

EEO Complaints Policy
For Applicants, Employees and Former Employees
of the Federal Election Commission
(Effective date 7/1/08)

OVERVIEW

The Equal Employment Opportunity Office is responsible for processing equal employment opportunity (EEO) complaints and implementing affirmative employment requirements. This policy sets forth the authority, responsibilities, and procedures under which the Federal Election Commission (FEC or Commission) manages complaints of employment based discrimination (as defined below) in accordance with Title VII of the Civil Rights Act of 1964 (Title VII), Executive Orders (EOs) and other relevant authorities.

PRIMARY RESPONSIBILITIES

All levels of FEC management are responsible and will be held accountable for cooperating with the EEO office in all aspects of EEO complaint processing.

The FEC Commissioners are responsible for:

Exercising EEO program oversight responsibility and assuming jurisdiction over the processing of discrimination complaints against the Staff Director, General Counsel, Inspector General, Chief Financial Officer, Senior Level Employees, the EEO Director and employees under the EEO Director's direct supervision. The assumption of jurisdiction is subject to the Chairperson's discretion so as to preclude a conflict of interest.

The Director of Equal Employment Opportunity

The Chairperson has delegated the authority to manage the EEO program within the Commission to the EEO Director. The EEO Director's role includes the following functions and responsibilities:

- Implement, administer, and monitor anti-discrimination laws, regulations, Executive Orders, procedures, and programs applicable to the FEC, its employees and applicants for employment;
- Manage the Commission's Federal discrimination complaints process, including EEO counseling, alternative dispute resolution, investigations, informal settlements, compliance with settlements, remedial actions (where warranted, and in consultation with the Staff Director and the Office of General Counsel (OGC)), determinations as to the merits of EEO complaints and issuance of final FEC decisions on such matters;
- Provide a quarterly status report for all open formal complaints to the Staff Director, the General Counsel and other selected staff, as appropriate ; and

- Ensure that FEC final agency decisions (FAD) and representation to the U.S. Equal Employment Opportunity Commission (EEOC) are consistent with legal requirements and precedents and are legally sufficient.

DISCRIMINATION COMPLAINT PROCESS

EEO COMPLAINTS

The Commission must adhere to the regulations in **29 C.F.R. §1614, et seq.**, Federal Sector Equal Employment Opportunity, for processing complaints appealable to the EEOC, filed by individual employees, former employees or applicants for employment, or any person intending to file a complaint on behalf of such individuals.

The bases for EEO complaints under Title VII are age (40 & over), disability, equal compensation, genetic information, harassment, national origin, pregnancy, race/color, religion, retaliation, sex and sexual harassment... Complaints alleging prohibited retaliation/reprisal based on participation in the EEO complaints process, or based on opposition to discrimination are also considered actionable complaints.

Additionally, federal government applicants and employees are protected from discrimination in personnel actions based on status as a parent (EO 13152) - - or marital status and political affiliation, both of which are addressed by the Civil Service Reform Act of 1978 (CSRA), as amended. Although the Office of Special Counsel (OSC) and the Merit Systems Protection Board (MSPB) enforce the prohibitions for these latter two (2) types of discrimination, the FEC's EEO Complaint process may be used in lieu of referral to these agencies. When complaints based on parental status, marital status, and/or political affiliation are processed according to the FEC complaint process, there is no right to a hearing and/or decision by an EEOC Administrative Judge (AJ) nor is there a right of appeal to the EEOC.

PRE-COMPLAINT PROCESS

The FEC must nominate, select, train, and make available an EEO Counselor to aggrieved persons. EEO Counselors serve in collateral duty status under the direction of the EEO Office. EEO Counselors' names and contact information must be posted prominently throughout the Commission.

Contact EEO Counselor

Aggrieved persons who believe they have been discriminated against must contact a FEC EEO Counselor prior to filing a formal complaint. The person must initiate counselor contact within 45 days of the matter alleged to be discriminatory or in the case of a personnel action, within 45 days of the effective date of the action. **(29 C.F.R. §1614.105(a)(1))** This time limit shall be extended where the "aggrieved person shows that:" he or she was not notified of the time limits and was not otherwise aware of them; he or she did not and reasonably should not have known that the discriminatory matter occurred; despite due diligence he or she was prevented by circumstances beyond his or

her control from contacting the counselor within the time limits; or for other reasons considered sufficient by the FEC or EEOC. **(29 C.F.R. §1614.105(a)(2))**

