Equal Employment Opportunity

Training

+ Anti-Harassment (AH)
+ Reasonable Accommodation (RA)
+ Alternative Dispute Resolution (ADR)

Fiscal Year 2023

References

- Laws:
  - Title VII of the Civil Rights Act of 1964
  - Age Discrimination in Employment Act of 1967
  - Rehabilitation Act of 1973
  - Americans with Disabilities Act of 1990 (ADA)
  - ADA Amendments Act of 2008
  - Genetic Information Nondiscrimination Act of 2008 (GINA)
  - Equal Pay Act of 1963
  - Uniformed Services Employment and Reemployment Rights (USERRA)
  - Religious Freedom Restoration Act
- Executive Orders
  - 13087, Prohibiting Discrimination Based on Sexual Orientation
  - 13152, Prohibiting Discrimination Based on Parental Status

- **PCLOB Policies:**
  - EEO policy 2016-002, 10/8/0216
  - EEO Q&A, undated
  - Anti-Harassment Policy, 2016-003, revised 10/17/2019
- Regulations:
  - MD 110
  - MD 715
- Training Required:
  - 29 CFR 1614.102(a)(12)/(b)(5) – EEO training
  - 29 CFR 1614.203(d)(7)(ii)(C) – Reasonable accommodation training
  - MD 110, Chapter 3(II)C. – Alternative Dispute Resolution Training

https://www.pclob.gov/Legal/Eeo

Objectives

- Equal Employment Opportunity and Anti-Harassment Law:
  - Remedy past discrimination
  - Prevent violations
  - Ensure employees are provided with the opportunity to:
    - Compete fairly for positions for which they are qualified
    - Receive objective ratings based on their performance
    - Not be subjected to personnel decisions or unfair treatment based on non-merit factors
- Reasonable Accommodation:
  - Allows an employee with a disability an equal opportunity to enjoy the benefits and privileges of employment that employees without disabilities enjoy
- Alternative Dispute Resolution:
  - An informal dispute mechanism for employees and the agency.

Outline

Part I: Responsibilities

Part II: EEO

Part III: Anti-Harassment

Part IV: Alternative Dispute Resolution

Part V: Reasonable Accommodation

Part I: Responsibilities (Generally)

Responsibilities (Generally)

Employees	Supervisors
Know and comply with EEO and AH policies and procedures	Know and comply with EEO and related policies and procedures
Report incidents that are witnessed or experienced to one of the following: Management, EEO Office POC, OGC	Report incidents or complaints received to the OGC or EEO POC. Even if it is not a formal complaint, report incidents that you become aware of.
Be available for interviews, provide complete information	Be available for interviews, including ensuring staff availability, and provide complete information. Demonstrate willingness to hear and objectively discuss complaints.
Maintain confidentiality during an investigation	Maintain confidentiality, to the extent possible, during the investigation, and handle any documents carefully
Avoid making judgments about the alleged harasser or harassed.	Inform the individual that you must report a complaint to the EEO Office or OGC.

Responsibilities: Employees

We want to promote a safe and happy environment for all employees.

Employees are expected to:

- Treat individuals respectfully and with dignity.
- Observe whether employees appear uncomfortable and be cognizant of your impact on coworkers or colleagues.
- Report incidents of harassment you witness.
- Attend these trainings.

Responsibilities: Management

Managers are expected to:

- Treat individuals respectfully and with dignity; leading by example and establishing a professional work environment.
- Use staff meetings as a forum to remind staff of the requirement of non-discriminatory and non-harassing behaviors in the workplace
- Pay close attention to whether employees are exhibiting inappropriate behavior.
- Observe whether employees appear uncomfortable.
- Listen to comments by employees, coworkers, or colleagues that may indicate inappropriate behaviors.

