

Equal Employment Opportunity (EEO) Compliance Training (For Managers & Supervisors)

Prepared by:
NEXCOM EEO OFFICE

-Unclassified-



Why EEO Training???



- EEO is the LAW. It is important to learn the rights, responsibilities, and protections provided by EEO laws, rules and regulations.
 - EEO training is mandatory for managers and supervisors IAW NO FEAR Act and MD-715.
 - Managers and Supervisors, as agents for NEXCOM bear legal responsibilities
 - EEO case law is constantly changing the way we conduct business. It is important to learn how those last-minute changes may have impacted our workplace.
 - Economic and moral imperative: Ignorance results in costly and lengthy complaints, loss of productivity, employee turnovers, and poor morale.
 - Discrimination and Harassment negatively impact our mission.
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Training Objectives/Purposes:

- Inform Managers/Supervisors about the roles of the EEO Office at NEXCOM.
- Review significant anti-discrimination theories, EEO laws, regulations, and policies.
- Review Federal Sector EEO complaint processing.

Roles/Responsibilities of the EEO Office

- Advisor on all EEO-related issues
- Advocate for the EEO process (Neutral position)
- Process EEO Complaints filed against NEXCOM
- Accept, or dismiss formal EEO Complaints on procedural grounds
- Coordinate EEO Investigations
- Partner with HR, Legal, Diversity and other stakeholders to ensure EEO
- EEO trainers
- Coordinate Mediations when complainants wish ADR participation
- Reasonable Accommodation Advisors

What is Equal Employment Opportunity (EEO)?

- Term used by the Federal government to refer to employment practices that ensure nondiscrimination on the basis of race, color, national origin, sex, religion, physical or mental disability, age, or other factors protected by Law.
- The principle behind EEO is that everyone should have the same access to opportunities in the workplace.
- The freedom to compete on a fair and level playing field with equal opportunity for competition, i.e., to advance based on merit.

What is Discrimination?

- Treatment or consideration based on class or category rather than individual merit; partiality or prejudice.

What is Employment Discrimination?

- Involves making employment decisions, personnel actions, or treating people in the workplace differently based, not on merit, but on protected factors (such as: race, color, national origin, age, sex, religion, disability, reprisal, etc)

What is our EEO Policy?

The government is committed to creating an inclusive culture that embraces, values, and utilizes the diversity within our service and to actively promote fairness and equal opportunity in the workplace.

It is our policy to:

- Provide equal opportunity in employment for all qualified persons;
- Prohibit discrimination in employment based on race, color, national origin, religion, sex, age (40 years and above), disability (physical and/or mental), reprisal, and genetic information.
- Maintain a work environment that is free of any form of discrimination or harassing conduct prohibited by law.

Policy on Sexual Harassment

- It is our policy to maintain a work environment free from sexual harassment and intimidation. Sexual harassment is an **Unacceptable Conduct** in the workplace and will not be tolerated.
- ***Every*** manager and employee is ***responsible*** for insuring a workplace free of discrimination and harassment.

EEO = Federal Laws



- Title VII of the Civil Rights Act of 1964, as amended: Prohibits employment discrimination on the basis of race, color, national origin, religion, and sex. Also, Title VII prohibits reprisal or retaliation for participating in the complaint process or for opposing an unlawful employment practice under the Act. Implemented by 29 CFR § 1614; EEOC MD110; EEOC MD 715
- Age Discrimination in Employment Act (ADEA) of 1967, as amended: Prohibits discrimination in employment on the basis of age (40 years or older). Also, the Act prohibits retaliation. Employees may proceed to district court.

Federal Laws (Cont.):



Rehabilitation Act of 1973, as amended: Prohibits discrimination in the workplace on the basis of mental and/or physical disability. It also prohibits retaliation/reprisal. The Act requires agencies to reasonably accommodate the known physical or mental limitations of qualified employees with disabilities or applicants with disabilities.

The law also requires that agencies ensure, absent undue burden, that individuals with disabilities have access to electronic and information technology that is comparable to the access of Individuals with no disabilities.

