

D.O.T's EEO Formal Complaint Phase, Appeal Process, and Judicial Phase

EEO Formal Complaint Phase

Complaint Format

An EEO complaint enters the formal phase when it is filed with DOOCR after the completion of the informal phase and receipt of the "Notice of Final Interview". The complainant has 15 days from receipt of this notice to file a formal complaint. The complaint must be a signed statement from the aggrieved party or the party's attorney. The complaint must include the telephone number and the address of the complainant and/or the chosen representative. The complaint itself must precisely identify the complainant and agency. A general description of the alleged discriminatory action or practice (29 CFR 1614.106) must also be included. At this point, the decision will be made to either dismiss or investigate the claim. The complaint can be amended at any time prior to the conclusion of the investigation.

Agency Obligations to the Complainant

The agency must acknowledge receipt of the complaint in writing and inform the complainant of:

- ∞ Date the complaint was filed
- ∞ Address of the EEOC office where a request for a hearing should be sent
- ∞ Complainant's right to appeal the agency's final action
- ∞ Complainant's right to dismiss the complaint
- ∞ Agency must investigate the complaint within 180 days of the filing date
- ∞ Any amendments to the complaint

Formal Complaint Process

A case that has not gone through the informal phase will be remanded to the OA or the ASA. The aggrieved party may still choose to contact an EEO Counselor or use the ONEDOT Sharing Neutrals ADR program. Multiple complaints filed by the same or different complainants are combined in accordance with 29 CFR 1614.606 . A hearing can be requested from an EEOC Administrative Judge (AJ) on the consolidated complaints any time after 180 days from the date the original complaint was filed.

Dismissal of a Complaint

Prior to a request for a hearing, an agency may dismiss an entire complaint for any of the following reasons:

- ∞ Complainant's failure to state a claim or stating the same claim that is pending or has already been decided by the agency or the EEOC
- ∞ Complainant's failure to comply with the time limits
- ∞ Filing a complaint on a matter that has not been brought to the attention of an EEO counselor and which is not like or related to the matters counseled
- ∞ Filing a complaint which is the basis of pending civil action or which was the basis of a civil action already decided by a court
- ∞ The complainant has already chosen to pursue the matter through either the negotiated grievance procedure or in an appeal to the Merit Systems Protection Board
- ∞ Where the matter is moot or merely alleges a proposal to take a personnel action
- ∞ Where the complainant cannot be located
- ∞ Where the complainant fails to respond to a request of a previously filed complaint
- ∞ Where the complaint alleges dissatisfaction with the processing of a previously filed complaint

Where the complaint is part of clear pattern of misuse of the EEO processes for a purpose other than the prevention and elimination of employment discrimination (29 CFR 1614.107).

Agency's Obligation if the Case is Dismissed

If an agency finds that some, but not all, of the claims in a complaint should be dismissed for the above reasons, it must:

- Notify the complainant in writing of the reason for this decision
- Identify which allegations will not be investigated
- Place a copy of the given notice in the EEO file

The determination to partially dismiss a complaint shall be viewable for review by an EEOC Administrative Judge (AJ) if a hearing is requested on the remainder of the complaint. However, it cannot be appealed until a final action is taken by the agency on the remainder of the complaint (29 CFR 1614.107).

If the entire complaint is dismissed the complainant may appeal the dismissal to the EEOC, Office of Federal Operations.

Investigations

Once a complaint is accepted, the Department conducts an investigation. An EEO investigator located in one of the six DOOCR regional offices will conduct the investigation. Contract investigators are used occasionally to reduce peak load or backlog situations.

Investigation Timelines

The agency must complete the investigation within the earlier of:

- 180 days after the last amendment to the complaint
- 360 days after filing the original complaint

Investigation Process

An impartial and appropriate factual record will be drafted. An appropriate factual record is defined as one that allows a reasonable fact finder to draw conclusion on whether discrimination occurred (29 CFR 1614.107).