- Seek guidance from OGC as soon as a complaint is brought to your attention.
  - This does not mean harassment occurred. The appropriate office will investigate and provide guidance.
- Make business decisions using business criteria (don't use protected class information)
- Ensure employees are not subjected to a hostile-work environment because of a protected category

Part II: Equal Employment Opportunity (EEO)

Goals

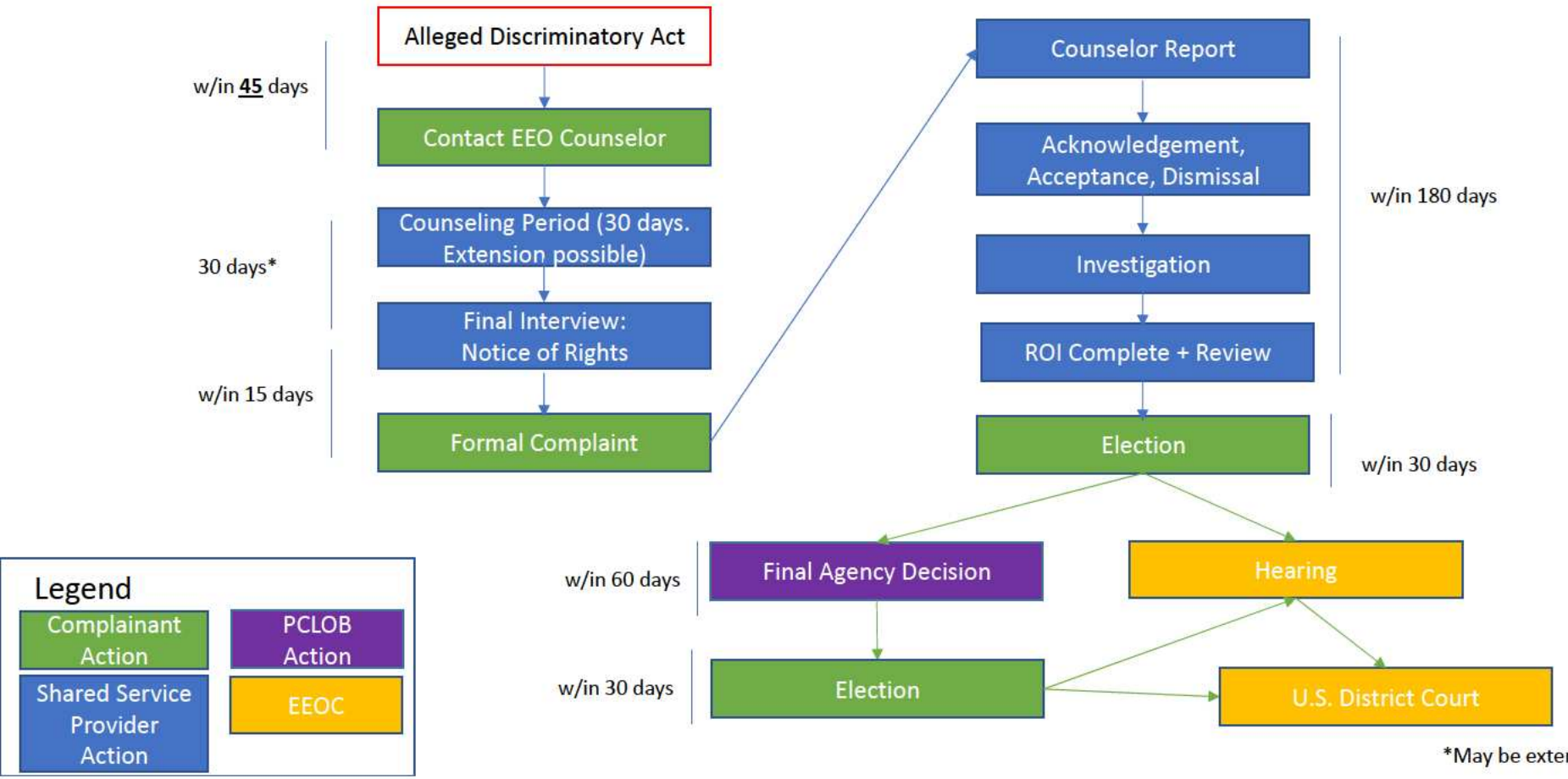
- The objectives of EEO Laws are:
- To remedy past discrimination
- To prevent violations
- To ensure that employees are provided with the opportunity to:
  - Compete fairly for positions for which they are qualified
  - Receive objective ratings based on their performance
  - Not be subjected to personnel decisions or unfair treatment based on non-merit factors

See PCLOB Policy 401-01 (March 4, 2023)

Complaint: Referral

- PCLOB uses GSA as Shared Service Provider.
  - Employees can contact:
    - eeo@gsa.gov, 202-501-4571; or,
    - (b) (6) @gsa.gov, (b) (6) .

