

DEFENSE HUMAN RESOURCES ACTIVITY (DHRA)



EQUAL EMPLOYEMENT OPPORTUNITY PROGRAM HANDBOOK

OCTOBER 1, 2014

EEO PROGRAM OVERVIEW

It is Defense Human Resources Activity (DHRA) policy to ensure all employees and applicants have an equal opportunity for employment without regard to race, religion, color, national origin, sex (including pregnancy), age (over 40), disability, genetic information, or reprisal for participating in Equal Employment Opportunity activities. If you are a federal employee, former federal employee, or job applicant and you believe a federal agency has discriminated against you, you have a right to file a complaint.

DHRA is committed to a discrimination-free work environment reflecting an atmosphere of inclusion where equal employment opportunity applies to all and where employment decisions are made on the basis of merit. We are committed to attracting and maintaining the best people to work in DHRA. We can do that only by working together to facilitate a culture of transparency and inclusiveness.

A strong commitment is needed from leadership, supervisors, managers, and employees to promote equal employment opportunities and maintain non-discriminatory practices in our workplace. This commitment will further DHRA's ability to attract and maintain a diverse workforce made up of the best and brightest employees. This diverse workforce will drive Department of Defense mission accomplishment.

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INTRODUCTION

Background

The Defense Human Resources Activity (DHRA) established its own Equal Employment Opportunity (EEO) program effective October 1, 2014, to provide EEO services and support to personnel located in DHRA Headquarters and the DHRA Components located both in the National Capital Region and around the world. The DHRA EEO program was formerly administered by the Defense Logistics Agency through September 30, 2014.

In developing and maintaining its own EEO program, DHRA relies on a combination of in-house support, support through agreements with other Federal agencies, and at times, contract support. The DHRA Director is responsible for overall management of the EEO program.

Purpose

The purpose of this handbook is to provide information about the DHRA EEO program and processes. Policies and practices discussed in this handbook are in compliance with Federal laws, regulations, and guidance issued by the Equal Employment Opportunity Commission (EEOC), the Office of Personnel Management (OPM), and the Department of Defense (DoD). The information contained herein is not all inclusive. Readers will find additional information from the cited references and from your DHRA EEO program office.

This handbook outlines EEO program responsibilities, procedures, and associated timelines for supervisors and employees with regard to EEO claims. **Please note all timelines referenced in this handbook are calendar days.** The handbook discusses the different segments of the complaint process to include the informal complaint process, counseling or alternative dispute resolution, formal complaint acceptance and dismissal procedures, formal complaint process, investigation process, the final agency decision, and EEO Commission (EEOC) hearings. A flowchart depicting the overall EEO process can be found at Appendix 1.

DHRA EEO CONTACTS

DHRA EEO Toll-Free Number: 1-844-857-3550 (local 571-372-1962)
Deaf and Hard of Hearing: 711 (Federal Relay Service)

DHRA EEO Email Box: DHRA-EEO@mail.mil

DHRA EEO Office Address: DHRA EEO Office
4800 Mark Center Drive, Ste 06J25-01, MB #4
Alexandria VA 22350-4000

DHRA EEO Staff: Ms. Heidi Boyd-Rice, Director of Operations
571-372-1945, heidi.c.boyd.civ@mail.mil
Cortina Barnes
571-372-1971, cortina.m.barnes.civ@mail.mil
Cathy Harris
571-372-1961, Catherine.l.harris.civ@mail.mil
Lisa Johnson
571-372-1960, lisa.m.johnson33.civ@mail.mil

