegal discrimination can be interpreted from seemingly innocent acts; e.g., asking questions to learn more about an employee that could be taken as insincere or biased. Because each employee brings a unique set of values to the workplace, we should always try to consider cultural differences and how these differences might influence one's reaction to a particular form of behavior.

We need to keep in mind that working together in a productive environment depends on an appreciation of cultural differences, understanding, tolerance, and open communication. To this end, VA provides training programs in diversity awareness designed to help us learn about, appreciate, and celebrate our various cultures.

It is important to acknowledge that inappropriate behavior and illegal employment discrimination do occur. When we act based on someone's race, color, religion, sex, national origin, age, disability, sexual orientation, genetic information, parental status, or retaliation we have committed an act of illegal discrimination. Although most complaints do not result in a finding of illegal employment discrimination, it would be naive to suggest that acts of discrimination do not occur.

At the same time, we need to recognize that employees are often apprehensive about speaking directly to their supervisors about issues that concern them. The EEO complaint process serves not only as a means for adjudicating rewards or punishment, but also as a conduit for communication between employees and management.

In the next section of this guide, you will learn more about the discrimination complaint process.

Discrimination Complaint Procedures

A current VA employee, former employee, or applicant for employment may initiate an EEO complaint if he or she believes that discrimination based on race, color, religion, sex, national origin, age (40 or older), disability, genetic information, or retaliation has occurred. In addition, although parental status is not covered under EEOC regulations, it is also a form of prohibited discrimination for federal employees. If a complaint is filed on this basis, it will be processed by ORM and a final agency decision will be rendered by OEDCA.

There are two parts to a complaint: a claim and basis. A claim is an allegation that an action or inaction by management has negatively affected a condition of employment, such as denial of leave, non-selection, etc. The allegation must be related to one or more of the bases stated above. In other words, the claim is "what happened" and the basis is "why it happened."

HOW DOES ONE INITIATE THE EEO COMPLAINT PROCESS?

An individual (aggrieved person) who believes that he or she has been discriminated against must contact an ORM EEO counselor within 45 calendar days of the date when the alleged discrimination occurred or, in the case of a personnel action, within 45 calendar days of the effective date of the action. An aggrieved person may seek EEO counseling by calling 1-888-737-3361 or visiting the local ORM field office.

An EEO counselor will inform the aggrieved person during the pre-complaint stage that he or she has the option to attempt resolution of the complaint through ADR or pursue resolution through counseling. If the latter is elected, the counselor will make necessary inquiries into the matter to explore a mutually acceptable resolution. At the informal stage of the complaint process, the aggrieved person has the right to anonymity. The EEO counselor is required to complete counseling within 30 calendar days of initial contact or extend up to 90 days for ADR.

HOW IS MANAGEMENT INVOLVED AT THIS STAGE OF THE PROCESS?

The facility director or senior leader in the organization will receive notice that an aggrieved person has contacted ORM for EEO counseling. If ADR is not elected, an EEO counselor will contact the responsible management official (RMO) to discuss the particulars of the complaint. Even if ADR is not elected, resolution is possible. The EEO counselor can facilitate resolution discussions.

WHAT HAPPENS IF THE ISSUES REMAIN UNRESOLVED AFTER THE EEO COUNSELING OR ADR IS COMPLETED?

ORM will advise the aggrieved person that he/she has 15 calendar days from the conclusion of the informal stage to file a formal complaint.

WHAT HAPPENS IF A FORMAL COMPLAINT IS FILED?

Upon receipt of the formal complaint, ORM will conduct a procedural review of the complaint to determine whether it is acceptable for further processing, based on EEOC's procedural requirements. There are three outcomes from this procedural determination: acceptance for further processing, partial acceptance for further processing, or full dismissal of the complaint.

WILL I BE ADVISED IF THE COMPLAINANT FILES A FORMAL COMPLAINT?

If the complainant files a formal complaint, ORM will inform the facility/organization executive by sharing a copy of the formal complaint (usually on VA Form 4939). There is no action required by management at this point.

WHY ARE FORMAL COMPLAINTS DISMISSED?

EEOC regulations set out the only circumstances under which an agency may dismiss a formal complaint. A formal complaint can be dismissed only if it is determined that the complaint does not comply with applicable laws and regulations. **The merits of the complaint cannot be considered at this stage**.

The following are the EEOC bases for dismissal of an EEO complaint at the formal stage of the complaint process:

Untimely Counseling Contact:
For an initial contact to be considered timely, the complainant must have sought counseling within 45 calendar days of the alleged discriminatory act. There are certain occasions when there may be legitimate reasons for failing to contact ORM in a timely manner, such as not receiving training on the EEO complaint process, failure by the facility to display information regarding employees' rights to seek EEO counseling, or severe illnesses or personal issues that precluded the complainant from being able to contact ORM. Often, with claims of harassment or hostile work environment, a complainant will raise allegations that occurred outside of the 45 day timeframe that may be accepted in support of a claim that was timely raised.

Untimely Filing of a Formal Complaint:
The complainant must file a formal complaint within 15 calendar days from the conclusion of counseling. Unless there are extenuating circumstances, the untimely filing of a formal complaint will result in dismissal.

Failure to State a Claim:
ORM determines whether the alleged conduct, if true, would constitute an unlawful employment practice under EEO laws and regulations. A complaint will be dismissed if it does not state a claim alleging a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy and if retaliation was not an alleged basis of discrimination.

States the Same Claim:
A complaint will be dismissed if the same claim is pending before or has been previously decided by the agency. The complaint must involve "identical matters" raised in a previous EEO complaint by the same complainant in order to be dismissed under this circumstance.

Abuse of Process:
Abuse of process is defined as a clear pattern of misuse of the EEO complaint process for ends other than that which it was designed to accomplish. The hurdle for such dismissals is very high, and few cases meet the criteria, as EEOC has long held that the EEO complaint process must be in favor of preserving a complainant's EEO rights.

Complainant Files a Civil Action:
The agency has 180 calendar days from the filing date of the formal complaint to complete an investigation of the alleged discrimination. After 180 days, the complainant has the right to file a civil suit in Federal District Court. If the civil suit raises the same claims as the EEO complaint, however, ORM will dismiss the EEO complaint.

Issue Previously Decided:
If the same issues raised in the EEO complaint have been decided by a court of competent jurisdiction and the complainant was a party to the lawsuit, EEOC regulations mandate dismissal of the EEO complaint. Allowing the simultaneous pursuit of both administrative and judicial remedies would waste resources and create the potential for inconsistent or conflicting decisions.

Allegation Raised in Negotiated Grievance Proceeding:
ORM will ask management to advise us whether the employee has filed an appeal with the Merit Systems Protection Board (MSPB) or a union grievance on the same issue discussed with the EEO counselor. If a negotiated grievance procedure permits processing of allegations of discrimination, the complainant can file a formal EEO complaint or a written grievance, but not both. If the complainant filed a timely written grievance, ORM would dismiss the EEO complaint.

Appeal Made to Merit Systems Protection Board (MSPB):
A "mixed case complaint" is a complaint of employment discrimination related to or stemming from an action that may be appealed to the MSPB. A "mixed case appeal" is an appeal filed directly with the MSPB that alleges an appealable agency action was effected because of discrimination due to one or more protected bases. An individual may raise claims of discrimination in a mixed case as a direct appeal to the MSPB or as a mixed case EEO complaint with the agency, but not both. The action an individual files first is considered an election to proceed in that forum, and any subsequent action will be dismissed.

Complainant Alleges a Preliminary Step:
When a complainant alleges that a proposed or preliminary personnel action is discriminatory (e.g., proposed disciplinary actions), the complaint can be dismissed. The premise is that unless or until a personnel action is initiated, the complainant's conditions of employment are not affected. However, if the complainant alleges the preliminary step was part of a pattern of harassment or based on retaliation, the proposed action cannot be dismissed because the preliminary step has allegedly affected the employee.

Complaint is Moot:
A complaint may be dismissed as moot if there is no reasonable expectation that the alleged violation will recur, and events have completely and irrevocably eradicated the effects of the alleged violation. If the complainant has made a timely request for compensatory damages, however, the agency must address the issue of compensatory damages before dismissing a complaint as moot.

Dissatisfaction with the Processing of a Complaint:
EEOC regulations require the dismissal of a complaint alleging dissatisfaction with the processing of a previously filed EEO complaint. Claims of dissatisfaction with the processing of a previous complaint are processed by ORM's Policy and Compliance.

WHAT HAPPENS WHEN A COMPLAINT HAS BEEN DISMISSED?

If ORM determines that the complaint does not comply with the EEOC's regulations for further processing, ORM will dismiss the complaint. A letter of dismissal is sent to the complainant, advising of the reasons for the dismissal as well as appeal rights and procedures. The facility/organization executive also receives a copy of the dismissal letter. The dismissal closes the case unless the complainant appeals, and ORM's decision is reversed by EEOC.

WHAT HAPPENS WHEN A FORMAL COMPLAINT IS ACCEPTED?

If a complaint is accepted (or partially accepted) for further processing, an ORM EEO investigator will be assigned to the case. The investigator takes statements from witnesses under oath, gathers pertinent documents, and reviews records to develop an impartial, factual record that allows an adjudicator to draw conclusions as to whether discrimination has occurred.

HOW IS MANAGEMENT INVOLVED AT THIS STAGE OF THE PROCESS?

If a formal complaint is accepted for further processing, a notice of acceptance is sent to the complainant and the facility/organization executive. In some instances, not all of the claims raised will be accepted for further processing. In such cases, the complainant and facility/organization will receive a notice of partial acceptance, explaining in detail what was accepted and what was dismissed. The notices of acceptance inform all parties that the complaint has been accepted for investigation and will be assigned to an impartial EEO investigator.