Complaint: General Process



*May be extended if ADR

Complaint: Informal and Formal

Informal	Formal
• Employee reaches out to EEO Counselor • Discussion of process, timeframe, etc. • Limited inquiry and attempt at informal resolution • Employee has 15 days from final interview to file formal complaint	• After informal process concluded, employee may file formal complaint • EEO Investigation begins (non-adversarial) • Completes in 180 days • Employee option for agency action OR proceed to EEOC.

Complaint: Basis

Elements of an EEO Complaint:

1. Protected Basis, and
2. Issue (+nexus)

Protected Basis:

- Age (40 +)
- Disability
- Genetic Information
- Race/Color
- National Origin
- Sex (Including Pregnancy)
- Religion
- Disability
- Sexual Orientation (and gender identity)
- Opposition to Retaliation.

Issues (adverse employment action) may include:

- Appointment
- Awards
- Promotion
- Demotion
- Reprimand
- Suspension/removal
- Duty hours
- Working conditions
- Performance evaluation
- Harassment
- Sexual harassment
- T&A/Overtime/Pay
- Reassignment
- Training
- Retirement
- Reasonable accommodations

Discrimination Generally

- Do not treat people differently because members of a specific race or other protected basis
- Do not make decisions based on stereotypes or assumptions based on a protected basis

- It is illegal to harass or discriminate against someone because of his or her religion.
- This includes offensive remarks about a person's religious beliefs or practices.

Reprisal occurs when an employee suffers restraint, interference, coercion, discrimination or retaliation for raising an allegation of discrimination or representing one who has alleged discrimination

Sex* discrimination including treating people differently on the basis of sex or gender, and can include pregnancy.

Discrimination Generally

Ethnic slurs, racial jokes, offensive or derogatory comments, or other verbal/physical conduct may be unlawful harassment or create a hostile work environment

Age discrimination occurs where someone over 40 years of age is treated unfavorably

National origin discrimination can occur on the basis of physical, cultural, or linguistic characteristics.

Political affiliation and marital status discrimination may be subject to different procedural processes

Disability Discrimination

- Not everyone with a medical condition is protected by law. In order to be protected, a person must be qualified for the job and have a disability as defined by law.

- A person may be disabled if he or she:
  1. has a physical or mental condition that substantially limits a major life activity (such as walking, talking, seeing, hearing or learning).
  2. has a history of a disability (such as cancer that is in remission).
  3. is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he does not have such an impairment).

- The law requires an employer to provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause <u>significant</u> difficulty or expense for the employer (undue hardship).

- It is illegal to harass an applicant or employee because:
  1. he/she has a disability, had a disability in the past, or
  1. is believed to have a physical or mental impairment that is not lasting or expected to last six months or less,

even if he/she does not have such an impairment.

Retaliation

- It is against federal law and PCLOB policy to retaliate against employees who engage in protected activity and those who retaliate may be subject to discipline.

- Protected activity is defined as either:
  - Opposing a policy or practice made unlawful by federal law; or,
  - Participating in an investigation, hearing, or proceeding under federal law.

- Retaliation occurs when an employer takes action that might discourage a reasonable employee from pursuing the EEO process

Part III: Anti-Harassment Program

Anti-Harassment Program

- Anti-Harassment Program – distinct from EEO
- See PLOCB Policy 402-01 (March 4, 2023)
- The Board will promote and maintain a work environment free from harassment, even if doesn't rise to the level of EEO discrimination.
- Filing a harassment complaint pursuant to this program is NOT the same as an EEO complaint. They are mutually exclusive processes.

- PCLOB will begin an internal investigation within 10 calendar days.
- Reports of harassment will be kept confidential to the fullest extent possible, without impeding an inquiry into the allegations and to protect the privacy of both the alleged victim and the accused.

Workplace Harassment

- Harassment is:
  - Verbal or physical conduct;
  - That is unwelcome;
  - Based on a protected class; **and,**
  - Results in a tangible employment action or conduct that created a hostile work environment.

- Harassment is not only sexual harassment
- Federal law prohibits harassment based on protected classes:
  - sex (sexual, non-sexual, gender identity, and sexual orientation), race, color, national origin, religion, age (40 or over), disability, participation in EEO process, or in retaliation for protected activity.

