



WHAT YOU
NEED TO
KNOW ABOUT
EEO

Publication 133
May 2003

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Laws and EEOC Regulations

Title VII of the Civil Rights Act of 1964, as amended

Title VII prohibits discrimination based on race, color, religion, sex, or national origin. Title VII also prohibits reprisal or retaliation for taking part in the discrimination complaint process or for opposing any unlawful employment practice under its authority.

Age Discrimination in Employment Act of 1967, as amended

The Age Discrimination in Employment Act (ADEA) prohibits discrimination in employment based on age (40 years or older).

Rehabilitation Act of 1973, as amended

The Rehabilitation Act prohibits discrimination based on mental and physical disability and requires agencies to reasonably accommodate the known physical or mental limitations of qualified employees or applicants with disabilities. The Rehabilitation Act also requires that agencies ensure that individuals with disabilities have access to electronic and information technology that is comparable to the access of individuals who do not have disabilities unless that would place an undue burden on the agency.

Equal Pay Act of 1963

The Equal Pay Act (EPA) prohibits sex-based wage discrimination. The EPA prohibits agencies from paying employees of one sex lower wages than those of the opposite sex for equal work performed under similar working conditions.

Title 29 Code of Federal Regulations Part 1614

29 CFR Part 1614 contains the regulations that govern the processing of federal sector discrimination complaints.

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Introduction

This booklet provides an overview of the Equal Employment Opportunity (EEO) complaints process for the Postal Service and explains your rights and responsibilities. Please read it carefully.

Although this booklet contains some important information, it does not include all of the discrimination complaint laws or EEO regulations. For further information, contact the EEO office located in your district, area, or Headquarters facility.

This booklet also provides an explanation of the REDRESS® program. REDRESS, an alternative dispute resolution process, may offer you an opportunity to request mediation in addition to traditional EEO counseling. Detailed information regarding REDRESS is located on the Internet at www.usps.com/redress.

Administrative Process for Complaints of Illegal Discrimination

Precomplaint Process

As a Postal Service employee or applicant for Postal Service employment, if you believe you have been discriminated against because of your race, color, religion, sex, age, national origin, physical or mental disability, or in retaliation for involvement in prior EEO activity, you must take part in the precomplaint process before filing a formal EEO complaint.

Beginning the Process in a Timely Manner

To begin the precomplaint process, you must contact the EEO office found in your Postal Service district, area, or Headquarters facility within 45 calendar days of the incident you believe to be discriminatory, or in the case of a personnel action, within 45 calendar days of the effective date of the action.

- Most employees and applicants begin counseling by contacting their local EEO office. See one of the EEO posters displayed in your facility for information on how to contact the proper EEO office.
- Only employees or applicants for Headquarters, Headquarters field units or the Postal Inspection Service should contact the dispute resolution specialist (DRS) at Headquarters. You may contact the DRS at Headquarters by telephone at 1-888-308-7654 or you may mail your request for counseling to the following address:

EEO COMPLAINT PROCESSING
US POSTAL SERVICE
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4135

Representation

You may designate a representative at any stage of the complaint process, including the precomplaint counseling stage. However, the designation of a representative may not cause undue delay to the process or unwarranted expense to the agency.

Official Time

Employee complainants and their designated representatives, if also employed by the Postal Service, may expect a reasonable amount of official time to present the complaint and to respond to agency requests for information, if they are in a duty status. The term duty status refers to an employee's normal hours of work. What constitutes a reasonable amount of official time may vary from case to case. However, with regard to preparation time, reasonable refers to hours or portions of hours. Employees seeking official time for EEO-related matters must receive advance approval from their immediate supervisors.

If Postal Service officials or Equal Employment Opportunity Commission (EEOC) officials require their attendance, employee complainants and their designated employee representatives may attend EEO meetings or hearings on official time. Postal Service employees seeking official time to attend EEO meetings must present written requests to their immediate supervisors before the scheduled meeting.

Providing Information

In most instances, the EEO office advises you to complete PS Form 2564-A, *Information for Precomplaint Counseling*, and to return it to them within 10 calendar days.

