Secretary

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

September 20, 2011

MEMORANDUM FOR: All DHS Employees

FROM: Secretary Napolitano

SUBJECT: Department of Homeland Security Anti-Discrimination Policy Statement and No FEAR Act Notice

As Secretary of Homeland Security, I am honored to lead an exceptionally talented, dedicated, and diverse workforce. I expect all DHS personnel to join me in creating a work environment free from unlawful discrimination, promoting awareness of employee rights and responsibilities, and providing a fair and neutral process for adjudicating complaints without fear of retaliation. Today, DHS is issuing an updated Anti-Discrimination Policy Statement, which sets out the Department's policy and provides important information for all DHS personnel regarding their rights and responsibilities, as well as available information and resources.

I. DHS Anti-Discrimination Policy Statement

I am firmly committed to identifying and implementing meaningful initiatives to advance the equal rights of all employees. The DHS Anti-Discrimination Policy Statement reinforces our commitment to a work environment free from unlawful discrimination and emphasizes your obligations as employees to prevent and promptly correct harassment in the workplace, as set forth in DHS's Anti-Harassment Policy (Directive Number 256-01). The Statement provides information on avenues through which an employee may seek redress if he or she believes they have been subjected to discrimination or retaliation.

II. No FEAR Act Notice

All DHS employees should be aware of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), enacted by Congress on May 15, 2002. The No FEAR Act requires DHS to provide a notice to federal employees, former federal employees, and applicants for federal employment to inform them of their rights and protections available under federal antidiscrimination, whistleblower protection, and retaliation laws. That notice is available at http://edocket.access.gpo.gov/2009/E9-376.htm and at http://www.dhs.gov/xutil/editorial_0478.shtm.

The Office for Civil Rights and Civil Liberties (CRCL), in coordination with the DHS Chief Human Capital Officer, provides an online training course for all DHS employees regarding their rights and remedies under the federal antidiscrimination, whistleblower, and retaliation laws

listed in the No FEAR Act. Current employees who have not already taken the training are required to complete this training as soon as possible, and new employees are required to complete this training within 90 days of entering on duty. Please contact CRCL or the appropriate Component-servicing EEO office for more information (for contact information for each Component EEO office, see http://www.dhs.gov/xabout/structure/editorial_0856.shtm).

Questions concerning this memorandum may be directed to CRCL at crcl.eeo@dhs.gov, or at (202) 254-8200.

Thank you for working together to uphold the highest levels of professionalism and performance at DHS, and for your critical work in securing our homeland.

DHS Anti-Discrimination Policy Statement

As the Department of Homeland Security protects the United State, a guiding principle of mutual respect allows each employee to contribute to that crucial mission to the maximum of his or her ability. Maintaining a fair workplace and recruiting, developing, and retaining a diverse workforce creates an environment in which personnel can develop and apply the widest possible range of competencies, ideas, and solutions. DHS is fully committed to equal employment opportunity (EEO) principles, and I am issuing this Anti-Discrimination Policy to guide the Department's employees, managers, supervisors, and executives in understanding their rights and responsibilities relating to equal employment.

The core of equal employment opportunity is the right to work and advance on the basis of merit, ability, and potential, free from prejudice or discrimination. In accordance with the applicable anti-discrimination statutes, executive orders, and other authorities DHS protects employees against discrimination, to the fullest extent of law, on the basis of race, color, religion, sex (including pregnancy), national origin, disability, genetic information, marital status, political affiliation, whistleblower activity, sexual orientation, parental status, military service (past, present, or future), and against retaliation for participation in EEO activity or opposition to discrimination.

Unlawful discrimination includes harassment on any of these bases that has the purpose or effect of unreasonably interfering with an individual's work performance or that creates an intimidating, offensive, or hostile environment. It is DHS policy to maintain a work environment in which all DHS employees are free from such harassment, by preventing it through training and supervision, and by promptly taking action if harassment occurs. Employees should promptly report any incidents of harassment they observe, as well as any suspected retaliation related to a harassment complaint.

Attached to this policy statement is more information relating to anti-discrimination rights, responsibilities, and remedies, along with the ways in which an employee who believes he or she has been subjected to discrimination or retaliation can obtain a prompt and fair hearing and remedy.

All DHS personnel are responsible for complying with this policy, for maintaining a high level of professional conduct in the workplace, and for treating others with respect and fairness. I enlist and rely on your support in this crucial aspect of our operations. If you believe you have been subjected to discrimination or retaliation I ask that you give the Department the opportunity to correct the problem and improve our organization for you and your coworkers.

INFORMATION SHEET ON DHS PERSONNEL'S ANTI-DISCRIMINATION RIGHTS, RESPONSIBILITES, AND REMEDIES

Federal Anti-Discrimination Statutes and Executive Orders

Federal employees are protected against discrimination on the basis of race, color, religion, sex (including pregnancy), national origin, age, disability, genetic information, military service (past, present, or future), and against retaliation for participation in EEO activity or opposition to discrimination. The statutory sources include the following: Title VII of the Civil Rights Act of 1964; Age Discrimination in Employment Act of 1967; Rehabilitation Act of 1973; Genetic Information Nondiscrimination Act of 2008; the Equal Pay Act of 1963; and Uniformed Services Employment and Reemployment Rights Act of 1994.

Executive Orders 11478, 13087, and 131 *S2* provide similar protections against discrimination on the basis of race, color, religion, sex, national origin, handicap, age, and add the protected bases of parental status and sexual orientation.

An employee who believes he or she has been subjected to discrimination or retaliation involving a basis prohibited under an EEO statute or one of the above-referenced Executive Orders, must contact his or her servicing EEO office within 45 days of the alleged discrimination if he or she wishes to pursue an EEO complaint.

DHA Anti-Harassment Policy

Unlawful discrimination includes harassment on the basis of an individual's race, color. religion, sex, sexual orientation, national origin, age, disability, marital status, parental status, political affiliation or any other basis protected by law, that has the purpose or effect of unreasonably interfering with an individual's work performance or that creates an intimidating, offensive, or hostile environment. DHS's Anti-Harassment Policy (Directive Number 256-01), is available on-line at http://dhsconnect.dhs.gov/policies/Instructions/Directive%20256-01%20Anti-Harassment%20Policy%20(Revision%2000).pdf.

Title 5 of the United States Code: Civilian Employees

Nearly all DHS civilian employees and applicants for employment are covered by Title 5 of the United States Code, which forbids discrimination on the basis of race, color, religion, sex, national origin. Age, disability, and also on the basis of marital status, political affiliation, whistleblowing activity, and other conduct that does not adversely affect work performance. 5 U.S.C. § 2302. Additionally, OPM has interpreted this statute to prohibit discrimination based upon sexual orientation. *See* http://www.opm.gov/er/address2/Guide04.asp..

