



TULLY RINCKEY PLLC
ATTORNEYS & COUNSELORS AT LAW



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



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