DHRA EEO Website: www.dhra.mil/website/headquarters/info/hqInfo_eeo.shtml

EEOC Website: www.eeoc.gov

MSPB Website: <http://www.mspb.gov/index.htm>

APPLICABLE AUTHORITIES AND PUBLICATIONS

- Title VII, Civil Rights Act of 1964 (Title VII) (42 U.S.C. 2000e et. seq.), as amended.
- Civil Rights Act of 1991 (Pub. L. 102-166).
- Rehabilitation Act of 1973 (29 U.S.C. 791 et. seq.) and Americans with Disabilities Act of 1990 (42 U.S.C. 12183) as amended.
- Age Discrimination in Employment Act of 1967 (29 U.S.C. 663a), as amended.
- Older Workers' Benefit Protection Act of 1990 (29 U.S.C. 626 (f) (2)), amending the Age Discrimination in Employment Act of 1967.
- Pregnancy Discrimination Act of 1978.
- Genetic Information Non-Discrimination Act of 2008 amending Title VII, DR 4300-7.
- Equal Pay Act of 1963 (29 U.S.C. 206 (d))
- Americans with Disabilities Act (as applicable to the Federal Government)
- Americans with Disabilities Act Amendments act of 2008
- Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act 2002
- Executive Order 11478 (34 FR 12985 (1969): Equal Opportunity in the Government.
- Executive Order 13152 (May 2000); Further Amendment to Executive Order 11478.
- Executive Order 13087 (63 FR 30097 (1998); Further Amendment to Executive Order 11478.
- Executive Order 13145 (February 2000); To Prohibit Discrimination in Federal Employment Based on Genetic Information.
- 29 CFR Part 1614 and 1630 - Equal Employment Opportunity in the Federal Government and Regulations to Implement the Equal Employment Provisions of the Americans With Disabilities Act, as amended.
- 5 CFR Part 1201 Subpart E – Procedures for Cases Involving Allegations of Discrimination.
- 5 CFR 300.102(c), 300.103(c) – Processing EEO Complaints of Discrimination.
- 32 CFR 191 – The DoD Civilian Equal Employment Opportunity Program.
- Equal Employment Opportunity Commission (EEOC) Management Directive (MD-110) (Nov. 9, 1999).
- DoD Directive 1440.1, The DoD Civilian Equal Employment Opportunity (EEO) Program
- DHRA Director EEO Policy Statement (7/23/2014)

EQUAL EMPLOYMENT OPPORTUNITY BASES

Complaints of discrimination may be filed within the Department of Defense on the following bases:

1. **RACE**: Group of people identified by their similar physical characteristics (e.g. African-American, American Indian, Asian-American, Caucasian, or European-American, etc.).
2. **COLOR**: Skin pigmentation (e.g. light-skinned, dark skinned, red, tan, etc.).
3. **RELIGION**: Traditional or non-traditional beliefs or practices, or a lack thereof (e.g. Atheist, Buddhist, Christian, Hindu, Jewish, Moslem, Pagan, etc.).
4. **SEX**: Male/female (note: sexual harassment is a type of discrimination).
5. **NATIONAL ORIGIN**: Individual or ancestral place of origin which may be identified by physical, cultural, linguistic or other characteristics (e.g. Ethiopian, German, Hispanic, Palestinian, Turkish, Vietnamese, etc.).
6. **AGE**: Age 40 or over.
7. **DISABILITY**: Physical or mental impairment which substantially limits one or more major life activities, and has a record of such an impairment or is regarded as having such an impairment.
8. **GENETIC INFORMATION**: The use of genetic information in employment when making hiring, firing, job placement, or promotion decisions.
9. **REPRISAL**: Action taken against an individual by management because of protected EEO activity such as filing an EEO complaint or participating in the EEO process, or for opposing discriminatory practices.

INITIATING AN EEO COMPLAINT

This first step in the complaint process is to contact the DHRA EEO office **within 45 days*** from the day the discrimination occurred. If the discrimination involves a personnel action (for example, a demotion or removal), you generally must contact the EEO office within 45 days of the day the personnel action took effect. Failure to comply with the 45-day time limit for contacting the EEO Counselor may be grounds for dismissal of your complaint.

The central phone number is:
844-857-3550 (local 571-372-1962)
Deaf and hard of hearing call: 711 (Federal Relay Service)

Email address is:
DHRA-EEO@mail.mil

The mailing address is:
Defense Human Resources Activity
ATTN: DHRA EEO Office
4800 Mark Center Drive, Ste 06J25-01, MB #4
Alexandria VA 22350-4000

Intake Process

When you contact the DHRA EEO Office (either in person or by phone), a DHRA EEO counselor will provide you the Complaint Intake Package. If you call the EEO central phone number and request the package be sent to you, you will have five days to complete and return the package to the DHRA EEO Office. You can either complete the package on your own or a DHRA EEO counselor will assist you in confirming the issues and bases of discrimination, and will explain to you the EEO process, timeframes, your rights and responsibilities, and the complaint process.