The letter to the facility/organization includes a request for documentary evidence required for the investigative file. It is important that the facility/organization comply promptly with the request for documents. If the VA fails to produce the evidence as requested, an adverse inference may be made against the agency, increasing the likelihood that there will be a finding of discrimination.

INVESTIGATIONS

EEOC regulations instruct agencies to develop an impartial and appropriate factual record upon which to make findings on the claims raised in the written complaint. The timeframes for completing investigations are critical. Depending upon the type of investigation, the investigator has 60 calendar days to complete the investigation. That is why it is imperative that all parties, including witnesses, participate willingly and cooperate with the investigator. Because they understand that the parties to a complaint rarely have spare time, the investigators are willing to work around the parties' schedule to obtain affidavits or other documentary evidence within 180 days of the filing of the complaint.

WHAT IS THE ROLE OF THE SENIOR OFFICIAL/EXECUTIVE AT THIS STAGE OF THE PROCESS?

The complainant and the facility/organization executive will receive letters advising that the complaint has been assigned to an EEO investigator. The letter also serves to inform management, along with EEO and HR personnel, to begin preparations for the investigation and to consider this part of the EEO process as another opportunity to resolve the complaint. The investigator will request any additional documentary evidence deemed necessary and will work closely with your EEO and HR specialists to obtain the requested information. The RMO, or management official accused of discrimination, will receive notice of the type of investigation to be conducted, along with management's rights and responsibilities.

The senior official/executive of the organization should direct staff to fully cooperate with the investigation and respond promptly to document requests.

WHAT OCCURS AFTER THE INVESTIGATION?

Upon completion of the investigation, the ORM sends the complainant a copy of the investigative file and can elect an EEOC hearing or a Final Agency Decision (FAD) from OEDCA. The investigative file includes administrative documents related to the complaint; testimony of all witnesses; exhibits of evidence. The evidence section includes relevant documents from both the complainant and management. There is also an investigative summary, which includes the salient points from the witness's testimony and any other relevant evidence. EEOC regulations require that the investigator not draw any conclusions or make any recommendations regarding the merits of the evidence and testimony during the investigation.

HOW IS MANAGEMENT INVOLVED AT THIS STAGE OF THE PROCESS?

The facility/organization executive will receive a letter indicating that the investigation has been completed, along with a copy of the investigative summary. If the complainant fails to elect an EEOC hearing or FAD within 30 days from receipt of the investigative file, ORM will forward the complaint to OEDCA for a FAD. If the complaint contains claims that are appealable to the MSPB (otherwise known as mixed-case EEO complaints), the complainant does not have the right to request an EEOC hearing, and the complaint will be automatically forwarded to OEDCA for a FAD. If the complainant requests an EEOC hearing, ORM will provide the Regional Counsel representative (or other designated management official representing the agency) a complete copy of the investigative file. Once an Administrative Judge (AJ) from EEOC is assigned to the complaint, it is no longer under ORM's jurisdiction. The AJ will review the complaint file and determine whether a hearing will be held. The AJ also makes available the opportunity to resolve the complaint through ADR. In certain instances, the AJ may issue a summary judgment-the rendering of a decision without a hearing.

If the complaint goes to OEDCA for a FAD, a complete copy of the investigative file is provided to OEDCA. OEDCA reviews the complaint file, decides whether discrimination occurred, and sends a copy of its decision to the complainant and the facility/ organization executive.

WHAT HAPPENS WHEN THERE IS A FINDING OF DISCRIMINATION?

If there is a finding of discrimination at the hearing stage, the EEOC submits a recommended decision to OEDCA and the complainant. OEDCA has 40 calendar days to either accept the recommended decision or appeal it. If the recommended decision is accepted in its entirety, OEDCA issues a final order. The final order outlines the relief (which may include compensatory damages, attorneys' fees, and costs) awarded to the complainant and any other corrective action the facility/organization must implement. If OEDCA initiates an appeal of the entire decision or a portion of it, it issues a final order outlining its reasons for disagreeing with and rejecting the AJ's recommended decision.

If the complaint goes to OEDCA for a FAD and discrimination is found, OEDCA sends its decision outlining the remedial relief awarded to the complainant and any other corrective action the VA must implement. If the complainant is entitled to compensatory damages, OEDCA will request that ORM's Policy and Compliance conduct a compensatory damages investigation. Upon completion of that investigation, OEDCA will issue a FAD on the amount of damages awarded to the complainant and, if the complainant is represented by an attorney, award attorney's fees.

ORM monitors and documents compliance with the implementation of all terms of the Order. When a finding of discrimination requires the VA to conduct training, ORM reviews and certifies the qualifications of the individual delivering the training as well as the training material. ORM coordinates the delivery of the training with the local EEO program manager or designee.

HOW IS MANAGEMENT INVOLVED AT THIS STAGE OF THE PROCESS?

Any decision from OEDCA is final and the parties must comply. VA must submit supporting documentation of compliance to Policy and Compliance. If OEDCA has initiated an appeal or partial appeal on a recommended finding of discrimination from EEOC, you will be instructed not to implement EEOC's recommended decision until an appellate decision is received. Once an appellate decision is rendered, VA's Office of General Counsel provides a copy of the decision to the facility/organization executive with instructions to implement the required actions and submit a report of compliance to ORM. Any questions related to compliance issues should be directed to ORM, Policy and Compliance.

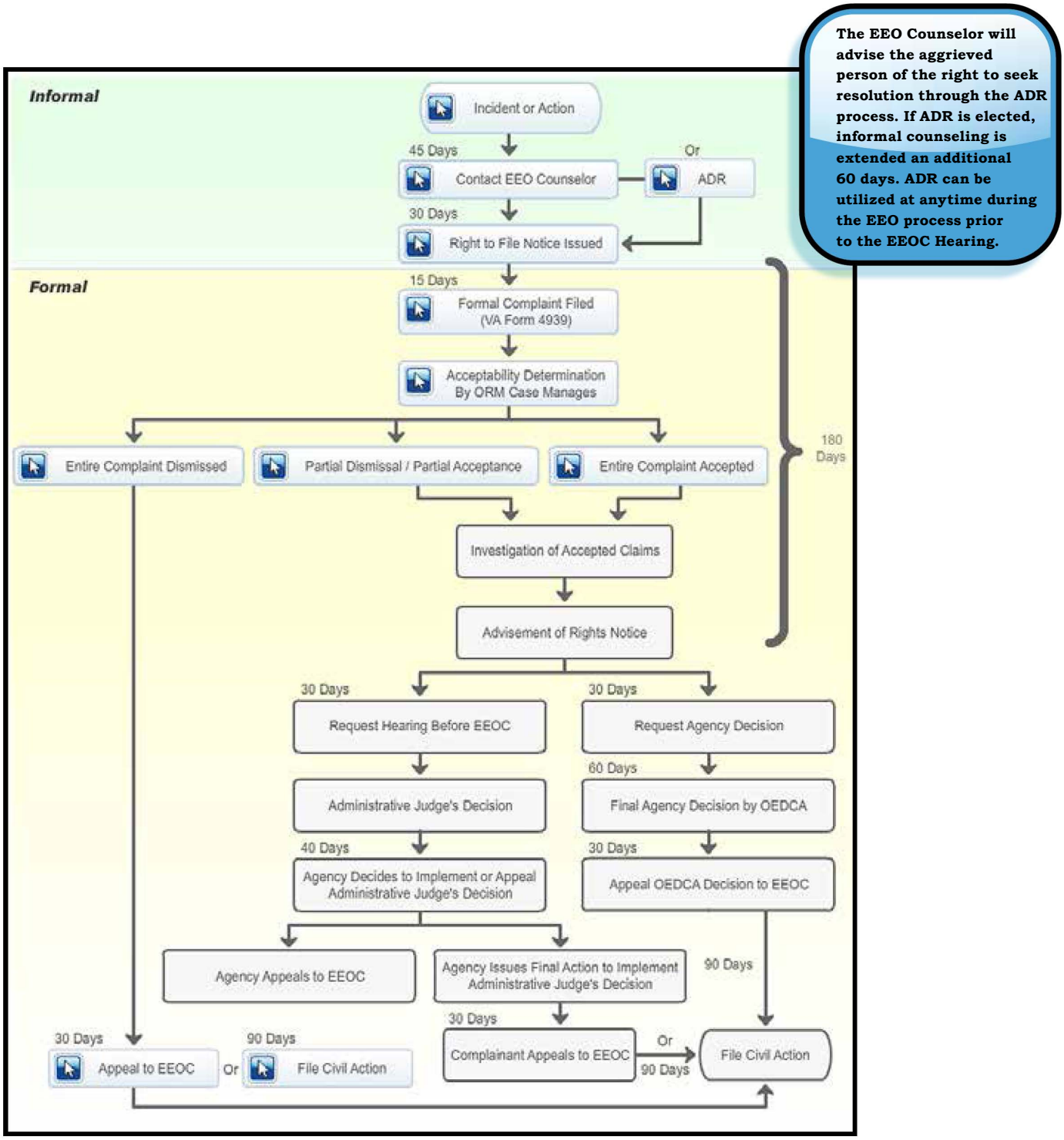
From the information above, you can see the time and resources involved in processing EEO complaints. Later in this guide, you will learn about ADR; a process that can be used to resolve EEO complaints in less time and with fewer resources.

Rights of Persons Involved in Discrimination Complaints

Party To The Complaint	Anonymity	Freedom From Reprisal	Representation	Preparation Time
Complainant	YES[3]	YES	YES	YES
Complainant's Representative	NO	YES	N/A	YES
Responsible Management Official (RMO)	NO	YES	YES	YES
RMO's Representative	NO	YES	N/A	YES
Witness	NO	YES	YES	YES
Facility-Based EEO Program Manager	NO	YES	YES	YES
Agency Representative	NO	YES	N/A	YES

3 Only during informal counseling

EEO Complaint Process Flowchart and Timeframes



Frequently Asked Questions About the EEO Process

ORM understands that a VA executive's time is limited. This section will provide you with brief answers to questions often faced by leaders. For more detailed information, contact your local ORM field office.