The EEO dispute resolution specialist (DRS) uses the information to look into the matter informally and to try to resolve your concerns.

If you fail to return the form within 10 calendar days of receiving it, the EEO office may close the precomplaint process, because the DRS does not have enough information to process your counseling request.

Maintaining Anonymity

You may remain anonymous during the precomplaint process. If you request anonymity, the EEO office will honor your request.

Taking Part in the Precomplaint Process — Counseling

The DRS gathers information about jurisdictional issues — for example, the timeliness of your request — and tells you about the EEO complaint process. The DRS also explains your choice to engage in either traditional counseling or REDRESS mediation during the precomplaint process. See the next section for more information about REDRESS.

The DRS conducts informal counseling inquiries and does not usually obtain extensive documentation or written testimony. The DRS may conduct EEO counseling in person, by mail, or by telephone.

What You Need to Know About EEO

During counseling inquiries, the DRS usually meets separately with you and the other party in the dispute. However, if both parties agree, the DRS may meet with you at the same time.

The DRS makes necessary inquiries of Postal Service employees and supervisors. He or she also reviews relevant agency regulations and documents, including comparative employee data, to help him or her understand the issues and resolve the matter. Even when you request a comparison, the DRS cannot reveal the identity of the comparative individuals.

The goal of counseling is an agreeable resolution to the issue. In trying to resolve your dispute, the DRS may discuss settlement alternatives with you and the other involved party. Settlement discussions are confidential. A willingness to discuss resolution does not suggest that either party feels that his or her position is wrong or weak.

- If the matter is not resolved within 30 calendar days from the date on which you first seek EEO counseling, the DRS may ask you to agree to extend the counseling period. The extension cannot be longer than 60 days, resulting in no more than 90 total days in the counseling period. Your agreement to extend the counseling period must be in writing.
- If the matter is not resolved at the end of the counseling period, including the extended period (if you have agreed to it), the DRS conducts a final interview and issues you a notice of right to file a formal complaint. The notice is issued either in person or by certified mail.

REDRESS — A Conflict Resolution Process

When you seek EEO counseling, the DRS will tell you about REDRESS, which is an opportunity for you and the appropriate management official to discuss your complaint with the help of a professionally trained mediator who is not an employee of the Postal Service. REDRESS mediators support the parties in identifying the core issues of their dispute and exploring possible solutions. Employees usually find this opportunity for direct communication and conflict resolution satisfying and effective.

Your participation in REDRESS is voluntary and may be done on the clock. The Postal Service pays the cost of the mediator. The mediator keeps everything said in mediation confidential.

Some issues are not appropriate for alternative dispute resolution. The EEO office tells you when the issue you have raised is inappropriate.

When the DRS offers you the choice to take part in REDRESS and you agree in writing to do so, the precomplaint processing period is 90 calendar days from the date of your initial contact with the EEO office.

- If the matter is not resolved within 90 calendar days, the DRS issues you a notice of right to file a formal complaint.
- You may have discussed many issues during your REDRESS mediation session, but only those issues that you included in your timely request for EEO counseling may be included in a formal complaint.

Formal Complaint Process

Losing Your Right to Anonymity

If you decide to file a formal complaint, your identity will not be kept confidential during the formal complaint process. When a complaint reaches the formal stage, the complaint file may be opened to those parties who are involved and who require access to it.

Filing Formally in a Timely Manner

To file a formal complaint, you must put your complaint in writing and sign it. Your attorney, if one represents you, may sign it instead. If someone who is not an attorney represents you, you must sign the complaint yourself and designate your representative in writing.

Equal Employment Opportunity Commission (EEOC) regulations require that EEO complaints against the Postal Service must be filed with the Postal Service. You should file your complaint with the EEO office that is indicated on the PS Form 2579, *Notice of Right to File*. Be sure to use your correct address so your complaint will not be misdirected. If you are unsure of the address where you should mail or personally deliver your formal complaint, contact the EEO office that processed your precomplaint.