During the intake session, you will be given the option of either EEO counseling or alternative dispute resolution (ADR) if the Agency offers it. Under the DHRA EEO Program, counseling and ADR are conducted by an independent, third-party organization. You may delay your decision to choose either EEO counseling or ADR until you have met with the independent EEO counselor that will be assigned to your case.

Maintaining Anonymity

You may remain anonymous during the informal complaint process. If you request anonymity, the DHRA EEO office will honor your request. Remaining anonymous may not be practical due to the circumstances of your complaint, as it may be evident who has filed a complaint once the Counselor speaks to the responsible management official. Anonymity may also hinder the EEO Counselor's attempts in gathering information regarding your case and reaching resolution during the informal stage. Once you elect ADR and/or file a formal EEO complaint, anonymity cannot be granted.

Representation

You may designate a representative at any stage of the informal or formal complaint process, but you are not required to have a representative. However, your designation of a specific representative must not cause undue delay to the EEO process or unwarranted expense to DHRA. Further, the designation of a representative that may create a conflict of interest may not be allowed. You must designate your choice of a representative in writing, and immediately notify the DHRA EEO Office, in writing, of any changes in representation.

You will be responsible for proceeding with the complaint at all times whether or not you have designated a representative, to include picking up certified mail or any other correspondence sent to you.

Official Time

DHRA complainants and their designated representatives, if also employed by DHRA, may expect a reasonable amount of official time to present the complaint and to respond to agency requests for information, if they are in a duty status. The term duty status refers to an employee's normal hours of work. What constitutes a reasonable amount of official time may vary from case to case. However, with regard to preparation time, reasonable refers to hours or portions of hours, not weeks or months. Employees seeking official time for EEO-related matters must receive advance approval from their immediate supervisors. If DHRA officials or EEOC officials require their attendance, employee complainants and their designated employee representatives may attend EEO meetings or hearings on official time.

Dissatisfaction with Processing of EEO Complaint

If you are dissatisfied with the way your complaint is being processed during any stage of the EEO process (from Intake up to the point before an EEOC Administrative Judge issues a decision, DHRA issues a Final Agency Decision, or DHRA dismisses the complaint), you may submit your objections in writing to the DHRA EEO Office. You will receive a written response, and the DHRA EEO Office will add both your letter of objection and DHRA's written response to your case file.

Keeping Your Contact Information Current

If you change your mailing address, notify the DHRA EEO office in writing. If you fail to keep the DHRA EEO office informed of your current address, your complaint may be dismissed.

Withdrawing a Complaint

You may withdraw your complaint at any time. If you decide to withdraw a complaint, put your withdrawal in writing and sign it. Whether you are withdrawing your complaint during the informal complaint process or during the formal complaint process, submit your written withdrawal to the DHRA EEO Office.

INFORMAL COMPLAINT PROCESS

The purpose of the informal complaint process is to advise you of your rights and responsibilities under the EEO process, to identify your claims, and to try to resolve the matter informally. You must take part in the EEO informal complaint process before filing a formal EEO complaint.

If you do not elect Alternative Dispute Resolution (ADR) during the Intake process, or DHRA determines ADR would be inappropriate, you will proceed through the EEO counseling process. You can request ADR at any time during the informal complaint process and during the formal complaint process up to the time of an EEOC hearing.

Counseling

Within five (5) days of your initial meeting with the DHRA EEO counselor for the Intake process, an independent EEO counselor will meet with you for an initial interview and then begin the inquiry process. The initial interview will be accomplished either by telephone or in person.

During counseling, the EEO counselor will request additional information from you, if necessary, to understand your complaint. The EEO counselor may also obtain additional information by talking to other persons involved in your complaint, unless you have elected to remain anonymous.

The EEO counselor generally will conduct counseling by telephone, but may conduct it by email, mail, or in person. During counseling inquiries, the EEO counselor usually will communicate separately with you and the other party in the dispute. However, if both parties agree, the EEO counselor may communicate or meet with you and the other party at the same time. During the counseling period, the EEO counselor does not usually obtain extensive documentation or written testimony.

The EEO counseling period will end 30 days from the date of your initial contact with the DHRA EEO Office. You and the Agency may agree to extend the counseling period up to an additional 60 days. Your agreement to extend the counseling period must be in writing.