WHAT DOES ORM DO?

ORM processes EEO complaints and seeks alternative methods for complaint resolution. We encourage participation in activities that improve the morale and efficiency of the Department's employees in an effort to improve service to our Veterans.

HOW LONG DOES THE EEO COMPLAINT PROCESS TAKE?

The EEO complaint process consists of two stages: informal and formal. The first stage begins with EEO counseling or ADR, which gives the parties an opportunity to work informally with ORM to try to resolve the complaint. The intent of the informal stage is to carry out a basic inquiry, sufficient to communicate the interests of all parties, in an effort to resolve the complaint. The formal stage occurs when an informal complaint is not resolved, and the complainant elects to file a formal complaint of discrimination. This stage includes an investigative and hearing stage and ends with a final agency decision. The formal process establishes an official record of the complaint, which the agency and EEOC use to evaluate the complaint, and determine whether illegal discrimination has taken place.

WHO MAY REPRESENT ME IN DEFENDING MYSELF IN AN EEO COMPLAINT?

A management official may select a personal representative, such as an attorney. An EEO manager may not serve as a representative.

WHAT IS ALTERNATIVE DISPUTE RESOLUTION (ADR)?

ADR is a group of processes that employ specially trained neutral persons who help individuals with a problem or dispute to resolve the issues in the controversy. The most frequently used ADR process in VA is mediation. Through ADR, a neutral third party assists individuals to find a mutually acceptable solution to their dispute. ADR is a problem-solving process; it allows the parties a say in the outcome and can improve relationships.

HOW CAN I REDUCE THE NUMBER OF COMPLAINTS WITHIN MY ORGANIZATION?

- Make sure your expectations are clear and hold subordinate managers accountable.
- Seek early resolution and encourage participation in ADR.
- Be involved and ensure that there are open lines of communication.
- Train your staff, especially as it relates to EEO and management training.
- Enforce zero tolerance if inappropriate behavior or discrimination occurs.
- Support cultural diversity efforts.
- Seek assistance from ORM and your facility-based EEO professionals.

WHY DOES ORM ACCEPT COMPLAINTS THAT APPEAR FRIVOLOUS OR WITHOUT MERIT?

When a formal complaint is filed, ORM must determine whether the complaint meets the EEOC's procedural requirements for investigation. EEOC prohibits agencies from considering the merits of the complaint at this stage. A complaint must be accepted for investigation if it identifies a basis protected under EEO laws; if it is timely raised and filed; if it alleges a harm or loss with respect to a term, condition, or privilege of employment; and if it does not state the same claim as one that is pending or has been previously decided.

CAN I STILL RESOLVE A COMPLAINT THROUGH ADR ONCE IT HAS GONE FORMAL?

Absolutely! A complaint can be resolved at any time throughout the process. ADR is one vehicle that can be used. Simply contact your servicing ORM field office for additional guidance.

Do's and Don'ts

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DO consider and encourage ADR before EEO complaints are initiated or at all stages of the complaint process.

DO secure all documents and memorialize events upon notification that an EEO complaint has been filed.

DO contact ORM or your facility-based EEO manager if you would like to attempt settlement.

DO take positive steps to avoid potential disputes. Train your staff and discuss your expectations regarding workplace diversity, inappropriate behavior, and discrimination.

DO contact ORM if you have any questions or concerns.

DON'T treat an employee differently because s/he filed an EEO complaint or protested discrimination.

DON'T retaliate against an employee who files an EEO complaint alleging you as the responsible management official.

DON'T take it personally. Complainants have their own interpretations of what happened and you have yours.

Alternative Dispute Resolution (ADR)

The VA actively uses ADR as a tool to resolve workplace disputes and EEO complaints. ADR is offered to the aggrieved person in virtually every EEO complaint. The VA-wide target for ADR participation at the informal stage of the EEO complaint process is 53%, and VA's resolution rate target is 50%. We want all employees and managers to consider ADR as the first opportunity to resolve issues or disputes. ADR has proven to be highly effective, both in resolving complaints and reducing the costs associated with processing informal and formal EEO complaints. Another intangible benefit is that lines of communication may be improved, enhancing VA's overall level of productivity, morale, and customer service.

ADR is an interactive process in which a neutral third party engages individuals in facilitated discussions and seeks a mutually acceptable outcome to issues and concerns. It is a less time-consuming approach than going through the EEO complaint process.

Unlike the formal complaint process, where the parties involved in a dispute are placed in a contest to determine a "winner" or a "loser," ADR provides an opportunity for individuals to examine their workplace concerns and develop unique solutions that are acceptable to all parties. Through ADR, participants can generally arrive at resolutions quicker than through the formal complaint process and resolutions are designed by the participants rather than by an outside entity, *e.g.*, EEOC or OEDCA.

WHO MAY USE ADR?

Any employee or manager or union official at any level may ask to participate in ADR. Mediation is the form of ADR most frequently used within the VA. If a dispute arises involving a co-worker or supervisor, ADR may be requested whether or not a complaint, grievance, or personnel action has been initiated. Employees maintain the right to pursue more formal avenues as long as they comply with the specified timeframes of those procedures, i.e., MSPB, Office of Special Counsel, or EEO.

HOW DOES MEDIATION WORK?

In mediation, a trained neutral mediator usually begins the session by explaining the procedures and ground rules. The participants are then invited to share information regarding the issues in dispute while the mediator provides structure, balance, and fairness throughout the discussion. The mediator may meet separately with each participant to discuss matters further and to develop possible options for resolution. Throughout the mediation process, the participants listen to each other's concerns and try to focus on the kind of future they can build together. Although an agreed-upon resolution between the parties is the primary goal, mediation is often considered successful if it results in a better understanding or relationship between the participants.

WHAT ISSUES MAY NOT BE APPROPRIATE FOR ADR?

The decision to use ADR calls for informed judgment. Employees' relationships, their interest in retaining control over the process, the need to move quickly, and the need for neutral involvement are factors to be weighed in deciding whether ADR is appropriate for a particular conflict. Certain cases may not be appropriate for ADR. When the following factors are present, a case-by-case determination must be conducted as to whether the matter is appropriate for ADR.

- An indication of fraud, waste, or abuse;
- An allegation of patient abuse;
- An allegation of criminal activity; or
- An allegation for which there is an active investigation in another forum, *e.g.*, Administrative Investigation Board, Inspector General.

HOW DO I LEARN MORE ABOUT ADR?

Contact ORM or your facility ADR Program Manager. You can find additional information about ADR at http://vaww1.va.gov/adr/ or http://www.va.gov/adr/.

ORM has developed a Resolution Strategies document that offers employees and managers tips on how to prepare for ADR and examples of terms that have been used to resolve frequently alleged claims of discrimination. The contents of the document are below.

DEPARTMENT OF VETERANS AFFAIRS
OFFICE OF RESOLUTION MANAGEMENT
RESOLUTION STRATEGIES FOR INFORMAL EEO COMPLAINTS

Introduction

Public policy favors the amicable resolution of disputes, and the Equal Employment Opportunity Commission (EEOC) has codified its strong support for settlement attempts at all stages of the EEO complaint process in 29 C.F.R. § 1614.603, which states, "Each agency shall make reasonable efforts to voluntarily settle complaints of discrimination as early as possible in, and throughout, the administrative processing of complaints, including the informal stage."

The informal stage of the EEO process offers the aggrieved person and the agency the earliest opportunity to address work-related issues. During this stage, an EEO counselor or an Alternative Dispute Resolution (ADR) neutral can assist the aggrieved person and management to talk about the issues in dispute and craft an outcome that is to their mutual agreement and in their best interest. The outcome may be in the form of a written settlement agreement but could also include a decision not to proceed to the formal stage based on the information shared during counseling or ADR.

Government-wide, approximately 53% of all EEO complaints are able to be resolved at the informal stage. What strategies can be used to maximize early resolution and obtain results that are often more satisfying and sustainable than decisions rendered in EEO complaints? Below are some practices that can promote early resolution of complaints.

Strategies

EEO and ADR Education and Training

1. Educate yourself on the EEO process and the benefits of ADR and know who to contact for more information. The Office of Resolution Management (ORM) is always available to provide EEO training and to consult. See ORM Course Catalog http://www.va.gov/adr/docs/ORM_Course_Catalog_2012.pdf

2. Invest in conflict management and mediation training for supervisors. A VA organization sent all of their supervisors to 3-day training and has seen a 35% decrease in complaint activity for two consecutive years. Registration for this training can be coordinated through ORM's Centralized ADR Program at workplaceadr@va.gov

Reasonable Accommodation and Retaliation

3. Since most of VA's findings of discrimination are based on reasonable accommodation and retaliation:

    a. When an EEO complaint involves reasonable accommodation, ensure that VA Directive and Handbook 5975.1 were followed and subject matter experts in the Office of Diversity and Inclusion and General Counsel were consulted. http://www.diversity.va.gov/policy/dra.aspx

    b. Ensure supervisors review the Department's Frequently Asked Questions on Retaliation to better understand this basis of discrimination. See Frequently Asked Questions – Retaliation/Reprisal section of this guide.

    c. Ensure all supervisors and managers receive training on reasonable accommodation and retaliation. See TMS course titled *EEO, Diversity, and Conflict Management for Managers and Supervisors*. https://www.tms.va.gov/plateau/user/login.jsp

Collaboration and Technical Support

4. Because EEO allegations often involve personnel actions or policies and procedures negotiated with labor, using a team approach to work through issues raised in complaints can be effective. Reach out to Human Resources, your organization's EEO/ADR program manager, the Union, and General Counsel, for guidance, advice and ideas on how the complaint can be resolved.