An employee who believes be or she has been subjected to a personnel practice that violates Title S may take one or more of the following courses of action: (1) contact his or her servicing Human Capital Office; (2) contact his or her servicing EEO office within 4S days to file an EEO complaint pursuant to procedures established by their servicing EEO office; (3) file a grievance

under an applicable collective bargaining agreement; (4) file an appeal with the Merit Systems Protection Board (MSPB), as appropriate; or (5) file a complaint with the U.S. Office of Special Counsel (OSC). Additional relevant information including requirements and timeframes for timely raising discrimination claims. is available from the Equal Employment Opportunity Commission (www.ecoc.gov); MSPB (www.mspb.gov); and OSC (www.osc.gov).

Title 10 of the United States Code: Military Personnel

Military members of the United States Coast Guard are covered by Title 10 of the U.S. Code, which extends to military personnel protections against retaliatory and other prohibited personnel actions. Unlike Title 5, Title 10 places certain limits on the protections provided to members of the military against discrimination based on sexual orientation. See 10 U.S.C. § 654(b). Military personnel are, however, entitled to protection from harassment on the basis of sexual orientation, actual or perceived, pursuant to procedures set forth by the Commandant, United States Coast Guard and the DHS Anti-Harassment Policy described above. Military personnel may file discrimination complaints pursuant to procedures set forth by the Commandant, United States Coast Guard. COMDTINST MS350.4C, Ch. 4, May 2010.

[Federal Register Volume 74, Number 8 (Tuesday, January 13, 2009)]
[Notices]
[Pages 1702-1703]
From the Federal Register Online via the Government Printing Office [www.gpo.gov]
[FR Doc No: E9-376]

DEPARTMENT OF HOMELAND SECURITY

No FEAR Act

AGENCY: Office of the Secretary; DHS.

ACTION: Notice.

SUMMARY: The Department of Homeland Security (DHS) is providing notice to all of its employees, former employees, and applicants for employment about the rights and remedies that are available to them under Federal antidiscrimination laws and whistleblower protection laws. This notice satisfies the Department's notification requirements under section 202 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 and Office of Personnel Management regulations.

FOR FURTHER INFORMATION CONTACT: Stephen Shih, Deputy Officer for Equal Employment Opportunity (EEO) Programs, U.S. Department of Homeland Security, 245 Murray Lane, SW., Building 410, Washington DC, 20528, by telephone at 1-888-644-8360 or by e-mail at civil.liberties@dhs.gov.

SUPPLEMENTARY INFORMATION: The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, ``No FEAR Act''), Public Law 107-174 (May 15, 2002) was enacted, in part, to ensure that federal agencies are accountable for violations of antidiscrimination and whistleblower protection laws. Congress expressly found that ``agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' Id., Title I, General Provisions, section 101(1).

In furtherance of this purpose, section 202 of the No FEAR Act requires all Federal agencies to provide written notification to Federal employees, former Federal employees and applicants for Federal employment to inform them of the rights and protections available under applicable Federal antidiscrimination and whistleblower protection laws. The Act also requires federal agencies to post the notice on each agency's Web site.

Pursuant to section 202 of the No FEAR Act, DHS is notifying all of its employees, former employees, and applicants for employment about the rights and remedies that are available to them under applicable Federal antidiscrimination laws and whistleblower protection laws. This notice will also be posted on DHS's Web site https://www.dhs.gov.

Antidiscrimination Laws

A Federal agency, including DHS, may not discriminate against an employee or applicant for Federal employment with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C.2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e-16. If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact a DHS Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal

[[Page 1703]]

complaint of discrimination with your agency. See, e.g., 29 CFR part 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor, as noted above, or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination

based on sexual orientation, marital status, protected genetic information or political affiliation, you may (a) File a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below) or (b) pursue a discrimination complaint by contacting a DHS Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action or (c) file a grievance through the DHS administrative or negotiated grievance procedures, if such procedures apply and are available.

Whistleblower Protection Laws

A Federal employee--including a DHS employee--with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of: law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC-11) with the U.S. Office of Special Counsel at 1730 M Street, NW., Suite 218, Washington, DC 20036-4505 or online through the OSC Web site--http://www.osc.gov.

Retaliation for Engaging in Protected Activity

A Federal employee, including a DHS employee, may not retaliate against an employee or applicant for employment because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, DHS retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws, up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), DHS must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits DHS to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR Part 724, as well as the DHS Office for Civil Rights and Civil Liberties. Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site--http://www.eeoc.gov and the OSC Web site--http://www.osc.gov.

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Daniel W. Sutherland,
Officer for Civil Rights and Civil Liberties.
[FR Doc. E9-376 Filed 1-12-09; 8:45 am]
BILLING CODE 4410-10-P

Department of Homeland Security
DHS Directives System
Directive Number: 256-01
Revision Number: 00
Issue Date:

ANTI-HARASSMENT POLICY

I. Purpose

This Directive is intended to prohibit and prevent harassment in the workplace at the Department of Homeland Security (DHS), to prohibit and prevent harassment by DHS employees, and to promptly correct any harassment that occurs.

II. Scope

A. This Directive applies throughout DHS. It applies to the Transportation Security Administration to the extent consistent with the Public Law 107-71, "Aviation and Transportation Security Act" (November 19, 2001).

B. This Directive is separate and apart from any collective bargaining agreement or statutory complaint process covering harassment.

C. Complaints alleging harassment on any statutory or non-statutory basis raised by military members of the United States Coast Guard are administratively processed pursuant to policies set forth by the Commandant, United States Coast Guard.

D. DHS Management Directive 3090, "Equal Employment Opportunity and Sexual Harassment," is hereby canceled.

III. Authorities

A. Title 5, United States Code (U.S.C.), Section 2302, "Prohibited personnel practices."

B. Equal Employment Opportunity Commission Management Directive 715, "Federal responsibilities under Section 717 of Title VII and Section 501 of the Rehabilitation Act" (October 1, 2003).

C. Equal Employment Opportunity Commission, "Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors," No. 915.002 (June 18, 1999).

IV. Responsibilities

A. The ***Officer for Civil Rights and Civil Liberties*** implements the policies in this Directive.

B. The ***DHS Chief Human Capital Officer*** coordinates with the Officer for Civil Rights and Civil Liberties regarding personnel matters affected by this policy.

C. The ***DHS Component heads*** ensure compliance with this Directive and the DHS anti-harassment policy throughout their Component, and by all employees of their Component.

D. ***All employees*** abide by the DHS anti-harassment policy, create a work environment that is free from harassment and promptly report any incidents of harassment. All employees are expected to promptly report any suspected retaliation for making a complaint or helping another employee make a complaint, participating in an inquiry into potential violations of this anti-harassment policy, or opposing unlawful discrimination or harassment.

V. Policy

A. It is the policy of DHS to maintain a work environment free from harassment on the basis of an individual's race, color, religion, sex, sexual orientation, national origin, age, disability, marital status, parental status, political affiliation or any other basis protected by law.

