

SUBCHAPTER 1614.1

CIVILIAN DISCRIMINATION COMPLAINTS MANAGEMENT PROGRAM

- References:**
- (a) 29 CFR Part 1614 of 9 Nov 99
 - (b) EEOC MD 110 of 9 Nov 99
 - (c) EEOC MD 715 of 1 Oct 03
 - (d) Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002
 - (e) 5 CFR Part 1201 of 1 Jan 01
 - (f) EEOC Guidance 915.002 of 18 Jun 99
 - (g) Department of the Navy Discrimination Complaints Program Management Manual
 - (h) SECNAVINST 12250.6 of 22 Jan 03

Cancelled: OCPMINST 12713.2A
SECNAVINST 12000.22B

1. Purpose. This subchapter establishes policy and assigns responsibility for the Civilian Discrimination Complaints Management Program within the Department of the Navy (DON).

2. Policy.

a. In accordance with references (a) through (h), DON policy assures equal employment opportunity (EEO) for all DON employees and applicants; prohibits discrimination in employment on the basis of race, color, religion, sex, national origin, age, or disability; prohibits acts of reprisal against persons presenting or processing allegations of discrimination; and promotes the full realization of EEO through continuing affirmative programs. This policy is an integral part of every aspect of human resources (HR) management practices in the employment, development, advancement, and treatment of civilian employees.

b. All DON military and civilian supervisors and employees will protect the integrity of the discrimination complaints process by avoiding any actions that violate governing laws, regulations, or this instruction. Commands and activities will avoid conflicts of interest or the appearance of conflicts of interest in the processing of discrimination complaints. Discrimination complaints will be processed promptly, impartially, and in compliance with the timeframes established in references (a), (b), and (g).

c. Corrective and/or disciplinary action will be considered and documented when there is a finding of unlawful discrimination. The HR management policies or practices, found to have an unlawful discriminatory impact on a protected group, will be modified to nullify such impact.

d. In accordance with reference (d), DON will not tolerate harassment based on sex (with or without sexual misconduct), race, color, religion, national origin, age, disability, or reprisal. This prohibition covers harassment by or against anyone in the workplace.

3. Responsibilities

a. In accordance with reference (a), The Secretary of the Navy (SECNAV) will ensure that a system exists to process discrimination complaints in a timely and objective manner.

b. As delegated by reference (h), The Assistant Secretary of the Navy (ASN) (Manpower and Reserve Affairs (M&RA)), as Director of EEO, shall establish policy for implementing a civilian EEO program that includes the processing of discrimination complaints throughout DON. The Director of EEO ensures that adequate resources are allocated to effectively manage a DON discrimination complaints program, including the timely issuance and compliance with Final Agency Decisions (FADs) and Final Orders. The EEO Practitioners in local servicing EEO offices manage programs and implement processes in support of the responsibilities of the Director of EEO and respective activity EEO Officers.

c. The Deputy Assistant Secretary of the Navy (DASN) (Civilian Human Resources (CHR)) is hereby delegated the authority to establish policy and procedures for processing discrimination complaints and evaluating the management and operation of the discrimination complaints program on behalf of SECNAV. The DASN(CHR) has authority to further delegate these responsibilities to enforce compliance with this instruction.

d. The Special Assistant (SA) for EEO serves as the primary technical expert for EEO to the ASN(M&RA) and reports directly to the DASN(CHR). The SA EEO serves as principal EEO Representative and point of contact between DON and various offices both internal and external in the accomplishment of DON's Model EEO Program.

e. Director, Naval Office of EEO Complaints Management and Adjudication (NAVOECMA), oversees the management and operation

of DON discrimination complaints program. The Director, NAVOECMA, establishes DON policy and serves as the primary point of contact for advice and guidance regarding the processing and disposition of discrimination complaints at all Navy and Marine Corps activities. In addition to the responsibilities outlined in reference (a), the Director, NAVOECMA, will:

(1) Prepare and issue DON Final Orders, Decisions, and Notices of Appeal in individual and class complaints of discrimination; and recommend corrective actions to ASN(M&RA) where discrimination has been found.

