



Equal Employment Opportunity

TOPIC LEARNING OBJECTIVES

Upon successful completion of this topic, the student will be able to:

1. Recognize the ten bases for discrimination.
2. Identify the theories of discrimination.
3. Identify characteristics of the different types of sexual harassment.
4. Recognize the Federal sector discrimination complaint process.
5. Identify management's responsibilities when notified of a discrimination complaint.
6. Identify the complainant's and Responsible Management Official's rights.

STUDENT PREPARATION

Student Support Material

1. None

Primary References

1. Title VII of the Civil Rights Act of 1964

Additional References

1. None



Overview

- What is EEO
- Discrimination
- Sexual Harassment
- Complaint Process



Equal Employment Opportunity

- Provides equal opportunity to all
- Prohibits discrimination



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Discrimination Statutes & Regulations

- Laws
 - Title VII of the Civil Rights Act of 1964 (1991 Amendments)
 - Rehabilitation Act of 1973
 - Age Discrimination in Employment Act of 1967 as amended in 1974
 - Equal Pay Act of 1963 as amended in 1974
 - Pregnancy Discrimination Act of 1978
 - No Fear Act of 2002
 - Genetic Information Nondiscrimination Act (GINA) of 2008
- Regulations
 - 29 C.F.R. Part 1614
- Implementing Guidance
 - EEOC Management Directive 110
 - EEOC Management Directive 715
 - SECNAV Instructions
 - Fair Labor Standards Act of 1974



10 Bases for Discrimination

1. Race
2. Color
3. Religion
4. Retaliation (a.k.a. reprisal)
5. Sex-based (gender, gender identity, sexual orientation, pregnancy)
6. National origin
7. Equal pay and compensation
8. Age (over 40)
9. Disability (physical or mental)
10. Genetic Information

Bases may be found in Title VII, Table B-30



Qualified Individual with Disabilities

- A person who meets legitimate skill, experience, education, or other requirements of an employment position that he or she holds or seeks, and who can perform the "essential functions" of the position with or without reasonable accommodation



Theories of Discrimination

1. Disparate Treatment

- Being treated differently than one's similarly situated peers because of one's race, color, gender, etc.

2. Adverse Impact

- Employment decisions based on a facially neutral criteria, but that results in a significant negative impact on a given protected group
 - Avoid this, unless a legitimate **Business Necessity** exists

3. Denial of Reasonable Accommodation (RA)

- An agency must attempt to reasonably accommodate the known physical or mental disability of a qualified individual
 - Accommodate, unless it results in an **Undue Hardship**
- An agency must attempt to reasonably accommodate an individual's religious practices
 - Accommodate, unless a **De Minimus** situation exists



Examples of Reasonable Accommodation

- Job restructuring (redistribute marginal job functions)
- Modified work schedules (flex-time)
- Flexi-place
- Modifying or acquiring equipment or devices
- Providing qualified readers or sign language interpreters
- Making facilities physically accessible (ramps, parking spaces, etc.)
- Altering how or when an essential job function is performed
- Reassignment to a vacant position (within the scope of the organization, as a last resort)



Pregnant Workers Fairness Act (PWFA)

- Enacted in Dec 2022, 29 C.F.R. Part 1636
 - Regulation effective on 15 June 2024
- Primary purpose is to help ensure workers stay healthy throughout pregnancy while remaining gainfully employed in a paid duty status
 - Pregnancy itself is not a disability, making RA ill-suited to address temporary pregnancy-related conditions
- Extends RA protections to temporary pregnancy-related conditions
 - Requires employers to provide temporary “reasonable accommodations” for employees with known limitations related to pregnancy, childbirth, or related medical conditions, unless doing so creates undue hardship on the agency
 - Spouses/significant others/caregivers not covered
- Employees cannot be required to take leave if other accommodations (i.e., flex-time, telework, remote work, etc.) can meet the employee’s needs
 - Use leave only if employee prefers to take leave as the accommodation
 - PWFA is not additional paid leave



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Types of Sexual Harassment

1. “Quid Pro Quo” (Conditional)

- Submission to the conduct is explicitly or implicitly a term or condition of employment. Submission or rejection of the conduct is the basis for employment decisions (selection, promotion, termination, transfer, etc.)

