

The Sexual Orientation Discrimination Complaint Process

The Office of Civil Rights (OCR) manages the Department of Commerce's Sexual Orientation Discrimination Complaint process. Sexual orientation discrimination against Commerce employees and applicants for employment is prohibited by Federal Government and Department of Commerce policies. It is also a prohibited personnel practice under the Civil Service Reform Act of 1978 — the law that established the basic merit system principles governing federal personnel management.

Q. What is the Sexual Orientation Discrimination Complaint Process?

A. The Sexual Orientation Discrimination Complaint Process is an administrative process for redressing claims of discrimination based on sexual orientation. It was established by Department Administrative Order (DAO) 215-11, and is modeled on the Equal Employment Opportunity (EEO) Complaint Process, as well as sexual orientation discrimination complaint processes available at other federal agencies.

Like the EEO Complaint Process, the Sexual Orientation Discrimination Complaint Process has three parts:

- an informal pre-complaint process;
- a formal complaint process; and
- an appeal process.

In most instances, Alternative Dispute Resolution, through mediation, is available to employees as an option during the pre-complaint or formal complaint process.

Q. What types of issues may be raised in the Sexual Orientation Discrimination Complaint Process?

A. Any issue related to discrimination based on sexual orientation in employment may be raised, including discrimination in hiring, assignment, termination, and any other terms and conditions of employment.

Q. What is employment discrimination based on sexual orientation?

A. Employment discrimination based on sexual orientation is treating employees or applicants for employment differently than similarly-situated coworkers or applicants because of:

- their sexual orientation or perceived sexual orientation;
- their relationship with an individual(s) of a particular sexual orientation; or
- their affiliation with a group that is associated with sexual orientation issues or whose membership is composed mainly of people of a particular sexual orientation(s), including an employee organization.

Q. Who can use the Sexual Orientation Discrimination Complaint Process?

A. The Sexual Orientation Discrimination Complaint Process may be used by all Department of Commerce employees and applicants for employment, except:

- temporary employees in the Bureau of the Census Decennial Census Processing Program or applicants for such employment; and
- employees covered by collective bargaining agreements that do not specifically exclude sexual orientation discrimination or related retaliation from their negotiated grievance procedures.

Q. How does the pre-complaint process work?

A. You **must** raise issues in the pre-complaint process before filing a formal sexual orientation discrimination complaint. You must initiate the pre-complaint process **within 45 calendar days** of the action you believe to be discriminatory, the effective date of the alleged discriminatory action, or the

date that you learned or should have suspected that the agency action may be discriminatory.

Counseling for sexual orientation claims is done by EEO Counselors and works the same way as EEO counseling for Title VII claims. Counselors help to define the issues raised in the complaint and try to facilitate an agreement to resolve the issues. They also provide basic information about the sexual orientation discrimination process and other procedures you can use to raise your claim. The Counselor is neutral and does not represent or support your position or management's position. You may remain anonymous during EEO Counseling. However, remaining anonymous may make it difficult for the Counselor to facilitate a resolution of your concerns. Counseling is generally completed within 30 calendar days.

Contact the EEO Officer serving your bureau and ask to be assigned to an EEO Counselor.

Q. Is Mediation available in the sexual orientation discrimination process?

A. Mediation, an Alternative Dispute Resolution (ADR) process is available in both the

informal and formal stages of the sexual orientation discrimination complaint process. Mediation is an informal process in which the employee and management officials meet with a neutral third party, called a mediator. In a meeting or series of meetings, the mediator brings the parties together to reach a mutually acceptable resolution of the dispute. When mediation is successful, the parties draft the terms of a mutually acceptable settlement agreement. If your case is appropriate (see *When is Mediation Inappropriate*, in the *DoC EEO Mediation Guide*), you have the option of electing ADR, through mediation, during your complaint. To request mediation after you have filed your formal complaint, or to request information about the mediation process, contact the Department's EEO ADR Manager.

Q. How does the formal complaint process work?

A. If your claim is not resolved through counseling or mediation, the counselor will give you notice of your right to file a formal complaint and provide you with a complaint form. You must file your complaint **within 15 calendar days** of receiving this notice. Provided that you meet the procedural requirements for filing a formal complaint -- including initiating

counseling and filing your complaint in a timely manner -- the Department will investigate your claim.

An investigator will collect relevant documents and take testimony from you, management officials, and other witnesses about the issues you raise in your complaint. Investigations are generally completed within 180 calendar days of the date you file a complaint. When the investigation is complete, a Report of Investigation (ROI) will be sent to you.

Within 60 calendar days of issuing the ROI, the Director of OCR will issue a Final Order, including findings on the merits of each matter in the complaint. When discrimination is found, appropriate remedies and relief will be ordered.

Q. How can I appeal a Final Order in my complaint?

A. Final orders may be appealed to the Department's Chief Financial Officer/Assistant Secretary for Administration.

For more information about this complaint process, contact your EEO Officer or the Department's Office of Civil Rights or see OCR's web site at www.osec.doc.gov/ocr.

Published June 2003