B. Prohibited harassment includes, but is not limited to, unwelcome conduct, whether verbal, nonverbal, or physical, that has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, offensive, or hostile environment as a result of the individual's race, color, religion, sex, sexual orientation, national origin, age, disability, marital status, parental status, political affiliation or any other basis protected by law. Among the types of unwelcome conduct prohibited by this policy are epithets, slurs, stereotyping, intimidating acts, and the circulation or posting of written or graphic materials that show hostility toward individuals because of their protected status. Acts of physical violence, and actual, implied, or veiled threats of violence, are forms of prohibited harassment. Any form or manner of threatening or provoking remarks or threatening gestures in the workplace is prohibited. DHS prohibits harassment even if does not rise to the level of actionable harassment under the law. Although a single utterance or act may not rise to a level that may be actionable under the law, it still has no place at DHS. This policy prohibits harassment by or of any employee, supervisor, manager, contractor, vendor, applicant, or other individual with whom DHS employees come into contact by virtue of their work for DHS. DHS's full anti-harassment

policy is attached as Attachment 1 and is available to all employees in hardcopy form at their servicing Component Equal Employment Opportunity (EEO) or Civil Rights Office, as well as electronically on their servicing Component website.

C. Sexual harassment is a form of prohibited harassment. Harassing conduct is often, but not always, sexual in nature. DHS's policy forbids harassment based on gender regardless of whether the offensive conduct is sexual in nature or whether the individual engaged in harassment and the individual being harassed are of the same sex. Unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal or physical conduct based on sex (whether or not it is sexual in nature) constitute sexual harassment when:

1. Submission to such conduct is either an explicit or implicit term or condition of employment;

2. Submission to or rejection of the conduct is used as a basis for making employment decisions; or

3. The conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, offensive, or hostile environment.

D. Any person who believes that he or she has been subjected to, or has been a witness to, harassment in violation of this policy reports the matter promptly pursuant to procedures established by the Component.

E. Reports of harassment are kept confidential to the fullest extent possible. DHS does not tolerate retaliation against an employee for reporting harassment or assisting another individual to report harassment, participating in an inquiry into a report of harassment, or opposing discrimination or harassment. Any person who believes he or she has been subject to retaliation should use the same reporting procedures as for complaints of harassment. Reports of harassment are addressed through an appropriate prompt, thorough, and impartial investigation. DHS takes prompt corrective action when it determines that harassment has occurred. Any employee found to have engaged in harassment may be subject to disciplinary action, up to and including removal.

F. The Operational Components, the Federal Law Enforcement Training Center (FLETC), and the Office of Inspector General (OIG) develop procedures for filing, addressing, and investigating reports of harassment for their respective employees. The anti-harassment policy and these procedures are posted in a conspicuous location on the Component's intranet, or for employees who do not have access to the intranet, in a physical location accessible by those employees (posting in a conspicuous physical location does not apply outside DHS spaces).

G. The Office for Civil Rights and Civil Liberties develops procedures for filing, addressing, and investigating reports of harassment for the Office of the Secretary and the Support Components (except FLETC and OIG). The anti-harassment policy and these procedures are posted in a conspicuous place on the DHS intranet, or for employees who do not have access to the intranet, in a physical location accessible by those employees (posting in a conspicuous physical location does not apply outside DHS spaces).

H. Appropriate measures are taken to publicize policies and the reporting procedures. Employees receive the DHS anti-harassment policy and applicable reporting procedures at least once per year. New employees receive the policy and procedures when beginning employment. All employees sign an acknowledgment that they have been provided the policy and procedures—new employees upon joining DHS and existing employees within 90 days of the effective date of this Directive.

I. Training is provided to employees, supervisors, and managers so they understand their rights and responsibilities regarding the policy and procedures.

J. This Directive and the DHS anti-harassment policy do not affect an employee's right to file an EEO complaint of harassment or discrimination. An employee's use of the reporting procedure referenced in this Directive does not result in an individual complaint of discrimination or harassment and does not take the place of such a complaint.

1. Employees may use the reporting procedure referenced in this Directive in addition to filing a complaint of harassment or discrimination based on race, color, religion, sex, national origin, disability, age, sexual orientation, parental status, protected genetic information or retaliation by contacting the servicing Component EEO Office or Civil Rights Office within 45 days of the alleged harassment. However, employees choosing to file such a complaint with their own EEO Office or Civil Rights Office must also report any possible harassment in accordance with their Component's reporting procedures.

2. Complaints may also be made directly to the Office of Special Counsel (www.osc.gov), alleging discrimination based upon marital status, political affiliation, or sexual orientation. The Office of Special Counsel investigates and prosecutes allegations of prohibited personnel actions.

VI. Questions

Address any questions or concerns regarding this Directive to the Deputy Officer for EEO Programs, in the Office for Civil Rights and Civil Liberties.

Elaine C. Duke
Under Secretary for Management

3/1/09
Date

ATTACHMENT 1

ANTI-HARASSMENT POLICY

It is the policy of the Department of Homeland Security (DHS) to maintain a work environment free from harassment.

Prohibited harassment includes, but is not limited to, unwelcome conduct, whether verbal, nonverbal, or physical conduct that has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, offensive, or hostile environment on the basis of an individual's race, color, religion, sex, sexual orientation, national origin, age, disability, marital status, parental status, political affiliation, or any other basis protected by law. Among the types of unwelcome conduct prohibited by this policy are epithets, slurs, stereotyping, intimidating acts, and the circulation or posting of written or graphic materials that show hostility toward individuals because of their protected status. Acts of physical violence, and actual, implied, or veiled threats of violence, are forms of prohibited harassment. Any form or manner of threatening or provoking remarks or threatening gestures in the workplace is prohibited. DHS prohibits harassment even if it does not rise to the level of actionable harassment under the law. Although a single utterance or act may not rise to a level that may be actionable under the law, it still has no place at DHS.

This policy prohibits harassment by or of any employee, supervisor, manager, contractor, vendor, applicant, or other individual with whom DHS employees come into contact by virtue of their work for DHS.

Sexual Harassment

Sexual harassment is a form of prohibited harassment. Harassing conduct is often, but not always, sexual in nature. DHS's policy forbids harassment based on gender regardless of whether the offensive conduct is sexual in nature or whether the individual engaged in harassment and the individual being harassed are of the same gender. Unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal or physical conduct of based on gender (whether or not it is of a sexual nature) constitute sexual harassment when:

a. Submission to such conduct is either an explicit or implicit term or condition of employment;

b. Submission to or rejection of the conduct is used as a basis for making employment decisions; or

c. The conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, offensive, or hostile environment.