EEO Counseling

The EEO Counselor will provide information to the aggrieved individual concerning how the Federal sector EEO process works, including time frames and appeal procedures, and attempt to informally resolve the matter. At the initial counseling contact, individuals will be advised in writing of their rights and responsibilities in the EEO process, including the right to request a hearing before an EEOC administrative judge (AJ), if applicable, or an immediate final agency decision from the FEC following its investigation of the complaint. Individuals will be informed of their right to elect between pursuing the matter in the EEO process under these procedures, a grievance procedure (where applicable), or the Merit Systems Protection Board (MSPB) appeal process (where applicable). The counselor will also inform the individuals of their rights to proceed directly to District Court in a lawsuit under the Age Discrimination in Employment Act, of their duty to mitigate damages, and that only claims raised in pre-complaint counseling may be alleged in a subsequent complaint filed with the FEC. **(29 C.F.R. §1614.105(b)(1))**

In addition, the EEO Counselor will explain the EEO counseling process and the availability of Alternate Dispute Resolution (ADR). The EEO Counselor will consult with the Director of EEO on the suitability of the issues raised for ADR. The decision to refer issues for ADR will rest solely with the EEO Director. ADR policies and procedures are explained in greater detail below.

EEO counseling must be completed within **30 days** of the date the aggrieved person contacted the FEC's EEO office to request counseling. The **30-day** counseling period may be extended for up to an additional **60 days** if the individual agrees to an extension in writing: (1) where the individual agrees to an extension in writing counseling may be extended an additional 30 days; or (2) where the aggrieved person chooses to participate in an ADR procedure, counseling may be extended an additional **60 days**. **(29 C.F.R. §1614.105(e))** If the matter is not resolved within **30 days** or within the extension period (up to **90 days** total including the original period) the Counselor must notify the individual in writing of the right to file a discrimination complaint. This notice (Notice of Right to File a Formal Complaint, (NRTF)) must inform the individual that a complaint must be filed within **15 days** of receipt of the notice, identify the FEC official with whom the complaint must be filed, and the individual's duty to inform the FEC if he or she retains counsel or a representative. **(29 C.F.R. §1614.105(d))**

If the claim is not resolved before the **90th day**, the NRTF must be issued to the individual. **(29 C.F.R. §1614.105(e) (f))** Note: As explained above, if the matter is not resolved in the ADR process within **90 days** of the date the individual contacted the EEO office or EEO Counselor, a NRTF a Formal Complaint must be issued to the individual giving him or her the right to proceed with a formal complaint.

If a complaint is filed, within **15 days** the EEO Counselor must submit a written report to the EEO Office and the aggrieved person concerning the issues discussed and the actions taken during counseling. **(29C.F.R. §1614.105(c))**

Alternative Dispute Resolution (ADR)

After the aggrieved individual has had an initial meeting with an EEO Counselor, the Director of EEO may determine that the case is suitable for ADR instead of EEO counseling. The EEO Counselor shall advise the aggrieved individual of their right to choose between ADR and traditional EEO counseling.

In ADR, mediation sessions are managed by professionals from the U.S. Federal Mediation and Conciliation Service or other contract mediation services. The mediator will attempt to assist in the resolution of the matters at issue.

If the matter is referred to and the aggrieved individual chooses the ADR mediation process, the pre-complaint processing period is **90 days**. If the matter is not resolved in the ADR process within **90 days** of the date the individual contacted the EEO office, a NRTF must be issued to the individual giving him or her the right to proceed with a formal complaint. **(29 C.F.R. §1614.105(f))**

The Counselor must file a report with the EEO office that list the issues raised in the initial meeting with the aggrieved person, within 15 days of the filling of a formal complaint.

Representation

The aggrieved person/complainant has the right to be accompanied, represented and advised by a representative or attorney of choice at all stages of the complaint process. **(29 C.F.R. §1614.605(a))** A complainant must inform the Director of EEO in writing when he or she retains counsel or a representative. In cases where the representation of a complainant would conflict with the official or collateral duties of a representative employed by the agency, the Director of EEO may disqualify the representative after full and fair consideration of the representative's opportunity to show cause against disqualification. **(29 C.F.R. §1614.605(c))** The decision of the Director of EEO is not appealable, but the decision, and the reasons for it, must be recorded and made a part of the complaint file. If the representative is disqualified, the complainant will be granted reasonable time to obtain other representation.