If the complaint is resolved during the informal EEO complaint process, the EEO counselor will document and provide a final settlement agreement. The settlement agreement will be signed by relevant parties and include a statement of recourse if you feel the agency has not complied with the settlement agreement.

If the complaint is not resolved during the informal EEO complaint process, the EEO counselor will conduct a final interview and issue you a notice of right to file a formal complaint. You can continue to pursue your EEO rights through filing a formal complaint. You have 15 days to file a formal EEO complaint with the DHRA EEO Office.

Alternative Dispute Resolution (ADR)

During your initial interview with the independent EEO counselor, he or she will discuss with you the ADR process that provides an opportunity for you and the appropriate management official to discuss your complaint with the help of a professionally trained mediator. If you participate in mediation, you do NOT waive any of your rights under the EEO process.

The ADR program is voluntary, confidential, enforceable by the parties (if an agreement is reached), and led by a neutral person who has no personal interest in the dispute. Mediation gives you a chance to meet face to face with the appropriate management official soon after the dispute arises. No witnesses are called. Nobody testifies under oath. The mediator will not share information discussed during mediation. After the mediation is over, the mediator destroys all of his or her discussion notes.

The ADR mediator is trained to help people who have disagreements talk to each other. The mediator does not decide who is right or wrong or issue a decision. Instead, the mediator helps the parties work out their own solutions to their dispute. ADR offers both you and the Agency the opportunity for a fast and informal settlement of the dispute. Rather than leaving the decision to a third party, such as an Administrative Judge, ADR gives you the opportunity to reach an agreement that works for both you and the Agency.

Not all problems are covered by the ADR program. In some instances, indicators exist that may make a complaint inappropriate for ADR such as fraud, waste, and abuse; an allegation of sustained, continued sexual harassment; removal for cause (e.g. removal based upon a commission of a felony); decisions from the matter would inform government policy; or a full public record of the proceedings is important.

When the EEO counselor offers you the option to take part in ADR and you agree in writing to do so, the Informal complaint process period ends 90 days from the date of your initial contact with the EEO office.

If the complaint is resolved during the ADR process, the EEO counselor will document and provide a final settlement agreement. The settlement agreement will be signed by relevant parties and include a statement of recourse if you feel the Agency has not complied with the settlement agreement.

If the complaint is not resolved during the ADR process, the case goes back to the EEO counselor who will issue a "No Agreement" letter along with a notice of right to file a formal complaint. You can continue to pursue your EEO rights through filing a formal complaint. You have 15 days to file a formal EEO complaint with the DHRA EEO Office, from receipt of the "no agreement" letter.

FORMAL COMPLAINT PROCESS

If your issue is not resolved during the informal complaint process, you may elect to file a formal complaint. To be timely, you must submit your formal EEO complaint to the DHRA EEO office to the address that appears in the Notice of Right to File, no later than 15 days after you receive the Notice of Right to File. Use DD Form 2655, Complaint of Discrimination in the Federal Government (<http://www.dtic.mil/whs/directives/infomgt/forms/forminfo/forminfo2083.html>). The form must be signed by you. Your representative, if you have one, may sign it instead. Submit the DD Form 2655 to the DHRA EEO Office:

Defense Human Resources Activity
ATTN: DHRA EEO Office
4800 Mark Center Drive, Ste 06J25-01, MB #4
Alexandria VA 22350-4000

OR

DHRA-EEO@mail.mil

The DHRA EEO Office will respond by sending you a letter to acknowledge your complaint was received.

Acceptance/Dismissal or Partial Dismissal of Complaint

Upon receipt of a formal complaint by the DHRA EEO Office, an analysis will be performed to determine whether to accept all of the claims of discrimination in the complaint, whether to accept some of the claims and dismiss others, or whether to dismiss all of the claims.

If all claims are accepted, you will be notified in writing. If you believe your claims are not correctly stated, you have five days after receipt of the letter to notify the DHRA EEO office in writing specifying why you believe the claims are not correctly stated.

If some but not all of the claims in your complaint are dismissed, you will receive a letter outlining the claims that will be investigated and identifying the claims that will be dismissed. You may **not** appeal the dismissed claims at that time. The letter will explain when and how you may appeal any dismissed claims. A certified EEO Investigator will be assigned to investigate the accepted claims. If you believe the letter does not correctly state the accepted claims, you have five days after receipt of the letter to notify the DHRA EEO office in writing specifying why you believe the claims are not correctly defined.

