Enforcing Your EEO Rights in the Federal Workplace

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What You Will Learn

• What types of discrimination you are protected against;

• Why you must act quickly when facing discrimination;

• How to enforce your rights;

• What to expect during the informal and formal stages; and

• Why having an experienced attorney at your side is crucial to protecting your federal career.
What Types of Discrimination Are You Protected Against?

• Title VII of the Civil Rights Act of 1964
  - Race
  - Color
  - National origin (includes ancestry and ethnic characteristics)
  - Sex (includes pregnancy, transgender, and gender stereotyping)
  - Religion

• Age Discrimination in Employment Act of 1967
  - Age (covers you if 40 years of age or older)

• Rehabilitation Act of 1973
  - Disability (covers individuals perceived as disabled or with a record of disability)
What Types of Discrimination Are You Protected Against (continued)?

• Genetic Information Discrimination Act of 2008
  - Genetic information (includes information about genetic tests, diseases of an employee or a family member)

• Retaliation
  - Illegal to retaliate against someone because they engaged in protected activity
  - Two types of protected activity:
    • Opposition: opposing explicitly or implicitly a practice made unlawful under above anti-discrimination statutes
    • Participation: participating in an EEO complaint (e.g., filing a complaint, testifying, or assisting in an EEO matter for yourself or someone else)
How to Recognize Discrimination

• **Disparate Treatment**
  - When an agency treats similarly situated individuals differently in their employment because of a protected characteristic
  - Involves intentional preferential treatment

• **Adverse Impact**
  - When an agency adopts a seemingly neutral practice that has the effect of excluding a protected group
  - Exceptions include job relatedness or business necessity
  - Does not require an intent to discriminate

• **Denial of Reasonable Accommodation**
  - A “qualified individual with a disability” entitled to an effective reasonable accommodation for known physical/mental impairments
  - Reasonable accommodation is a change in the work environment that would allow someone to have equal employment opportunities
  - Exception if undue hardship
How to Recognize Discrimination (continued)

• Harassment
  - Unwelcome physical or verbal conduct/actions based on a protected characteristic
    • Quid Pro Quo sexual harassment: submission to or rejection of unwelcome sexual conduct is a basis for employment decisions
    • Hostile work environment must involve conduct sufficiently severe or pervasive to alter working conditions and create an abusive working environment
  - When is the Agency liable?
    • Supervisors:
      - Always responsible if culminates in a tangible employment action
      - If no tangible employment action, liability may be avoided if can show:
        » Agency took reasonable care to prevent and correct harassment
        » Employee unreasonably failed to take advantage of preventative/corrective avenues or to otherwise avoid harm
    • Co-workers:
      - Agency is liable if it knew or should have known about the harassment and failed to take prompt and appropriate corrective action
Discrimination NOT Recognized through the EEO Process

• Sexual Orientation Discrimination
  - Equal Employment Opportunity Commission only allows gender discrimination claims
• Whistleblowers
• Personal Appearance
• Marital Status
• Political Status
What Should You Do if Experiencing Discrimination?

• **Step One:** Contact an Agency EEO Counselor
  - Deadline: A federal employee generally has 45 calendar days from the discriminatory action to contact an EEO counselor

• **Step Two:** Complete the Informal Complaint Process
  - The EEO Counselor will give you the opportunity to participate in either:
    • Traditional Counseling: Entails working through the situation with your Agency (a 30-calendar-day process)
    • Alternative Dispute Resolution: Involves mutual agreement to participate in mediation led by a neutral party (a 90-calendar-day process)

• **Step Three:** Receive Notice of Right to File
  - The EEO counselor will send you a notice informing you of your right to file a formal complaint. (remove period)
  - Next Deadline: You have 15 calendar days from the date you receive the Notice to file your formal complaint
What Happens After You File a Formal EEO Complaint?

• **Step Four:** File a formal EEO complaint
  - The Agency generally will send you a letter acknowledging its receipt of your formal complaint.
  - The Agency’s EEO office will review your claims and decide whether to accept or dismiss all, part, or none of your claim
    - Full dismissals may be appealed to the EEOC’s Office of Federal Operations (OFO)
    - Partial dismissals may be challenged at EEOC when a hearing is requested

• **Step Five:** Participate in Agency Investigation of Your Claims
  - Investigator will interview alleged discriminating officials, you and perhaps other witnesses
    - Personal interviews, written questions or fact-finding conferences
  - Investigator does not decide merits
  - Investigator prepares a Report of Investigation (ROI)
  - Agency deadline: if pure discrimination issues, Agency has 180 calendar days from the date you filed the formal complaint to issue the ROI
    - May be extended if you amend your complaint
    - If mixed case, Agency’s deadline is 120 calendar days; different process
How Will A Decision be Made on the Merits of Your Case?

**Step Six:** Choice Between Final Agency Decision and EEOC Hearing
- Your next deadline: 30 calendar Days of Your Receipt of ROI to request EEOC Hearing; or Final Agency Decision (FAD).

**Step Seven:** File a EEOC Hearing
- Involves litigation similar to process in federal court
- Affords opportunity for discovery
- Agency attorneys will likely represent the Agency
- Administrative judge will conduct a hearing, make a decision, and order relief if discrimination or retaliation claims are substantiated
- Agency has 40 calendar days to implement AJ’s decision and to inform you of your appeal rights

**Step Eight:** Appeal to EEOC
- May appeal an adverse finding to EEOC’s Office of Federal Operations
- Next Deadline: file appeal notice within 30 calendar days of receipt of Agency decision
- Second Deadline: brief due within 30 calendar days of filing notice of appeal
- OFO will review all case materials and issue a **FINAL** decision
- The appellate process often takes longer than a year to conclude
When Can You File a Lawsuit Against the Agency?

• You may opt out of the process and bring a lawsuit in federal district court at several different times:
  - After filing a formal EEO complaint, you may sue anytime after 180 calendar days of filing complaint if no FAD issued and no OFO appeal filed;
  - After the Agency issues a FAD, you may sue within 90 calendar days of your receipt of the FAD if no OFO appeal filed;
  - After filing an EEOC OFO appeal, you may sue anytime after 180 calendar days of filing the appeal if no decision is issued;
  - After the OFO renders a decision on your appeal, you must sue within 90 calendar days of your receipt of the decision.
How an Experienced Attorney Can Help You:

- **Counseling You on Recognizing and Preserving Your Claims**
  - Identifying your claims
  - Counseling you through difficult situations
  - Determining whether exception to the rules applies
  - Acquiring and developing evidence to prove your claims

- **Negotiating with the Agency to Settle Your Dispute**
  - Evaluating the strengths and weaknesses of your case
  - Counseling you on the pros and cons of early resolution
  - Leveraging your case and its facts to your benefit
  - Ensuring a settlement is in YOUR best interest
  - Protecting you in the event the Agency breaches the agreement

- **Ensuring Timeliness**
  - Missing a deadline may result in dismissal or significant harm
  - Navigating complex deadlines

- **Leveling the Playing Field to Prevent Injustice**
  - Neutralizing aggressive defense tactics
  - Recognizing improper evidence requests and developing an accurate record
Do You Need Further Information?

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