Official Time

Complainants who are employees of the FEC are entitled to a reasonable amount of official time to present the complaint and to respond to the FEC and EEOC requests for information. **(29 C.F.R. §1614.605(b))** If the complainant is an employee of the FEC and designates another FEC employee as representative, the representative also is entitled to a reasonable amount of official time, if otherwise on duty, to assist in complaint preparation and any required responses. Both are in a duty status when their presence is authorized or required by the EEO Office or EEOC, during the investigation, resolution attempts, or hearing on the complaint. The FEC is not obligated to change work

schedules; incur overtime, or travel expenses to facilitate the choice of a specific representative or to allow the complainant and representative to confer.

The amount of time considered “reasonable” is based on the nature of the particular action being taken, the current workload of the employee and the amount of time granted for similar actions in other cases. The employee’s supervisor, with appropriate guidance concerning the particular action and similar actions from the EEO Office, and in certain cases the OGC, will make the determination. Any request for official time must be made in advance and granted in advance in accordance with applicable leave rules. This provision does not preclude appropriate administrative actions in cases in which an employee has not followed the applicable leave rules in requesting and obtaining official time.

FORMAL STAGE

Filing a Complaint

If the aggrieved chooses to, he or she must file a formal complaint within **15 days** of receipt of the NTRF. **(29 C.F.R. §1614.106(b))** The complaint should be filed with the FEC EEO Director. The complaint must be a signed statement from the complainant or the complainant’s representative, containing the complainant’s (or representative’s) telephone number and address, and must be sufficiently precise to identify the complainant and the FEC, and describe generally the action or practice which forms the basis of the complaint. **(29 C.F.R. §1614.106(c))**

A complainant may amend a complaint at any time prior to the conclusion of the investigation to include issues or claims like or related to those raised in the complaint. After requesting a hearing, if applicable, a complainant may file a motion with the EEOC AJ to amend a complaint to include issues or claims like or related to those raised in the complaint. **(29 C.F.R. §1614.106(d))**

For complaints alleging discrimination based on age (40 & over), disability, equal compensation, genetic information, harassment, national origin, pregnancy, race/color, religion, retaliation, sex and sexual harassment, or reprisal concerning these bases, the FEC will acknowledge receipt of the complaint in writing and inform the complainant of the date on which the complaint was filed and the Case Number assigned to the complaint.

Within **30 days** of receipt of the Acknowledgement of Receipt Notice, the FEC will issue the complainant or complainant’s representative an Acceptance/Dismissal notice. The Acceptance/Dismissal notice will advise complainant that the FEC must investigate the complaint within **180 days** of the filing date; that the complainant has the right to appeal the FEC’s final action or dismissal of the complaint; and, of the address of the EEOC office where a request for a hearing should be sent. The FEC’s Acceptance/Dismissal notice will also advise the complainant that when a complaint has been amended, the FEC must complete the investigation within the earlier of: (1) **180 days** after the last amendment to the complaint; or (2) **360 days** after the filing of the original complaint. A

complainant alleging discrimination based on age (40 & over), disability, equal compensation, genetic information, harassment, national origin, pregnancy, race/color, religion, retaliation, sex and sexual harassment, or reprisal concerning these bases may request a hearing from an EEOC AJ on the consolidated complaints any time after **180 days** from the date of the first filed complaint. **(29 C.F.R. §1614.106(e))**

Within **30 days** of receipt of the Acknowledgement of Receipt Notice, for complaints alleging marital status, parental status and political affiliation discrimination, or reprisal concerning these bases, the FEC will issue complainant or complainant's representative an Acceptance/Dismissal notice. The Acceptance/Dismissal notice will advise the complainant that the FEC must investigate the complaint within **180 days** of the filing date; and that they have no rights to request an EEOC administrative hearing or no right to appeal the Final Agency Decision (FAD).

Acceptance and Dismissal of Complaints

Upon receipt of a formal complaint and prior to accepting a complaint for investigation, the EEO Director shall review the complaint and dismiss it in its entirety for any of the following reasons: (1) failure to state a claim, or stating the same claim that is pending or has been decided by the FEC or the EEOC; (2) failure to comply with the time limits; (3) filing a complaint on a matter that has not been brought to the attention of an EEO Counselor and which is not like or related to the matters counseled; (4) filing a complaint in which the complainant is a party or which was the basis of a civil action already decided by a court in which the complainant was a party; (5) the complainant has already elected to pursue the matter through either the negotiated grievance procedure or in an appeal to the Merit Systems Protection Board; (6) the matter is moot or merely alleges a proposal to take a personnel action; (7) the complainant cannot be located; (8) the complainant fails to respond to a request to provide relevant information; (9) the complaint alleges dissatisfaction with the processing of a previously filed complaint; or, (10) the complaint is part of a clear pattern of misuse of the EEO process for a purpose other than the prevention and elimination of employment discrimination. **(29 C.F.R. §1614.107(a))** The complainant shall be notified of the dismissal in writing.

