



National Transportation Safety Board

Operations Bulletin EEO-GEN-001

Equal Employment Opportunity and Complaints of Discrimination

1. Issuing Organization. Operations Bulletin EEO-GEN-001 was developed by the Office of Equal Employment Opportunity, Diversity, and Inclusion (EEODI), and was issued July 24, 2014. It was reviewed and reissued May 19, 2020, and is due for review by May 18, 2025, or earlier if needed.
2. Purpose. Operations Bulletin EEO-GEN-001 provides the policies and procedures for staff to use in the processing of complaints of discrimination by employees or applicants for employment with the National Transportation Safety Board (NTSB).
3. Policy. It is the policy of the NTSB to provide equal opportunity in employment for all employees and applicants, and to prohibit discrimination in employment because of race, color, religion, sex (including gender identity, pregnancy, or sexual orientation), national origin, age, disability (mental or physical), family medical history, or genetic information. No person will be subject to retaliation for opposing any practice made unlawful by the nondiscrimination statutes listed in paragraph 5, or for participating in any stage of administrative or judicial proceeding under the nondiscrimination statutes referenced in this bulletin.
4. Cancellation. Operations Bulletin EEO-GEN-001 supersedes Operations Bulletin EEO-GEN-001 dated July 24, 2014.
5. References.
 - A. Title VII of the Civil Rights Act of 1964 (Title VII) as amended, 42 *United States Code* (U.S.C.) § 2000(e).
 - B. Age Discrimination in Employment Act of 1967 (ADEA) as amended, 29 U.S.C. § 633(a).
 - C. The Rehabilitation Act of 1973, 29 U.S.C. § 791.
 - D. The Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101-12213, as amended.
 - E. Equal Pay Act of 1963 (EPA), 29 U.S.C. § 206(d).
 - F. 29 *Code of Federal Regulations (CFR)* Part 1614, Federal Sector Equal Employment Opportunity.

- G. Title 29 *CFR* Part 1635, Genetic Information Nondiscrimination Act of 2008 (GINA).
- H. Equal Employment Opportunity Management Directive 110 (MD-110).
- I. Operations Bulletin EEO-GEN-004: Equal Employment Opportunity Alternative Dispute Resolution Process.
- J. Operations Bulletin EEO-GEN-005: Procedures for Requesting Official Time in the EEO Complaint Process.

6. Responsibilities.

A. The EEODI Director is responsible for the following:

- (1) Ensuring compliance with the procedures set forth in this bulletin.
- (2) Updating this bulletin according to the schedule, or earlier if needed.
- (3) Developing NTSB policy and procedures to process discrimination complaints.
- (4) Providing appropriate training to managers, supervisors, and employees on the complaint process and related procedures.
- (5) Providing trained EEO counselors to counsel aggrieved employees or applicants for employment who believe they have been subjected to unlawful discrimination.
- (6) Providing trained EEO investigators to conduct investigations into formal complaints of discrimination.
- (7) Ensuring that managers, supervisors, and employees cooperate fully with EEO counselors and EEO investigators during the informal and formal complaint process.
- (8) Ensuring that managers, supervisors, and employees are aware that people who file complaints of discrimination will be free from retaliation for opposing any practice made unlawful under the nondiscrimination statutes.
- (9) Acknowledging receipt of, and initiating investigations of, formal complaints of discrimination within the NTSB, and developing a complete and impartial factual record upon which to make findings on the claims asserted in formal complaints.
- (10) Issuing Final Agency Decisions and Final Agency Actions in accordance with 29 *CFR* § 1614.110.
- (11) Overseeing and monitoring EEODI program implementation; evaluating the sufficiency of NTSB EEO procedures; and developing and recommending additional policies, programs, and procedures as may be required to ensure compliance with applicable laws and regulations.
- (12) Preparing all required reports within the regulatory timeframes.