ADA Amendments Act of 2008: Effective, January 1, 2009. The Act revised some aspects of various definitions to cover more people and, as a result, prevent more discrimination. In other words, the Amendments Act was created to restore the ADA's broad protections as intended by Congress when the ADA was enacted in 1990. The standards and definitions of the Act apply to Federal sector.

Federal Laws (Cont.):

Equal Pay Act of 1963: Prohibits sex-based wage discrimination. It also prohibits reprisal. Employees may proceed to district court.

Civil Rights Act of 1991: Provides right to jury trials and \$300,000 cap on compensatory damages + attorney fees, back/front pay, expenses)



Federal Laws (Cont.):

- Genetic Information Non-discrimination Act of 2008 (GINA): Prohibits discrimination against employees or applicants because of genetic information.
 - Genetic information includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder or condition of an individual's family members (i.e. an individual's family medical history).
 - The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a complaint of discrimination, or participated in an employment discrimination investigation or complaint.

EEO Regulations and Directives:

Title 29 CFR Part 1614: Contains the regulations governing the processing of Federal sector discrimination complaints.

EEOC MD-110: Policy guidance in effect since Nov. 9, 1999. Its purpose is to describe in detail the procedures that must be followed when processing Federal sector discrimination complaints.

EEO Regulations and Directives (Cont.):

Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (“NO FEAR Act”): Makes Federal agencies more accountable for violations of discrimination, retaliation and whistleblower protection laws.

EEOC MD-715: Policy guidance on the implementation of reporting/training requirements established by the NO FEAR Act.

NO FEAR Act requires:

- Agencies that lose or settle discrimination and whistleblower cases to pay judgments out of their individual operating budgets;
- Agencies to post statistical data on EEO complaints on agency's public website;
- Agencies to notify employees about rights under discrimination and whistleblower laws;
- Agencies to train managers in managing a diverse workforce, dispute resolution, and other communication skills;
- Agencies to encourage disciplinary action against employees found to have discriminated or retaliated.
- Agencies to file annual report with Congress.

Theories of Discrimination

The courts and the EEOC have identified a number of discrimination theories in adjudicating EEO complaints:

- ✓ Disparate Treatment
- ✓ Adverse Impact
- ✓ Harassment/Hostile Environment
- ✓ Reprisal
- ✓ Reasonable Accommodation
- ✓ Perpetuation of Past Discrimination

Disparate Treatment:

Applies to allegations of discrimination where the complainant alleges that he or she was treated differently than similarly-situated employees not of the complainant's protected class.

Similarly-situated employee: one who reports to the same manager as the complainant, the individual must be subject to the same performance evaluations and discipline standards, and he or she must have engaged in conduct similar to the complainant's.

Disparate Treatment (Cont.)

The Supreme Court held that a Complainant must establish ***Prima Facie Case*** by showing that:

1. S/He is a member of a protected class;
2. S/He suffered some adverse action;
3. A similarly-situated individual outside of her/his class was treated more favorably

Disparate Treatment (Cont.)

Shifting Burden of Proof: Once Complainant established a prima facie case, the agency must provide a legitimate, non-discriminatory reason for the action taken.

To prevail, the Complainant must show that the agency's proffered reasons were untrue, that were pre-text, that is, that the agency's reasons were cover-up employment discrimination.

The burden of proof always falls on the Complainant.

Adverse Impact

Exists when a facially neutral employment Policy or Practice disproportionately impacts members of a protected class.

The burden shifts to the agency to provide a business justification for the challenged policy or practice.

After management meets its burden, the complainant may prevail by providing an alternative practice that would accomplish the same business objective with a less adverse impact on the protected class.

Adverse Impact

Discriminatory motive is not required. In other words, the employee is not required to prove intentional discrimination.

Examples of policies that may adversely impact certain groups:

- Educational requirements;
- Tests;
- Height and weight requirements;
- Subjective standards for hiring, promotions, and assignments.

Harassment

What Workplace Harassment is:

Any unwelcome verbal or physical conduct based on one of the protected bases that is so objectionably offensive that it alters the conditions of the victim's employment.

The standard is met when:

- The conduct culminates in a tangible employment action, or
- The conduct was sufficiently severe or offensive to create a hostile work environment.



