



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

DATE:

TO:

FROM:

SUBJECT: AGGRIEVED PERSON'S RIGHTS AND RESPONSIBILITIES

The purpose of this memorandum is to advise you of your rights and responsibilities in pursuing an EEO complaint.

AGGRIEVED PERSON'S RIGHTS

___ If you believe you have been discriminated against because of your race, color, religion, sex, sexual orientation, national origin, age, physical or mental disability, parental status or marital status, political affiliation, sexual orientation and/or subjected to reprisal in an employment matter subject to the control of the Federal Election Commission, you may have the choice of more than one route to file a complaint and to have it resolved.

___ **Option for employees outside of a bargaining unit.** If you are not a member of a bargaining unit covered by a union contract, you have the right to select one of the following options:

___ **You may pursue a discrimination complaint under the procedures covered by 29 CFR § 1614.** Your first step under this procedure is to contact an Equal Employment Opportunity (EEO) Counselor within **45 calendar days** of the date of the matter alleged to be discriminatory or in the case of a personnel action, within **45 calendar days** of the effective date of the action or when you learned of the action. If the EEO Counselor can't resolve the problem to your satisfaction, you may file a formal EEO complaint. The EEO Counselor will tell you with whom to file your complaint and will explain the complaint procedures. These procedures include the investigation, the hearing by the Equal Employment Opportunity Commission (EEOC), in a non-mixed case if you so choose, and a final decision by FEC.

___ **You may pursue a discrimination complaint under the Merit Systems Protection Board (MSPB) appeal procedure.** This procedure is available to you only if the alleged discriminatory action can be appealed to the MSPB. Examples of personnel actions that are appealable to the MSPB include, but are not limited to, removal or suspension for more than **14 days** of a non-probationary competitive service employee. If you are subject to a personnel action that is appealable to MSPB, you will be notified in writing of your right to appeal to MSPB. The time limit for appeal to the MSPB is **20 calendar days** after the effective date of the personnel action that you believe discriminated against you. Under such an appeal, you are entitled to a hearing by MSPB. In addition, you may petition the EEOC to review the final decision of the MSPB on the allegation(s) of discrimination.

___ **Options for employees within a bargaining unit.** If you are a member of a bargaining unit covered by a union contract, and if the negotiated grievance procedure in that contract does not specifically exclude discrimination issues, you have the right to select one of the following options:

___ **You may pursue a discrimination complaint under 29 CFR § 1614, as described.**

___ **You may pursue a discrimination complaint under the MSPB appeal procedure, as described.**

___ **You may pursue a discrimination complaint under the negotiated grievance procedure.** Your union contract outlines the grievance steps including review by the EEOC. Note that decisions on actions covered by 5 U.S.C. Section 7512 or 4303 are not appealable to the Federal Labor Relations Authority (FLRA). In actions not covered by 5 U.S.C. Section 7512 or 4303, but otherwise appealable to MSPB, you have access to the MSPB procedures only if such actions are excluded from the grievance procedure. If the alleged discriminatory acts are covered by the negotiated grievance procedure, the option is between a discrimination complaint under 29 CFR § 1614, or the negotiated grievance procedure. If you choose the negotiated grievance procedure, you have the right to appeal to the EEOC of MSPB, as appropriate, the final decision; i.e. FEC decision, arbitration award, or FLRA decision. A bargaining unit employee who raises a claim of discrimination in connection with an appealable reduction in force action may choose to appeal to the MSPB. Note that in actions not appealable to the MSPB, but covered by the negotiated grievance procedure, you may choose between the grievance procedure or the EEO complaint procedure under 29 CFR § 1614.

___ **You may not seek redress under the EEO complaint procedure and the negotiated grievance procedure.** When you select the negotiated grievance procedure by filing a written grievance, your decision is final and you cannot seek redress under the EEO complaint procedure.

___ A grievance under the negotiated procedure will be rejected if you have filed a timely appeal with the MSPB or if you have filed a formal discrimination complaint under the EEO complaint procedure.

___ Allegations of discrimination that are subject to final administrative review by the EEOC may not be raised by an employee in the administrative grievance procedure.

___ **Additional option for age discrimination complaints (age 40 and over).** In addition to filing a complaint under the EEO complaint procedure, a mixed case appeal with MSPB (if applicable), or a negotiated grievance (if applicable) as described above, you may elect to bypass the administrative procedure and file a civil action directly in an appropriate U.S. District Court, after first filing a written notice of intent to file a civil action with the EEOC within **180 calendar days** of the date of the alleged discriminatory action. Once a timely notice of intent to sue is filed with EEOC, you must wait at least **30 calendar days** before filing a civil action.

___ If you elect to file an administrative complaint rather than filing directly in U.S. District Court, you must exhaust your administrative remedies before you file a civil action. You will have exhausted your administrative remedies when one of the following occurs: **90 calendar days** after receiving notice of the final FEC decision on your complaint, if no appeal has been filed; or, after **180 calendar days** from the date you filed your complaint with the FEC and the FEC failed to issue a final decision and no appeal has been filed; or **90 calendar days** after receiving the EEOC's final decision on your appeal; or after **180 calendar days** from the date you filed an appeal with the EEOC and the EEOC has not issued a final decision on the appeal.