- (13) Drafting and/or reviewing proposed negotiated settlement agreements and Offers of Resolution, and engaging in settlement negotiations, when appropriate.
 - (14) Following up with appropriate agency personnel to ensure that the agency complies with all terms of negotiated settlement agreements.
- B. The Managing Director is responsible for the following:
- (1) Ensuring that managers and supervisors meet their responsibilities in the discrimination complaint process.
 - (2) Providing sufficient resources to the Office of EEODI to ensure compliance with 29 *CFR* Part 1614.
- C. The Office of General Counsel is responsible for the following:
- (1) Providing legal advice on EEO matters to the EEODI Director; managers; supervisors; and the Chief, Human Resources Division (HRD), when appropriate.
 - (2) Reviewing managers' or supervisors' interrogatories or affidavits upon request to ensure that a complete record exists; however, the Office of General Counsel will not provide, dictate, or direct the content of the testimony and will not in any way interfere with the investigative process.
 - (3) Representing the agency in EEO matters before the Equal Employment Opportunity Commission (EEOC) and the Merit Systems Protection Board (MSPB) and working with the appropriate US Department of Justice or US Attorney's office to defend the agency when suits are filed in federal court.
 - (4) Drafting and/or reviewing proposed negotiated settlement agreements and Offers of Resolution, and engaging in settlement negotiations, when appropriate.
- D. The Chief, HRD, is responsible for the following:
- (1) Ensuring that EEO counselors, EEO investigators, and agency representatives are given access to personnel records and copies of records and documents relevant to complaints when needed to perform their official duties. Relevant records and documents will be retained until the EEODI Director notifies the Chief, HRD, that no further administrative or legal decision is pending on the complaint.
 - (2) Providing technical support to EEO counselors, EEO investigators, and agency representatives.
- E. Managers and supervisors are responsible for the following:
- (1) Acting promptly to prevent or correct situations that may give rise to complaints of discrimination.
 - (2) Participating in an Alternative Dispute Resolution (ADR) process, when appropriate.

- (3) Cooperating fully with EEO counselors/investigators and/or EEOC Administrative Judges involved in the complaint process. (Note: Failure to cooperate in the EEO complaint process may result in disciplinary action.)
- (4) Ensuring that aggrieved individuals are permitted to use a reasonable amount of duty time to work on their complaints in accordance with guidance provided by the EEODI Director (see Operations Bulletin EEO-GEN-005: Procedures for Requesting Official Time in the EEO Complaint Process).

F. Employees are responsible for cooperating fully with EEO counselors and EEO investigators by responding to questions truthfully and providing accurate statements in affidavits during efforts to determine the facts and resolve complaints. (Note: Failure to cooperate in the EEO complaint process may result in disciplinary action.)

7. Procedures.

A. Informal Complaint Process (also known as Pre-Complaint Process): Contacting an EEO Counselor

- (1) Any employee or applicant for employment who believes he or she has been unlawfully discriminated against (an aggrieved individual) may initiate the EEO pre-complaint process.
- (2) To initiate the EEO pre-complaint process, an aggrieved individual must contact the EEODI Director or a designated EEO counselor within 45 calendar days of the date the individual knew, or should have known, about the alleged act of discrimination or, in the case of a personnel action, within 45 days of the effective date of the action.¹
- (3) An aggrieved individual may be accompanied, represented, and advised during all counseling interviews by a representative of his or her choice. Aggrieved individuals must complete counseling of their pre-complaint with an EEO counselor before the EEODI Director may accept a subsequent formal written complaint of discrimination.

B. Informal Complaint Process: Role and Functions of the EEO Counselor

- (1) At the initial counseling session, trained EEO counselors must advise aggrieved individuals in writing of their rights and responsibilities under 29 *CFR* Part 1614, including the requirements and time limitations, and, if applicable, alternative avenues of redress.

¹ Alternately, a bargaining unit employee may elect to raise a complaint of discrimination under the negotiated grievance procedures (NGP), subject to the exceptions and time limitations in the NGP. An employee who wishes to file a complaint or grievance on an allegation of employment discrimination may elect to proceed either under the EEO complaint procedures or the NGP, but not both. An election to proceed under the EEO complaint procedures is made by filing a formal complaint; an election to proceed under the NGP is made by filing a grievance. An election to proceed under the EEO pre-complaint procedures does not constitute an election of the EEO complaint procedures.