Examples of gender-based harassment forbidden by this policy include: (1) offensive sexually-oriented verbal kidding, teasing or jokes; (2) repeated unwanted sexual flirtations, advances, or propositions, (3) continued or repeated verbal abuse of a sexual nature; (4) graphic or degrading comments about an individual's appearance or sexual activity; (5) offensive visual conduct, including leering, making sexual gestures, the display of offensive sexually suggestive objects or pictures, cartoons or posters; (6) unwelcome pressure for sexual activity; (7) offensively suggestive or obscene letters, notes, or invitations; or (8) offensive physical contact such as patting, grabbing, pinching, or brushing against another's body.

Employee Responsibilities

Everyone at DHS is responsible to help keep our workplace free from prohibited discrimination or harassment.

Everyone is expected to avoid any behavior or conduct that could reasonably be interpreted as prohibited harassment; no employees, regardless of title or position, are exempt from the requirements of this policy. Employees are encouraged to inform any person who engages in harassing conduct in the workplace that the conduct is unwelcome. Supervisors and managers are required to report any harassment they observe in accordance with the reporting procedure below.

Reporting Procedures

Any person who believes that he or she has been subjected to or witnessed harassment in violation of this policy should report the matter promptly to his/her first or second-line supervisor, to another management official in his or her chain of command, to _____ **[Component fills in contact information]**, or to the Equal Employment Opportunity (EEO) or Civil Rights Office servicing the applicable Component. If you are not promptly contacted by an investigator regarding your report, please notify _____ **[Components fill in contact information for a supervisor or contact of last resort]**.

Policy Against Retaliation

DHS does not tolerate retaliation against any individuals for reporting harassment or assisting another individual in reporting harassment, for providing information related to such a report, for filing an EEO complaint, or for opposing conduct that they believe is unlawfully discriminatory or harassing. Any person who believes he or she has been subject to retaliation reports the conduct using the same reporting procedures as for complaints of harassment.

DHS Response

All reports describing conduct that is inconsistent with this policy are investigated promptly. If deemed necessary, DHS takes interim measures while the investigation is pending and appropriate action once the report has been thoroughly investigated. DHS may discipline an employee for inappropriate conduct discovered in investigating reports made under this policy, regardless of whether the conduct amounts to a violation or law or even of this policy.

The confidentiality of reports or information relating to harassment is protected to the extent possible. Reports are addressed through an appropriate prompt, thorough, and impartial investigation. DHS takes prompt corrective action when it determines that harassment has occurred. Any employee found to have engaged in harassment is subject to disciplinary action, up to and including removal.

EEO Complaints

DHS Directive 256-01 does not affect an employee's right to file an EEO complaint of harassment or discrimination. An employee's use of the reporting procedures called for in the Directive does not result in an individual complaint of discrimination or harassment. Employees may make complaints of harassment or discrimination based upon race, color, religion, sex, national origin, disability, age, sexual orientation, parental status, protected genetic information, or retaliation by contacting _____ **[Components fill in information about the servicing Office of Equal Employment Opportunity (OEEO)]** within 45 days of the harassment or discrimination, regardless of whether an employee utilizes the procedures established under this policy. Complaints on some grounds can also be made directly to the Office of Special Counsel, including those based upon marital status, political affiliation, or sexual orientation. For complete information on filing such complaints, contact the Office of Special Counsel or visit www.osc.gov. Employees choosing to file such complaints with the servicing EEO or Civil Rights Office, or the Office of Special Counsel must still report harassment in accordance with their Component's harassment reporting procedures, which are available at _____ **[Components specify]**.

Laws Enforced by EEOC

Title VII of the Civil Rights Act of 1964 (Title VII)

This law makes it illegal to discriminate against someone on the basis of race, color, religion, national origin, or sex. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate applicants' and employees' sincerely held religious practices, unless doing so would impose an undue hardship on the operation of the employer's business.

- The Pregnancy Discrimination Act
  This law amended Title VII to make it illegal to discriminate against a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.
- The Equal Pay Act of 1963 (EPA)
  This law makes it illegal to pay different wages to men and women if they perform equal work in the same workplace. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.
- The Age Discrimination in Employment Act of 1967 (ADEA)
  This law protects people who are 40 or older from discrimination because of age. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.
- Title I of the Americans with Disabilities Act of 1990 (ADA)
  This law makes it illegal to discriminate against a qualified person with a disability in the private sector and in state and local governments. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless doing so would impose an undue hardship on the operation of the employer's business.
- Sections 102 and 103 of the Civil Rights Act of 1991
  Among other things, this law amends Title VII and the ADA to permit jury trials and compensatory and punitive damage awards in intentional discrimination cases.
- Sections 501 and 505 of the Rehabilitation Act of 1973
  This law makes it illegal to discriminate against a qualified person with a disability in the federal government. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless doing so would impose an undue hardship on the operation of the employer's business.
- The Genetic Information Nondiscrimination Act of 2008 (GINA)

Effective - November 21, 2009.

This law makes it illegal to discriminate against employees or applicants because of genetic information. Genetic information includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder or condition of an individual's family members (i.e. an individual's family medical history). The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

Facts About Discrimination Based on Sexual Orientation, Status as a Parent, Marital Status and Political Affiliation

The U.S. Equal Employment Opportunity Commission (EEOC) does not enforce the protections that prohibit discrimination and harassment based on sexual orientation, status as a parent, marital status and political affiliation. However, other federal agencies and many states and municipalities do. The relevant federal agencies are listed below. For assistance in locating your state or local agency, contact the EEOC office nearest you.

In the federal government the Civil Service Reform Act of 1978 (CSRA), as amended, prohibits federal employees who have authority to take, direct others to take, recommend or approve any personnel action from discriminating against applicants and employees on the bases of race, color, sex, religion, national origin, age, disability, marital status or political affiliation and from discriminating against an applicant or employee on the basis of *conduct* which does not adversely affect the performance of the applicant or employee. The Office of Personnel Management (OPM) has interpreted the prohibition of discrimination based on "conduct" to include discrimination based on sexual orientation. *See Addressing Sexual Orientation Discrimination in Federal Civilian Employment* at http://www.opm.gov/er/address2/guide01.htm.

EEOC has jurisdiction of the prohibitions against employment discrimination codified in Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, Sections 501 and 505 of the Rehabilitation Act of 1973, Titles I and V of the Americans with Disabilities Act of 1990 and the Civil Rights Act of 1991. These laws prohibit discrimination based on race, color, sex, religion, national origin, age and disability.

The Office of Special Counsel (OSC) and the Merit Systems Protection Board (MSPB) enforce the prohibitions against federal employment discrimination codified in the CSRA. The OSC will defer those bases of discrimination under EEOC's jurisdiction to the respective federal agency and its EEO process. The CSRA also prohibits employment discrimination in the federal government based on marital status, political affiliation and conduct which does not adversely affect the performance of the employee, none of which are within EEOC's jurisdiction. Moreover, the law defines ten other prohibited personnel practices in the federal government, all of which fall under the jurisdiction of the OSC and the MSPB. *See Prohibited Personnel Practices* at http://www.osc.gov/ppp.htm.