2. Hostile Work Environment

- Harassment sufficiently severe or pervasive to alter the conditions of the recipient’s employment. This creates:
 - An abusive working environment
 - Detracts from the employee’s performance
 - Discourages employee from remaining on the job
 - Discourages employees to compete for promotions
- Determination of such an environment is based on assessment of the frequency of conduct, severity (physical and/or verbal), and whether it unreasonably interfered with work performance



Discrimination/Harassment Examples

- Epithets; slurs; jokes; name calling; obscene gestures or sounds; obscene, vulgar or abusive language, notes or emails; negative stereotypes or threatening, intimidating or hostile acts, that relate to race, color, religion, gender, national origin, age, or disability
- Written or graphic material that belittles or shows hostility or dislike toward an individual group because of race, color, religion, sex, national origin, age or disability and that is placed on walls, bulletin boards, or elsewhere on the employer's premise or circulated in the workplace
- Verbal/non-verbal comments, gestures, etc., sexual in nature



Responding to Sexual Harassment

- Person being harassed:
 - Take action immediately
 - Address at lowest level first
- Managers and Supervisors: "Be SMART"
 - Separate and investigate
 - Maintain confidentiality
 - Afford the employee the right to seek relief
 - Retaliation must **not** occur
 - Take appropriate action based on the circumstances