If all of the claims are dismissed, you will receive a letter explaining why the claims have been dismissed and informing you of your right to appeal the decision to dismiss within 30 days to the Office of Federal Operation at the EEOC.

Investigation

The investigation of your accepted formal EEO complaint is an official review by an independent investigator. The EEO investigative process is non-adversarial. The investigator collects all factual information and documentation related to your accepted claims, obtains all needed affidavits from agency personnel who have relevant information about your claims, and prepares an unbiased summary of the investigation.

The investigator will be thorough in identifying and obtaining all relevant evidence from all sources regardless of how it may affect the outcome. The proper scope of an investigation will be dictated by the facts at issue. An appropriate investigation is one that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred.

You are required to cooperate with the investigation. Providing information the investigator requests is mandatory both for you and any DHRA employee witnesses. If you do not provide the information the EEO investigator requests, your complaint may be dismissed. The investigator takes testimony from relevant persons in affidavit form under penalty of perjury. Your appointed representative, if you have one, may help draft the language for your affidavit, but only you can sign it. Your statement must be true and correct.

During the investigation, you may amend the issues accepted so the report includes an investigation into like or related issues. You must make a request to amend the complaint in writing and mail or deliver it to the DHRA EEO Office, and comply with the same 45-day reporting requirement when filing an initial claim. An amendment to your complaint must be limited to issues or claims that are like or related to those raised in your original complaint. The DHRA EEO Office will inform you as to whether your amended claim(s) will be added to the on-going investigation, or if it will be processed as a separate complaint and proceed through the informal process.

The agency has 180 days from the day you filed your formal complaint to finish its investigation. The investigation may be extended by another 180 days, up to a maximum of 360 days, if new events are added to your complaint or if you file new complaints that must be added to your original complaint for investigation. You also have the right to agree to an extension of up to 90 days.

Once the investigation is completed, you will receive a Report of Investigation. The Report of Investigation summarizes your complaint and includes the records contained in the investigative file, including affidavits, transcripts from the EEO investigator interviews (if any), and documents gathered or submitted during the investigation. The Report of Investigation does not contain the investigator's opinion on the merits of the case or a conclusion on a claim of discrimination.

Along with the Report of Investigation, you will receive a notice explaining your options; within 30 days you can either request DHRA issue a Final Agency Decision as to whether discrimination occurred, or request a hearing before an EEOC Administrative Judge.

Request a Final Agency Decision

You have 30 days after receipt of your Report of Investigation to request a Final Agency Decision from DHRA in lieu of requesting an EEOC hearing. The Final Agency Decision is issued based on the Report of Investigation. DHRA will issue the Final Agency Decision to you within 60 days after receipt of your request for a decision.

Upon receipt of the Final Agency Decision, you can accept it as the final decision, appeal the decision to the EEOC Office of Federal Operations within 30 days, or file a civil action in U.S. District Court within 90 days.

If you appeal the Final Agency Decision to the EEOC, you must also serve at the same time a complete copy of the appeal to the DHRA EEO Office, along with your certification of the date and method by which service was made to DHRA. Any statement or brief in support of the appeal must be submitted to EEOC with a copy to DHRA, within 30 days of filing the Notice of Appeal. After receiving the EEOC's final decision, you may file a civil action in U.S. District Court within 90 days of receipt of EEOC's decision. A civil action may be filed any time after 180 days of the date of filing an appeal to the EEOC if there has been no final decision by EEOC.

If you file a civil action in U.S. District Court, you must do so within 30 days of receipt of the DHRA Final Agency Decision. The civil action must name the appropriate department head as well as the head's official title. Failure to do so may result in the loss of any judicial redress to which you are entitled. DHRA is a component of the Department of Defense (DoD). DoD has determined that The Honorable Charles T. Hagel, Secretary of Defense, shall be named as the defendant in any civil action filed against a DoD component.

Request an EEOC Hearing

You have 30 days after receipt of your Report of Investigation to request a hearing before the EEOC in lieu of a DHRA Final Agency Decision. You must provide the DHRA EEO Office with a copy of your hearing request. Once the appropriate EEOC field office receives your request, it will send you a docket number and ask DHRA to send a copy of your case file. Your case will then be assigned to an EEOC Administrative Judge.