Executive Order 13087, amending Executive Order 11478, was signed on May 28, 1998, to provide a uniform policy for the federal government to prohibit discrimination based on sexual orientation. Executive Order 11478 section 1 reads:

It is the policy of the government of the United States to provide equal opportunity in federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, age, or sexual orientation and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the federal government, to the extent permitted by law.

Executive Order 13087 did not create any new rights, however it did set the stage for positive and constructive action by all units of the federal government to make certain that the workplace is one free from harassment and discrimination. Many of the Cabinet level agencies have also issued policy statements

prohibiting discrimination based on sexual orientation. Some of the agencies have developed parallel EEO complaint procedures allowing federal employees to file.

EEO complaints based on sexual orientation within their agencies.
Executive Order 13152, also amending Executive Order 11478, was signed on May 2, 2000, to provide for a uniform policy for the federal government to prohibit discrimination based on an individual's status as a parent. Executive Order 11478 section 1 now reads:

It is the policy of the government of the United States to provide equal opportunity in federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, age, sexual orientation or status as a parent, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the federal government, to the extent permitted by law.

Executive Order 13152 states that "status as a parent" refers to the status of an individual who, with respect to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is:

- a biological parent;
- an adoptive parent;
- a foster parent;
- a stepparent;
- a custodian of a legal ward;
- in loco parentis over such an individual; or
- actively seeking legal custody or adoption of such an individual.

The Executive Order authorized the OPM to develop guidance on the provisions of this Order.

For complaints of discrimination based on sexual orientation or status as a parent, Executive Order 13087, Executive Order 13152 and the Civil Service Reform Act provide protection. The Cabinet level agencies also have issued policy statements prohibiting discrimination based on sexual orientation. In addition, some agencies have developed parallel EEO complaint procedures allowing employees to file EEO complaints based on sexual orientation within their agencies. Employees should check with their agencies to see if processes exist to handle these complaints. In addition, employees should check their respective collective bargaining agreements and their agencies' negotiated grievance procedures to determine whether grievance procedures can be invoked to address these issues. Whether or not an agency has internal procedures to address allegations of discrimination based on sexual orientation, employees should consult the OPM's publication, *Addressing Sexual Orientation Discrimination in Federal Civilian Employment*, OWR-25 (June 1999).

Employees also should contact the OSC at (202) 653-7188 or at http://www.osc.gov and/or the MSPB at (202) 653-6772 or http://www.mspb.gov to determine whether they have a prohibited personnel practice complaint under 5 U.S.C. 2302(b)(10).

This page was last modified on June 27, 2001.

Federal EEO Complaint Processing Procedures

A. Contact EEO Counselor

Aggrieved persons who believe they have been discriminated against must contact an agency EEO counselor prior to filing a formal complaint. The person must initiate counselor contact within 45 days of the matter alleged to be discriminatory. 29 C.F.R. Section 1614.105(a) (1). This time limit shall be extended where the aggrieved person shows that: he or she was not notified of the time limits and was not otherwise aware of them; he or she did not and reasonably should not have known that the discriminatory matter occurred; despite due diligence he or she was prevented by circumstances beyond his or her control from contacting the counselor within the time limits. 29 C.F.R. Section 1614.105(a) (2).

B. EEO Counseling

EEO counselors provide information to the aggrieved individual concerning how the federal sector EEO process works, including time frames and appeal procedures, and attempt to informally resolve the matter. At the initial counseling session, counselors must advise individuals in writing of their rights and responsibilities in the EEO process, including the right to request a hearing before an EEOC administrative judge or an immediate final decision from the agency following its investigation of the complaint. Individuals must be informed of their right to elect between pursuing the matter in the EEO process under part 1614 and a grievance procedure (where available) or the Merit Systems Protection Board appeal process (where applicable). The counselor must also inform the individuals of their right to proceed directly to court in a lawsuit under the Age Discrimination in Employment Act, of their duty to mitigate damages, and that only claims raised in pre-complaint counseling may be alleged in a subsequent complaint filed with the agency. 29 C.F.R. Section 1614.105(b) (1).

Counseling must be completed within 30 days of the date the aggrieved person contacted the agency's EEO office to request counseling. If the matter is not resolved in that time period, the counselor must inform the individual in writing of the right to file a discrimination complaint. This notice ("Notice of Final Interview") must inform the individual that a complaint must be filed within 15 days of receipt of the notice, identify the agency official with whom the complaint must be filed, and of the individual's duty to inform the agency if he or she is represented. 29 C.F.R. Section 1614.105(d). The 30-day counseling period may be extended for an additional 60 days: (1) where the individual agrees to such extension in writing; or (2) where the aggrieved person chooses to participate in an ADR procedure. If the claim is not resolved before the 90th day, the Notice of Final Interview described above must be issued to the individual. 29 C.F.R. Section 1614.105(e),(f).

When a complaint is filed, the EEO counselor must submit a written report to the agency's EEO office concerning the issues discussed and the actions taken during counseling. 29 C.F.R. Section 1614.105(c).

C. Alternative Dispute Resolution (ADR)

Beginning January 1, 2000 all agencies were required to establish or make available an ADR program. Such program must be available for both the pre-complaint process and the formal complaint process. 29 C.F.R. Section 1614.102(b) (2). At the initial counseling session, counselors must advise individuals that, where an agency agrees to offer ADR in a particular case, the

individual may choose between participation in the ADR program and EEO counseling. 29 C.F.R. Section 1614.105(b) (2). As noted above, if the matter is not resolved in the ADR process within 90 days of the date the individual contacted the agency's EEO office, a Notice of Final Interview must be issued to the individual giving him or her the right to proceed with a formal complaint.

D. Complaints

A complaint must be filed with the agency that allegedly discriminated against the complainant within 15 days of receipt of the Notice of Final Interview. The complaint must be a signed statement from the complainant or the complainant's attorney, containing the complainant's (or representative's) telephone number and address, and must be sufficiently precise to identify the complainant and the agency, and describe generally the action or practice which forms the basis of the complaint. 29 C.F.R. Section 1614.106.

A complainant may amend a complaint at any time prior to the conclusion of the investigation to include issues or claims like or related to those raised in the complaint. After requesting a hearing, a complainant may file a motion with the AJ to amend a complaint to include issues or claims like or related to those raised in the complaint. 29 C.F.R. Section 1614.106 (d).

The agency must acknowledge receipt of the complaint in writing and inform the complainant of the date on which the complaint was filed, of the address of the EEOC office where a request for a hearing should be sent, that the complainant has the right to appeal the agency's final action or dismissal of a complaint, and that the agency must investigate the complaint within 180 days of the filing date. The agency's acknowledgment must also advise the complainant that when a complaint has been amended, the agency must complete the investigation within the earlier of: (1) 180 days after the last amendment to the complaint; or (2) 360 days after the filing of the original complaint. A complainant may request a hearing from an EEOC AJ on the consolidated complaints any time after 180 days from the date of the first filed complaint. 29 C.F.R. Section 1614.106 (e).