- You may use Form 2565, *EEO Complaint of Discrimination*, to file your formal complaint.
- To be timely, you must mail your complaint postmarked no later than 15 calendar days after you receive PS Form 2579, *Notice of Right to File*, or you may deliver it in person no later than 15 calendar days after you receive PS Form 2579.

Prohibition Against Using Penalty Envelopes and Postal Equipment

Do not mail your complaint in a penalty envelope printed with the official mail emblem to avoid payment of postage. If you do, you may be subject to a \$300 fine.

Do not use Postal Service computers or office equipment such as photocopiers or facsimile machines to prepare or send EEO complaint documents without authorization by the agency.

Changing Your Mailing Address

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

Receiving Acknowledgment and Acceptance of the Complaint

The Postal Service's complaint processing office acknowledges your complaint and sends you a letter telling you whether the complaint has been accepted for investigation. If your complaint is not accepted, you will receive a letter explaining the reasons for the dismissal of your complaint and outlining your appeal rights should you disagree. (See "Appealing the Decision or Filing a Civil Action on page 17.")

If the Postal Service believes that part of your complaint should be dismissed, you will receive a letter outlining those claims that will be investigated and identifying the claims that will be held in your case file awaiting future dismissal. You may not appeal pending dismissals.

Waiting for Investigation of the Complaint

If the Postal Service accepts your complaint or any part of it, it then assigns the complaint to an EEO complaints investigator. The EEO complaints investigator collects factual information about the accepted issues and prepares a report. The complaints investigator is responsible for gathering evidence. He or she does not take the side of any of the parties involved in the dispute. The investigative report does not contain the complaints investigator's opinion on the merits of the case or his or her conclusion on a claim of discrimination.

While your case is in the investigative stage, you may ask to amend the issues accepted so the report includes an investigation into like or related issues. Your request must be put in writing and mailed or delivered to the EEO office that accepted your complaint. You should make your request within 45 days of the date of the incident that you believe was discriminatory, or if a personnel action, within 45 calendar days of the effective date of the action. Since the Postal Service uses the receipt date of your request as an important factor in deciding whether or not to amend your complaint, you may prefer to use Certified Mail or Delivery Confirmation to document when your complaint was received.

If you have more than one complaint at the formal stage, the Postal Service will consolidate them into one investigation.

If you are dissatisfied with the way the Postal Service is processing your complaint, you may put your objections in writing and then mail or deliver your letter to the EEO office that accepted your complaint. You will receive a written response. The Postal Service adds both your letter of objection and the Postal Service's written response to the investigative case file.

The complaints investigator typically completes the investigation within 180 calendar days of the date the complaint was filed, unless you and the Postal Service voluntarily agree in writing to extend the time up to an additional 90 calendar days.

However, when consolidating two or more complaints for investigation, or when amending a complaint under investigation to include like or related issues, the investigation may continue for up to 360 days after the filing date of the original complaint.

Cooperating With the Complaints Investigator

The complaints investigator takes testimony from relevant persons in affidavit form under penalty of perjury. Your appointed representative may help draft the language for your affidavit, but only you can sign it. Your statement must be true and correct.

The complaints investigator asks you to provide evidence about the remedies to which you believe you are entitled. You must provide relevant evidence about the remedy, including medical reports and other personal documents.

There are penalties for any false statements. Section 1001, Title 18 of the *United States Code* states that whoever, in any matter within the jurisdiction of the executive branch of the United States government, which includes the Postal Service, knowingly and willfully does the following:

...falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years or both.

Providing information that a complaints investigator requests is mandatory both for you and any Postal Service employee witnesses. If you do not provide the information the complaints investigator requests, your complaint may be dismissed.

Filing Both a Complaint and a Grievance

If you file an EEO complaint and a grievance covering the same matter, the Postal Service may defer processing the EEO complaint until the grievance procedure ends. The Postal Service will notify you in writing if it decides to defer your case.

Requesting Final Postal Service Decision, or Requesting an EEOC Hearing Before the Postal Service Issues a Final Decision

When the report of investigation is complete, you will receive a copy of the investigative file with a notice explaining your appeal rights. Within 30 calendar days of the date you receive the report, you may request either a hearing before the EEOC or a final Postal Service decision without a hearing.