If the EEO Director believes that some, but not all, of the claims in a complaint should be dismissed for the above reasons, they must notify the complainant in writing of the rationale for this determination, identify the allegations which will not be investigated, and place a copy of this notice in the investigative file. For complaints based on age (40 & over), disability, equal compensation, genetic information, harassment, national origin, pregnancy, race/color, religion, retaliation, sex and sexual harassment or reprisal concerning these bases, the dismissal is reviewable by an EEOC AJ if a hearing is requested on the remainder of the complaint but not appealable until final action is taken by the FEC on the remainder of the complaint. **(29 C.F.R. §1614.107(b))**

Investigations

Investigations are conducted by the FEC. The Commission will develop an impartial and appropriate factual record upon which to make findings on the claims raised by the complaint. An appropriate factual record is defined in the regulations as one that allows a

reasonable fact finder to draw conclusions as to whether discrimination occurred. **(29 C.F.R. §1614.108(b))** All FEC employees must cooperate with the investigative process by promptly providing affidavits or documents as requested. **(29 C.F.R. §1614.108(c)(1))**

The investigation must be completed within **180 days** from the filing of the complaint or within the earlier of **180 days** of the last amendment to the complaint or **360 days** after the filing of the original complaint. **(29 C.F.R. §1614.108(e))** A copy of the investigative file will be provided to the complainant. For cases involving age (40 & over), disability, equal compensation, genetic information, harassment, national origin, pregnancy, race/color, religion, retaliation, sex and sexual harassment or reprisal concerning these bases, the EEO Office will also provide a notification that within **30 days** of receipt of the file the complainant has the right to request a hearing and a decision from an EEOC AJ or may request an immediate final decision from the FEC. **(29 C.F.R. §1614.108(f))** If an investigation is not completed and the investigative report not forwarded to the complainant within **180 days** of the filing date, the complainant may request an EEOC hearing or file a civil action in Federal District Court anytime after that. The request must be in writing and a copy sent to the Director of EEO. **(29 C.F.R. §1614.108(g))**

In cases alleging marital status, parental status and political affiliation discrimination, or reprisal concerning these bases, the EEO Office will notify complainant that within **30 days** of receipt of the file, they have the right to request an immediate final decision from the FEC.

CONTINUED PROCESSING OF CASES APPEALABLE TO THE EEOC

Hearings

A request for a hearing must be sent by the complainant to the EEOC office indicated in the FEC's acknowledgement letter, with a copy to the FEC's EEO office. Within **15 days** of receipt of the request for a hearing, the FEC must provide a copy of the complaint file to the EEOC. **(29 C.F.R. §1614.108(g))** The EEOC will then appoint an AJ to conduct a hearing. **(29 C.F.R. §1614.109(a))** The AJ will issue an Acknowledgement and Order to the parties.

An EEOC AJ may dismiss a complaint for any of the reasons set out above in the Acceptance and Dismissal of Complaints section. **(29 C.F.R. §1614.109(b))**

The FEC must provide the attendance at hearing of all Federal employees approved as witnesses by an administrative judge. **(29 C.F.R. §1614.109(e))**

The hearing must be recorded and the FEC must arrange and pay for verbatim transcripts. All document submitted to and accepted by the administrative judge at the hearing are part of the record of the hearing. **(29 C.F.R. §1614.109(h))**

An AJ may hold full or limited hearings, or may issue findings of fact and conclusions of law on the case merits without a hearing. The AJ determines whether a hearing is or is not held, based on a showing by complainant or the FEC that the information and evidence of record reveal no genuine dispute or issue of credibility. Hearings are closed to the public because they are part of the investigative process.

Unless the AJ makes a written determination that good cause exists for extending the time of the hearing, the AJ is required to issue a decision on the complaint, and other appropriate remedies and relief where discrimination is found, within **180 days** of the date the AJ received the complaint file from the agency **(29 C.F.R. §1614.109(i))**

Offer of Resolution

The FEC may make an offer of resolution to a complainant who is represented by an attorney at any time after the filing of a complaint, but not later than the date an AJ is appointed to conduct a hearing. The FEC may make an offer of resolution to a complainant, represented by an attorney or not, after the parties have received notice that an administrative judge has been appointed to conduct a hearing, but not later than **30 days** prior to a hearing.