5. Through communities of practice and blogs available through the Corporate Senior Executive Management SharePoint site, seek coaching and mentoring from peers who are particularly effective at de-escalating conflict and resolving disputes. Perfect new strategies and approaches that have been used and proven effective by your colleagues.

6. Consider labor agreements when negotiating settlements with bargaining unit employees. Understand the parameters and impact a settlement may have on the contract.

Approaching Resolution

7. Avoid seeing collaboration to resolve a complaint as perpetuating more complaints, giving in, or looking weak. Few EEO complaints that settle result in a future EEO filing. Joint problem solving is intended to result in mutual gain and letting the EEO process run its course is more likely to trigger subsequent complaints based on employees feeling like no one is listening or nothing is happening. Consider what outcome is in the best long-term interest of both VA and the employee.

8. Come into the EEO process curious about how the other person sees things, open to hearing different perspectives, constructively expressing how you feel, and willing to explore various possibilities to resolve the issues versus taking an adversarial, argumentative, or inflexible position. Use open ended questions and active listening when talking to the EEO counselor or when participating in ADR.

9. Always know your best and worst alternatives to an agreement when considering outcomes at the informal stage. Be willing to accept the time and cost involved if the matter remains unresolved.

ADR Practices

10. Cooperate to ensure timely scheduling of ADR/mediation sessions and come prepared. Delays in scheduling or frequent rescheduling can cause frustration and lead to a lack of confidence in the ADR process. Individuals may file formal to preserve their rights thereby impacting the rate of resolution at the informal stage.

    a. Participate in the pre-mediation discussion to ensure the management official participating in ADR/mediation has authority to resolve the complaint and knows what can be considered and what further concurrence is needed.

    b. Read and review the materials you will be provided by the EEO/ADR program manager related to the EEO complaint and ADR processes that may be helpful to understand the topics that will be discussed in ADR/mediation.

    c. Discuss the complaint with subject matter experts to explore possible resolution strategies to bring to the ADR/mediation session. Ensure subject matter experts such as Human Resources and General Counsel are available for consultation in advance of and on the day of the ADR/mediation session to ensure any outcomes being considered are legal and enforceable.

d. Leverage the mediator's role - not to judge who's right and who's wrong or to impose a settlement but to help develop solutions acceptable to all parties.

e. Practice active listening and work at uncovering the root cause of the issue alleged to be discriminatory. Often the term hostile work environment is used in the EEO process to identify something that happened on a given date that the person believes to be based on discrimination. However, in ADR/mediation, the root cause of the accusation can surface and it is often more about respect or work styles or trust than race, gender, religion, or other bases of discrimination. Rarely, does this level of communication or understanding occur in the traditional EEO process. Once the root cause is revealed, use this knowledge to enhance opportunities to reach a lasting resolution, and institute some best practices to improve the work environment.

11. Maintain a readily accessible and well-trained pool of neutral third parties to assist the workforce in facilitating or mediating solutions to disputes and complaints. http://vaww.va.gov/adr/NCP.asp

Resolution Ideas and Options

12. Come to ADR with ideas and options that may resolve the EEO complaint. Below are some settlement outcomes to frequently raised claims of discrimination.

    a. Promotion/Non-Selection: Depending on the issue at hand, resume writing, developing interview skills, or training could be considered effective solutions to this claim. Consider working with the employee to create an individual development plan (IDP) that includes training opportunities to enhance employee's skills and abilities to compete for promotions. Cross training in various positions with upward mobility may be another option. Mycareer@VA is an excellent resource. http://mycareeratva.va.gov/Pages/default.aspx

    b. Termination: Explore ways that the individual's interest in finding another job or having a bridge to future employment is preserved. Consider consulting with local HR and/or legal counsel to determine the appropriate revision to the SF-50 that indicates the employee resigned for personal reasons instead of termination. Also consider consulting with local HR and/or legal counsel to determine the appropriateness of providing a neutral reference letter.

    c. Disciplinary Action: Consider conducting periodic meetings with the employee with the intent to remove the disciplinary action from the electronic personnel folder as soon as possible, if the conduct improves. Consider agreeing on ways to correct the conduct and establishing a mutually agreeable time frame during which the conduct will not recur and will result in rescission of the disciplinary action. This strategy can address everyone's interests and needs.

d. Performance Evaluation: Sometimes reviewing how the employee's accomplishments were written up or if something noteworthy from the employee's perspective was not referenced can bring these allegations to resolution. It can also be an opportunity to more clearly define future performance standards and rating levels to prevent repeated dissatisfaction with the end of year rating.

e. Hostile Work Environment: Examine the conduct or behaviors contributing to the allegation and first work to correct the behavior and improve the work environment. Consider training for the office or department. Sometimes an assurance that management will address and not ignore the problem is the desired outcome.

Consider exploring ways to enhance communications between the parties. Such as, both parties attending team building exercises and communications skills training. If possible, consider the parties attending the communications skills training together. ORM's Training and Services Catalog along with VA's Learning University Course Catalog are excellent resources.
http://vaww.va.gov/valu/
http://www.va.gov/adr/docs/ORM_Course_Catalog_2012.pdf

f. Time and Attendance: Claims such as Absent without Leave (AWOL) charges can sometimes be resolved through replacing the AWOL with annual or sick leave, talking about the circumstances that led to the AWOL charge, understanding agency policies and procedures and that future infractions will not be excused.

When an employee uses excessive sick leave to attend doctor's appointments, if they qualify for telework, consider allowing the employee to work from home prior to their doctor's appointments. That way they are productive and they will more than likely not take as much sick leave.

g. Failure to Hire: Sometimes applicants can benefit from education on the different hiring processes such as merit promotion and delegated examining unit. On other occasions, feedback on an application or an interview is useful. Also, informational interviews with offices and hiring officials can help applicants to be more aware of the work performed by the VA and how they may or may not be a good candidate for certain types of jobs.

h. Religious Accommodation: Consider changing the employee's tour of duty or suggesting the use of earned compensatory time, if applicable.

i. Denial of Training: Consider sending the employee to similar training opportunities in the local area or allow the employee on duty time to take an online training course. Another consideration could be approving a short term detail or shadow assignment in another department. VA's Learning University Course Catalog is an excellent resource. http://vaww.va.gov/valu/

Settlement Agreements

WHAT HAPPENS WHEN AN EEO COMPLAINT IS SETTLED?

A written settlement agreement can be reached at either the informal or formal stage of the EEO process. Once the settlement terms are finalized and the agreement signed by the aggrieved person/complainant, an authorized agency official with settlement authority, and their respective representatives, if applicable, the document is submitted to ORM, and ORM issues a Notice of Closure confirming that the complaint(s) has been settled and further processing of the complaint(s) will cease.

HOW IS MANAGEMENT INVOLVED IN THE SETTLEMENT PROCESS?

Management officials, or their designee, negotiate the terms and conditions of the agreement with the aggrieved person/complainant and their representative, if applicable. The facility/organization executive or designee is the only official with the authority to bind the agency to a settlement agreement. It is imperative that the director or designee sign the settlement agreement after it has been reviewed and approved by General/Regional Counsel for legal sufficiency and Human Resources if a personnel action is a term of settlement.

WHAT CONSTITUTES A VALID SETTLEMENT AGREEMENT?

In order to be a binding and valid contract, the settlement agreement must provide the aggrieved person/complainant with "adequate consideration," that is an employment benefit that they are not already entitled to as a federal employee. Examples of adequate consideration are providing additional training opportunities; expunging a disciplinary action from personnel records; financial compensation; or a reassignment to a different supervisor. Examples of provisions that do not provide adequate consideration are promising not to retaliate or discriminate against the complainant; promising to adhere to EEO regulations or to follow established policies and procedures. These examples do not provide adequate consideration because the Department is already required to do these things so there is no valuable consideration given to the aggrieved person/complainant by agreeing to these terms.

WHAT HAPPENS IF A COMPLAINANT BELIEVES THE SETTLEMENT AGREEMENT HAS BEEN BREACHED?

If an aggrieved person/complainant believes that the VA has not honored the provisions of the settlement agreement, they may notify the Deputy Assistant Secretary for Resolution Management, in writing, within 30 calendar days of the alleged breach of the settlement agreement. Policy and Compliance will issue a decision regarding whether or not the settlement agreement was breached.

HOW IS MANAGEMENT INVOLVED IN A BREACH OF SETTLEMENT CLAIM?

ORM's Policy and Compliance monitors compliance with settlement agreements and contacts the facility for information and documentation regarding the implementation of the terms of the agreement. When a breach is alleged, Policy and Compliance also contacts the facility and requests information in order to determine if the promises made in the settlement agreement have been satisfied. The response to the request for information should be made by individuals that have knowledge of the creation and implementation of the settlement agreement.

HOW CAN I AVOID BREACHING A SETTLEMENT AGREEMENT AND HAVING AN EEO COMPLAINT REINSTATED?

- Use settlement agreement templates developed by ORM and General Counsel contained within this guide and on ORM's website http://vaww.va.gov/ORM/
- Ensure that the terms and conditions of the settlement agreement contain adequate consideration, and that the provisions are stated specifically to include who will do what, when, and how.
- Ensure that the facility EEO manager monitors compliance with implementation of the settlement agreement in a timely manner.
- Ensure that the time limits to comply with the settlement agreement are met.
- Ensure that the individuals that have the responsibility to implement the terms of the agreement, such as Human Resources and Fiscal Service officials, are aware of what needs to be accomplished, and their role in fulfilling the terms of the agreement in a timely manner.

