

NOTICE OF RIGHTS AND RESPONSIBILITIES

Use of the Equal Employment Opportunity (EEO) complaint process is voluntary. The first step in the process is to participate in pre-complaint alternative dispute resolution (ADR) or pre-complaint counseling. If your complaint is not resolved during the pre-complaint stage, you will have the opportunity to file a formal EEO complaint under the Equal Employment Opportunity Commission (EEOC) regulations at 29 CFR, Part 1614. Following are frequently asked questions about the EEO complaint process:

1. Is there a time limit on when I have to make initial contact with the Civil Rights office?
Yes. You must contact the office within 45 calendar days of the date you knew or should have known of the discriminatory event.
2. What happens after I make my initial contact with the Civil Rights office? The process provides for 90 calendar days from your initial contact to conduct ADR. If you elect to participate in traditional counseling then the EEO counselor will only have 30 calendar days after the initial contact date to conduct an informal inquiry and attempt to facilitate a resolution of your employment dispute. You may grant an additional 60 calendar day extension for traditional counseling. Your EEO counselor acts strictly as a neutral party and will make necessary inquiries into the matters raised and attempt to resolve the issues. The Counselor is not an advocate for you or the Transportation Security Administration (TSA). If the matter is not resolved to your satisfaction either through ADR or traditional counseling, you will receive a written notice informing you of the right to file a formal EEO complaint within 15 calendar days of your receipt of the notice.
3. Can I remain anonymous during the pre-complaint counseling process? Yes, if you elect traditional counseling but not in ADR. However, if you wish to remain anonymous, it will be difficult to effectively resolve your complaint. Also, depending on the facts of the case, it may be possible for participants to assume that you are the one who has filed the complaint. The right to anonymity ends if you file a formal EEO complaint.
4. Can I be represented during the counseling and formal portions of the process? Yes. You have the right to be accompanied, advised, and represented at any stage in the complaint process. You must notify this office of your election in writing, and include your representative's name, telephone number, and mailing address. If your chosen representative charges you for his or her services, you will be responsible for paying those fees. Additionally, should your case eventually go to hearing, TSA is not required to pay attorney's fees for services performed during the pre-complaint process.
5. What if my contact information changes while I am working with the civil rights office? You are required to keep the Civil Rights office and the EEOC informed of your current mailing address and contact information during all stages of the process.
6. If my complaint is not resolved in the pre-complaint process, and I choose to file a formal complaint, what claims may I include? If you file a formal EEO complaint, only those

claims raised during the pre-complaint counseling stage, or issues related to those claims, may be alleged in a subsequent formal complaint.

7. What happens in the formal complaint process? Your claims will be evaluated for legal sufficiency and will either be accepted or dismissed. Claims that are legally sufficient and thus accepted will be assigned to an impartial investigator who will conduct a formal investigation. At the completion of the investigation, or, generally, if 180 days have elapsed since you filed your formal complaint, you will be notified of your right to either request a Final Agency Decision from the Department of Homeland Security or to request a hearing before an EEOC Administrative Judge. Your request should be made directly to the appropriate EEOC Office as instructed on the election letter you will receive. You must certify to the EEOC Administrative Judge that you provided TSA with a copy of your request for a hearing. You will also be instructed to notify the Department of Homeland Security (DHS) and TSA of your election in writing, at the following addresses:

**Department of Homeland Security
Office of Civil Rights and Civil Liberties, Room 3310
245 Murray Drive, Building 410
Washington, DC 20528**

and

**Transportation Security Administration
Office of Civil Rights and Liberties, TSA-6
601 South 12th Street
Arlington, VA 20598-6006**

You also have the right to file a civil action in an appropriate U.S. District Court within; (a) 90 days of receipt of the final action on an complaint if no appeal has been filed; (b) 180 days from the date of filing a formal EEO complaint if the investigation has not been completed; (c) 90 days of receipt of the EEOC's final decision on an appeal, or; (d) after 180 days from the date of filing an appeal with the EEOC if there has been no final decision rendered. An appropriate U.S. District Court is the court within the area where the alleged discrimination occurred.