E. Dismissals of Complaints

Prior to a request for a hearing, in lieu of accepting a complaint for investigation an agency may dismiss an entire complaint for any of the following reasons: (1) failure to state a claim, or stating the same claim that is pending or has been decided by the agency or the EEOC; (2) failure to comply with the time limits; (3) 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; (4) filing a complaint which is the basis of a pending civil action, or which was the basis of a civil action already decided by a court; (5) where the complainant has already elected to pursue the matter through either the negotiated grievance procedure or in an appeal to the Merit Systems Protection Board; (6) where the matter is moot or merely alleges a proposal to take a personnel action; (7) where the complainant cannot be located; (8) where the complainant fails to respond to a request to provide relevant information; (9) where the complaint alleges dissatisfaction with the processing of a previously filed complaint; (10) where the complaint is part of a clear pattern of misuse of the EEO process for a purpose other than the prevention and elimination of employment discrimination. 29 C.F.R. Section 1614.107.

If an agency believes 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 rationale for this determination, identify the allegations which will not be investigated, and place a copy of this notice in the investigative file. This determination shall be reviewable by an EEOC AJ if a hearing is requested on the remainder of the complaint, but is not appealable until final action is taken by the agency on the remainder of the complaint. 29 C.F.R. Section 1614.107 (b).

F. Investigations

Investigations are conducted by the respondent agency. The agency must develop an impartial and appropriate factual record upon which to make findings on the claims raised by the complaint. An appropriate factual record is defined in the regulations as one that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred. 29 C.F.R. Section 1614.108 (b).

The investigation must be completed within 180 days from the filing of the complaint. A copy of the investigative file must be provided to the complainant, along with a notification that, within 30 days of receipt of the file, the complainant has the right to request a hearing and a decision from an EEOC AJ or may request an immediate final decision from the agency. 29 C.F.R. Section 1614.108 (f).

An agency may make an offer of resolution to a complainant who is represented by an attorney at any time after the filing of a complaint, but not later than the date an AJ is appointed to conduct a hearing. An agency may make an offer of resolution to a complaint, represented by an attorney or not, after the parties have received notice than an administrative judge has been appointed to conduct a hearing, but not later than 30 days prior to a hearing.

Such offer of resolution must be in writing and include a notice explaining the possible consequences of failing to accept the offer. If the complainant fails to accept the offer within 30 days of receipt, and the relief awarded in the final decision on the complaint is not more favorable than the offer, then the complainant shall not receive payment from the agency of attorney's fees or costs incurred after the expiration of the 30-day acceptance period. 29 C.F.R. Section 1614.109 (c).

G. Hearings

Requests for hearing must be sent by the complainant to the EEOC office indicated in the agency's acknowledgment letter, with a copy to the agency's EEO office. Within 15 days of receipt of the request for a hearing, the agency must provide a copy of the complaint file to EEOC. The EEOC will then appoint an AJ to conduct a hearing. 29 C.F.R. Section 1614.108 (g).

An EEOC AJ may dismiss a complaint for any of the reasons set out above under Dismissals. 29 C.F.R. Section 1614.109 (b).

Prior to the hearing, the parties may conduct discovery. The purpose of discovery is to enable a party to obtain relevant information for preparation of the party's case. Each party initially bears their own costs for discovery, unless the AJ requires the agency to bear the costs for the complainant to obtain depositions or any other discovery because the agency has failed to complete its investigation in a timely manner or has failed to adequately investigate the allegations. For a more detailed description of discovery procedures, see EEOC Management Directive 110, Chapter 6.

Agencies provide for 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 applied to the proceedings. If the AJ determines that some or all facts are not in genuine dispute, he or she may limit the scope of the hearing or issue a decision without a hearing.

The AJ must conduct the hearing and issue a decision on the complaint within 180 days of receipt by the AJ 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 within 40 days of

receipt of the AJ's decision, then the decision becomes the final action by the agency in the matter. 29 C.F.R. Section 1614.109 (i).

H. Final Action by Agencies

When an AJ has issued a decision (either a dismissal, a summary judgment decision or a decision following a hearing), the agency must take final action on the complaint by issuing a final order within 40 days of receipt of the hearing file and the AJ's decision. The final order must notify the complainant whether or not the agency will fully implement the decision of the AJ, and shall contain notice of the complainant's right to appeal to EEOC or to file a civil action. If the final order does not fully implement the decision of the AJ, the agency must simultaneously file an appeal with EEOC and attach a copy of the appeal to the final order. 29 C.F.R. Section 1614.110 (a).

When an AJ has not issued a decision (i.e., when an agency dismisses an entire complaint under 1614.107, receives a request for an immediate final decision, or does not receive a reply to the notice providing the complainant the right to either request a hearing or an immediate 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 processed certain allegations in the complaint for procedural reasons set out in 29 C.F.R. Section 1614.107, it must provide the rationale for its decision not to process the allegations. The agency's decision must be issued within 60 days of receiving notification that the complainant has requested 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 C.F.R. Section 1614.110 (b).

I. Appeals to the EEOC

Several types of appeals may be brought to the EEOC. A complainant may appeal an agency's final action or dismissal of a complaint within 30 days of receipt. 29 C.F.R. Sections 1614.401 (a), 1614.402(a).

A grievant may appeal the final decision of the agency, arbitrator or the FLRA on a grievance when an issue of employment discrimination was raised in the grievance procedure. 29 C.F.R. Section 1614.401 (d).

If the agency's final action and order do not fully implement the AJ's decision, the agency must appeal to the EEOC. 29 C.F.R. Section 1614.110 (a); 29 C.F.R. Section 1614.401 (b).

A complainant may appeal to the EEOC for a determination as to whether the agency has complied with the terms of a settlement agreement or decision. 29 C.F.R. Section 1614.504 (b).

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

Appeals must be filed with EEOC's Office of Federal Operations (OFO). Any statement or brief on behalf of a complainant in support of an appeal must be submitted to OFO within 30 days of 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 C.F.R. Section 1614.403.

EEOC has the authority to draw adverse inferences against a party failing to comply with its appeal procedures or requests for information. 29 C.F.R. Section 1614.404 (c).

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

A party may request that EEOC reconsider its decision within 30 days of receipt of the Commission's decision. Such requests are not a second appeal, and will be granted only when the previous EEOC decision involved a clearly erroneous interpretation of material fact or law; or when the decision will have a substantial impact on the policies, practices or operations of the agency. 29 C.F.R. Section 1614.405 (b).

The EEOC's decision will be based on a preponderance of the evidence. The decision will also inform the complainant of his or her right to file a civil action.