Harassment (Cont.)

Who can commit Harassment?

A management official. The agency is liable even if management did not know of the harassing conduct, unless both elements of an affirmative defense are met:

1. That the agency exercised reasonable care to prevent and to promptly correct any harassment, and
2. That the employee unreasonably failed to take advantage of any preventive or corrective opportunities offered by the agency or to avoid harm otherwise.

Harassment (Cont.)

Who can commit Harassment?

A co-worker

A non-employee (e.g., contractor, visitor)

If harassment was committed by a co-worker or a non-employee, the Agency is liable if it knew or should have known about the harassment and failed to take immediate and appropriate corrective action.

Knowledge assumed if:

- ✓ The victim complains about the harassment;
- ✓ The conduct occurred in the presence of a Supervisor;
- ✓ The conduct is widespread.

Hostile Work Environment

Hostile Work Environment exists when the conduct unreasonably interferes with job performance or creates an *intimidating, hostile, or offensive work environment*.

Behavior must be **severe or pervasive** under a *reasonable person standard*.

Hostile Work Environment



A supervisor, coworker or non employee can commit this type of harassment.

Nothing tangible about the individual's job need to be affected.

Key Issues: Frequency and Severity.

- Sexual Harassment is a form of sex discrimination that violates Title VII.

- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
 - (1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
 - (2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
 - (3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Retaliation:

Prohibited by:

- ✓ Title VII
- ✓ ADEA
- ✓ Rehab. Act
- ✓ Equal Pay Act



Retaliation (Cont.)

Elements of Reprisal:

- ✓ Participation in the EEO process or opposition to a discriminatory employment practice
- ✓ Adverse action against complainant
- ✓ Causal connection between the protected activity and the adverse action

Retaliation (Cont.)

Questions to consider when retaliation/reprisal is alleged:

- ✓ Did complainant previously engage in protected activity (file or participate in a complaint) or oppose unlawful discrimination?
- ✓ Was the agency aware of complainant's activity?
- ✓ Was complainant contemporaneously or subsequently adversely affected by an agency's action?
- ✓ Does some connection exist between the complainant's activity and the adverse employment decision that could lead to an inference of retaliation, e.g., period of time, sudden adverse performance evaluation?

Retaliation (Cont.)

Participation: The laws do not limit or condition the protection against reprisal/retaliation for participating in the EEO complaint process. Individuals who participate in the complaint process are protected from reprisal regardless of the validity or reasonableness of the complaints that they make.

Unlawful to discriminate because the employee:

- ✓ Filed a complaint of discrimination or initiated EEO counseling, whether timely or untimely.
- ✓ Participated in complaint process (testified, assisted, represented in an investigation, hearing, proceeding, etc.)

Retaliation (Cont.)

Opposition: Unlawful to discriminate against an employee because he or she opposed any unlawful practice under employment discrimination statutes.

- ✓ The protection applies if an individual explicitly or implicitly communicates a belief to her/his employer that its activity constitutes a form of employment discrimination, covered by any of the laws enforced by the EEOC.



Retaliation (Cont.)

Opposition includes, but is not limited to:

- ✓ Threatening to file a complaint
- ✓ Complaining to anyone at the workplace about alleged discrimination against oneself or others
- ✓ Refusing to obey an order because of a reasonable belief that it is discriminatory
- ✓ Requesting reasonable accommodation or religious accommodation

Disability Discrimination

The Rehabilitation Act prohibits discrimination against individuals with physical or mental disabilities in the Federal sector.

The ADA's nondiscrimination standards also apply to federal sector employees under section 501 of the Rehabilitation Act, as amended, and its implementing rules.



Disability Discrimination

The Rehabilitation Act states that a person with a disability is one who:

- has a mental or physical impairment that substantially limits a major life activity;
- has a history of disability; or
- is regarded as disabled.

Impairment:

- A physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting a body system; or
- A mental or psychological disorder.

Disability Discrimination (Cont.)

Major Life Activity: Basic activity that the average person in the general population can perform with little or no difficulty.

Includes:

Caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, etc.



Disability Discrimination (Cont.)