After the hearing, the Administrative Judge will send you and DHRA a decision and order relief, if any. The decision, along with the transcript of the hearing, will be sent to you within 180 days from the day you request a hearing.

After the EEOC Administrative Judge issues a decision, DHRA will have 40 days to issue a final order, either accepting the decision, in full or in part, or rejecting the decision. The agency's final order will contain information about your right to appeal to the EEOC, your right to file a civil action in U.S. district court, and the deadline for filing either an appeal or a civil action. It also will state if the agency will grant the relief ordered by the Administrative Judge.

If the agency does not accept the decision or disagrees with any part of the decision of the Administrative Judge, the agency must file an appeal with the EEOC's Office of Federal Operations. If the agency doesn't issue a final order in 40 days, the Administrative Judge's decision becomes the agency's final action in the complaint.

Procedures if You Don't Make a Request

If you don't make a request for either a DHRA Final Agency Decision or an EEOC hearing, you will receive a final agency decision from DHRA within 60 days of the end of the 30-day period that you were given to respond to the notice explaining your options.

EEO SPECIAL PROCEDURES AND ELECTION RIGHTS

Depending upon the facts and circumstances of your case, you may have options other than the EEO complaint process under 29 CFR 1614. In some cases, you may will to elect the process you wish to pursue. These options and associated procedures apply in age discrimination complaints, Equal Pay Act complaints, and complaints that involve personnel actions.

AGE DISCRIMINATION IN EMPLOYEMENT ACT COMPLAINTS

You have the right to file a lawsuit under the Age Discrimination in Employment Act instead of filing an EEO complaint of age discrimination, pursuant to section 29 CFR 1614.201(a).

Election of Administrative Process. Following EEO counseling, you may file a formal EEO complaint based on age discrimination with the DHRA EEO office. One you elect to file a Formal EEO complaint, you must first exhaust administrative remedies before filing a civil action in U.S. District Court. Exhaustion in an age discrimination case occurs: (1) 180 days after the filing of an individual or class EEO complaint if the Agency has not issued a final decision and you have not filed an appeal; (2) no more than 90 days after the issuance of a final decision on an individual or class EEO complaint if you or the class agent have not filed an appeal; or (3) no more than 90 days after the issuance of a final decision by the EEOC on an appeal or 180 days after the filing of an appeal if the EEOC has not issued a final decision.

Bypass Administrative Process. You may bypass the EEO complaint process and file a civil action directly to U.S. District Court provided that you first provide the EEOC with a written notice of our intent to sue under the Age Discrimination in Employment Act. The notice to the EEOC must be filed within 180 days of the date of the alleged discriminatory action. Once a timely notice of intent to sue is filed with the EEOC, you must wait at least 30 days before filing a civil action.

Your Responsibilities Regarding Notices of Intent to Sue. Notices of intent to sue must be delivered, mailed, or faxed to the EEOC.

Delivered to:
Equal Employment Opportunity
Commission
Office of Federal Operations
Federal Sector Programs
131 M Street, NE
Suite 5SW12G
Washington, DC 20507

Mailed to:
Equal Employment Opportunity
Commission
Office of Federal Operations
Federal Sector Programs
P.O. Box 77960
Washington, DC 20013

Faxed (if no more than ten pages) to:
(202) 663-7022

The notice of intent to sue should be dated and must contain the following information: (1) a statement of your intent to file a civil action under section 15(d) of the Age Discrimination in Employment Act of 1967, as amended; (2) your name, address, and telephone number; (3) the name, address, and telephone number of your designated representative, if any; (4) the name and location of the Federal Agency or installation where the alleged discriminatory action occurred; (5) the date on which the alleged discriminatory action occurred; (6) a statement of the nature of the alleged discriminatory action(s); and (7) your signature or your representative's signature.

Attorney Fees. Your attorney's fees, if any, may be recoverable. The Administrative Judge determines the amount of attorney's fees awarded, if any. Fees will be calculated by multiplying the reasonable number of hours your attorney spent on your case by an hourly rate determined by looking at rates charged by attorneys with similar skill and experience. It is calculated this way regardless of whether the attorney took your case on a contingency fee.

