



DEFENSE HUMAN RESOURCES ACTIVITY
4800 MARK CENTER DRIVE, SUITE 06J25-01
ALEXANDRIA, VA 22350-4000

OPERATING INSTRUCTION

SUBJECT: Equal Employment Opportunity/ Equal Opportunity Complaint Processing

- References:
- (a) 29 C.F.R. § 1614
 - (b) EEOC Management Directive 110
 - (c) DoD Directive 1440.1 DoD Civilian Equal Employment Opportunity (EEO) Program, April 17, 1992
 - (d) DoD Directive 1020.02 Diversity Management and Equal Opportunity in the Department of Defense

1. **PURPOSE**

This Operating Instruction (OI) establishes guidance for processing civilian equal employment opportunity (EEO) and military equal opportunity (EO) complaints of discrimination across the Defense Human Resources Activity (DHRA) Enterprise.

2. **APPLICABILITY**

This OI applies to the DHRA Enterprise.

3. **POLICY**

- 3.1 All DHRA employees, civilian and military, and applicants for employment are protected under federal laws and Presidential Executive Orders and may seek assistance if they believe they have been subjected to unlawful employment discrimination or not afforded an equal opportunity based on their individual merit and fitness. All DHRA employees or applicants for employment are protected from discrimination and harassment based on race, color, religion, sex (including pregnancy and related conditions, gender identity, and sexual orientation), national origin, age (40 or older), disability (mental or physical), genetic information, and/or reprisal for prior EEO activity or participation in the EEO process. Based on DoD Directive 1020.02, discrimination based on age, disability and genetic information does not apply to military members. Any DHRA civilian employee, military member or job applicant who believes that the DHRA has discriminated against him/her has a right to file an EEO or EO complaint. From this point forward the term employee is all inclusive of civilians and military members and the term EEO is all inclusive of EEO and EO unless stipulated otherwise.
- 3.2 EEO complaints will be processed in accordance with the aforementioned references (as relevant) and this OI.

4. RESPONSIBILITIES

- 4.1 The Director, DHRA, shall oversee the implementation of this OI and delegate the authority to implement this OI to the Director, Office of Equal Employment Opportunity (DOEEO).
- 4.2 DHRA employees or applicants for employment at DHRA must contact the DHRA OEEO within forty-five (45) calendar days of the discriminatory incident or the effective date of the discriminatory personnel action.
- 4.3 The Director, OEEO (DOEEO) shall:
 - 4.3.1 Assign cases involving allegations of discrimination to Equal Employment Specialists for EEO counseling.
 - 4.3.2 Receive formal complaints of discrimination and procedurally accept or dismiss the complaint based on law and regulation.
 - 4.3.3 Request the investigation of accepted complaints and after completion of the investigation, advise Complainants of their right to request for a hearing by an Equal Employment Opportunity Commission (EEOC) Administrative Judge (AJ) or a final agency decision (FAD).

Military members have no standing with the EEOC and a FAD will automatically be issued on their complaints at the completion of the investigation.
 - 4.3.4 Coordinate with the Office of General Counsel in drafting and ensuring legal sufficiency of accept and dismissal letters and FADs.
 - 4.3.5 Issue the Final Order after a decision is made on the complaint by DHRA or the EEOC AJ.
- 4.4 The Equal Employment Specialists shall:
 - 4.4.1 Oversee and administrate the informal and formal complaints process through counseling individual and class complaints of discrimination, charges of reprisal, coercion, intimidation, and harassment using traditional counseling methods.
 - 4.4.2 Explain to aggrieved employees their rights and responsibilities in the EEO complaint process.
 - 4.4.3 Advise the aggrieved employee about EEO counseling and the Alternative Dispute Resolution Program.
 - 4.4.4 Meet with the management official named to be responsible for the alleged discriminatory incident to conduct a limited inquiry into the allegations raised by the aggrieved employee.
 - 4.4.5 Conduct a final interview if no resolution is reached and issue the aggrieved employee's Notice of Right to File a Formal Complaint.
 - 4.4.6 Submit a Counselor's Report based on the EEO counseling.
 - 4.4.7 Ensure full compliance in accordance with existing laws, executive orders, Office of Personnel Management (OPM), OEEO, DHRA, and agency policies and directives.

- 4.5 Managers and Supervisors shall:
 - 4.5.1 Cooperate with the Office of EEO and its staff in the processing of EEO complaints of discrimination.
 - 4.5.2 Respond to allegations raised by aggrieved employees.
 - 4.5.3 Provide documents to the Office of EEO upon request.
 - 4.5.4 Provide organizational rosters and data on employment upon request.
 - 4.5.5 Ensure subordinate employees respond to the Office of EEO upon request.
- 4.6 The Office of General Counsel shall:
 - 4.6.1 Provide guidance to managers and supervisors in responding to allegations raised by aggrieved employees.
 - 4.6.2 Review Accept and Dismissal Letters and FADs for legal sufficiency.
 - 4.6.3 Represent the agency when the complaint goes to a hearing.
 - 4.6.4 Maintain strict separation between the defense function and the EEO advisory function. Attorneys advising the EEO office and the DHRA Director on EEO policy matters, reports, Accept/Dismissal Letters and FADs will not serve as agency representatives defending the agency against EEO complaints.
 - 4.6.5 Coordinate all settlement agreements and provide the Office of EEO a copy of settlement agreements with all the signatures collected.
 - 4.6.6 Provide the Office of EEO documents supporting the agency's compliance with all terms listed in the settlement agreement.
- 4.7 The Defense Civilian Personnel Advisory Service (DCPAS):
 - 4.7.1 Provide listed documents/information to the OEEO, upon request during counseling and investigation of EEO complaints.
 - Data on employment to include names, grades, ranks, job series, grades and demographics, if routinely kept and available;
 - Names of employees who have completed mandated equal employment opportunity training to include training on sexual harassment, discrimination, reprisal, and No FEAR Act.