Substantially Limited: Means that an individual is unable to perform (or is significantly restricted) as to the condition, manner, or duration under which the person can perform the activity.

The agency must consider:

- The nature and severity of the impairment;
- The duration of the impairment (**cannot be temporary in nature**);
- The long-term impact of the impairment.

Disability Discrimination (Cont.)

Mitigating Measures: Medicines, devices, or treatments that helps an individual cope with her/his impairment. (Examples: hearing aids, insulin, prosthetic limbs, wheelchairs, pacemakers, medications).

- ❖ Mitigating measures other than “ordinary eyeglasses or contact lens” are no longer considered in assessing whether a person has a disability.
- ❖ If the mitigating measure itself causes any limitations, then those *will* be considered to determine whether an individual is substantially limited in a major life activity.

Disability Discrimination (Cont.)

Proving Disability Discrimination:

To establish a “prima facie” case of disability discrimination, the complainant must show that:

- S/he is an individual with a disability as defined by the law;
- S/he is a “qualified employee with a disability” as defined by the statute; and
- The agency took adverse action against the employee.

Reasonable Accommodation



- ✓ An employee or applicant may file a complaint of discrimination based on the agency's failure to provide a reasonable accommodation.
- ✓ Agencies have a duty to provide reasonable, effective accommodation to “qualified individuals with disabilities” to enable them to perform the essential functions of their jobs, unless the accommodation poses an undue hardship to the agency, or a direct threat to the individual or others.

Reasonable Accommodation (Cont.)

Reasonable Accommodation is an adjustment to job requirements or to the work environment that assists an employee with a long term or permanent disability in performing the essential duties of his or her position. It includes a modification or adjustment to the job application process that enables a qualified applicant with a disability to be considered for the position sought.



Types:

Job Restructuring

Accessible Facilities

**Providing Readers
and Interpreters**

**REASONABLE
ACCOMMODATION**

(reassignment: accommodation of last resort)

**Modified
Work
Schedules**

**Assistive
Devices**

**Adjusting or modifying examinations and
training materials**

Reasonable Accommodation (Cont.)

Qualified Individual with a Disability:

Is an employee (or applicant) with a disability, who can perform the “essential functions” of the position in question, with or without reasonable accommodation, without endangering the health and safety of the individual or others, and who, depending on the type of appointing authority being used, meets the:

- a) Experience and/or education requirements of the position; or
- b) Criteria for appointment under one of the special appointing authorities for people with disabilities.

Reasonable Accommodation (Cont.)

Essential Functions:

Job duties that are so fundamental to the position that the individual holds or desires that s/he cannot do the job without performing them. A function can be "essential" if, among other things: the position exists specifically to perform that function; there are a limited number of other employees who could perform the functions; or the function is specialized and the individual is hired based on his/her ability to perform it.

Reasonable Accommodation (Cont.)

Essential Functions:

Determinations of the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed, and not simply the components of a generic position description.



Reasonable Accommodation (Cont.)

Undue Hardship:

Significant difficulty or expense incurred should the agency provide a particular accommodation. The criteria to be considered in determining undue hardship on a case-to-case basis include the following:

- ✓ Nature and cost of the accommodation;
- ✓ Overall size of the organizational unit as compared with the number of employees, facilities, and size of the budget;
- ✓ Type of operation, including composition and structure of the workforce; and
- ✓ The impact of the accommodation to the operation of the office, including the impact on the ability of other employees to perform their duties and the impact on the office's ability to conduct business.

Supervisor's Responsibilities during the Reasonable Accommodation Request Process