- To request a hearing, send your request directly to the EEOC district office that serves your geographic area within 30 days of your receipt of the investigative report. Be sure to send a copy of your request to the appropriate Postal Service EEO office at the same time. The addresses of both offices are included in the letter that you receive with your investigative file.
- If you request a hearing in a timely manner, the Postal Service will send the complaint file to the EEOC. The EEOC then decides whether to conduct a hearing on some or all of the issues in the case.

- Following the hearing, the EEOC judge will send the hearing record and copies of his or her decision containing findings of fact and conclusions of law to you and to the Postal Service. The Postal Service has 40 days from date of receipt to issue its Notice of Final Action (final action). The final action may be to carry out the judge's decision, in full or in part, or to decline to carry out the judge's decision. If the Postal Service decides that its final action will not fully carry out the judge's decision, then the Postal Service must file an appeal with the EEOC. Regardless of the Postal Service's determination, you will be notified of its final action and provided any applicable appeal rights within 40 days of the agency's receipt of the judge's findings.
- If you do not request a hearing within 30 days of your receipt of the investigative file or if you request a final decision without a hearing, the Postal Service will issue a final decision.

Appealing the Decision or Filing a Civil Action

Appealing to the EEOC Office of Federal Operations

If your complaint was not accepted for investigation and you receive a Postal Service final decision dismissing it, you may appeal the dismissal decision to the EEOC Office of Federal Operations (OFO). If you are not represented by an attorney during the complaint process your deadline for filing an appeal begins upon your receipt of the agency decision. If you are represented by an attorney, the deadline for filing an appeal with the OFO begins when your attorney receives the Postal Service decision.

If you receive a final agency decision following the conclusion of the investigation, you may appeal the agency's decision to the OFO within 30 calendar days of the date you receive it.

- After a hearing, you have 30 days from the date you receive the Postal Service's final action to appeal the decision to the OFO. During that same 30 days, you may appeal the EEOC administrative judge's decision to the OFO.
- If the Postal Service does not issue a final action within 40 days from the date it receives the administrative judge's decision, you may appeal the administrative judge's decision to the EEOC within 30 days of the expiration of the 40-day review period.
- Remember, if your representative is an attorney, the time period for appeal begins when the attorney receives the Postal Service's decision or final action.

Appeals to the OFO should be sent on EEOC Form 573, *Notice of Appeal/Petition to the Equal Employment Opportunity Commission*, or PS Form 3573, *Notice of Appeal/Petition to the Equal Employment Opportunity Commission, Office of Federal Operations*. You must serve a copy of your appeal on the Postal Service at the same time it is sent to the OFO and provide proof that you took this action.

Filing a Civil Action

You may file a civil action in an appropriate United States district court:

- Within 90 days of receipt of the Postal Service's final agency decision or final action on the complaint, if no appeal has been filed.
- After 180 days from the date of filing your formal complaint if no appeal has been filed and the Postal Service has not issued you a final agency decision or a final action.
- Within 90 days after you receive the EEOC's final decision on appeal.
- After 180 days from the date of filing an appeal with the OFO if there has been no final decision by the EEOC.

Age Discrimination in Employment Act Cases

Filing a Formal Complaint, or Filing a Civil Action

If you believe that you have been discriminated against based on age (40 years or older), you have the right to file a formal complaint or to bypass the administrative complaint processing procedures and directly file a civil action in an appropriate U.S. district court pursuant to the Age Discrimination in Employment Act (ADEA).

Filing an ADEA Civil Action

If you decide to file a civil action, you must first provide the EEOC a written notice of intent to sue under the ADEA. You must file the notice with the EEOC within 180 calendar days of the date of the action you believe to be discriminatory. When you have filed this notice of intent to sue in a timely manner, you must wait at least 30 calendar days before filing a civil action.