8. Do I have an obligation to mitigate damages? Yes, you have the duty to mitigate damages, e.g., interim earnings or amounts that could be earned by you with reasonable diligence during the processing of your EEO complaint. Generally, these earnings must be deducted from any award of back pay.
9. What happens if I file an additional complaint if I already have a complaint in the system? If you have filed two or more EEO complaints, that are like or related, TSA is required by regulation consolidate them after appropriate written notice to you, in accordance with 29 CFR §1614.606. TSA shall complete its investigation of consolidated complaints within 360 days after filing of the first complaint or 180 days after the filing of the last complaint.

10. Are there special concerns for age-based complaints? Yes. You have the right to file a written notice of intent to sue, instead of an administrative complaint when age is alleged as a basis for discrimination under the Age Discrimination in Employment Act (ADEA). If you elect to file an EEO complaint, you must exhaust administrative EEO remedies before you may file a civil action in U.S. District Court. Exhaustion of administrative remedies occurs when the agency takes final action or 180 days after filing the complaint if no final action is taken. In order to file a civil action directly in an appropriate U.S. District Court you must first wait at least 30 days and give written notice to the EEOC within 180 days of the date of the alleged discriminatory action. Notices of intent to sue must be hand delivered to the Commission at the following address:

**Equal Employment Opportunity
Commission Office of Federal Operations
Federal Sector Programs
1801 L Street, N.W.
Washington, D.C. 20507**

Or mailed to:

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

Or faxed (if no more than ten pages) to (202) 663-7022.

The notice of intent to sue should be dated and must contain the following information:

- a) Statement of intent to file a civil action under Section 15(d) of the Age Discrimination in Employment Act of 1967, as amended;
- b) Name, address, and telephone number of the employee or applicant;
- c) Name, address, and telephone number of the aggrieved party's designated representative, if any;
- d) Name and location of the federal agency or installation where the alleged discriminatory action occurred;
- e) Date on which the alleged discriminatory action occurred;
- f) Statement of the nature of the alleged discriminatory action(s); and
- g) Signature of the aggrieved or the aggrieved party's representative.

11. Are there special concerns for disability-based complaints? Yes. TSA employees alleging discrimination based on disability should refer to TSA Management Directive No. 1100.73-4, "Reasonable Accommodation Program" for information and guidance to request an accommodation.

12. Are there special considerations related to Equal Pay Act complaints? Yes. You have the right to file a civil action directly in an appropriate U.S. District Court on claims of sex-based wage discrimination under the Equal Pay Act (EPA), even though such claims are also recognized under Title VII, 29 CFR, § 1620.12(b). EPA claims must be filed within two years (or within three years if the violation is willful) from the date of the alleged violation whether or not you have filed an EEO complaint against TSA. Filing an EEO complaint under 29 CFR Part 1614 does not extend the time for filing a civil action.

If you file an EEO complaint with TSA alleging sex-based wage discrimination under the EPA; you must contact or inform the EEO counselor within 45 days of the date you become aware of, or reasonably suspect, a violation of the EPA.

13. Are there special considerations related to discrimination claims if they relate to claims before the Merit Systems Protection Board "Mixed Cases"? Yes. A matter is a "mixed case" if: (1) the aggrieved person alleges discrimination in connection with an action that can be appealed to the U.S. Merit Systems Protection Board (MSPB); and (2) the employee has standing to file an appeal to the MSPB. If the subject of the action is appealable to the MSPB, you may file a complaint with the EEO Office or an appeal with MSPB, but not both. The process selected first is deemed the elected process.

Employment actions, which generally may be appealed to the MSPB, include but are not limited to: Removal, reduction-in-grade or pay; suspension for more than 14 days, or a reduction-in-force.

The following employees usually have standing to appeal to the MSPB: Preference eligible employees with one or more years of current continuous service in the same or similar position and non-preference eligible employees with two or more years of current continuous service in the same or similar position (other than a temporary appointment limited to 2 years or less).

If you elect the EEO complaint process, your mixed case complaint will be processed substantially in the same manner as any other EEO Complaint. However, you will not be entitled to a hearing before an EEOC Administrative Judge pursuant to 1614.301.

If you elect to file an appeal directly to the MSPB, you must file the mixed case appeal within 30 calendar days of the effective date of the appealable action or your receipt of the agency's final decision on the appealable action, whichever is later.

The above information is only a summary of your rights and responsibilities under the Federal Sector EEO Regulations. Additional information is available on the EEOC and MSPB websites at www.EEOC.gov and www.MSPB.gov, respectively.