EQUAL PAY ACT COMPLAINTS

You have a right to go directly to U.S. District Court on claims of sex-based wage discrimination under the Equal Pay Act even though such claims are also cognizable under Title VII of the Civil Rights Act. You may file a Formal EEO complaint of sex-based wage discrimination which will be processed in accordance with 29 CFR 1614 or you may go directly to U.S. District Court without first providing notice to the EEOC or exhausting administrative remedies. The statute of limitations for Equal Pay Act complaints is 2 years, or 3 years for a willful violation.

Unlike Title VII, the Equal Pay Act does not allow plaintiffs to recover compensatory or punitive damages, but may be entitled to "liquidated damages." Liquidated damages may be awarded to punish an especially malicious or reckless act of discrimination. The amount of liquidated damages that may be awarded is equal to the amount of back pay awarded the victim.

Damages under the Equal Pay Act are limited to:

- back pay (including compensation for all forms of pay, such as lower benefits);
- an order that the plaintiff's pay be raised to the level of the opposite-sex counterpart — note that the Equal Pay Act prohibits an employer from *reducing* the other employee's pay instead;
- attorney's fees; and
- **liquidated damages** equal to the amount of the back pay awarded.

Back Pay. Back pay in the case of a *non-willful* violation can be awarded for a period of **up to 2 years** prior to the filing of the Equal Pay Act complaint. In the case of a *willful* violation, this is extended to **up to 3 years**.

Attorney Fees. Your attorney's fees, if any, may be recoverable. The Administrative Judge determines the amount of attorney's fees awarded, if any. Fees will be calculated by multiplying the reasonable number of hours your attorney spent on your case by an hourly rate determined by

looking at rates charged by attorneys with similar skill and experience. It is calculated this way regardless of whether the attorney took your case on a contingency fee.

MIXED CASE COMPLAINTS AND APPEALS TO THE MERIT SYSTEMS PROTECTION BOARD (MSPB)

A complaint of employment discrimination based on race, color, religion, sex, national origin, age, handicap, or reprisal related to or stemming from an action that can be appealed to the MSPB is known as a “mixed case complaint.” The complaint may contain only a claim of employment discrimination or it may contain additional non-discrimination claims that the MSPB has jurisdiction to address. The regulations provide that a covered individual may raise claims of discrimination in a mixed case either as a direct appeal to the MSPB or as a mixed-case EEO complaint with the Agency, **BUT NOT BOTH**. Filing a formal EEO complaint constitutes an election to proceed in the EEO forum. When a mixed-case complaint proceeds through the EEO forum, there is no right to a hearing before an EEOC Administrative Judge. Contacting an EEO counselor or receiving EEO counseling during the informal EEO process does not constitute an election.

Common Agency Actions MSPB Has Jurisdiction Over:

- Reduction in grade or removal for unacceptable performance.
- Removal, reduction in grade or pay, suspension for more than 14 days, or furlough for 30 days or less for cause that will promote the efficiency of the service.
- Reconsideration decision sustaining a negative determination of competence for a general schedule employee.
- Determinations affecting the rights or interests of an individual or of the United States under the Civil Service Retirement System or the Federal Employees’ Retirement System.
- Disqualification of an employee or applicant because of a suitability determination.
- Separation, demotion, or furlough for more than 30 days, when the action was effected because of a reduction in force.
- Employment of another applicant when the person who wishes to appeal to the MSPB is entitled to priority employment consideration after a reduction-in-force action, or after partial or full recovery from a compensable injury.
- Appeals of actions appealable to the MSPB under any law, rule, or regulation, in which the appellant alleges that the action was taken because of the appellant’s “whistleblowing.”

A complete list of matters over which the Board generally has jurisdiction is contained in section [1201.3](#) of Part 1201 of Title 5 of the Code of Federal Regulations (5 C.F.R. § 1201.3)

Procedures for Appealing to the MSPB:

- Appeals to MSPB must be filed at the **appropriate MSPB regional office**. To locate the appropriate office and mailing address, go to <http://www.mspb.gov/contact/contact.htm>.