- (2) The EEO counselor will explain that reasonable accommodations may be made available throughout the EEO complaint process.
- (3) The EEO counselor will conduct a limited inquiry during the informal complaint process with the aggrieved individual for the purpose of determining jurisdictional questions. This includes determining whether there may be issues relating to the timeliness of the individual's counselor contact and obtaining information relating to this issue. It also includes obtaining enough information concerning the claim(s) and basis(es) to enable the agency to properly identify the legal claim raised if the individual files a complaint at the conclusion of the EEO counseling process.
- (4) The EEO counselor will explain that, if the EEO ADR program is available, the aggrieved individual will have to decide whether to seek pre-complaint resolution through that process or through the traditional EEO counseling process. The counselor will also explain the differences between the two processes.
- (5) If the aggrieved individual uses the EEO counseling process to resolve the issue, the counselor will seek a resolution of the dispute at the lowest possible level. If the EEO ADR program is offered and the aggrieved individual elects to participate in that program, the counselor cannot attempt to resolve the matter, but must instead refer the dispute to the EEO ADR program for processing and resolution (see Operations Bulletin EEO GEN 004: Equal Employment Opportunity, Alternate Dispute Resolution Process).
- (6) If during the course of the traditional EEO counseling process or the EEO ADR program process, the agency and the aggrieved individual agree to an informal resolution of the dispute, the terms of the resolution must be specified in writing, must clearly identify the claims resolved, and must be signed by both parties to help ensure that they have the same understanding of the terms of the resolution.
- (7) If resolution is not reached during the EEO counseling process or the EEO ADR program process, the EEO counselor will conduct a final interview with the aggrieved individual. During the final interview, the counselor will discuss what occurred during the counseling process in terms of attempts at resolution. The counselor will provide the aggrieved with information to move the matter forward and will answer any questions the aggrieved may have. The counselor must advise the aggrieved individual that he or she has the right to pursue the claim further through the formal complaint procedure. The counselor must also advise the aggrieved individual of the requirements of the formal complaint, including that the complaint must be in writing, must be specific with regard to the claims that the aggrieved raised in the counseling process and that he or she wishes to pursue, must be signed by the complainant or complainant's attorney; and must be filed within 15 calendar days from the date he or she receives the written Notice of Right to File a Discrimination Complaint.

- (8) After the final interview, the written Notice of Right to File a Discrimination Complaint must be issued. The notice must specify that an aggrieved individual has 15 calendar days after its receipt to file a formal complaint. It must also advise the aggrieved individual of the appropriate official with whom to file a complaint and of the aggrieved individual's duty to inform the agency immediately when he or she retains counsel or a representative. The notice must also advise the aggrieved individual of his or her duty to inform the agency of a change of address that occurs during the pendency of the EEO process, and of the possible consequences for not doing so.
- (9) If the aggrieved individual participates in the EEO counseling process, the EEO counselor must conduct the final interview and issue the written Notice of Right to File a Discrimination Complaint within 30 days of the date the aggrieved individual brought the dispute to the counselor's attention. This time period may be extended, by no more than additional 60 days, if the aggrieved individual consents to a written extension of time. If the aggrieved individual participates in the EEO ADR program process, the counselor must conduct the final interview and issue the written Notice of Right to File a Formal Complaint of Discrimination no later than 90 days of the date the aggrieved individual brought the dispute to the counselor's attention.
- (10) Within 15 days, after notification by the EEODI Director that a formal complaint of discrimination has been filed, the EEO counselor will submit a written report to the EEODI Director and the aggrieved individual. The report will document the date of first contact with the aggrieved individual, matters raised, and claims presented; any attempts at informal resolution of the complaint must include a precise description of the claim(s) and the basis(es) identified by the aggrieved individual; pertinent documents gathered during the inquiry, if any; specific information bearing on timeliness of the counseling contact; an explanation for why the counseling process was untimely, if applicable; and an indication as to whether an attempt was made to resolve the complaint.

