

FREQUENTLY ASKED EEO (EQUAL EMPLOYMENT OPPORTUNITY) QUESTIONS

This section will include frequently asked questions and answers covering all areas of EEO and related topics. The first part covers EEO procedures from the time of the discriminatory event through the end of the pre-complaint processing, including representation and official time. The second part covers employment related pregnancy issues.

PART 1-EEO PROCEDURE AND REPRESENTATION IN THE AGENCY COMPLAINT SYSTEM

1. I believe that I have been discriminated against at my agency (based on race, color, religion, national origin, gender, age, disability, or reprisal for EEO/Civil Rights activities). What do I do first?

Answer: [Note: Although you may ordinarily file a union grievance over a discriminatory act, or even a MSPB appeal in those cases of removals or suspensions greater than 14 days, *the vast majority of discrimination cases are processed in the agency complaint system known as Part 1614. Therefore, the following responses assume processing in the agency's complaint system that eventually leads to a decision from an Administrative Judge working for the EEOC.*]

The answer to this question, as well as to most other EEO procedural questions, can be found at 29 C.F.R. (Code of Federal Regulations) Part 1614. You can get a copy of these regulations at the EEOC web site: www.eeoc.gov. Under 29 C.F.R. 1614.105(a), the first thing you **must** do is contact an EEO Counselor at your Agency **within 45 calendar days** of the date of the alleged discrimination, the effective date of the personnel action involved, or the date you knew or reasonably should have known of the discriminatory event or personnel action. This is absolutely necessary in order to preserve your right to file an EEO complaint. If you don't know where the EEO Counselors are located, contact your EEO, Personnel or Human Resources office.

2. Can I have a representative with me when I go to see the EEO Counselor?

Answer: Yes. 29 C.F.R. 1614.105(a) specifically states that "At any stage in the processing of a complaint, including the counseling stage in section 1614.105, the complainant shall have the right to be accompanied, represented, and advised by a representative of complainant's choice." This may be an employee of the agency (for example a fellow union member or the union Local leadership: union steward, Local Women's Coordinator or Local Fair Practices Coordinator), or any other person of your choice.

3. Why would I need a representative? Doesn't the EEO Counselor represent me?

Answer: No, the EEO Counselor does not represent you, but instead represents the Agency, just like the Labor-Relations Officer (who may process your labor-relations dispute) represents the agency's interests, not your's. Since the agency has a representative, you should

have a representative too, but experience has shown that there is only a very limited role (and often, little need) for your representative at the EEO Counselor stage of this process. However, the need for a representative will increase as your case continues in the Part 1614 process toward your eventual hearing. For further information on the role of the Agency's-appointed EEO Counselor, see Question 5, below.

4. Do I get official time, and does my representative get official time for preparing the complaint, responding to the Agency and EEOC requests for information, etc?

Answer: Yes. 29 C.F.R. 1614.605(b) provides for a "reasonable amount" of official time for the complainant and representative to prepare the complaint and respond to the agency and EEOC requests for information. In addition, 1614.605(b) provides that the complainant and representative, if employed by the agency and in a pay status, shall be on official time "when their presence is authorized or required by the agency or the EEOC during the investigation, informal adjustment, or hearing on the complaint." Although there is no standard definition of what constitutes a "reasonable amount" of official time to prepare and represent an EEO complaint, as a general rule, you should be entitled to about the same amount of time the agency representative(s) are spending on the case.

Since Part 1614 requires the Agency to provide EEO official time, you do not need to access any Union official time that exists pursuant to the collective bargaining agreement. In fact, your representative is titled "Complainant's Representative," and not the Union's Representative. As such, the Union itself does not appear anywhere in Part 1614 as "the Union" even though the complainant designated an official of the Union to be the representative. Thus, it would be inappropriate to use Union official time, when Part 1614 official time is available. The Agency has an "EEO Management Directive," called the "EEO MD-110," which contains guidance that management should follow regarding the Agency EEO Procedures found in Part 1614, including official. If necessary, ask to review MD-110, or view it at www.eeoc.gov.

5. When I go to see the EEO Counselor, what will happen?

Answer: Your first meeting with the EEO Counselor (which must occur within 45 days of the discriminatory event or when you reasonably should have known of the discriminatory event) is called the "initial counseling session." You will be asked for information regarding the alleged discriminatory action(s). The counselor must advise you in writing of your rights and responsibilities, including the right to request a hearing and thereafter receive a decision from an EEOC Administrative Judge. The counselor shall also advise you of the possible applicability of 5 United States Code Section 7121(d), which is your election of remedies for discrimination under either the negotiated grievance process or the EEO process.