5. PROCEDURES

- 5.1 DHRA employees or applicants for employment who believe they have been discriminated against or harassed based on race, color, religion, sex (including pregnancy and related conditions, gender identity, and sexual orientation), national origin, age (40 or older), disability (mental or physical), genetic information, and/or reprisal for prior EEO activity or participation in the EEO process must contact the DHRA OEEO within forty five (45) calendar days of the discriminatory or harassing incident or the effective date of the alleged discriminatory personnel action.
- 5.2 Military employees may contact the DHRA OEEO within forty-five (45) calendar days of the alleged discriminatory or harassing incident or effective date of the discriminatory personnel action for allegations of discrimination or harassment based on race, color, religion, national

origin, and sex.

- 5.3 The DOEEO will assign the employee/applicant with the allegation of discrimination to an Equal Employment Specialist in the OEEO for pre-complaint counseling. When offered by DHRA management, the employee has the choice to participate in the Alternative Dispute Resolution (ADR) program, such as a mediation program.
- 5.4 If the pre-complaint is not resolved during counseling or through ADR, the DHRA OEEO will issue the notice of the employee's right to file a formal complaint of discrimination.
- 5.5 The employee/applicant must file the formal complaint of discrimination with the DHRA OEEO Office within fifteen (15) calendar days from the day of receipt of the notice.
- 5.6 When a formal complaint is filed, the EE Specialist will review the complaint and decide whether or not the complaint should be dismissed for a procedural or other reason (for example, late filing) as set forth in the Management Directive 110 or accept the complaint for investigation and provide to the DOEEO for approval and signature.
- 5.7 Complaints based on actions associated with the Uniform Code of Military Justice (UCMJ) will be dismissed for failure to state a claim because they are outside the scope of the EO complaint process and must be addressed through the appropriate appeal process or the Armed Forces Board of Correction of Military Records.
- 5.8 Military complaints that are subject to an official process such as appraisals or awards must be processed through the appropriate appeal process.
- 5.9 If the complaint (EEO/EO) is accepted, DHRA has 180 calendar days from the date the complaint was filed to complete the investigation.
- 5.10 Mixed complaints, which are complaints appealable to the Merit System Protection Board, will be fully investigated within 120 calendar days from the date the complaint was filed.
- 5.11 After completion of the investigation, the EE Specialist will provide the DOEEO with the notice explaining the Complainant's right to either request, within thirty (30) calendar days, a hearing before an EEOC AJ or a FAD as to whether the discrimination occurred for approval and signature.
- 5.12 Military members do not have standing with the EEOC and, therefore, will automatically be issued a FAD upon completion of the investigation.
- 5.13 If an EEO FAD is requested and no discrimination is found, or if the Complainant disagrees with some part of the decision, the Complainant can appeal the decision to EEOC or challenge it in federal district court.
- 5.14 FADs issued to military members must be appealed in writing within 30 calendar days of receipt of the FAD to the appropriate Component Director or the DHRA Director depending on the position of the alleged offender.
- 5.15 Military members may request reconsideration of the decision, in writing, to the DHRA Director no later than thirty (30) calendar days after receipt of the decision on the appeal.
- 5.16 For EO complaints, the DHRA Director's decision is final.

When a hearing is requested on a civilian EEO complaint, the Complainant must submit the request in writing to the EEOC within 30 days from the day of receipt of the notice from the DHRA OEEO about the Complainant's hearing rights. The Complainant must also copy DHRA OEEO. If a hearing is requested, an EEOC AJ will decide whether to conduct a hearing, make a decision, and order relief if discrimination is found.

- 5.17 After the DHRA OEEO receives the EEOC AJ's decision, DHRA will issue, within forty (40) calendar days, a final order which will inform the Complainant whether DHRA agrees with the AJ's decision and if it will grant any relief the judge ordered. The final order will also contain information about the Complainant's right to appeal to the EEOC, the right to file a civil action in federal district court, and the deadline for filing both an appeal and a civil action.
- 5.18 The Complainant has the right to appeal DHRA's final order (including a final order dismissing the complaint) to the EEOC Office of Federal Operations. The appeal must be filed no later than thirty (30) days after receipt of the final order. DHRA also has the right to appeal the decision if it disagrees with any part of the AJ's decision.
- 5.19 When a decision is issued on the appeal, the Complainant or DHRA may ask the EEOC to reconsider the decision if it can be shown that the decision is based on a mistake about the facts of the complaint, or the law applied to the facts of the complaint. Requests for reconsideration must be made no later than thirty (30) calendar days after receipt of the decision on the appeal. An EEOC decision on the request for reconsideration is final.
- 5.20 Complainants must go through the administrative complaint process before they can file a lawsuit; however, a Complainant has the opportunity to quit the process and file a lawsuit in court in the following instances:
- After 180 days have passed from filing the complaint, if DHRA has not issued a decision and no appeal has been filed;
 - Within 90 days after receipt of DHRA's decision on the complaint, so long as no appeal has been filed;
 - 180 days after filing the appeal if the EEOC has not issued a decision; or
 - Within 90 days after receiving the EEOC's decision on the appeal.

6. EFFECTIVE DATE: The effective date of this OI is on the date of the signature below.

REGISTER.JEFF
REY.RAYMOND.1
046072339

Digitally signed by
REGISTER.JEFFREY.RAYM
OND.1046072339
Date: 2024.07.29 09:09:31
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Jeffrey R. Register
Director