C. Formal Complaint Process: Filing of Formal Complaints.

- (1) A complainant may file a formal complaint with the EEODI Director or an EEO specialist in the Office of EEODI within 15 calendar days of receipt of the written Notice of Right to File a Formal Complaint. The formal complaint must contain a signed statement by the complainant or his or her representative and must be sufficiently precise to identify the action(s) or practices(s) that form the basis of the complaint.
- (2) A formal complaint will be deemed timely if it is delivered in person or via facsimile, e-mail, commercial, or postal delivery and is postmarked before the expiration of the 15-day filing period. In the absence of a legible postmark, complaints received via postal mail within 5 days after the expiration of the 15-day filing period will be considered timely.

- (3) The EEODI Director will acknowledge receipt of a complaint in writing and will inform the complainant of the date on which the complaint was received and deemed filed.
- (4) The EEODI Director will review the complaint using the criteria in 29 *CFR* § 1614.107 to determine whether the complaint will be accepted or dismissed. The Director will dismiss any complaint or a portion of a complaint in which—
 - a. The complaint fails to state a claim or states the same claim that is pending before or has been decided by the agency or the EEOC.
 - b. The complaint fails to comply with applicable time limits, unless the EEODI Director extends the time limits in accordance with 29 *CFR* Part 1614.
 - c. The complaint raises a matter that has not been brought to the attention of an EEO counselor and is not like or related to a matter that has previously been brought to the attention of such a counselor.
 - d. The complaint is the basis of a pending civil action in a US District Court in which the complainant is a party, provided that at least 180 days have passed since the filing of the administrative complaint, or that was the basis of a civil action decided by a US District Court in which the complainant was a party.
 - e. The complaint is moot or alleges that a proposal to take a personnel action, or other preliminary step to taking a personnel action, is discriminatory.
 - f. The complainant has raised the matter in an appeal to the MSPB, and thereby has elected to pursue resolution through the MSPB process.
 - g. The complainant is a bargaining unit employee, has raised a non-excluded matter under the negotiated grievance procedure, and thereby has elected to pursue resolution through the grievance process.
 - h. The complainant cannot be located, even after reasonable efforts have been made, and the complainant has not responded within 15 days to a notice of proposed dismissal sent to his or her last known address.
 - i. The agency has provided the complainant with a written request to provide relevant information or otherwise proceed with the complaint, and the complainant has failed to respond to the request within 15 days of its receipt, or the complainant's response does not address the agency's request, provided that the request included a notice of the proposed dismissal.
 - j. The complainant alleges dissatisfaction with a previously processed complaint (that is, it is a "spin-off" complaint).
 - k. There is a clear pattern of misuse of the EEO complaint process for ends other than that for which it was intended.

- (5) The EEODI Director will issue a separate letter notifying the complainant of whether the claim(s) in the complaint were accepted for investigation. If the complaint is not accepted, the letter will explain the reason(s) for the dismissal and any applicable appeal rights. If some, but not all, of the claims in the complaint are accepted, the letter will identify which claims will be investigated and which dismissed, and the reasons for their dismissal. The letter will also inform the complainant that there is no immediate right to appeal the dismissal, but that the dismissal will be reviewed either by an EEOC Administrative Judge, if the complainant requests a hearing before such a judge, or by the EEOC itself if the complainant files an appeal of a final agency action or final agency decision.
- (6) The EEODI Director will notify the complainant in writing of the agency's obligations to investigate the complaint within the applicable time limits pursuant to 29 *CFR* Part 1614. In the event that the agency has not completed the investigation 180 days from the date of the complaint's filing date, the Director will issue a written notice informing the complainant that the agency has not yet completed the investigation, the estimated date of completion, and the complainant's right to file a civil action or request a hearing.
- (7) The EEODI Director will also notify the complainant in writing of all rights and responsibilities afforded to the complainant, including, if applicable, the right to request a hearing, the right to appeal, and the right to file a civil action.