J. Civil Actions

Prior to filing a civil action under Title VII of the Civil Rights Act of 1964 or the Rehabilitation Act of 1973, a federal sector complainant must first exhaust the administrative process set out at 29 C.F.R. Part 1614. "Exhaustion" for the purposes of filing a civil action may occur at different stages of the process. The regulations provide that civil actions may be filed in an appropriate federal court: (1) within 90 days of receipt of the final action where no administrative appeal has been filed; (2) 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; (3) within 90 days of receipt of EEOC's final decision on an appeal; or (4) after 180 days from the filing of an appeal with EEOC if there has been no final decision by the EEOC. 29 C.F.R. Section 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 C.F.R. Section 1614.201. An ADEA complainant who initiates the administrative process in 29 C.F.R. Part 1614 may also file a civil action within the time frames noted above. 29 C.F.R. Section 1614.408.

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 C.F.R. Section 1614.409.

Filing a civil action terminates EEOC processing of an appeal. 29 C.F.R. Section 1614.410.

K. Class Complaints

Class complaints of discrimination are processed differently than individual complaints. See 29 C.F.R. Section 1614.204. The employee or applicant who wishes to file a class complaint must first seek counseling and be counseled, just like an individual complaint. However, once counseling is completed the class complaint is not investigated by the respondent agency. Rather, the complaint is forwarded to the nearest EEOC Field or District Office, where an EEOC AJ is appointed to make decision as to whether to accept or dismiss the class complaint. The AJ examines the class to

determine whether it meets the class certification requirements of numerosity, commonality, typicality and adequacy of representation. The AJ may issue a decision dismissing the class because it fails to meet any of these class certification requirements, as well as for any of the reasons for dismissal discussed above for individual complaints (see section 5, above).

A class complaint may begin as an individual complaint of discrimination. At a certain point, it may become evident that there are many more individuals than the complainant affected by the issues raised in the individual complaint. EEOC's regulations provide that a complainant may move for class certification at any reasonable point in the process when it becomes apparent that there are class implications to the claims raised in an individual complaint. 29 C.F.R. Section 1614.204 (b).

The AJ transmits his or her decision to accept or dismiss a class complaint to the class agent and the agency. The agency must then take final action by issuing a final order within 40 days of receipt of the AJ's decision. The final order must notify the agent whether or not the agency will implement the decision of the AJ. If the agency's final order does not implement the AJ's decision, the agency must simultaneously appeal the AJ's decision to EEOC's OFO. A copy of the agency's appeal must be appended to the agency's final order. 29 C.F.R. Section 1614.204(d) (7).. A dismissal of a class complaint shall inform the class agent either that the complaint is being filed on that date as an individual complaint and processed accordingly, or that the complaint is also dismissed as an individual complaint for one of the reasons for dismissal (discussed in section E, above). In addition, a dismissal must inform the class agent of the right to appeal to EEOC's OFO or to file a civil action in federal court.

When a class complaint is accepted, the agency must use reasonable means to notify the class members of the acceptance of the class complaint, a description of the issues accepted as part of the complaint, an explanation of the binding nature of the final decision or resolution on the class members, and the name, address and telephone number of the class representative. 29 C.F.R. Section 1614.204 (e). In lieu of an investigation by the respondent agency, an EEOC AJ develops the record through discovery and a hearing. The AJ then issues a recommended decision to the agency. Within 60 days of receipt of the AJ's recommended decision on the merits of the class complaint, the agency must issue a final decision which either accepts, rejects or modifies the AJ's recommended decision. If the agency fails to issue such a decision within that time frame, the AJ's recommended decision becomes the agency's final decision in the class complaint.

When discrimination is found in the final decision and a class member believes that he or she is entitled to relief, the class member may file a written claim with the agency within 30 days of receipt of notification by the agency of its final decision. The EEOC AJ retains jurisdiction over the complaint in order to resolve disputed claims by class members. The claim for relief must contain a specific showing that the claimant is a class member entitled to relief. EEOC's regulations provide that, when a finding of discrimination against a class has been made, there is a presumption of discrimination as to each member of the class. The agency must show by clear and convincing evidence that any class member is not entitled to relief. The agency must issue a final decision on each individual claim for relief within 90 days of filing. Such decision may be appealed to EEOC's OFO, or a civil action may be filed in federal court. 29 C.F.R. Section 1614.204(l) (3).

A class complaint may be resolved at any time by agreement between the agency and the class agent. Notice of such resolution must be provided to all class members, and reviewed and approved by an EEOC AJ. If the AJ finds that the proposed resolution is not fair to the class as a whole, the AJ will issue a decision vacating the agreement, and may replace the class agent with some other eligible class member to further process the class complaint. Such decision may be appealed to EEOC. If the

AJ finds that the resolution is fair to the class as a whole, the resolution is binding on all class members. 29 C.F.R. Section 1614.204 (g).

L. Grievances

Persons covered by collective bargaining agreements which permit allegations of discrimination to be raised in the grievance procedure, and who wish to file a complaint or grievance on an allegation of employment discrimination, must elect to proceed either under the procedures of 29 C.F.R. Part 1614 or the negotiated grievance procedures, but not both. 29 C.F.R. Sections 1614.301 (a). An election to proceed under Part 1614 is made by the filing of a complaint, and an election to proceed under the negotiated grievance procedures is made by filing a grievance. Participation in the pre-complaint procedures of Part 1614 is not an election of the 1614 procedures. The election requirement does not apply to employees of agencies not covered by 5 U.S.C. Section 7121(d), notably employees of the United States Postal Service.

M. Mixed Case Complaints

Some employment actions which may be the subject of a discrimination complaint under Part 1614 may also be appealed to the Merit Systems Protection Board (MSPB). In such cases, the employee must elect to proceed with a complaint as a "mixed case complaint" under Part 1614, or a "mixed case appeal" before the MSPB. Whichever is filed first is considered an election to proceed in that forum. 29 C.F.R. Section 1614.302.

Mixed case complaints are processed similarly to other complaints of discrimination, with the following notable exceptions: (1) the agency has only 120 days from the date of the filing of the mixed case complaint to issue a final decision, and the complainant may appeal the matter to the MSPB or file a civil action any time thereafter; (2) the complainant must appeal the agency's decision to the MSPB, not the EEOC, within 30 days of receipt of the agency's decision; (3) at the completion of the investigation the complainant does not have the right to request a hearing before an EEOC AJ, and the agency must issue a decision within 45 days. 29 C.F.R. Section 1614.302 (d).