The counselor has 30 days to complete their obligations, unless the aggrieved person agrees in writing to extend this time period for up to an additional 60 days. [Normally, there is no good reason to agree to an extension. However, in the event the Agency has a good-faith ADR, or

Alternative Dispute Resolution, system in place, an extension of time to pursue ADR may be of value.] The counselor's other duties include: determining issues of the complaint, conducting a limited inquiry, seeking a resolution, advising of the right to file a formal complaint, and preparing a report documenting counseling efforts.

During this time period, the aggrieved person may agree to participate in ADR (alternate dispute resolution) if available, and this would extend this pre-complaint period to 90 days. Local unions can bargain over acceptable forms of ADR, including mediation panels and expedited arbitration, etc.

If the counselor cannot resolve the dispute within their time limits, the counselor is required to notify the individual of the right to file a formal agency complaint, and when and with whom the complaint should be filed. This is called a "notice of final interview" because it should be issued at a final interview between the counselor and the aggrieved individual.

Under 29 C.F.R. 1614.106, the aggrieved person then has **15 days** after receiving the notice of final interview to file a formal complaint of discrimination. The complaint must be in writing and signed by the complainant.

Please remember, it is not the EEO Counselor's job to be your advocate or representative. Though one of their duties it to try to resolve the complaint, they are agency employees who merely have responsibility for carrying out part of the EEO process. The agency-appointed EEO Counselor has many duties to complete within the 30-day period, in order to prepare your complaint for further processing by the agency. None of these duties, however, include representing you. At the end of this 30-day Counseling session, your case will move on to other stages, and the EEO Counselor will no longer be involved in your case.

6. What happens to my case after the Counseling stage?

Answer: Following the 30-day Counseling stage, there is a 180-day Investigation stage, and then a 180-day Hearing stage which ends with a hearing and decision from an Administrative Judge of the EEOC (Equal Employment Opportunity Commission).

PART 2-PREGNANCY, ADOPTION & YOUR EMPLOYMENT

1. What rules and regulations protect the rights of pregnant employees?

Answer: The Pregnancy Discrimination Act (PDA) is an amendment to Title VII of the Civil Rights Act. It provides that employers must treat a pregnant employee who is temporarily

unable to perform her job duties because of pregnancy the same as any other temporarily disabled employee.

2. If I take leave due to pregnancy, how long must the Agency hold my job open?

Answer: The amount of time an Agency must hold open your job must be the same amount of time a position is left open for an employee who is on leave because of sickness or disability.

3. Are my benefits altered if I am pregnant but not married?

Answer: Any pregnancy related benefits must be offered to employees regardless of their marital status.

4. How are my pay increase, vacation calculations and accrual and credits of service effected by my pregnancy related disabilities and leave?

Answer: Temporarily disabled employees and employees on leave for pregnancy related disabilities must be treated the same with respect to any benefit, accrual and vacation calculation.

5. My wife is having a baby, what are my options for taking leave?

Answer: According to OPM Regulations, if you are your wife's caregiver, you may take sick leave for the period of her incapacitation. Barring complications, the incapacitation period is usually six weeks. The regulations provide for 40 hours of sick leave for this purpose as well as an additional 64 hours of sick leave if the employee maintains a balance of at least 80 hours of sick leave. Also, if there are complications during the birth of your child and either the mother or the child are seriously ill, you may take unpaid leave under the Family and Medical Leave Act for the period of their illness, not to exceed 12 workweeks of unpaid leave during any 12-month period.

6. How much sick leave can I take for adoption-related purposes?

Answer: The amount of leave you can take for adoption related purposes is not limited to the 13 days provided for leave under the Family Friendly Leave Act (FFLA). Any leave taken for adoption purposes does not count towards the 13 days allotted under the FFLA. You cannot use sick leave to bond with the child, but you may use sick leave if the court or adoption agency requires that you remain home for a time to care for the child.

7. What adoption-related activities are covered under the Sick Leave for Adoption Act (SLAA)?

Answer: The SLAA became effective on September 30, 1994 and provides that Federal employees may use sick leave for adoption-related activities. Activities that are covered by the SLAA are: appointments with social workers, adoption agencies, and attorneys as well as any court proceedings related to the adoption and any other travel or activities that are required in order to proceed with the adoption.

8. I am adopting a child, how much leave may I take under the Family and Medical Leave Act? (FMLA)?

Answer: You are entitled to twelve weeks of unpaid leave throughout a twelve month period which expires twelve months after the child is placed with you, but can begin before the placement. It is important to note that you will be required to provide medical certification in order to use leave under the FMLA at least 30 days in advance if the event is foreseeable. If the event is not foreseeable, then you must provide reasonable notice which must be followed up with required medical certification.