An offer of resolution must be in writing and include a notice explaining the possible consequences of failing to accept the offer. If the complainant fails to accept the offer within **30 days** of receipt, and the relief awarded in the final decision on the complaint is not more favorable than the offer, then the complainant shall not receive payment from the FEC of attorney's fees or costs incurred after the expiration of the **30-day** acceptance period. **(29 C.F.R. §1614.109(c))**

Discovery

Prior to the hearing, the parties may conduct discovery. **(29 C.F.R. §1614.109(d))** The purpose of discovery is to enable a party to obtain relevant information for preparation of the party's case. Each party initially bears their own costs for discovery, unless the AJ requires the FEC to bear the costs for the complainant to obtain depositions or any other discovery because the FEC has failed to complete its investigation in a timely manner or has failed to adequately investigate the allegations. For more detailed description of discovery procedures, see **EEOC Management Directive 110 Chapter 7, Part IV.**

Final Action by Agencies

When an AJ has issued a decision whether it is a dismissal, a summary judgment decision or a decision following a hearing, the FEC must take final action on the complaint by issuing a final order within **40 days** of receipt of the hearing file and the AJ's decision. The final order must notify the complainant whether or not the FEC will fully implement the decision of the AJ, and shall contain notice of the complainant's right to appeal to the EEOC or to file a civil action. If the final order does not fully implement the decision of the AJ, the FEC must simultaneously file an appeal with the EEOC and attach a copy of the appeal to the final order. **(29 C.F.R. §1614.110(a))** If the FEC does not issue a final order within **40 days** of receipt of the administrative judge's decision, the administrative judge's decision shall become the final action of the agency. **(29 C.F.R. §1614.109(i))**

Final Agency Decisions

When the FEC dismisses an entire complaint under **29 C.F.R. §1614.107**; receives a request for a final agency decision (FAD); or, does not receive a reply to the notice providing the complainant the right to either request a hearing or an immediate final decision, the FEC will take final action by issuing a FAD. The FEC's final decision will consist of findings by the FEC on the merits of each issue in the complaint. Where the FEC has not processed certain allegations in the complaint for procedural reasons set out in **29 C.F.R. §1614.107**, it must provide the rationale for its decision not to process the allegations. The FEC's decision must be issued within **60 days** of receiving notification that the complainant has requested an immediate final decision or within **60 days** of the end of the **30-day** period for the complainant to request a hearing or a FAD. The FEC's decision must contain notice of the complainant's rights to appeal to the EEOC or to file a civil action in federal court, if applicable. **(29 C.F.R. §1614.110(b))** Complaints alleging discrimination based on marital status, parental status, political affiliation, or reprisal concerning these bases do not have appeal rights to the EEOC.

APPEALS STAGE

Equal Employment Opportunity Commission

If an appeal of a FAD is desired, the complainant must file an appeal with the Director of the Office of Federal Operations (OFO), Equal Employment Opportunity Commission. The appeal may be mailed to the Director at P.O. Box 19848, Washington, DC 20036; personally delivered to the EEOC Office of Federal Operations at 1801 L. Street, N.W., Washington, DC 20036; or faxed to (202) 663-7022.

The complainant must submit an appeal to EEOC within **30 calendar days** of the complainant's receipt of the FAD, using EEOC Form 573, which the EEO Director must provide along with the FAD. The complainant must simultaneously provide a copy of the appeal to the EEO Director.

The complainant may submit a statement or brief to the EEOC in support of the appeal but must do so within **30 days** of filing the appeal and must simultaneously send a copy to the EEO Director.

The EEO Director must provide a copy of the administrative file and the investigative file to EEOC within **30 days** of receiving notice that an appeal has been filed. Any statement or brief in opposition to the appeal must be submitted to OFO and served on the opposing party within **30 days** of receipt of the statement or brief supporting the appeal. If no brief or statement supporting the appeal is filed, the party opposing the appeal must file its opposition within **60 days** of the receipt of the appeal. A copy of the FEC appeal statement or brief must be provided to the complainant at the time of the response.