Individuals who have filed either a mixed case complaint or a mixed case appeal, and who have received a final decision from the MSPB, may petition the EEOC to review the MSPB final decision. In contrast to non-mixed matters, individuals who wish to file a civil action in mixed- case matters must file within 30 days (not 90) of receipt of: (1) the agency's final decision; (2) the MSPB's final decision; or (3) the EEOC's decision on a petition to review. Alternatively, a civil action may be filed after 120 days from the date of filing the mixed case complaint with the agency or the mixed case appeal with the MSPB if there has been no final decision on the complaint or appeal, or 180 days after filing a petition to review with EEOC if there has been no decision by EEOC on the petition. 29 C.F.R. Section 1614.310.

Printed from www.eeoc.gov

Facts About Mediation of EEO Disputes

If you have an EEO dispute with your employer, you may be offered mediation services. Mediation can often resolve the dispute more quickly and inexpensively than investigation or litigation. Mediation may be offered at any point in the dispute process, including after you have filed a formal complaint of discrimination.

Mediation is an informal, confidential process for resolving disputes by using an impartial third-party (the mediator) who meets with the employer and employee. The mediator has no decision-making authority, but rather tries to assist the parties to resolve their dispute. Participation in mediation does not constitute an admission of any violation of the laws enforced by the Equal Employment Opportunity Commission. Sometimes mediation is the best way to preserve or build a better working relationship. To participate, parties need only be open to the possibility of resolution.

Generally, neither party to a dispute is required to participate in mediation, or to agree to a resolution; an agreement to mediate is an agreement to work in good faith with the other party toward a solution. Mediation typically includes an opening session, followed by a joint meeting of the parties, fully and fairly allowing both the employer and the employee to explain their point of view and to listen to the other party's point of view. Through private and joint meetings with the mediator, the parties attempt to develop and evaluate options for reaching agreement. When an agreement is reached, usually it is memorialized in an enforceable, written document signed by both parties.

Each party may have an attorney, friend, and relative or other support person, present at the mediation. If you are not able to reach resolution through mediation, then you may still pursue any legal claims or defenses you have preserved. The mediator is a neutral facilitator, not either party's advocate. The mediator will try to help both parties identify their interests and ways to achieve desired outcomes.

Here are some key questions for parties to consider in preparing to participate in mediation:

- What are the main issues of concern to you? What are the main issues of concern to the other party?
- What are your goals for the mediation? What are the goals of the other party?
- Who are the key players in the dispute?
- What obstacles might there be to having a productive session?
- What will happen if the dispute is not resolved through mediation?
- Is there anything you need to help you participate in the process?

DHS Headquarters is pleased to have contract support to assist in mediation for DHS-Headquarters and Office of the Inspector General employees. If you feel mediation might be a tool you wish to use, please contact James Cooley, EEO Specialist james.cooley@hq.dhs.gov or by calling 202-245-1133 (O).

DHS Headquarters Equal Employment Opportunity (EEO) Office

We can be reached at the following numbers:

Carl Lucas
EEO Director
Office: (202) 245-1131
carl.lucas@hq.dhs.gov

Kathleen Lane
Selective Placement Program Manager
Office: (202) 245-1132
kathleen.lane@hq.dhs.gov

James Cooley
Informal Complaint Manager
Office (202) 245-1133
james.cooley@hq.dhs.gov

Recardo Alexander
EEO Specialist/FPS
(202) 245-1136
recardo.alexander@hq.dhs.gov

Cynthia Powell
Administrative Specialist
Office: (202) 245-1130
cynthia.powell@hq.dhs.gov

Fax number: (202) 245-1141

Headquarters EEO Home Page: www.dhs.gov/eeo

Global e-mail address: eeo.hq-dhs@dhs.gov

Mailing address: 245 Murray Lane, SW, Bldg. 410, Mail Stop 0145, Rm.4300, Washington, DC 20528

The DHS Headquarters EEO Office works to ensure all DHS Headquarters employees work in an environment that is free from any form of discrimination. If you believe you have been subjected to unlawful discrimination you may be entitled to file an EEO complaint. For more information, please contact the office.

HQ EEO Intake

DATE OF INITIAL CONTACT	Check one: Employee/Former Employee ____ Applicant_____ Contractor_____
1. TYPE OF CONTACT ☐ TELEPHONIC ☐ IN-PERSON ☐ E-MAIL	

PRINCIPAL PURPOSE: To record the initial contact from an aggrieved individual (employees, applicants for employment, former employee or contractors) requesting; information on the EEO Process; EEO pre-complaint counseling, or mediation.

2. NAME (*Last, First, Middle Initial*)	
3. DUTY ORGANIZATION (for example: CRCL)	
4. WORK PHONE	5. HOME PHONE 6. CELL PHONE
7. E-MAIL ADDRESS	
8. WORK LOCATION (for example: VTA, Room XXX)	
9. MATTER (s) OF CONCERN IDENTIFIED (*Use additional sheets or attach e-mail, if necessary*) Note: If allegation involves Harassment, check here:_____ Sexual or Non-Sexual (circle one) .	
10. Basis of concern/protected class (check all that apply): Age_____Race_____National Origin_____Sex_____ Disability (Physical/Mental) _____ Religion _____ Protected Genetic Information_____ Reprisal_____(include date(s) of prior EEO activity/participation) _____ Sexual Orientation_____ Parental Status _____	
11. CONTACT SUMMARY ☐ Provide general information regarding EEO complaint processing, emphasizing time limitation (45 days) for initiating the EEO complaint process and right to representation during the EEO process, including the pre-complaint interview. Sent via e-mail: _____ ☐ Explain Mediation/ADR process. Sent via e-mail_____ ☐ Aggrieved elected to proceed with pre-complaint process at this time ☐ EEO Traditional Counseling ☐ ADR/Mediation ☐ Aggrieved declined to proceed with pre-complaint process at this time	
12. REQUEST FOR ANONYMITY AT THIS TIME ☐Yes, I wish to remain anonymous (Share with the assigned Counselor) ☐No, I do not wish to remain anonymous	

13. Intake by: (PRINTED NAME OF EEO OFFICIAL)	14. SIGNATURE OF EEO OFFICIAL	15. DATE
16. PRINTED NAME OF INDIVIDUAL (if in person)	17. SIGNATURE OF INDIVIDUAL	18. DATE

HQ EEO Intake

NOTES:

Department of Homeland Security
Headquarters Equal Employment Opportunity Office
REQUEST FOR MEDIATION

TO: James E. Cooley III
EEO Informal Complaint Manager
DHS HQ Equal Employment Opportunity Office

I, (Print Name) _____, request mediation and have listed the matters I wish to mediate in the space provided below:

I am seeking the following as resolution to my concerns:

Provide name, title and contact information of the Management Official that you wish to engage in mediation:

_____ (Print Name)

_____ (Title)

_____ (phone number)

_____	_____	_____
Aggrieved	Date	Telephone No.
_____	_____	_____
EEO Official/Counselor	Date	Telephone No.

This form should be faxed to 202.245.1141 or e-mail to *(Informal Complaint Manager's Name)*, on 202.245.1133 if you have any questions.