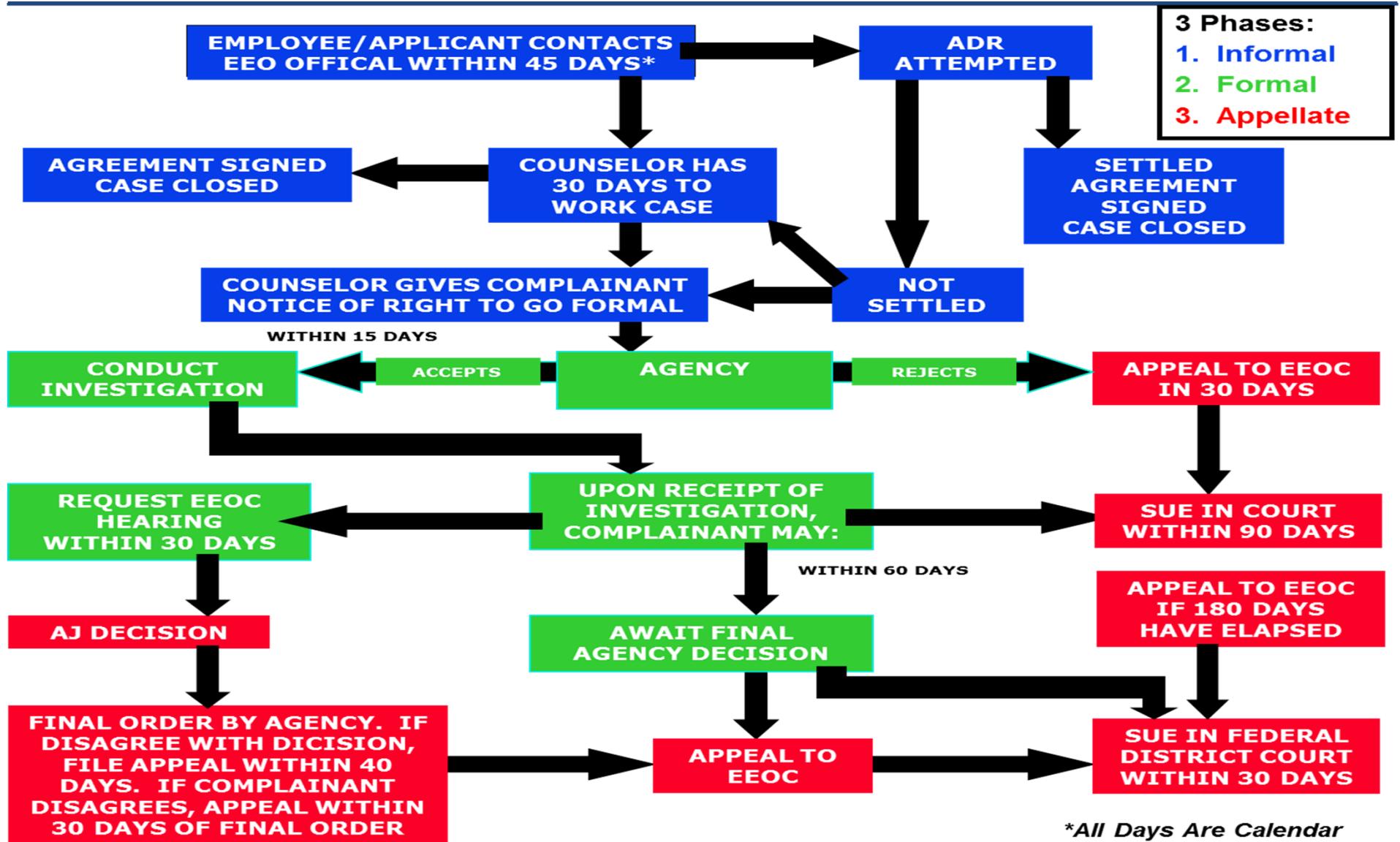


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EEO Complaint Process



*All Days Are Calendar



Alternative Dispute Resolution (ADR)

- Mediation is an informal process (a vehicle for ADR) in which a neutral third party, the mediator, assists the opposing parties in reaching a voluntary, negotiated resolution of the complaint

- Benefits
 - Cost effective
 - Encourages communication (between the parties)
 - Everyone has a chance to be heard, including the manager
 - Gets to root causes of the conflict
 - Non-adversarial
 - Parties have “nothing to lose and everything to gain”
 - Strengthens work relationship
 - Resolution committed to writing



Management's Responsibilities

1. Contact EEO Office
 - For information and advice
2. Respond to the complaint in a timely manner
 - Must initiate and complete a management inquiry within 14 calendar days (for sexual harassment only)
3. Notify the complaining party of findings
4. Take appropriate action
 - Based on results of investigation
5. Set the tone
 - Lead by example

Note: Management does not determine potential compensatory damages!



Complainant's Rights Under Title VII

- To a **reasonable amount of time** for counseling and other activities involved in the functional complaint process
 - Supervisors must arrange for the employee's release as required
 - Management will decide what a reasonable amount of time is
- To a **representative** who can advise them in answering questions during counseling and throughout the complaint process
- To **remain anonymous during the informal stage** of the complaint process
- To be **free from** restraint, **interference**, coercion, or reprisal either during or after the complaint process
- To **file a formal complaint** if the informal process does not result in a satisfactory resolution



RMO's Rights

- Who is a Responsible Management Official (RMO)?
 - A person who the complainant believes discriminated against him/her, believes participated in the discrimination against him/her, or believes is responsible for the discrimination against him/her
- RMO Rights
 - **To be informed** of any allegation made against them and be given a full and fair opportunity to respond to those allegations for the record
 - **To a representative** to advise them on answering questions during the counseling phase and throughout the complaint process
 - **To see any document** which names them. However, the name of the complainant must be withheld during the informal process unless the complainant has authorized its release
 - **To be kept advised** of the progress of the complaint
 - **To know about** and answer any new allegations that come up during the inquiry or later during the formal complaint proceedings



Proving Discrimination

- Establishing a “prima facie” case of discrimination (proving discrimination)
 - Raising an inference of discrimination
 - Complainant belongs to a protected group (is covered by Title VII)
 - Applied for and was qualified
 - Was rejected / treated differently than similarly situated peers
 - Management selected another; continued to seek applicants
 - Management Defense
 - Management must articulate a “legitimate non-discriminatory reason” for its actions
 - Management must be able to explain its reasons; relevance to the job or situation.
Documentation is preferred
 - Burden of the Complainant
 - Complainant must establish **pretext** (i.e., show that management’s reasons are untrue)
 - Burden of proof is always on the complainant



Compensatory Damages

- Definition
 - Monetary relief awarded to victims of employment discrimination for their out-of-pocket expenses and for pain and suffering (\$300,000 cap)
- Exclusion
 - Discrimination based on age or equal pay violations
- Concepts
 - Employer **only responsible for the grief caused**, not other factors (e.g., abusive spouse, death in family, divorce, etc.)
 - May result in exploration of deeply personal issues
 - **"Eggshell skull" theory**: take victim as they are, without speculation (e.g., incest victim who suffers much more than others when sexually harassed at work)
 - Complainant must show **objective evidence** that:
 - Compensatory damages incurred
 - The damages are related to the discrimination



Summary

- What are the three theories of discrimination?
- What are the types of sexual harassment?



Summary

- What are the three phases of the Federal sector discrimination complaint process?
 - What are management's responsibilities when notified of discrimination complaints?
 - Does management get to determine potential compensatory damages?