(2) Serve as the primary point of contact to the Equal Employment Opportunity Commission's (EEOC) Office of Federal Operations to facilitate the processing of discrimination complaints DON-wide. Coordinates and ensures DON compliance with EEOC appeals process and procedures and provides guidance to DON Agency Representatives and Discrimination Complaints Managers on all appeal matters.

(3) Conduct periodic evaluations of activity and major command programs to ensure compliance with references (a) through (g).

(4) Conduct data analyses and meet reporting requirements to internal or external higher authority. This includes, but is not limited to the reporting requirements of references (a) through (g). Conduct data and trend analyses of complaints to determine and correct root causes.

(5) Monitor discrimination complaint investigations conducted DON-wide and serve as DON's liaison with the Department of Defense, Office of Complaint Investigations.

f. Director, Office of Civilian Human Resources (OCHR), develops HR programs and policies that fully integrate EEO principles in the Navy workplace. Director, OCHR will:

(1) Support DON Human Resources Service Centers (HRSC) and Human Resources Offices (HRO) in their efforts to adequately staff and provide expert EEO service to their customers.

(2) Ensure and support the availability of a corporate automated system to track DON-wide complaints of discrimination to accurately meet internal and external reporting requirements. Such automated system must comply with functional program requirements established by the Director, NAVOECMA and in accordance with reference (a).

g. OCHR Office of Counsel will:

(1) Provide legal advice to HR/EEO community and provide oversight of Federal court litigation resulting from complaints processed under this subchapter.

(2) Review proposed settlements at all levels of DON involving an award of compensatory damages or other remedies in excess of \$10,000.

(3) Provide legal guidance to EEO Practitioners regarding class action complaints.

(4) Prepare appellate briefs/comments in support of DON appeal of EEOC Administrative Judge (AJ) decisions.

h. The Chief of Naval Operations, Commandant of the Marine Corps, Assistant for Administration Office of the Under the Secretary of the Navy, and Heads of Echelon 2 Commands are designated as Command EEO Officers (CEEEO). As such, they must:

(1) Ensure that SECNAV policy regarding the processing of discrimination complaints is understood and implemented within their respective commands.

(2) Issue command-wide policies and procedures implementing this subchapter.

(3) In accordance with reference (c), allocate adequate resources to effectively manage the discrimination complaints process, and ensure that the Command Deputy EEO Officer (CDEEO) has direct access to the CEEEO regarding all matters pertinent to DON's Model EEO Program (reference (c)).

(4) Ensure their EEO Program Officials meet established training requirements and are free from interference and reprisal in the execution of their duties and in their efforts to maintain the integrity of the process.

(5) Ensure all complaints of discrimination are processed in a timely, efficient, and objective manner.

(6) Conduct periodic EEO program reviews and evaluations to ensure compliance with required timeframes and procedures by subordinate commands.

(7) In accordance with reference (c), track and conduct trend analyses of discrimination complaints within their command and submit required reports.

i. Command Deputy Equal Employment Opportunity Officer (CDEEEO). The CDEEEO will:

(1) Serve as the primary advisor to the CEEEO on all matters pertaining to effective EEO program management in accordance with references (a) through (g).

(2) As needed, provide guidance, assistance, and command-specific training, to subordinate activity and command officials on EEO program responsibilities and the discrimination complaints process.

(3) Monitor status of discrimination complaints at subordinate activities to ensure all discrimination complaints are processed in a timely, objective, and efficient manner and in compliance with established regulations. Conduct trend analyses to determine/correct root causes of discrimination and under representation. Analyze complaints and advise on modification of policies and practices within the command found to have an unlawful discriminatory impact.

(4) Serve as the primary link between subordinate activities and NAVOECMA to monitor and enforce compliance with this subchapter and to facilitate reporting requirements and program assessments.

j. Activity Heads or Commanders. The head of each Naval activity and Marine Corps Command employing civilians will serve as the local EEO Officer (EEEO). The EEEOs must:

(1) Allocate adequate resources to administer and manage their organizations' civilian EEO program. Ensure EEO Officials responsible for the discrimination complaints process are free from interference and reprisal in the execution of their duties and in their efforts to maintain the integrity of the process.