Instructions for Completing and Writing Settlement Agreements

ORM has issued instructions for completing and writing EEO settlement agreements that should be reviewed by all VA Executives.

INSTRUCTIONS FOR COMPLETING AND WRITING EEO SETTLEMENT AGREEMENTS

- Check the case numbers and spelling of the party(ies)'s name(s). Confirm all names and applicable EEO case numbers to avoid confusion.
- Carefully describe the consideration for the agreement. Consideration requires new, future, clearly defined obligations by both parties to make the agreement legally binding. Review each party's obligations to confirm that they are clearly described, not otherwise required, and must occur after the agreement is executed. Agreements too vague for enforcement, not imposing additional requirements on both parties, or for which obligations are met before execution, will lack sufficient consideration to constitute a legally binding agreement.
- Specify timeframes or deadlines for each obligation. Absence of timeframes requiring action, such as within "a reasonable period of time" may cause a failed agreement or an allegation of a breached agreement. Specific timeframes should be stated.
- Attach all related documents. Attach to the agreement and clearly describe letters of resignation, performance appraisals, award recommendations, etc. as appropriate. Terms calling for a neutral or clean letter of reference should be avoided. Instead, the parties should agree upon a letter of reference, indicate that it will be provided upon request, and attach it to the agreement.
- Confirm that the Authorized Agency Official (AAO) has authority to sign the agreement. Request the AAO to provide a written designation (i.e., e-mail) that states: (1) the AAO has the authority to commit the VA to a settlement agreement, and (2) the scope of that authority (i.e., dollar amount, leave restoration limit, etc.).
- In all cases, VA Counsel should review the agreement for legal sufficiency. If VA Counsel has been personally involved in the matter, he or she will also opine on whether the terms of the proposed settlement agreement are in the best interests of the Agency.

- The highest ranking Agency signatory to the agreement is responsible for ensuring compliance: e.g., by following up with Human Resources and/or Fiscal, when appropriate.
- All required signatories must sign the agreement before it is effective. All required parties, including legal counsel, must sign the agreement before the agreement is fully executed and/or effective. If counsel is not present during negotiations, the agreement should be forwarded for counsel's prompt review and concurrence.

On the following pages you'll find two settlement agreement templates developed by ORM and the Office of General Counsel that should be used VA-wide when resolving an EEO complaint; one template is for EEO complaints in which age was not a basis of discrimination, and the second template is for EEO complaints in which age was alleged as a basis for discrimination.

Settlement Agreement: EEO Cases Not Alleging Age Discrimination

This Settlement Agreement ("Agreement") is between [Insert name of employee] ("Aggrieved Person/Complainant") and the Department of Veterans Affairs ("Agency") collectively referred to as the "Parties." For and in consideration of the promises and covenants herein contained, the Parties hereby agree that:

1. **Withdrawal and Waiver**: The Aggrieved Person/Complainant voluntarily:

   a. Withdraws all pending informal and formal EEO complaints, including but not limited to, EEO Case No(s)._____.

   b. Waives or withdraws any other complaints, claims, grievances, appeals or other actions against the Agency and its past and present officers and employees, in their personal or official capacities, whether formal or informal, which are or may be asserted by the Aggrieved Person/Complainant or on the Aggrieved Person/Complainant's behalf, based on any event occurring before the Aggrieved Person/Complainant's execution of this Agreement.

2. **Agency Obligations**: The Agency shall:
   (Specify, in detail and including timeframes, whatever terms have been agreed upon—ensure that every deadline is reasonable!)

3. **Enforcement**:
   If the Aggrieved Person/Complainant believes that the Agency has breached this Agreement, he/she must notify the Deputy Assistant Secretary for Resolution Management (ORM) in writing, within 30 calendar days after the date of the alleged breach. If ORM determines a breach has occurred, the Aggrieved Person/Complainant may elect to have this Agreement implemented, or to have any waived or withdrawn complaint(s) or other actions reinstated and processed from where processing ceased. The Parties understand that, before any complaint or other action can be reinstated, the Aggrieved Person/Complainant must return to the status quo before this Agreement's execution: specifically and for any complaint, the Aggrieved Person/Complainant must forfeit all benefits received and return all money paid to or for his/her benefit under this Agreement before ORM will reinstate the complaint. Pursuant to 29 CFR § 1614.504, the Aggrieved Person/Complainant may appeal to the Equal Employment Opportunity Commission (EEOC) if he or she believes that the Agency has either not fully implemented this Agreement or has improperly failed to reinstate his or her complaint.

4. **Further Understandings**:

   a. This Agreement does not constitute an admission of guilt, liability, or wrongdoing by either Party and is entered into solely to resolve the subject matter of this Agreement.

   b. This Agreement constitutes the entire understanding between the Parties. No other oral or written terms or commitments exist between the Parties.

c. This Agreement addresses unique circumstances and shall not serve as precedent or past practice for resolving any other matter involving the Agency.

d. The Aggrieved Person/Complainant shall be solely responsible for the payment of attorney fees and costs, if any, related to prosecution of discrimination complaints and other actions against the Agency referenced in paragraph 1.

e. The Aggrieved Person/Complainant shall be solely responsible for the payment of all taxes, if any, attributable to this Agreement. The Agency makes no representations concerning the tax consequences of this Agreement.

f. This Agreement shall be made a part of the record of the Aggrieved Person/Complainant's above referenced discrimination complaint(s) and remains enforceable under the jurisdiction of the EEOC following dismissal of this case.

g. If a binding determination is made that any term(s) of this Agreement is/are invalid, the remaining terms of this Agreement shall remain effective unless prohibited by law.

h. This Agreement may not be modified except by a writing signed by all Parties.

i. The Aggrieved Person/Complainant enters into this Agreement voluntarily without duress or coercion.

This Agreement shall be effective upon the date of the last required signature identified below.

FOR THE AGGRIEVED PERSON/COMPLAINANT:

_____ _____

Aggrieved Person/Complainant **Date**

_____ _____

Representative's Name (if any) **Date**

FOR THE DEPARTMENT:

_____ _____

Authorized Agency Official **Date**

_____

Title

REQUIRED REVIEW FOR LEGAL SUFFICIENCY:
APPROVE / DISAPPROVE

_____ _____

Name **Date**
Counsel for Agency

Settlement Agreement: EEO Cases Alleging Age Discrimination

This Settlement Agreement ("Agreement") is between [Insert name of employee] ("Aggrieved Person/Complainant") and the Department of Veterans Affairs ("Agency") collectively referred to as the "Parties." For and in consideration of the promises and covenants herein contained, the Parties hereby agree that:

1. **Withdrawal and Waiver**: The Aggrieved Person/Complainant voluntarily:

   a. Withdraws all pending informal and formal EEO complaints, including but not limited to, EEO Case No(s)._____.

   b. Waives or withdraws any other complaints, claims, grievances, appeals or other actions against the Agency and its past and present officers and employees, in their personal or official capacities, whether formal or informal, which are or may be asserted by the Aggrieved Person/Complainant or on the Aggrieved Person/Complainant's behalf, based on any event occurring before the Aggrieved Person/Complainant's execution of this Agreement.

2. **Agency Obligations**: The Agency shall:
   (Specify, in detail and including timeframes, whatever terms have been agreed upon—ensure that every deadline is reasonable!)

3. **Enforcement**:
   If the Aggrieved Person/Complainant believes that the Agency has breached this Agreement, he/she must notify the Deputy Assistant Secretary for Resolution Management (ORM) in writing, within 30 calendar days after the date of the alleged breach. If ORM determines a breach has occurred, the Aggrieved Person/Complainant may elect to have this Agreement implemented, or to have any waived or withdrawn complaint(s) or other actions reinstated and processed from where processing ceased. Pursuant to 29 CFR § 1614.504, the Aggrieved Person/Complainant may appeal to the Equal Employment Opportunity Commission (EEOC) if he or she believes that the Agency has either not fully implemented this Agreement or has improperly failed to reinstate his or her complaint.

4. **Further Understandings**:

   a. This Agreement does not constitute an admission of guilt, liability, or wrongdoing by either Party and is entered into solely to resolve the subject matter of this Agreement.

   b. This Agreement constitutes the entire understanding between the Parties. No other oral or written terms or commitments exist between the Parties.

   c. This Agreement addresses unique circumstances and shall not serve as precedent or past practice for resolving any other matter involving the Agency.

   d. The Aggrieved Person/Complainant shall be solely responsible for the payment of attorney fees and costs, if any, related to prosecution of discrimination complaints

and other actions against the Agency referenced in paragraph 1.

e. The Aggrieved Person/Complainant shall be solely responsible for the payment of all taxes, if any, attributable to this Agreement. The Agency makes no representations concerning the tax consequences of this Agreement.

f. This Agreement shall be made a part of the record of the Aggrieved Person/Complainant's above-referenced discrimination complaint(s) and remains enforceable under the jurisdiction of the EEOC following dismissal of this case.

g. If a binding determination is made that any term(s) of this Agreement is/are invalid, the remaining terms of this Agreement shall remain effective unless prohibited by law.

h. This Agreement may not be modified except by a writing signed by all Parties.

i. The Aggrieved Person/Complainant enters into this Agreement voluntarily without duress or coercion.

5. **Notice under the Age Discrimination in Employment Act ("ADEA") and the Older Workers Benefit Protection Act ("OWBPA")**:

a. The Aggrieved Person/Complainant has thoroughly reviewed the entire Agreement and understands its provisions;

b. The Aggrieved Person/Complainant has not waived any rights or claims that may arise after the date this Agreement is signed;

c. The Aggrieved Person/Complainant has not waived any rights or claims to benefits to which he or she is entitled;

d. The Aggrieved Person/Complainant has the right to consult with an attorney prior to signing the Agreement;

e. The Aggrieved Person/Complainant has a period of twenty-one (21) days to consider the Agreement;

f. The Aggrieved Person/Complainant will have seven (7) days following the execution of the Agreement to revoke the Agreement, by delivering written revocation to Agency counsel, and the Agreement will not become effective or enforceable until the seven-day revocation period has expired; and

g. The Aggrieved Person/Complainant's relinquishment of these claims and rights is specifically conditioned upon the Agency's performance of the actions set forth hereinabove.