Federal Statistics in FY21:

- 5,581 charges alleged sexual harassment
- 21,270 charges alleged any type of harassment

Harassment: Unwelcome Conduct

- Unwelcome conduct is conduct that the individual:
  - Does not solicit or invite; and,
  - Regards as undesirable.
- Submission to harassment does not mean that the conduct is welcome.
  - The individual may explicitly or implicitly communicate that the conduct is unwelcome
  - The harasser's intent is not the determinative factor of whether the conduct is unwelcome

- The following are examples:
  - Sexual advances
  - Requests for sexual favors
  - Sexual pranks
  - Repeated teasing, jokes or innuendo based on protected category
  - Repeatedly brushing up against a person
  - Repeatedly making sexually suggestive gestures
  - Verbal abuse
  - Making or posting demeaning or offensive pictures or cartoons of a protected category in the workplace

Harassment:
Tangible Employment Action

- A tangible employment action is a **significant** change in an employee's employment status.

- Examples include:
  - Firing
  - Demotion
  - Failure to promote

Harassment: Hostile Work Environment

- Hostile Work Environment is:
  - Unwelcome speech or conduct
  - Severe **or** pervasive
  - Based on 'reasonable person' standard
- The conduct must be subjectively offensive (i.e. offensive to the person being harassed) and objectively offensive to a reasonable person
- May be caused by supervisors, coworkers, or others in the workplace.

- In addition to speech/conduct, a Hostile Work Environment also covers explicit or suggestive items that unreasonably interferes with an employee's work performance or create an intimidating, hostile or offensive work environment.
- There does not need to be a tangible affect on an individual's job to establish a Hostile Work Environment claim
- Example:
  - Jane Doe posts a calendar of nude males on her cubicle wall that is visible to people who walk by her cubicle

Sexual Harassment

- A form of sexual discrimination that involves unwelcome sexual advances, requests for favors, or other verbal/physical conduct sexual in nature.

- Two forms of sexual harassment:
  1. Quid Pro Quo (“this for that” or “something for something”)
  2. Hostile Work environment.

Sexual Harassment: Quid Pro Quo

Taking a tangible employment action against an individual based on his or her submission to or rejection of unwelcome sexual advances, or other verbal or physical conduct of a sexual nature.

Elements:

1. Tangible employment action against the victim
2. Involves monetary loss or change of job

Example:

- John Smith receives a smaller performance-based pay increase than his coworkers (who had similar performance) after he refuses his supervisor's request to go on a date.

Examples

Statements that may indicate harassment:

- An employee uses the term, “I am being sexually harassed” or “I think X is being sexually harassed”
- A supervisor uses graphic language, racial slurs, and derogatory insults towards employees.
- An employee or coworker makes comments, such as “I have overheard X telling Y dirty jokes. I know they are friends but I don’t think it’s right.”
- She is creeping me out; always watching and sending me suggestive emails. Nothing really nasty, but…
- “I know I dated X for a while, but she continues to insist that we go out. I am getting sick of her.”
- “The contractor continues to harass X by, among other things, referring to him as a worthless [race, age, etc.] and stupid.”
- An employee mentions harassment but doesn’t want to cause problems

Bullying

- Employees who are bullied often experience a high level of stress and emotional anguish.

- Bullying is not necessarily an equal employment opportunity violation, unless is involves a protected class.

- Nonetheless, bullying may violate PCLOB disciplinary rules, as well as other laws. Bullying, if left unresolved, creates a negative work environment that may encourage EEO-violative behavior.

Bullying: Bully v. Tough Manager

Bullies

- Tend to treat employees inconsistently or unfairly
- Often use humiliation or intimidation to control others
- Can be emotionally unpredictable or have frequent emotional outbursts
- Often intend to negatively affect employees' performance
- Act in their own self-interest.

Tough Managers

- Treat employees consistently and fairly
- Set reasonable standards and expect employees to meet them
- Are generally predictable in their actions and reactions
- Aim to positively affect employees' performance
- Act in the interest of the organization.

AH Responsibilities: Employees

- An employee who believes that he or she is being subjected to unlawful harassment should immediately tell the offender that his or her behavior is unwelcome and ask that it stop.
- If that does not successfully end the conduct, or if the employee does not wish to confront the offender, then the employee should promptly report the unwelcome conduct to his or her first- or second-line supervisor, or the EEO Office.

- In addition to reporting the harassment to a responsible management official, employees who believe they have been subjected to harassment should give truthful information and cooperate in any investigation.