(2) Attempt early resolution of complaints.

(3) Ensure the availability of an Alternative Dispute Resolution (ADR) program and designate management officials to participate. Promote the use of ADR methods and techniques to locally and cost-effectively resolve complaints.

(4) Promote accountability by demonstrating personal commitment to equality of opportunity, requiring periodic informational reports and/or briefings; and ensuring that appropriate training is made available to managers, supervisors, employees, and EEO Practitioners regarding roles and responsibilities within DON's EEO program.

(5) Publicize and communicate discrimination complaint procedures, including the identity and telephone numbers of designated EEO Counselors, to all employees and applicants for employment.

(6) Ensure that supervisors, managers, and employees understand and meet their EEO program responsibilities with respect to discrimination complaints management.

(7) Promptly review and make timely decisions regarding complaints of discrimination, awards of attorney fees and costs, and compensatory damages.

(8) Timely accept/dismiss discrimination claims, in coordination with or via delegated authority to the servicing EEO office.

(9) Analyze complaints and modify policies and practices that have an unlawful discriminatory impact.

(10) Ensure that disciplinary and/or other corrective action is considered and documented when discrimination, misconduct, or poor management practices are identified and attributable to responsible management officials.

(11) Ensure that all pertinent records, required to fully adjudicate a complaint, are maintained by the activity, Command EEO office, and/or servicing HRO/HRSC.

(12) Designate an Agency Representative, as necessary, to present the agency's position, in the best interests of SECNAV.

k. Human Resources Offices (HRO). The HRO will provide Civilian HR/EEO functions for serviced activities. This includes identifying qualified individuals to perform specific complaints management functions, (e.g. DEEOO, EEO Case Manager, and EEO Counselor). The HRO staffs will cooperate with EEO Program Officials by providing information and access to records necessary to process complaints, conduct investigations, and resolve claims of discrimination. Special attention must be

given to ensure impartiality, avoid conflicts of interest or the appearance of such conflicts in working relationships, and implementation of the DON EEO policies and procedures. The servicing HR Director must:

(1) Ensure that EEO principles, and procedures are well understood by all HRO staff members and integrated into all HR functions to support DON EEO policies and avoid workplace disputes.

(2) Designate a DEEOO and, as appropriate a EEO Case Manager to manage EEO Discrimination Complaints Program requirements and impartially process claims of discrimination with direct access to each serviced EEEO. In addition, designate an adequate number of EEO Practitioners and ensure they are properly trained to implement the complaints process in a timely, objective, and effective manner.

1. Deputy Equal Employment Opportunity Officer (DEEOO).
The DEEOO will:

(1) Serve as the primary staff advisor on EEO program initiatives and discrimination complaint matters. This EEO Official must have direct and unrestricted access to consult with the EEEO.

(2) Coordinate with the HRO EEO Case Manager in providing advice to the EEEO on the acceptance/dismissal of individual complaints of discrimination and in the identification of cases that are likely to be resolved via ADR techniques.

(3) Direct the official activities of EEO Counselors to ensure adherence with applicable regulations, policies and case law.

(4) Ensure all EEO Counselors and other EEO Practitioners are fully trained consistent with reference (b). Document that qualifications and training requirements have been completed prior to assignment of counseling duties.

(5) Work closely with members of management and support staff of serviced activities to achieve resolution of disputes, whenever feasible and appropriate, at each stage of the complaints process.

(6) Coordinate settlement agreements with appropriate activity personnel, such as managers, supervisors, Agency

Representatives, legal counsel, and other officials designated by the EEOO.

(7) Ensure that data on informal and formal complaints is maintained in DON prescribed automated tracking system to meet reporting requirements. Provide Activity EEOO with quarterly briefing on complaints trend analyses.

(8) Monitor and ensure that all aspects of the complaints process are conducted in a timely, objective, and effective manner.

(9) Ensure the accuracy and completeness of the official complaint record.