Notices of intent to sue must be filed in writing with the EEOC. Personal delivery should be made to:

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
OFFICE OF FEDERAL OPERATIONS
FEDERAL SECTOR PROGRAMS
1801 L STREET NW
WASHINGTON DC 20507-0002

Or mail to:

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
OFFICE OF FEDERAL OPERATIONS
FEDERAL SECTOR PROGRAMS
PO BOX 19848
WASHINGTON DC 20036-9848

What You Need to Know About EEO

Or fax (if no more than ten pages) to:
(202) 663-7022.

The notice of intent to sue should be dated and must contain the following information:

1. Statement of intent to file a civil action under Section 15(d) of the Age Discrimination in Employment Act of 1967, as amended.
2. Name, address, and telephone number of the employee or applicant.
3. Name, address, and telephone number of the complainant's designated representative, if any.
4. Name and location of the Postal Service where the alleged discriminatory action occurred.
5. Date on which the alleged discriminatory action occurred.
6. Statement of the nature of the alleged discriminatory actions.
7. Signature of the complainant or complainant's representative.

Reminder: After the notice of intent to sue is timely filed, you must wait at least 30 days before filing your civil action.

Filing a Formal Complaint Under ADEA

If you choose to file a formal administrative complaint, you must complete certain steps before going to court. You cannot go to court unless one of the following conditions is met. You may file a civil action in an appropriate United States district court:

- Within 90 days of receipt of the Postal Service's final agency decision or final action on an individual complaint, or its final decision on a class complaint, if no appeal has been filed.

- After 180 days from the date of filing an individual or class complaint if no appeal has been filed and the Postal Service has not issued a final action on an individual complaint or a final decision on a class complaint.
- Within 90 days after receipt of the EEOC's final decision on appeal.
- After 180 days from the date of filing an appeal with the EEOC if the EEOC has not issued a final decision.

Equal Pay Act Cases

You may file an Equal Pay Act (EPA) wage discrimination lawsuit in a court of competent jurisdiction without filing a sex-based administrative complaint under the EPA or Title VII. Alternatively, you may choose to file a sex-based administrative complaint of wage discrimination with the Postal Service under the EPA, Title VII, or both.

Mixed EEO and Merit Systems Protection Board Cases

Filing a Formal EEO Complaint or Appealing an Action to the MSPB

You may be eligible to raise a complaint of discrimination with the Merit Systems Protection Board (MSPB) in what is called a mixed-case appeal. A mixed case is one where an action appealable to the MSPB is combined with a claim of discrimination. If you are eligible to file a mixed case, you begin the administrative process by filing with the MSPB or with the Postal Service EEO office as described below.

Who Is Eligible to File a Mixed-Case Complaint

All employees or former employees who believe they have been discriminated against and who have an action appealable to the MSPB may file a mixed-case complaint. Actions appealable to the MSPB include the following:

- Recovery from a compensable work-related injury.
- Return from active duty in the armed forces of the United States.

Adverse personnel actions may be appealed to the MSPB by employees with one or more years of current continuous service in the same or a similar position in the Postal Service who are eligible for veterans' preference and employees covered by Public Law 100-90. Employees covered by Public Law 100-90 include postmasters, employees in

supervisory positions, a limited group of management employees, and some employees in confidential positions. Adverse personnel actions include:

- Suspension of more than 14 days.
- Reduction in grade and/or pay.
- Furlough of 30 days or less.
- Constructive discharge.
- Removal.
- Reduction in Force (RIF), but only in relation to preference eligibles.

Processing of Mixed-Case Complaints

If you choose to file an appeal with the MSPB, you must file your appeal within 30 days of the disciplinary or personnel action involved.

You may receive precomplaint counseling on mixed-case issues, but you may not file both a formal EEO mixed-case complaint with the Postal Service and a mixed case appeal with the MSPB at the same time. What you choose to do first, that is, file an appeal with MSPB or file a formal complaint of discrimination, determines where and how your claim is processed.

- If you decide to file a formal mixed-case complaint with the EEO office and your complaint is accepted, it will be assigned to a complaints investigator. After the investigation is completed, you will receive a copy of the investigative file and a final Postal Service decision.