This Agreement shall be executed upon the date of the last required signature identified below, but not effective or enforceable until the revocation period has expired.

FOR THE AGGRIEVED PERSON/COMPLAINANT:

_____ _____

Aggrieved Person/Complainant **Date**

_____ _____

Representative's Name (if any) **Date**

FOR THE DEPARTMENT:

_____ _____

Authorized Agency Official **Date**

_____

Title

REQUIRED REVIEW FOR LEGAL SUFFICIENCY:
APPROVE / DISAPPROVE

_____ _____

Name **Date**
Counsel for Agency

Most Common Findings of Discrimination to Avoid

Harassment (Non-Sexual)	Avoidance
☐ Inconsistent application of rules and regulations ☐ Using racial epithets and prohibited bias ☐ Demonstrating offensive behavior ☐ Failure to take action when put on notice ☐ Denial of leave, consistently ☐ Assignment of duties ☐ Denial of training, consistently ☐ Close scrutiny of employee	☐ Take immediate action when workplace disputes arise ☐ Apply all rules and regulations equitably, such as leave and attendance ☐ Assign job assignments on the same terms and conditions as similarly situated employees ☐ Approve training on the same terms and conditions as similarly situated employees ☐ Commensurate level of supervision with performance ☐ Treat employees fairly and in the manner they prefer to be treated whenever possible
Reprisal	**Avoidance**
☐ Targeting employees who participated in prior EEO activity	☐ Do not make disparaging remarks or idle threats regarding participation in EEO activity ☐ Do not interfere or discourage an employee's right to participate in the EEO process[4]

4 The Equal Employment Opportunity Commission has found that this constitutes a per se violation. A per se violation in this instance is any action or statement by management officials that might dissuade employees from engaging in protected activity.

Reasonable Accommodation	Avoidance
☐ Failure to accommodate specific needs ☐ Denial of leave for medical reasons ☐ Denial of specialized equipment and/or furnishings ☐ Assignment of duties that exacerbates the disability ☐ Denial of accommodating work space ☐ Accessing employee's medical record without authorization	☐ Be knowledgeable of the Americans with Disabilities Act of 1990 and Rehabilitation Act of 1973 ☐ Educate self and staff; participate in reasonable accommodation training ☐ Engage in interactive communications with employees with disabilities to determine entitlement and appropriate accommodation ☐ Do not violate Health Insurance Portability and Accountability Act and the Privacy Act[5]
Sexual Harassment	**Avoidance**
☐ Failure to take action promptly ☐ Failure to exercise reasonable care to prevent and correct sexual harassment ☐ Repeated inappropriate sexual remarks and jokes	☐ Even when the victim request no action management is obligated to intervene ☐ Once put on notice act immediately ☐ Do whatever to end sexual harassment and prevent reoccurrence ☐ Acting too late is just like not acting at all ☐ Do not allow, condone, or participate in inappropriate sexual banter

5 The Equal Employment Opportunity Commission has found that this constitutes a per se violation. A per se violation in this instance is any unauthorized person accessing an employee's confidential medical records.

Frequently Asked Questions Retaliation/Reprisal

The Equal Employment Opportunity Commission (EEOC) reports that retaliation is the most frequently alleged basis of discrimination in the Federal government. An employer is prohibited from taking an adverse action based on an employee's prior EEO activity. What lessons can VA managers learn from recent EEOC decisions to prevent findings of discrimination? The scenarios below reflect cases where VA was found to have committed a per se violation or retaliated against an employee. Per se retaliation/reprisal is an automatic violation of the law against reprisal that does not require evidence of an "adverse action." Per se violations occur when management officials make negative comments or take action against an individual who participates in the EEO process in any capacity. The responses to the following scenarios can be used as a valuable tool to assist managers in preventing and eliminating retaliation/reprisal and other forms of discrimination in the workplace.

1. ***I was in the midst of approving the reassignment of an employee to a different position when I received a call from an EEO counselor indicating that the employee had initiated an EEO complaint against me. I am not sure what the complaint is about, so I will deny the reassignment until I learn what the complaint is about because I do not want it to appear that I am moving her because she has filed an EEO complaint. Was this the right thing to do?***

   Delaying actions after an employee initiates an EEO complaint can be viewed as retaliation/reprisal. Managers should always ask themselves "Would I take this course of action if the employee did not have a complaint?" If the answer is no, then the action is not advisable, as it sends a message that because an employee used the EEO process, management may take a retaliatory action against them. The motivation to take or not to take an action based on an employee's participation in the EEO process constitutes prohibited retaliation/reprisal in violation of Title VII of the Civil Rights Act.

   Provisions of Title VII of the Civil Rights Act that govern retaliation/reprisal are broad and make discrimination against an individual because of his or her protected EEO activity, unlawful. These provisions prohibit any discrimination that is reasonably likely to deter a complainant from participating in protected EEO activity.

2. ***Carol has filed an EEO complaint and the case is scheduled for a hearing. She alleges that I discriminated against her when she was placed on absent without leave (AWOL). I just learned that Carol is going to call Donna as a witness. I hired Donna a couple of months ago; she is a recent college graduate and has no clue about what goes on in the Federal workplace. Is it ok for me to warn Donna that***

Carol is a troublemaker and that she "crossed the line" when she filed her complaint?

It is always inappropriate (and illegal!) for a supervisor or other VA management officials to dissuade an employee from participating in the EEO process, including testifying for, or serving as a representative on behalf of a complainant. It is also illegal for VA management officials to suggest or infer that an employee who files an EEO complaint is a "troublemaker."

Witnesses who testify in EEO hearings are protected from retaliation/reprisal by VA management officials. Depending on the circumstances, a potential witness may also be protected if she is the target of an adverse action by her supervisor or other management official as a result of being identified as a potential witness. Targeting can take many forms including issuing a letter of warning, lowering a performance evaluation, denying a leave request, or non-selection for promotion.

3. ***I was on a selection panel for a motor vehicle operator position. I attended a meeting with Human Resource officials regarding the selection process where the applicant's prior EEO activity was disclosed as well as the qualifications of both candidates. The panel found both candidates to have similar qualifications; however, not all members agreed on what type of experience was the most valuable and gave credit to each candidate using different job experiences. The panel also discussed their concern that one of the employees had a prior history of filing EEO complaints which could lead to future complaints. Therefore, the other candidate was selected. Was it appropriate to discuss the employee's prior EEO activity while determining the best applicant for the position?***

An individual's prior EEO activity must never be discussed or considered when determining the best qualified candidate for a position. In essence, an individual's EEO activity should not be shared at all during the selection process. Selections must be based on merit principles; a review of the qualifications required for the position, and each candidates ability to meet those qualifications as evidenced by their work history. The Civil Service Reform Act (CSRA), codified (5 U.S.C. Section 2301) the basic merit principles governing Federal personnel management. These principles specify that selection and promotion should be based solely on merit, after fair and open competition.

Further, trying to justify a selection decision by simply stating that the selectee was "better qualified" absent a clear and specific explanation may result in a finding of discrimination, particularly, when it appears, at least on paper, that the candidate that was not selected actually had superior qualifications. For example,

management should be able to articulate what skills, abilities, and experience the selectee had to make them better qualified to perform the duties of the position. An inference of retaliation/reprisal arises when there is proof that the protected EEO activity and the adverse action taken against the employee are related. This inference may arise even if a significant amount of time has elapsed between the protected activity and the adverse action if there is other evidence that points to retaliation/reprisal. Even if management produces evidence of a legitimate, nondiscriminatory reason for the action at issue, a violation could still be found if this explanation is a pretext designed to hide the true retaliatory motive.

4. ***Steve, one of my subordinates, keeps filing EEO complaints. He is always spending time in Human Resources, but otherwise is an excellent employee. I want to put something in his performance evaluation to reflect how much time he is spending on his EEO complaints. Can I do this?***

   An employee's EEO activity has no relationship to his work performance. Statements about EEO activity may constitute per se retaliation/reprisal and must not be included in VA performance evaluations. Likewise, it is illegal to provide an employment reference that identifies, discusses, or offers an opinion about an individual's EEO activity.

   VA employees are entitled to a "reasonable amount of official time" to pursue their EEO complaints. An employee who serves as a complainant's representative is also entitled to official time. For further guidance about what constitutes a "reasonable amount of official time" contact your local EEO program manager and/or Regional Counsel.

5. ***In October 2009, Marcus, a Food Service Leader, who is one of my employees, participated in EEO activity. He had expressed his concern to me that there was a difference in assignments given to older and younger employees. In June 2010, Marcus contacted an EEO counselor and alleged that I assigned him less desirable work more often than his co-workers in retaliation/reprisal for his prior EEO activity in October 2009 and contrary to the agency's policy. I attest that Marcus' assignments were made for business related purposes. Is there something wrong with using my own judgment rather than relying on agency policies?***

   Management's reason was found to be pretextual because the employee's assignments violated agency policy. Pretext means that the explanation given by management is just an excuse and not the real reason for the action taken.

It is important for management officials to follow agency policy and not deviate from it when carrying out personnel actions without justifiable and credible reasons. It may raise red flags, if an EEO complaint is filed, particularly, by an employee who has previously filed. In this case, the manager did not specifically answer why Marcus received more of the less desirable jobs; more to the point, how did this turn of events relate and/or impact the business that led to Marcus' receipt of more of the less desirable assignments? Management must also be able to articulate a legitimate non-discriminatory reason (i.e., state the business case) for its actions. It is possible that if management had provided a detailed reason explaining the deviation of assignments from the usual policy, the result may have been different. In any event, this situation highlights the fact that managers need to be careful not to depart from normal procedures.