Investigation Complete

Once the Department finishes its investigation, it will issue a report of investigation. A copy of the investigation file and notification must be sent to the complainant letting them know they have 30 days (from receipt of the file) in which to either:

- Request a hearing and decision from an EEOC AJ
- Request an immediate final decision from the agency (29 CFR 1614.108)

Request for Hearing Format

The complainant must send his or her request for a hearing to the EEOC office indicated in the agency's acknowledgement letter. The request must include a copy of the acknowledgement letter. Within 15 days of receipt of the request for a hearing, the agency must provide a copy of the complaint file to the EEOC office. The EEOC will then appoint an Administrative Judge (AJ) to conduct a hearing (29 CFR 1614.108).

Offers of Resolution

An agency may make an offer of resolution to a complainant, whether represented by an attorney or not, after the parties have received notice that an administrative judge has been appointed to conduct a hearing, but not later than 30 days prior to a hearing. Any offers of resolution must be in writing and include a notice explaining the possible consequences of failing to accept the offer. If the complainant does not accept the offer within 30 days of receipt, and the final decision on the complaint is not more favorable than the offer, then the complainant shall not receive payment from the agency for attorney's fees or costs incurred after the 30-day acceptance period (29 CFR 1614.109).

Discovery

Prior to the hearing, the parties may conduct discovery. The purpose of discovery is to allow each party to obtain relevant information to prepare their cases. Each party will initially cover their own costs for discovery. The AJ can require the agency to bear the costs for the complainant to obtain depositions or any other discovery because the agency failed to complete the investigation in a timely manner or failed to adequately investigate the allegations. For a more detailed description of discovery procedures, see EEOC Management Directive 110, Chapter 6.

Hearing Request Timelines

A complainant has 30 days from the receipt of the investigation file to request a hearing from an EEOC Administrative Judge (AJ). A hearing can be requested on the consolidated complaints any time after 180 days from the date the original complaint was filed.

Request Agency's Final Decision

If the complainant does not request a hearing before an EEOC AJ or an immediate decision from the Department, DOOCR is expected to issue its decision in 60 days.

Hearing Process

Agencies will ensure the attendance of all employees approved as witnesses by the AJ. Hearings are considered part of the investigative process, and are closed to the public. The AJ conducts the hearing and receives relevant information or documents as evidence. The hearing is recorded and the agency is responsible for paying for the transcripts of the hearing. Rules of evidence are not strictly enforced during proceedings. If the AJ decides that some or all of the facts are not in dispute, then the scope of the hearing may be limited or a decision issued without a hearing.

Hearing Decision

The AJ must conduct the hearing and issue a decision on the complaint within 180 days of receipt of the complaint file from the agency. The AJ will send copies of the hearing record, the transcript, and the decision to the parties. If an agency does not issue a final order with 40 days of receipt of the decision, the AJ's decision becomes the final action by the agency in the matter (29 CFR 1614.100).

Final Action by Agency if the AJ Issues a Decision

When an AJ has issued a decision, the agency has 40 days from the receipt of the hearing file and the AJ's decision to take action and issue their final order. The final order must do the following:

- Notify the complainant whether or not the agency will fully use the decision of the AJ
- Notify the complainant of his or her right to appeal to the EEOC
- Notify the complainant of his or her right to file a civil action

If the final order does not fully use the decision of the AJ, the agency must at the same time file an appeal with the EEOC and attach a copy of the appeal to the final order (29 CFR 1614.110).

Final Action by Agencies if the AJ Does Not Issue a Decision

When an AJ has not issued a final decision, the agency must take final action by issuing a final decision. The agency's final decision will consist of findings by the agency on the merits of each issue in the complaint. Where the agency has not handled certain allegations in the complaint for any of the procedural reasons defined in 29 CFR 1614.107, the agency must provide the reason for its decision not to process the allegations. The agency's decision must be issued within 60 days of receiving notice that the complainant has asked for an immediate final decision. The agency's decision must contain notice of the complainant's right to appeal to the EEOC, or to file a civil action in federal court (29 CFR 1614.110).