A complainant or representative may appeal FEC's final decision based on the merits of an individual complaint of employment discrimination as follows:

- The dismissal of an individual complaint;
- The award of attorney's fees;
- Alleged noncompliance with the terms of a settlement agreement;
- Dismissal of all or a portion of a class complaint or final decision on a class complaint;
- A grievance when an issue of employment discrimination was raised in the FEC/NTEU (National Treasury Employees Union) negotiated grievance procedure and is not appealable to the Merit Systems Protection Board; or
- Final discrimination decisions rendered by arbitrator or the Federal Labor Relations Authority (FLRA).

Such appeals must be filled within **30 days** of an individual's receipt of a final FEC decision. An appeal also may be filed on final discrimination decisions rendered by an arbitrator or the FLRA.

An EEOC appellate decision is final within the meaning of (29 C.F.R. §1614.407), Civil Action: Title VII, Age Discrimination in Employment Act and Rehabilitation Act, unless either the complainant or FEC files a timely request for reconsideration or the Commission on its own motion reconsiders the case.

Reconsideration

If desired, either the FEC or the complainant must submit a request for reconsideration to the EEOC, OFO within **30 days** of receipt of an appellate decision from the OFO. In support of a request for reconsideration of a Commission decision, the FEC or the complainant must submit a statement or brief that contains arguments or evidence which tend to establish that:

- a. The appellate decision involved a clearly erroneous interpretation of material fact or law; or,
- b. The decision will have a substantial impact on the policies, practices, or operations of the FEC.

Regardless of whether the reconsideration request is initiated by the complainant or the FEC, the party opposing such reconsideration has **30 days** from the date of service or notice to submit any statement or brief in opposition to the request.

Compliance with Settlement Agreements

Any settlement of an EEO complaint reached must be in writing, identify the claims involved, approved by the EEO Director in consultation with the OGC, and signed by the complainant and the EEO Director. (29 C.F.R. §1614.603)

If the complainant believes that the FEC failed to comply with the terms of a settlement agreement, for reasons not attributable to acts or conduct of the complainant, the complainant is required to notify the EEO Director in writing within **30 calendar days** of when the complainant knew or should have known of the alleged noncompliance. The notification may request that the terms of the settlement be implemented or alternatively that the complaint be reinstated for continued processing from the point processing ceased. (29 C.F.R. §1614.504(a))

If the complainant is not satisfied with the response of the EEO Director or if the complainant is not satisfied with the resolution attempts, the complainant may appeal to the EEOC. This appeal may be filed **35 days** after written notice of noncompliance to the EEO Director but must be filed within **30 days** of receipt of any decision by the EEO Director. The complainant must serve a copy of the appeal on the agency. **(29 C.F.R. § 1614.504(b))**

Allegations that subsequent acts of discrimination violate a settlement agreement will be processed as a separate complaint. **(29 C.F.R. §1614.504(c))**

Civil Actions

Prior to filing a civil action under Title VII of the Civil Rights Act of 1964 or the Rehabilitation Act of 1973, a Federal sector complainant must first exhaust the administrative process set out at 29 C.F.R. Part 1614. “Exhaustion” for the purposes of filing a civil action may occur at different stages of the process. Civil actions may be filed in an appropriate Federal court: (1) within **90 days** of receipt of the final action where no administrative appeal has been filed; (2) after **180 days** from the date of filing a complaint if an administrative appeal has not been filed and final action has not been taken; (3) within **90 days** of receipt of the EEOC’s final decision on an appeal; or (4) after **180 days** from the filing of an appeal with the EEOC if there has been no final decision by the EEOC. **(29 C.F.R. §1614.407)**

Under the Age Discrimination in Employment Act (ADEA), a complainant may proceed directly to Federal court after giving the EEOC **30 days** notice of intent to sue. The notice must be filed within **180 days** of the occurrence of the alleged unlawful practice. **(29 C.F.R. §1614.201)** An ADEA complainant, who initiates the administrative process pursuant to 29 C.F.R. Part 1614, may also file a civil action within the time frames noted above. **(29 C.F.R. §1614.407)**

Under the Equal Pay Act, a complainant may file a civil action within 2 years (3 years for willful violations) of the date of the alleged violation, regardless of whether he or she has pursued an administrative complaint. **(29 C.F.R. §1614.408)**

Filing a civil action terminates EEOC processing of an appeal. **(29 C.F.R. §1614.409)**

SPECIAL CONSIDERATIONS

Class Complaints

Section 1614.204 of Title 29 C.F.R. provides for processing class complaints of discrimination. A class is defined as a group of employees, former employees, or applicants who are alleged to have been adversely affected by an agency personnel policy or practice which discriminates against the group on the basis of their common race, color, religion, sex, national origin, age, or disability. A class complaint is a written complaint of discrimination filed on behalf of the class by the agent of the class, alleging

that the class is so numerous that a consolidated complaint by the members of the class is impractical, that there are questions of fact common to the class, that the claims of the agent of the class are typical of the claims of the class, and that the agent of the class and, if represented, the representative, will fairly and adequately protect the interests of the class.