Note: Failure to follow agency's procedures led to this finding of retaliatory discrimination. Many employees, after having filed a discrimination complaint almost always believe that any negative or suspect action taken against them afterwards is retaliatory.

6. ***Last month I removed Tina during her probationary period and she filed a discrimination complaint against me. Jack is one of my subordinates and Tina's friend. I expect loyalty from my staff and I don't want Jack helping Tina with her complaint. Since Jack works for me, can I tell him not to assist Tina with her complaint?***

Third parties participating in the EEO process are protected from retaliation/reprisal even if they do not feel that they are personally discriminated against. Participation may include assisting an aggrieved employee with her complaint by participating in an investigation or providing a written or oral statement in support of the employee. Thus, it is illegal for a VA supervisor or other management official to advise subordinate staff that they cannot assist a co-worker with her complaint.

However, there are VA policies governing the use of official time for such purposes. To access the "Official Time" guidance, please visit ORM's website. VA supervisors and management officials must not discuss an employee's ongoing EEO activity with subordinate staff, unless the staff member is involved in processing, investigating, or litigating the complaint. Management officials must cooperate in the EEO process including investigations. Failure to cooperate in an EEO investigation may lead to disciplinary action, up to and including removal.

7. ***If an employee filed a previous EEO complaint against me, and subsequently, complains to me that another co-worker is telling insensitive jokes in his/her presence, and I don't think the jokes are insensitive at***

all. What should I do since the jokes were not directed at the employee who complained?

Whether or not you believe the jokes were insensitive, management has a responsibility to immediately address the issue. Management is under an obligation to do whatever is necessary to end harassment and prevent misconduct from recurring regardless of whether or not the employee who raised the concern has previously filed an EEO complaint, or whether or not management regards the employee as overly sensitive. Management can be found liable for retaliation/reprisal if they fail to exercise reasonable care to prevent retaliatory harassment. Incidents of harassment must be addressed promptly. Failure to take corrective measures in a timely fashion can result in a finding of discrimination, in so far that acting too late is the equivalent of not acting at all. It is advisable that management meet with the employee and share the conclusion after looking into the matter. VA managers and supervisors have a special responsibility in maintaining a work environment free from discrimination and harassment. All VA managers and supervisors are required to complete mandatory training in EEO, Diversity, and Conflict Management every two years. This training can be found using the Talent Management System at https://www.tms.va.gov/plateau/user/login.jsp.

8. ***Sam went to the union alleging that Nancy was sexually harassing him. I supervise both Sam and Nancy. I think Sam is making this whole thing up. I want to tell the union that Sam better be telling the truth, because if he is not, I am going to take disciplinary action against him. Should I do this?***

It is illegal for VA supervisors and management officials to make statements or engage in conduct that might cause an employee to refrain from engaging in protected EEO activity. Such statements or actions constitute "per se retaliation/reprisal" and are an automatic violation of anti-discrimination laws. A finding of discrimination involving "per se retaliation/reprisal" does not require evidence that the VA discriminated against the employee. When VA supervisors and management officials engage in per se retaliation/reprisal, by making statements that intimidate or threaten disciplinary action, it has a chilling effect on employees' rights to participate in the EEO process or voice opposition to discriminatory practices. The EEOC has determined that retaliation/reprisal harms the public interest by deterring others from filing complaints.

9. ***An employee filed a prior EEO complaint against me for counseling her regarding her time and attendance. Shortly thereafter, she was issued a letter of admonishment suspending her supervisory duties pending an investigation into patient abuse. Although the investigation did not reveal***

patient abuse occurred, I did not remove the suspension until six months later, because I forgot. Should I have removed the suspension immediately upon learning of the results of the investigation since that is the policy of the department?

There was no justifiable reason to continue to suspend the employee's supervisory duties after it was learned that no patient abuse occurred. The purpose of an Administrative Investigation Board is to determine whether or not misconduct occurred through the examination of relevant evidence, to include both testimonial and documentary. The evidence compiled during the investigation can be used to form the foundation of disciplinary and/or adverse action if it is discovered that misconduct has been committed. If, alternatively, no misconduct is evident, no further action need be taken against an employee, particularly when to do so, would be contrary to policy and common practice.

Managers should be mindful that employees are very sensitive to any actions management takes against them, after they have filed an EEO complaint. It is always a good practice to be certain that action taken against an employee after an EEO complaint has been filed, is warranted and the complainant is treated the same as any other employee in a similar situation.

10. Kevin filed a complaint saying that I discriminated against him because of his religion. I am personally offended by his statements. Can I tell him how I feel?

No supervisor or manager likes when an EEO complaint is filed identifying him/her as the individual responsible for the action alleged to have been discriminatory. You may feel offended, angry, or disappointed that a member of your staff would take such an action. However, it is never appropriate for VA managers and supervisors to publicly express hostility toward the EEO complaint process or the employee who filed the complaint. Such statements often are found to be "per se retaliation/reprisal," as discussed above. If you feel personally offended or hurt that a complaint has been filed against you, discuss your feelings with the EEO program manager or Regional Counsel.

11. An employee in my section alleges I retaliated against her when I sent an e-mail to all of the employees in my department asking them for statements I could use to defend myself against an EEO complaint she had filed against me. Were my actions inappropriate?

Anti-retaliation/reprisal provisions protect individuals from any actions that would likely discourage a reasonable person from participating in the EEO process.

These actions are not limited to actions that are typically considered to be adverse in nature, such as disciplinary or performance based actions. They may take the form of any management decisions or actions that interfere with an employee's ability to pursue a complaint.

Managers must avoid creating an atmosphere in which employees are reluctant to exercise their EEO rights for fear of retaliation.

After reviewing the facets of this case, management's e-mail to several employees in the section was the type of conduct reasonably likely to deter and dissuade individuals from engaging in EEO protected activity. Therefore, this action constituted prohibited discrimination.

12. ***An employee filed an EEO complaint against me and several months later, submitted an untimely leave request for 40 hours. The leave request was submitted two days before the leave was to begin. In accordance to the leave policy, employees are to request leave at least two weeks in advance to ensure there is proper staff coverage and pending projects are completed. I have held all employees accountable for following this procedure. I met with the employee to explain that her leave is denied because she failed to follow proper leave procedures and her request conflicts with the second extension granted to complete the John Doe project. The employee was dissatisfied with my decision and took the leave anyway. Upon her return, I issued her a letter of admonishment, which disclosed that she was carried in an absent without leave status, because she was AWOL. The employee said that she did not agree with the admonishment. She believed that I was retaliating against her, because she previously filed an EEO complaint against me. Should I have issued her the letter of admonishment or ignored the fact that she took the leave without approval and not have disciplined her for fear of perceived retaliation?***

Consistent with a manager or supervisors role and responsibilities, management should not avoid taking appropriate corrective action(s) against employees who have filed previous EEO complaints against them, if there is a legitimate, lawful, objective reason for taking such action.

To avoid the appearance of giving preferential treatment, management has an obligation to enforce policies and procedures equitably. By enforcing employees to adhere to leave policies, it helps managers and supervisors better administer the workload to prevent undue hardship on the organization and other employees.

13. Next month I will become the Director of the "Any Town USA, VA Medical Center." This is my first supervisory assignment, and I want to make a difference. Everyone knows that this facility is dysfunctional and has had a lot of EEO activity during the past three years. I am holding an "All Hands" meeting when I arrive. Can I tell employees that we need to reduce our EEO complaints, if we ever want to win an award for organizational excellence?

When VA managers and supervisors publicly discuss the EEO process, their focus should be on their strong commitment to equal employment opportunity, diversity and inclusion, and workplace dispute resolution. Every supervisor and manager bears a special responsibility to ensure that discrimination is not tolerated in VA and that diversity is valued.

On an annual basis, you and your staff should review VA's workplace policies dealing with EEO, diversity and inclusion, and discuss the expectations of these policies. If you need additional assistance in facilitating such a discussion, contact your local EEO program manager.

10 Steps to Help Prevent an EEO Complaint

To reduce EEO complaints, there are proactive steps that a manager can take to minimize the likelihood of EEO complaints, while improving employee morale and productivity.

1. **Open Lines of Communication:**
   Promote open, two-way communication throughout your organization. Encourage managers, supervisors, and employees to discuss their problems and concerns before they escalate into a dispute and possibly an EEO complaint. A good example is when a selecting official makes a sound selection. The person selected is indeed the most qualified and is the best candidate, based upon objective, professional standards; however, the selecting official may fail to recognize and respond to tell tale concerns of non-selected employees.

   No one likes to be doubted or questioned. However, by explaining to the non-selected employees why they were not selected and recommending ways to improve their chances at the next opportunity, the selecting official is acknowledging the natural disappointment of non-selected employees and defusing a potential complaint.

   Another example is the reality that supervisors and managers become so busy, they often fail to take steps to address performance related issues when they are minor and only react when the issues become major. Without communication and immediate corrective action, employees may be unaware that they are not performing at the appropriate level.

2. **Train... Train... Train...:**
   Train your managers, supervisors, and employees. ORM strongly encourages EEO related training in areas such as diversity, ADR, and the EEO complaint process. Train all employees in appropriate and acceptable behavior. A fully trained staff will be better able to resolve disputes.

3. **Enforce Zero Tolerance:**
   Clearly demonstrate to your entire organization that illegal discrimination is unacceptable and will not be tolerated. Clearly display EEO policies where all employees can read them, including those employees who require accommodation and when violations do occur, take immediate action to correct the situation and prevent recurrence.