D. Formal Complaint Process: Investigation of Complaints.

The EEODI Director will appoint a trained EEO investigator to develop an impartial and appropriate factual record upon which to make findings on the claims raised by the written complaint. This investigation will include reviewing and obtaining copies of all records and documents judged by the investigator to be pertinent. The investigator may use an exchange of letters or memoranda, interrogatories, fact-finding conferences, or any other fact-finding methods that efficiently and thoroughly address the matters at issue. The investigation will comply with the following requirements:

- (1) The investigation will be completed within 180 days of the date of filing of a complaint or in accordance with time period set forth in EEOC orders. By written agreement within those time periods, the complainant may voluntarily extend the time period for not more than an additional 90 days.
- (2) The EEO investigator will interview all persons he or she believes to be knowledgeable of facts or issues raised in the complaint.
- (3) Within the time periods stated in 29 *CFR* § 1614.108(f) or EEOC orders, the EEODI Director will provide the complainant with a copy of the investigative file and will notify the complainant that, within 30 days of receipt of the investigative file, he or she has the right to request a hearing and decision from an EEOC Administrative Judge or he or she may request an immediate final decision from the agency. If the agency fails to provide the required

notice, the complainant may request a hearing at any time after 180 days has elapsed from the date of filing of the complaint.

E. EEOC Hearings.

- (1) If a complainant believes that further development of the record is warranted, he or she may request a hearing conducted by an EEOC Administrative Judge. The request for a hearing must be sent directly to the EEOC District Office identified in the letter transmitting the investigative file to the complainant. A copy of the request must be simultaneously served on the NTSB EEODI Director and the NTSB Office of General Counsel.
- (2) Within 15 days of receipt of a request for hearing, the EEODI Director will provide a copy of the complaint file to the appropriate EEOC District Office.
- (3) If a complainant requests a hearing, the EEOC will appoint an Administrative Judge to conduct the hearing. Upon appointment, the judge will assume full responsibility for adjudication of the complaint, including overseeing the development of the record.
- (4) The judge will conduct the hearing in accordance with the provisions of 29 *CFR* § 1614.109, issue a decision on the complaint, and order appropriate remedies and relief in situations in which discrimination is found within 180 days of receipt of the complaint file.

F. Final Agency Action.

- (1) Final action following a decision by an Administrative Judge. When an Administrative Judge has issued a decision under 29 *CFR* § 1614.109, the agency will take final action on the complaint by issuing a final order within 40 days of receipt of the judge's decision. The final order will comply with the requirements of, and contain the notice required by, 29 *CFR* § 1614.110(a).
- (2) Final action by the agency in all other circumstances. When the agency dismisses an entire complaint under 29 *CFR* § 1614.107, receives a request for an immediate final decision, or does not receive a reply to the notice issued under section 7D(3) above, the agency will take final action by issuing a final decision. The final decision will consist of findings on the merits of each issue in the complaint or, when appropriate, the rationale for dismissing any claims in the complaint and, when discrimination is found, appropriate remedies and relief. The agency will issue the final decision within 60 days of receiving notice that a complainant has requested an immediate decision from the agency, or within 60 days of the end of the 30-day period the complainant has to request a hearing but for which the complainant has not requested either a hearing or a final decision. The final action will comply with the requirements of, and contain the notice required by, 29 *CFR* § 1614.110(b).

G. Mixed-Case Complaints and Appeals.

- (1) A mixed-case complaint is a complaint of employment discrimination filed with the agency that involves an action that can be appealed to the MSPB and alleges the action was taken because of unlawful discrimination.

Actions that can be appealed to the MSPB include, but are not limited to, removals, demotions, suspensions for more than 14 calendar days, reductions-in-force, and furloughs for 30 days or less.

- (2) A mixed-case appeal is an appeal filed directly with the MSPB alleging that an adverse agency action subject to such appeal was taken in whole, or in part, because of unlawful discrimination or reprisal.
 - (3) Mixed-case complaints and appeals will be processed in accordance with 29 *CFR* § 1614.302.
8. External Reporting Requirements. Complaints processed by the agency will be reported on the No FEAR Act Report, Form 462 Report, and Management Directive 715 Report to the EEOC, as required.
 9. Definitions.
 - A. **Unlawful Discrimination:** Discrimination based upon race, color, religion, sex (including gender identity, pregnancy or childbirth, or sexual orientation), national origin, age, disability (mental or physical), family medical history, genetic information, or reprisal.
 - B. **Reprisal:** Mistreatment of an employee or applicant for employment for complaining about discrimination in the workplace, opposing discrimination, filing a discrimination complaint, or participating in any manner in an employment discrimination proceeding.
 10. Attachments.

Form: NTSB Formal Complaint of Discrimination