What You Need to Know About EEO

- If you first file a mixed-case complaint with the EEO office, you may abandon the EEO complaint process and file an appeal with MSPB if 120 days have expired since you filed the formal complaint and no final Postal Service decision has been issued.
- You may appeal the final agency decision of the Postal Service to the MSPB — but not the EEOC — and request a hearing within 30 calendar days of receiving the decision, or file a civil action in an appropriate U.S. district court within 30 calendar days of receiving it.
- If you decide to appeal to the MSPB, you may ask the EEOC to review the MSPB administrative judge's decision on the discrimination aspects of your appeal.

Withdrawals, Settlements, and Remedies

You may withdraw or settle a complaint at any stage of the process.

Withdrawing a Complaint

If you decide to withdraw a complaint, put your withdrawal in writing, sign it, and deliver it to the EEO office that handled your complaint.

Settling a Complaint

Postal Service policy is to settle complaints informally through good faith negotiation and mutual agreement whenever possible and practicable. When you agree to settle a complaint, you are agreeing that you have received something that has value to you, in other words — something that has merit, desirability, or importance to you.

- If you wish to do so, you may seek the advice of an attorney or other qualified representative before you agree to settle your EEO complaint.
- If you agree to settle a complaint based on one or more stipulations, these must be written down, agreed on, and signed both by you and by a management designee.
- EEOC regulations specify the procedures to follow if either party comes to believe the settlement agreement has been breached. Read the EEOC settlement agreement procedures for further information or consult the EEO office.

Offer of Resolution

Under certain circumstances, the Postal Service may limit its liability for attorney's fees by making an offer to resolve a complaint by providing appropriate relief to a complainant. Such an offer would be in writing and would explain the consequences of rejecting it.

Remedies Not Available to You Under the Law

If you are offered relief, it may not be all the relief you requested. The following remedies are not available in discrimination cases arising under the enforcement of the EEOC.

- Punitive damages (a monetary award to you to punish the person responsible for discrimination).
- Attorney fees if:
 - The fees are incurred before you file a formal complaint, unless the complaint goes to a hearing, the administrative judge finds in your favor, the Postal Service decides not to carry out that decision and appeals to EEOC, and EEOC agrees with the administrative judge.
 - You fail to notify the Postal Service that an attorney is representing you.
 - You file an age complaint or an Equal Pay Act claim.
- Compensatory damages if you file an age or an Equal Pay Act claim, or in Rehabilitation Act cases if the Postal Service made a good faith effort to provide a reasonable accommodation, regardless of whether there is a finding of discrimination.

Interim Relief

If you prevail in an EEO complaint involving termination or indefinite suspension, the administrative judge may order that you be returned to the workplace pending any appeals. You will receive a copy of the Postal Service's appeal and notification of the agency's offer to restore you to duty either temporarily or conditionally until the appeal is decided. You may decline the offer of interim relief.

In limited circumstances the Postal Service may notify you that you will not be restored to duty pending the EEOC's decision on appeal. You may not appeal the Postal Service's decision not to restore you to duty. You will receive a copy of the Postal Service's appeal and you will receive front pay (also known as prospective pay) to compensate you for the salary you would have earned if you had been temporarily or conditionally restored to duty. If the EEOC decides the appeal in your favor, you receive back pay and interest from the effective date of the termination or indefinite suspension to the date that your front pay began.

Your Duty to Mitigate Back Pay Awards

If you are awarded back pay, you must provide information about your efforts to secure other employment during the entire back pay period.

If you prevail in an EEO complaint involving separation or indefinite suspension, and you return to work for the Postal Service, you are not required to provide any information about your inability to secure other employment during the first 45 days of your separation or suspension. After that time period, deductions will be made from your back pay for:

- Salary you earned or could have earned through reasonable diligence during the period of separation or indefinite suspension.
- Salary you could not have earned during any period in which you were not ready, willing, and able to return to duty because you were ill or injured.
- Salary for any period during which you were unavailable to return to duty for reasons that are not related to unlawful discrimination.

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