- The appeal must be filed no later than 30 days after the effective date, if any, of the action being appealed, or 30 days after the date of receipt of the Agency’s decision, whichever is later.
- An appeal can be filed with MSPB either electronically by going to the MSPB e-Appeal Online website at <https://e-appeal.mspb.gov/> or by traditional means (by U.S. Postal mail, fax, or personal or commercial delivery). An appeal shall be deemed filed on the day it is electronically submitted, postmarked or, in the absence of a postmark, on the date it is received by MSPB.
- You should complete MSPB appeal form, Form 185. The appeal must contain the following information:
 - The name, address, and telephone number of the appellant.
 - The name and address of the Agency that took the action.
 - A description of the action the Agency took and its effective date.
 - A request for hearing if the appellant wants one.
 - A statement of the reasons why the appellant believes the Agency action is wrong.
 - A statement of the action the appellant would like the judge to order.
 - The name, address, and telephone number of the appellant’s representative, if the appellant has a representative.
 - The notice of decision to take the action being appealed, along with any relevant documents.
 - A statement telling whether the appellant or anyone acting on his/her behalf has filed a grievance or a formal discrimination complaint with any Agency regarding this matter.
 - The signature of the appellant or, if the appellant has a representative, of the representative.
- At the same time you file the appeal with the MSPB, you are required to furnish a copy of the appeal to:

Ms. Heidi Boyd-Rice, Director of Operations
 Equal Employment Opportunity Office
 Defense Human Resources Activity
 4800 Mark Center Drive, Suite 06J25-01, MB#4
 Alexandria, VA 22350-4000

- In or attached to the appeal, you must certify the date and method by which service was made on the Agency.

FILING A LAWSUIT IN FEDERAL COURT

Generally, the law requires that you first try to settle your discrimination complaint by going through the administrative complaint process before you file a lawsuit. There are two exceptions to this general rule. If your complaint involves age discrimination, you can skip the administrative complaint process altogether and go directly to court (as long as you give EEOC at least 30 days' written notice of your intent to go to court). Also, if your claim involves gender-based pay discrimination and you wish to bring an action under the Equal Pay Act, you can skip the administrative complaint process and file a lawsuit anytime within two years of the day the discrimination occurred (three years if the discrimination is willful). Keep in mind, though, Title VII also makes it illegal to discriminate based on sex in the payment of wages and benefits. If you have an Equal Pay Act claim, there may be an advantage to also filing your claim under Title VII. Before you can pursue a Title VII claim in court, though, you must go through the administrative complaint process

Points in the Administrative Complaint Process for filing a lawsuit

For all other cases, you must go through the administrative complaint process before you can file a lawsuit. There are several different points during the process, however, when you will have the opportunity to quit the process and file a lawsuit in court, including:

- After 180 days have passed from the day you filed your formal complaint, if the agency has not issued a decision and no appeal has been filed
- Within 90 days from the day you receive DHRA's final agency decision on your complaint, so long as no appeal has been filed
- After 180 days from the day you filed your appeal if the EEOC has not issued a decision, or
- Within 90 days from the day you receive the EEOC's decision on your appeal

If you file a lawsuit at any point in the process in which it is permitted, DHRA or EEOC will stop processing your complaint.



Defense Human Resources Activity Equal Employment Opportunity Complaint Process

Directors, managers, and supervisors are responsible for ensuring the work environment is free from discrimination based on the following protected classes: race, color, religion, sex (including sexual harassment and pregnancy), national origin, age (40 or older), disability (mental or physical), genetic information, or reprisal (for participating in protected EEO activity.)

Employees, former employees, and/or applicants who believe they have been discriminated against based on the above protected classes must **contact the DHRA EEO Office within 45 days** of the date the alleged discriminatory act occurred or within 45 days of the effective date of an alleged discriminatory personnel action.

Prior to filing a Formal Complaint, aggrieved persons who believe they have been discriminated against will be assigned an EEO Counselor and proceed through the Informal Complaint Process.

As an alternative to traditional EEO counseling and if offered by the Agency, parties may choose to participate in Alternative Dispute Resolution (ADR)*, which offers informal, neutral, voluntary, and confidential methods for early dispute resolution.

DHRA EEO Office:
Toll Free: 844-857-3550
TTY: 711
Email: DHRA-EEO@mail.mil
Web Site: www.dhra.mil

*ADR can be used at any stage of the EEO process prior to an EEOC hearing

Days = Calendar Days

Blue Boxes Represent
Complainant Action