The regulatory requirements for class complaints at (29 C.F.R. §1614.204) provide a structure different from that for individual complaints. For class complaints, there is a four-stage process.

1st Stage - an FEC employee who seeks to represent a class of employees must seek counseling and undergo pre-complaint processing. (29 C.F.R. §1614.105) FEC employees must first seek counseling within **45 days** of the discriminatory event. If the complaint is not resolved on the **30th day** following initial EEO counseling, the EEO Counselor must give the agent his/her NRTF. The counseling period may be extended up to an additional **60 days** if, prior to the expiration of the **30-day** counseling period, the aggrieved person agrees to extend EEO counseling.

The one exception to the mandatory counseling prerequisite allows a complainant to move for class certification at any reasonable point in the process when it becomes apparent that there are class implications to the claim raised in an individual complaint.

As with an individual complaint, a class complaint must be filed with the FEC. (29 C.F.R. §1614.106) A class complaint must be signed by the class agent (the complainant) or a class representative and must identify the policy or practice adversely affecting the class as well as the specific action or policy affecting the class agent. (29 C.F.R. § 1614.204(c) (1))

2nd Stage - within **30 days** of the FEC receiving a class complaint, the FEC must designate a representative and forward the complaint, along with a copy of the EEO Counselor's report and any other relevant information about the complaint, to the EEOC. (29 C.F.R. §1614.204(d) (1)) When any complaint is filed, the FEC must take care to preserve any and all evidence with potential relevance to the class complaint. This is a continuing obligation that begins as soon as the complaint is filed, even before the class has been certified, and continues throughout the processing of the complaint.

The FEC must forward the class complaint to the EEOC district office having jurisdiction of the agency facility where the complaint arose:

Equal Employment Opportunity Commission
Office of Federal Operations
Federal Sector Programs
Complaint Adjudication Division
P.O. Box 19848
Washington, D.C.20036

The AJ will issue a decision on whether to certify or dismiss a class complaint. When appropriate, the AJ may decide to certify a class conditionally, for a reasonable period of time, until a complainant finds representation.

The AJ shall transmit his/her decision to accept or dismiss a class complaint to the agency and the agent. The FEC shall take final action by issuing a final order within **40 days** of receipt of the AJ's decision. The final order shall notify the agent whether the FEC will implement the decision of the AJ. If the final order does not fully implement the decision of the AJ, the FEC shall simultaneously appeal the AJ's decision in accordance with **(29 C.F.R. §1614.403)**.

3rd Stage- If the decision is to accept (certify) the class complaint, EEOC regulations require the FEC to notify all class members. **(29 C.F.R. §1614.204(e) (1))** The FEC must use all reasonable means, such as delivery, mailing to last known address or distribution, to notify all class members of the acceptance of the complaint within **15 days** of receipt of the AJ's decision or within a reasonable time frame specified by the AJ.

If a resolution is proposed, notice must be given to all class members in the same manner as the notification of certification of the class was given. The notice must include a copy of the proposed resolution, set out the relief, if any, that the FEC will grant, and inform the class members that the resolution will bind all members of the class. The notice must also inform class members of the right to submit objections to the settlement. The notice further must inform the parties of the name and address of the AJ assigned to the complaint.

The AJ shall review and issue a decision concerning the fairness, adequacy, and reasonableness of the proposed resolution. Within **30 days** of the date of a class member's receipt of the notice of proposed resolution, the class member may file a petition with the AJ noting objections to the settlement if the petitioner (class member) believes that the settlement benefits only the class agent or is otherwise not fair, adequate, and reasonable to the class as a whole. The AJ will review the proposed resolution after the expiration of the **30 day** period allowed for petitions and consider any petitions received. If the AJ determines that the resolution is not fair, adequate, and reasonable, s/he will vacate the proposed resolution and may replace the class agent with the petitioner or other class member who is eligible to serve as class agent.