(10) Coordinate with complaints managers, Agency Representatives and/or other staff offices, as deemed appropriate, to determine the best course of action in novel or controversial cases.

m. Agency Representative. The Agency Representative is appointed by the EEOO to represent the Department of the Navy in third-party proceedings. The Agency Representative works closely with EEO Officials responsible for processing complaints to represent the best interests of DON, while maintaining the integrity of the discrimination complaint process. The Agency Representative will:

(1) Serve as DON representative, ensuring appropriate coordination with EEO and HR Officials on all issues pertaining to discrimination complaints processing.

(2) Upon request, provide advice to EEO Officials on the acknowledgement or dismissal of individual complaints of discrimination.

(3) Ensure DON's position on complaints is supported by objective evidence at both the investigative and hearing stages of the complaint. This may require being available during investigations to assist management witnesses in fully responding to the claim(s).

(4) Draft or review proposed settlement agreements and offers of resolution.

(5) Advise the EEOO and DEEOO regarding proposed terms of settlements.

(6) Forward proposed settlement agreements involving an award of compensatory damages or other remedies, excluding back pay and attorney's fees, in excess of \$10,000 to OCHR Office of Counsel for review and consultation.

(7) Notify and provide supporting documentation to the DEEOO/EEO Case Manager when litigation is initiated or terminated on any EEO complaint.

(8) Respond to appeals of FADs or Requests for Reconsideration (RFR) filed by complainants and file appeal briefs and RFRs on behalf of DON.

(9) Appeals of AJ decisions will be initiated by NAVOECMA in coordination with OCHR Office of General Counsel (OGC). The OCHR OGC will designate an Agency Representative to file a timely appellant brief with copy to NAVOECMA.

n. EEO Case Manager. The EEO Case Manager has primary responsibility for overseeing and advising management on all aspects of discrimination complaints processing. The EEO Case Manager must:

(1) Maintain the original, official DON record for each discrimination complaint and ensure its proper disposition.

(2) Ensure all required notices and documents are issued at each stage of the complaint, including timely documentation of closure actions.

(3) Track and report on the status of discrimination complaints to meet internal and external requirements. Maintain the data in DON-prescribed automated tracking system for use in reports.

(4) Coordinate with Agency Representative, as deemed appropriate, on acceptance or dismissal of complaints, investigations, and resolution or settlement of complaints.

(5) Work closely with management officials and staff to achieve resolution of disputes whenever feasible at each stage of the complaints process.

(6) Ensure that complaints are processed promptly and in accordance with statutory requirements.

(7) Establish and maintain for each discrimination complaint a complete, impartial administrative record. Retain

the complete original case file from initial contact to closure of each claim for a minimum of four years after the end of all proceedings.

(8) Provide a copy of the case file to the EEOO/Agency Representative and to the complainant and/or his representative.

(9) Provide EEO program advice and guidance to employees, managers, and EEO Officials.

(10) Provide periodic complaint status reports to serviced activity EEOOs.

(11) Forward a copy of the complete discrimination complaint file to NAVOECMA for a SECNAV decision without a hearing, or to an (AJ) for a hearing.

o. EEO Counselor. The EEO Counselor has primary responsibility for conducting the initial inquiry into claims of discrimination with a focus on early resolution, while preparing an accurate written record of pertinent information. It is the policy of DON to use full-time EEO Counselors. As such the EEO Counselor will:

(1) Advise employees, former employees, or applicants seeking counseling of their rights and responsibilities in the discrimination complaints process.

(2) Function as a facilitator between the aggrieved person and management to seek reasonable informal resolution. If resolution is achieved, it will be properly documented and approved by the authorized EEO Official.

(3) Conduct the informal processing of class complaints to include developing the record. Coordinate processing of class complaints with the designated Agency Representative.

(4) Gather and document sufficient information to determine whether to accept or dismiss issues/claims of the complaint. Include information that objectively reflects the pre-complainants allegations and management's position concerning those claims of discrimination.

(5) Prepare a thorough complaint file and report of inquiry and ensure that all relevant documentation is included in the record.