4. **Support Cultural Diversity:**
   Encourage, actively support, and personally participate in cultural diversity events in your organization. Acknowledge the uniqueness of different cultures and lead your staff in accepting diversity as a positive, life enriching experience. Always seek quality and diversity in your organization.

5. **Support EEO Committees:**
   Make sure that you have active and fully supported EEO Committees. Members of EEO committees can often relay concerns to other members and management before they become major issues. This can act as a positive and diverse experience for the workforce.

6. **Utilize ORM and Facility-Based EEO Officials:**
   Look for opportunities to benefit from the expertise of your facility EEO officials, such as your ADR and EEO manager. They are valuable resources to help you identify and resolve disputes, as well as identify affirmative efforts that can be taken to ensure a diverse workforce. ORM offers some excellent training tools such as the Root Causes of Workplace Disputes DVD and Assessment Programs.

7. **Seek Early Resolution and Take Advantage of ADR:**
   Resolve complaints at the earliest possible moment by bringing parties together to help understand and settle their differences. Keep in mind that ADR is a perfect tool for reducing the number of complaints and avoiding future complaints. While ADR is offered by ORM throughout the complaint process, that does not limit a leader from taking advantage of ADR earlier. Employees and union officials may approach management requesting assistance regarding a possible EEO complaint. This may be a perfect opportunity to resolve the matter before it turns into a complaint or grievance.

8. **Recognize that the Process Can Be Abused:**
   Accept the reality that some employees are going to abuse the EEO process. EEOC has added a provision to its regulations to dismiss complaints that are frivolous or are intentional attempts to “clog” the EEO process. This provision has very limited applications, and the threshold to request a dismissal is very high. Remember, the vast majority of complainants truly believe that they have been discriminated against, regardless of what a management official believes.

9. **Hold Subordinates Accountable:**
   Hold subordinate managers and supervisors accountable for their actions. When senior managers do not follow through to discipline inappropriate or unprofessional behavior, employees will feel that such behavior is tolerated-or even approved. If the inappropriate behavior is allowed to continue, it becomes a feeding ground for EEO complaints, especially complaints of harassment.

10. **Monitor Complaint and Diversity Trends:**
    Monitor complaint and diversity trends within your organization. If you see numerous harassment complaints coming from one particular sector, that probably signals a need for some type of managerial or professional intervention.

Root Causes of EEO Complaints DVD

A MANAGER'S TOOL TO UNDERSTAND WHY EEO COMPLAINTS MAY BE FILED

ORM developed a video featuring six three-to-five minute vignettes, which depict dramatizations of workplace disputes that led to EEO complaints. They represent the most identified complaint driven disputes that result in employment discrimination complaints. This "Root Causes of Workplace Disputes" DVD demonstrates the value of identifying the causes of EEO complaints. The DVD helps educate VA employees on the benefits of recognizing and becoming acquainted with the most common root causes of workplace disputes and what could have been done differently to effectuate a positive resolution and change. The vignettes are designed to help managers recognize potential problems before they become complaints. The theory is that if managers understand the practices, conduct, and behavior that cause an employee to initiate and ultimately file an EEO complaint, they can educate the employees, provide the stimuli to promote modification in behaviors, effectuate change in behaviors, and prevent recurrences of situations that result in EEO complaints, as well as help foster more efficient, effective, and positive communications in the work environment.

TITLES OF THE SIX VIGNETTES

Inappropriate Comments

Training Denied

Harassed by Co-Worker

Non-Selection

Incomplete Project

Modified Proficiency Report

The Root Causes of Workplace Disputes Video can be viewed at http://vaww.vakncdn.lrn.va.gov/Default.asp by selecting Content Libraries, typing the keyword Root Cause, and selecting the Root Causes of Workplace Disputes Video.

ORM Resources

RESOLUTION SUPPORT CENTER

ORM's Resolution Support Center (RSC) is a call center that provides valuable information to both managers and staff who are facing difficult issues in the work environment that could lead to workplace disputes and EEO complaints. RSC staff resolves the issue or refers employees to resources that can help them obtain the information they seek. RSC can be reached toll free at 1-888-566-3982.

SENIOR COMPLAINTS UNIT (SCU)

SCU oversees and coordinates EEO complaint processing services for complaints filed by senior executives and against certain senior executives, as well as provides EEO training and advisory services to senior executives on workplace disputes that may lead to EEO complaints. SCU can be reached at 202-632-7961.

EEO, DIVERSITY, AND ADR DASHBOARD

The EEO, Diversity, and ADR Dashboard is an information system that provides ready access to EEO complaint data, workforce demographics, and ADR information. It is accessible to VA EEO and ADR program managers through the VHA Support Service Center (VSSC). EEO/ADR program managers can pull information and run reports that give management insight into the health of their workplace and ability to monitor success of their efforts to increase ADR participation and reduce complaints. The Dashboard is located at http://vssc.med.va.gov/MyVSSC/

ORM TRAINING SERVICES

To support VA administrations and staff offices in managing conflict, resolving disputes, and complying with EEO laws, ORM provides training, mediation, group facilitation, coaching, and assessments. ORM's training catalog describes the courses and services available to VA managers, employees, and union officials. To access this catalog, please visit the ORM website or call 727-540-3951.

Office of Diversity and Inclusion People with Disabilities Program

The VA is committed to increasing the representation of qualified people with disabilities in all levels of its workforce. The VA's People with Disabilities Program is designed to ensure that individuals with disabilities enjoy equal opportunity in all aspects of employment within VA, including intern programs, promotions, training, and reasonable accommodation.

The Disability Program at VA is part of our effort to address the low employment rate of individuals with disabilities, especially those with targeted disabilities. The targeted disabilities are: blindness, deafness, missing limbs, partial paralysis, total paralysis, dwarfism, psychiatric disorders, intellectual disabilities, and epilepsy. VA's National Disability Program is part of the Outreach and Retention Team, Office of Diversity and Inclusion (ODI).

DISABILITY ACCOMMODATION PROCEDURES

Section 501 of the Rehabilitation Act requires agencies to provide reasonable accommodation to qualified applicants and employees with disabilities. A "reasonable accommodation" is a change in the work environment or in work processes that enables a person with a disability to enjoy equal employment opportunities. The accommodation must be effective in meeting the needs of the individual by addressing the barrier created by the functional limitations. VA's procedures for responding to requests for reasonable accommodation can be found in VA Handbook 5975.1, "Processing Requests for Reasonable Accommodation" http://www.diversity.va.gov/policy/dra.aspx

ACCOMMODATIONS

Most accommodations have no cost. Others are obtained for free from the U.S. Department of Defense's Computer/Electronic Accommodation Program (CAP) by visiting their website at: http://www.tricare.mil/cap/.

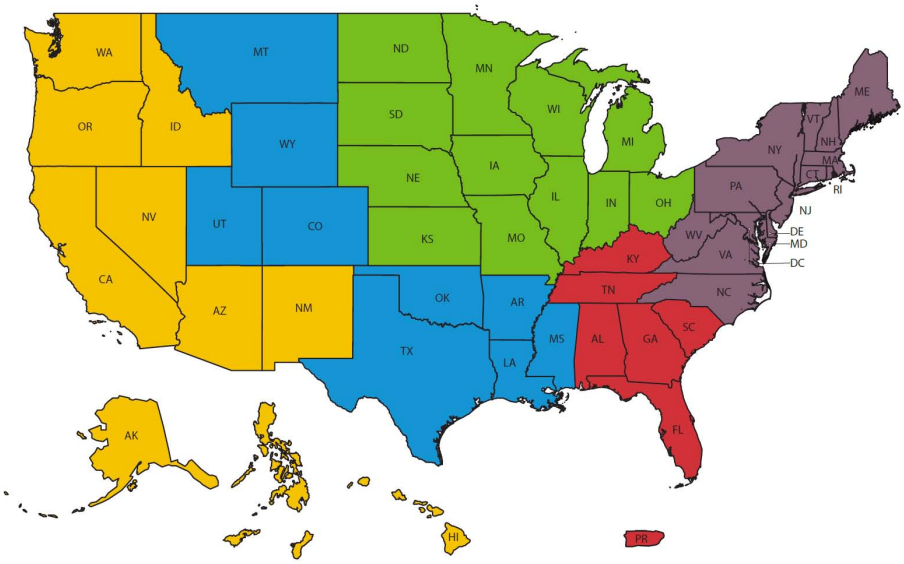
Accommodations, such as interpreters and readers that are not provided by CAP must be obtained by the employee's office, but the cost will be reimbursed from the Centralized Fund managed by the ODI. The goal of this fund is to ensure that VA applicants and employees with disabilities receive an accommodation they need to apply for a job, perform the essential duties of the job, or enjoy the benefits and privileges of employment. For further information, please visit the ODI website at: http://www.diversity.va.gov/programs/pwd.aspx or call: 202- 461-4131.

Contacting ORM

Office of the Deputy Assistant Secretary for Resolution Management
Washington, D.C. 20420
(202) 461-0280

Toll Free Line: 1-888-737-3361 (1-888-RES-EEO1)
TTY/TDD: 1-888-626-9008

ORM DISTRICT OFFICES AND GEOGRAPHIC JURISDICTIONS



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(908) 604-5349
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(202) 632-9599

Midwest District
Hines, IL
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Continental District
Houston, TX
(713) 794-7066

Southeast District
St. Petersburg, FL
(727) 540-3971

Pacific District
Los Angeles, CA
(310) 268-3586

Don't forget to visit us on-line at:
http://www.va.gov/ORM/Links.asp (Internet)
http://vaww.va.gov/ORM/ResolutionResources.asp (Intranet)

Honoring and serving our Nation's Veterans by promoting an environment that is free from discrimination.

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U.S. Department of Veterans Affairs
Office of Resolution Management (08)
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Washington, DC 20420

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