4th Stage - the AJ shall transmit to the FEC a report of findings and recommendations on the complaint, including a recommended decision, systemic relief for the class, and any individual relief, where appropriate, with regard to the personnel action or policy that gave rise to the complaint. The report of findings and recommendations shall be sent to the FEC together with the entire record, including the transcript. The AJ shall also notify the class agent, in a separate communication, of the date on which the report of findings and recommendations was forwarded to the agency. **(C.F.R. §1614.204(i) (1))**

If the AJ finds no class relief appropriate, s/he shall determine if any finding of individual discrimination is warranted and, if so, shall recommend appropriate relief. **(C.F.R. §1614.204(i) (2))**

Within **60 days** of receipt of the report of findings and recommendations issued by the AJ, the FEC must issue a decision to accept, reject, or modify those findings and recommendations. If the FEC does not issue the final decision within **60 days**, the AJ's findings and recommendations will become the final decision of the agency.

The FEC shall notify class members and the class representative of the decision and relief awarded, if any, through the same media employed to give notice of the existence of the class complaint. The notice, where appropriate, shall include information concerning the rights of class members to seek individual relief and of the procedures to be followed. **(C.F.R. §1614.204(k))**

Where a finding of discrimination against a class has been made, there is a presumption of discrimination as to each member of the class. The FEC has the burden of proving by clear and convincing evidence that a class member is not entitled to relief. **(C.F.R. §1614.204(l)(3))**

Within **30 days** of receipt of notification of the final agency decision in which discrimination is found, a class member who believes that s/he is entitled to individual relief may file a written claim with the head of the agency, or with the agency's EEO Director. The claim must include a specific, detailed showing that the claimant is a class member who was affected by the discriminatory policy or practice, and that this discriminatory action took place within the period of time for which the agency found class-wide discrimination in its final agency decision. Where a finding of discrimination against a class has been made, there shall be a presumption of discrimination as to each member of the class. The agency must show by clear and convincing evidence that any class member is not entitled to relief. **(C.F.R. §1614.204(l)(3))**

Federal employees who are agents, claimants, representatives of agents or claimants, witnesses, or agency officials having responsibility for processing class complaints may file individual discrimination complaints if they believe they have been subjected to reprisal because of their involvement in the presentation and/or processing of a class complaint.

GRIEVANCES

Persons covered by the Labor Management Agreement between the Federal Election Commission and the National Treasury Employees Union which permits allegations of discrimination to be raised in the grievance procedure, and who wish to file a complaint or grievance on an allegation of employment discrimination, must elect to proceed either under the procedures of 29 C.F.R. Part 1614 or the negotiated grievance procedures, but not both. **(29 C.F.R. §1614.301(a))** An election to proceed under Part 1614 is made by the filing of a complaint, and an election to precede under the negotiated grievance procedures is made by filing a grievance. Participation in the pre-complaint procedures of Part 1614 is not an election of the Part 1614 procedures.

Mixed Case Complaints

Some employment actions which may be the subject of a discrimination complaint under Part 1614 may also be appealed to the MSPB. In such cases, the employee must elect to proceed with a complaint as a “mixed case complaint” under Part 1614, or a “mixed case appeal” before the MSPB. Whichever is filed first is considered an election to proceed in that forum. **(29 C.F.R. §1614.302(b))**

Mixed case complaints are processed similarly to other complaints of discrimination, with the following notable exceptions: (1) the FEC has only **120 days** from the date of the filing of the mixed case complaint to issue a final decision, and the complainant may appeal the matter to the MSPB or file a civil action any time thereafter; (2) the complainant must appeal the FEC’s decision to the MSPB, not the EEOC, within **30 days** of receipt of the FEC decision; (3) at the completion of the investigation, the complainant does not have the right to request a hearing before an EEOC AJ and the FEC must issue a decision within **45 days**. **(29 C.F.R. §1614.302(d))**

Individuals who have filed either a mixed case complaint or a mixed case appeal, and who have received a final decision from the MSPB, may petition the EEOC to review the MSPB final decision. **(29 C.F.R. §1614.303)** A petition must be filed within **30 days** of receipt of the final decision from MSPB or within **30 days** of when the decision of a MSPB field office becomes final. **(29 C.F.R. §1614.303)**

In contrast to non-mixed matters, individuals who wish to file a civil action in mixed case matters must file within **30 days** of receipt of: (1) the FEC’s final decision; (2) the MSPB’s final decision; or, (3) the EEOC’s decision on a petition to review. In addition, a complainant may file a civil action **180 days** after filing a petition to review with EEOC if there has been no decision by EEOC on the petition. **(29 C.F.R. §1614.310)**