AH Responsibilities: Management

- Supervisors who observe, are informed of, or reasonably suspect an incident of possible harassment must immediately report such incidents to the Office of the General Counsel, which will **either initiate or oversee a prompt investigation**.

- Failure to report incidents of possible harassment by managers will be considered a violation of PCLOB policy and may result in disciplinary action.

- Supervisors should work with OGC and CHCO to take effective measures to make sure that no harassment occurs pending completion of the investigation.

Part IV: Alternative Dispute Resolution

Alternative Dispute Resolution

- Alternative Dispute Resolution generally includes mediation
  - Mediation is a process in which a third-party neutral works with employee and (usually) management to find solution acceptable to all parties.
  - Mediators are not judges or investigators. They work to help both sides come together.

- ADR is available at all stages of the EEO and AH process.

- If settle claim during ADR, cannot pursue EEO complaint.

Part V: Reasonable Accommodation

RA Policy

- What is a Reasonable Accommodation?
  - A change in the way the job is performed.
  - It allows an employee with a disability the equal opportunity to enjoy the benefits and privileges of employment.
- Policy available in quick access folder and at: https://www.pclob.gov/Legal/Eeo

- Need a reasonable accommodation?
  - Contact Operations Director / Reasonable Accommodation Coordinator, rac@pclob.gov
  - Or notify your supervisor (supervisor must refer to RAC)
- PCLOB uses shared service providers (IBC) for assistance in processing requests.
- Note: while the process also applies to applicants, this presentation focuses on current employees.

Examples:

- A blind employee asks for adaptive equipment for computer.
- In addition to speaker systems, agency installs alert message system on computers to allow for pop-up alerts in support of deaf employees.
- Employee with severe carpal tunnel requests speech-to-text software.
- An employee in a wheelchair asks for a ramp or change in door size to their office.
- Agency provides sign language interpreter for deaf employee.

RA Policy: General Notes

- Common accommodations:
  - Modifying work schedules, granting breaks or leave, telework, assistive technology, wheelchair
- RA requests may be temporary or permanent.
- Requestor's failure to provide requested information may result in denial.

RA Policy: Request

- Request may be oral or in writing. No special words required.
  - However, an oral request must be memorialized into a writing either by employee or supervisor.
- Upon receipt, RAC will engage in the "Interactive Process"
  - Employee may not automatically receive accommodation requested. RAC and employee work together to find optimal solutions.
  - This may include more than one discussion.
- Medical Documentation may be required
  - RAC or Shared Service Provider may ask for medical documentation, which should describe (1) nature of disability, (2) need for accommodation, (3) how requested accommodation will assist in essential functions of job. Additional information may be required.
- Information is kept as confidential as possible.

Practical Example:

- Employee had a C-Section and requested telework as an accommodation.
- In support of this request, employee submitted two medical notes but none of the communications provided any detail about the nature of these complications or how they would be accommodated by teleworking.
- Issue that Agency does not have sufficient information to grant telework.
  - An employee must put the employer on notice of the disability for which the employee seeks an accommodation.
  - The employee also must provide enough information to allow the employer to understand how the accommodation requested can assist.

RA Process

- Generally, takes 45 days from date of request. This time may be tolled if awaiting medical documentation or information from requestor.

- Temporary/Interim accommodations may be granted based on RAC and supervisor determinations.

- Agencies assess whether requested accommodations represent an “undue hardship” upon the agency, including significant difficulty or expense that would interfere with agency operations, or would change an essential function of the employee’s position.

Appeal

- If an employee does not accept the offered RA, or disagrees with a denial, the employee may request reconsideration from the RAC.

- If reconsideration is denied, the employee may file an EEO complaint.

RA: Religious Accommodations

- Management will make very effort to accommodate religious beliefs.
- An employee may request a reasonable accommodation where sincerely held religious beliefs, practices, or observances conflict with work requirements.
- Employees should identify the practice or requirement that conflicts, the nature of the sincerely held religious belief, the accommodation(s) that you are requesting, and any other accommodations you would consider.

Summary Slide

EEOC Counselor:

- eeo@gsa.gov, 202-501-4571; or,
- (b) (6) @gsa.gov, (b) (6) .

Reasonable Accommodation Request:

- Contact Operations Director / Reasonable Accommodation Coordinator, rac@pclob.gov
- HR/Chief Human Capital Officer