___ **Equal Pay Action option.** If you are alleging sex-based wage discrimination under the Equal Pay Act (EPA), you have the right to go directly to the U.S. District Court even though such claims can also be raised under 29 CFR § 1614. A civil action must be filed within **2 years** of the date of the occurrence, or within **3 years** of that date if the violation is alleged to be willful. The filing of an administrative complaint does not toll the time for filing a civil action.

___ **You have the right to remain anonymous during pre-complaint counseling.** The EEO Counselor will not reveal your identity except by your authorization.

___ **You have the right to a representative of your choice throughout the complaint process including counseling.** This right to choice of representation is limited when there would be a conflict of interest as defined in 29 CFR § 1614.605.

___ **You have the right to a hearing before an EEOC Administrative Judge** in a non-mixed case after **180 calendar days** from the filing of a formal complaint or after completion of the investigation, whichever comes first.

___ **You have the right to go to U.S. District Court 180 calendar days** after filing a formal complaint or **180 calendar days** after filing an appeal with EEOC.

___ **You have the right to receive in writing, within 30 calendar days of the first counseling contact (unless you agree in writing to an extension), a notice terminating counseling and informing you of:** (1) the right to file a formal individual or class complaint within **15 calendar days** of receipt of the notice (2) the appropriate official with whom to file a formal complaint; and, (3) your duty to immediately inform the agency if you retain counsel or a representative. Any extension of the counseling period may not exceed an additional **60 calendar days**. Where notice is not provided and no extension is secured, you have the right to file a formal complaint after the **30th day**. **Exception:** Where you agree to participate in an established alternative dispute resolution process, the written notice terminating the counseling period will be issued upon completion of the dispute resolution process or within **90 calendar days** of the first contact, whichever is earlier.

AGGRIEVED PERSON'S RESPONSIBILITIES

___ **You are responsible for cooperating with the EEO Counselor, the EEO Director, and investigator in processing your EEO complaint.**

___ **You are responsible for assuring that the FEC, EEO Director is advised in writing, of your current mailing address at all times during the processing of your EEO complaint in the administrative procedure.** Failure to keep the FEC informed of your current address may result in dismissal of your complaint.

___ **If you file a formal complaint, you are responsible for informing the EEO Director if you are represented, and if so by whom, and the address and telephone number of same.** You must also inform the EEO Director of any change in representation.

___ **You have a legal obligation to mitigate damages, regardless of whether it is later determined that you were a victim of unlawful discrimination.** A successful Aggrieved Person claiming back pay will be paid the amount s/he would have earned had it not been for discrimination, less any amount s/he actually earned or could have earned with due diligence, plus interest. Interest on back pay is not payable to Federal employees or applicants who prevail on employment discrimination claims brought under the ADEA or EPA.

___ **You are responsible for informing the Agency's EEO office of your election of redress.** Whichever formal action you file first (a MSPB mixed case appeal, a discrimination complaint under the EEO complaint procedure, or a written grievance under the negotiated grievance procedure) is considered to be an election to proceed only in that forum as to the alleged discrimination. **Thus you should be aware that:**

___ **An appeal to the MSPB will not be accepted if you have filed a timely formal complaint in writing under the EEO complaint procedure or a timely written grievance under the negotiated grievance procedure.**

___ **A discrimination complaint filed under the EEO complaint procedure will be dismissed if you have filed a timely appeal to the MSPB or a timely written grievance under the negotiated grievance procedure.**

___ **You are responsible for filing a formal EEO complaint within 15 calendar days of receipt of the EEO Counselor's Notice of Right to File a Discrimination Complaint (NRF) in the event that you wish to file a formal EEO complaint at the conclusion of the EEO counseling period.**

___ **You are responsible for serving Notice of Appeal and a copy of the Brief (if any) on the FEC should you elect to appeal an FEC Decision to the EEOC, Office of Federal Operations.**

___ **Should you elect to bypass the administrative procedure in an age discrimination complaint as set forth above, you are responsible for providing the following information in your notice of intent to sue:**

- a. The date prepared;
- b. Statement of intent to file a civil action under Section 15(d) of the Age Discrimination in Employment Act of 1967, as amended;
- c. Your name, address, and telephone number;
- d. Name, address, and telephone number of your designated representative, if any;
- e. Name and location of the Federal agency where the alleged discriminatory action(s) occurred;
- f. Statement of the nature of the alleged discriminatory action(s);
- g. Date(s) the alleged discriminatory action occurred; and,
- h. Your signature or the signature of your designated representative.

___ **Only matters raised in pre-complaint processing, or issues like or related to issues raised in pre-complaint processing, may be alleged in a subsequent formal EEO complaint filed with the FEC.**

Signature Aggrieved Person

Date

Signature EEO Counselor

Date