(6) Maintain records indicating when the aggrieved person first contacted the counselor/EEO office and the matters raised by the aggrieved person. These records will document the inquiry methods used to reach a resolution, the results of the inquiry, and will provide specific facts to be included in the counselor's written report to the DEEOO upon completion of counseling.

(7) Issue and maintain all notices and documents pertaining to the informal stage of the complaint. This includes, but is not limited to, the Notice of Rights and Responsibilities and the Notice of Extension of EEO Counseling

(8) Notify the employee, former employee, or applicant of the right to file a formal complaint by issuing a Notice of Final Interview within 30 days of the date the complainant brought the claim(s) to the attention of the EEO Counselor, or at the expiration of any written agreed-upon extension.

(9) Timely forward an accurate and complete Counselor's Report to the DEEOO/EEO Case Manager upon notification that a formal complaint has been filed.

(10) Work closely with appropriate management officials and staff to achieve resolutions and settlements whenever feasible.

(11) Coordinate settlement agreements with the DEEOO, EEO Case Manager, HRO, HRSC, activity management, Agency Representative, and any other appropriate individual or staff office.

(12) Do not influence the aggrieved in deciding whether to file a formal complaint, emphasizing that the decision to file rests solely with them.

p. Human Resources Service Centers (HRSCs). The HRSCs will:

(1) Integrate EEO principles into all HR functions to support EEO policies and initiatives and avoid workplace disputes.

(2) Ensure timely processing of personnel actions resulting from decisions or settlements to avoid the need for further compliance actions.

(3) Retain records of personnel actions (e.g.,

appointments, merit staffing, reductions-in-force, training, performance appraisals, and disciplinary actions) and related documentation pertaining to on-going complaints of discrimination.

(4) Cooperate with EEO Officials by providing information and access to records necessary to investigate and resolve allegations of discrimination.

q. Supervisors. Supervisors must act promptly to prevent or correct situations that may give rise to discrimination complaints. Supervisors will:

(1) Provide a work environment free from hostile, discriminatory, and offensive behavior, including sexual and other forms of harassment, and promptly provide reasonable accommodations for disabled employees.

(2) Cooperate with EEO Program Officials, Counselors, Investigators, and the designated agency representative, at every stage of the complaints process.

(3) Participate and cooperate in reasonable resolution attempts, including ADR. Take timely action to fully implement the terms of binding settlement agreements.

(4) Ensure that complainants and their representatives are permitted a reasonable amount of official time to work on their complaints.

(5) Ensure that subordinates fully cooperate with mediators, EEO Counselors, Agency Representatives, investigators, EEOC AJ, and other EEO Officials involved in the processing of discrimination complaints.

(6) Seek assistance from EEO Officials and Agency Representatives and act promptly to prevent and/or correct situations that may give rise to complaints of discrimination.

(7) Ensure that subordinates refrain from actions or comments that could be viewed as discriminatory. Officials should recuse themselves from participation in processes or decisions that would create a perception or actual conflict of interest.

(8) Ensure that their actions are free from

discrimination based on race, color, religion, sex, national origin, age, disability, or reprisal because of involvement with a discrimination complaint at any stage of the process or opposition to an unlawful discriminatory employment practice.

(9) Ensure employees have access to information regarding discrimination complaint procedures.

r. Employees. Employees will:

(1) Conduct themselves in a manner consistent with the principles of EEO and refrain from activities that reflect adversely on DON.

(2) Cooperate with EEO Program Officials, Counselors, Agency Representatives and Investigators, as required.

s. Complainants. Complainants should:

(1) Comply with the time frames and procedures as outlined in 29 CFR Part 1614 for processing complaints of discrimination.

(2) Provide information necessary for counseling and processing of claims of discrimination.

(3) Cooperate with EEO Program Officials, Counselors and Investigators, as required.

(4) Serve all required documents on designated Agency Officials.

4. Action. The DASN(CHR) will issue and update discrimination complaints processing directives that conform with this policy. Addressees will follow this instruction and the associated Discrimination Complaints Program Management Manual, reference (g).