Appeal Process

There are different Types of Appeals

- Appeal to the agency's final action (29 CFR 1614.401)
- Dismissal of complaint within 30 days of receipt (29 CFR 1614.402a)
- Final decision of the agency when the issue of employment discrimination was raised in the grievance procedure (29 CFR 1614.401d)
- The agency's final action and order do not fully implement the AJ's decision (then the agency has to appeal to the EEOC) (29 CFR 1614.110a)
- Complainant's appeal to the EEOC for a determination as to whether the agency has complied with the terms of the settlement agreement or decision (29 CFR 1614.504b)

An employee should be aware of the Appeal Timelines for Supporting Documents

All appeals must be filed with the EEOC's Office of Federal Operations (OFO). The following timetables apply to documents being submitted:

- Any statement or brief on behalf of a complainant in support of the appeal must be given to the OFO within 30 days of the filing the notice of appeal
- Any statement or brief on behalf of the agency in support of its appeal must be filed within 20 days of filing the notice of appeal
- An agency must submit the complaint file to OFO within 30 days of initial notification that the complainant has filed an appeal or within 30 days of submission of an appeal by the agency
- Any statement or brief in opposition to an appeal must be submitted to OFO and served on the opposing party within 30 days of receipt of the statement or brief supporting the appeal, or, if no statement or brief supporting the appeal has been filed, within 60 days of receipt of the appeal

(29 CFR 1614.403)

EEOC has the authority to draw unfavorable conclusions against a party failing to comply with its appeal procedures or requests for information (29 CFR 1614.404c).

The decision on an appeal from an agency's final action is based on a de novo review (question of law), except that the review of the factual findings in a decision by an AJ is based on a substantial evidence standard of review (29 CFR 1614.405a).

Requests for Reconsideration

A party may request that EEOC reconsider its decision within 30 days of receipt of the commission's decision. Such a request is not a second appeal, and will be granted only when the previous EEOC decision involved an invalid interpretation of material fact or law; or when the decision will have a significant impact on the policies, practices, or operations of the agency (A party may request that EEOC reconsider its decision within 30 days of receipt of the commission's decision. Such a request is not a second appeal, and will be granted only when the previous EEOC decision involved an invalid interpretation of material fact or law; or when the decision will have a significant impact on the policies, practices, or operations of the agency (29 CFR 1614.405b).

Class Action Appeals

For class action appeals, the class agent or the agency may appeal an AJ's decision accepting or dismissing all or part of the class complaint. A class member may appeal a final decision on an individual(s) claim for relief pursuant to a finding of a class-wide discrimination. Finally, the class agent or the agency may appeal from an AJ decision on the adequacy of a proposed settlement of a class action (29 CFR 1614.401c).

Judicial Phase

Regulations for Filing a Civil Action

A federal sector complainant has to first exhaust the administrative process set out at 29 CFR 1614 before filing a civil suit. The regulations provide that civil actions may be filed in an appropriate federal court:

- Within 90 days of receipt of the final action where no administrative appeal has been filed
- After 180 days from the date of filing a complaint if an administrative appeal has not been filed and final action has not been taken
- Within 90 days of receipt of EEOC's final decision on an appeal
- After 180 days from the filing of an appeal with EEOC if there has been no final decision by the EEOC

(29 CFR 1614.408)

Under the Age Discrimination in Employment Act (ADEA), a complainant may proceed directly to federal court after giving the EEOC notice of intent to sue (29 CFR 1614.201).

Under the Equal Pay Act, a complainant may file a civil action within 2 years (3 years for willful violations), regardless of whether he or she has pursued an administrative complaint (29 CFR 1614.409). The EEOC processing of an appeal is ended once a civil action is terminated.

Class Complaints

Requirements for Class Complaints

Class complaints are processed differently than individual(s) complaints (29 CFR 1614.204). The informal counseling phase is the same, with each member of the class action required to undergo individual(s) counseling. Once counseling is completed, the class complaint will be forwarded to the nearest EEOC Field or District Office for investigation. An EEOC AJ is appointed to decide whether to accept or dismiss the class complaint.