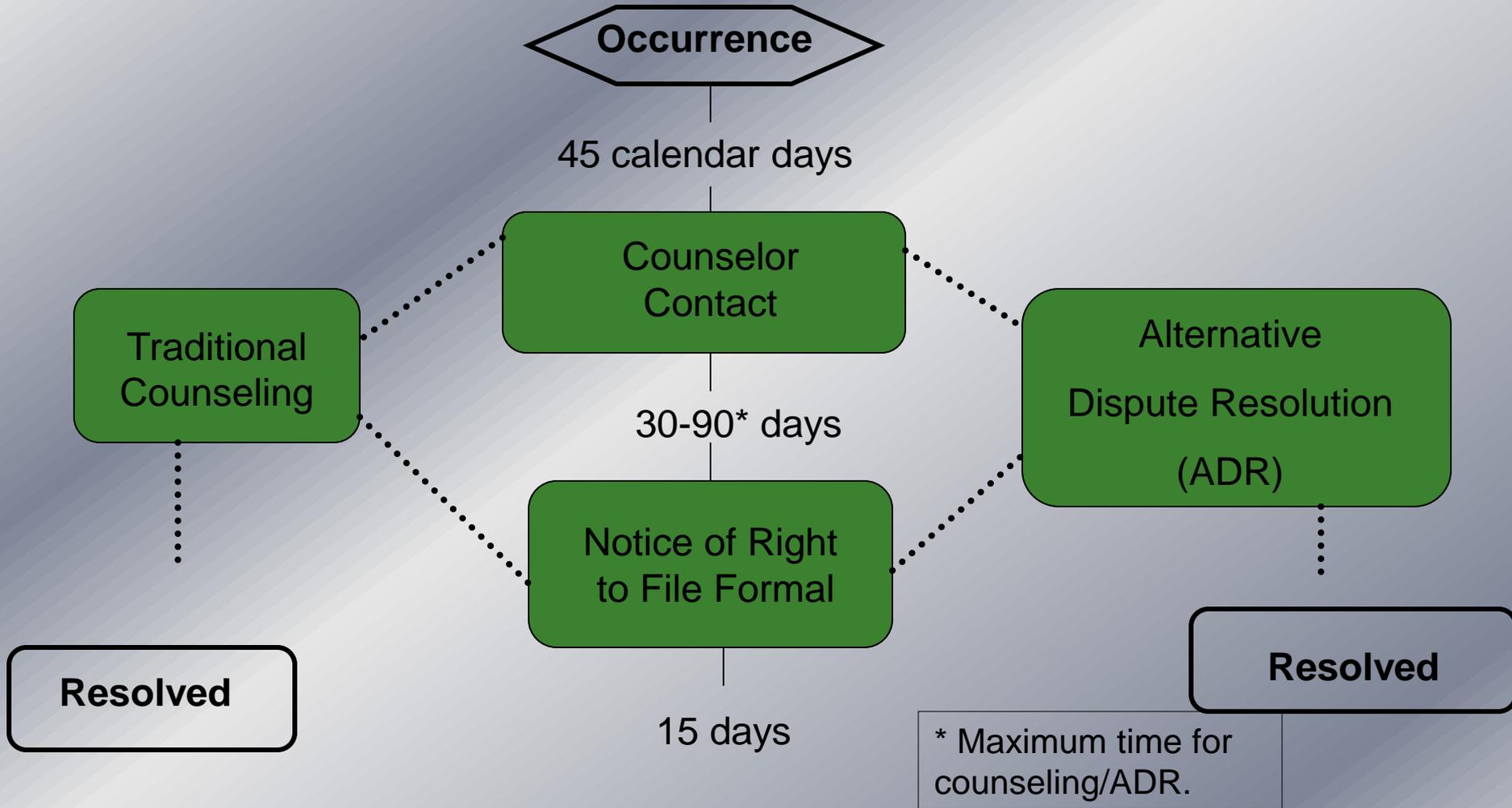
- ✓ Engage in the interactive process.
- ✓ Do not delay; act promptly.
- ✓ Contact the EEO Manager and/or HRBP for advice.
- ✓ Treat all requests seriously.
- ✓ Respect confidentiality.



Perpetuation of Past Discrimination Theory:

- It concerns situations where, in the past, management has had a discriminatory policy/practice, which it eliminated and replaced with a policy/practice that is neutral on its face, but which perpetuates the discriminatory effect of the prior policy.
- Perpetuation cases are very much like adverse impact cases, with a past discriminatory element thrown in.
- The analysis of the impact of the replacement policy or practice is conducted the same as in adverse impact cases.

Federal Sector Complaint Process: Informal (Under 29 CFR 1614)



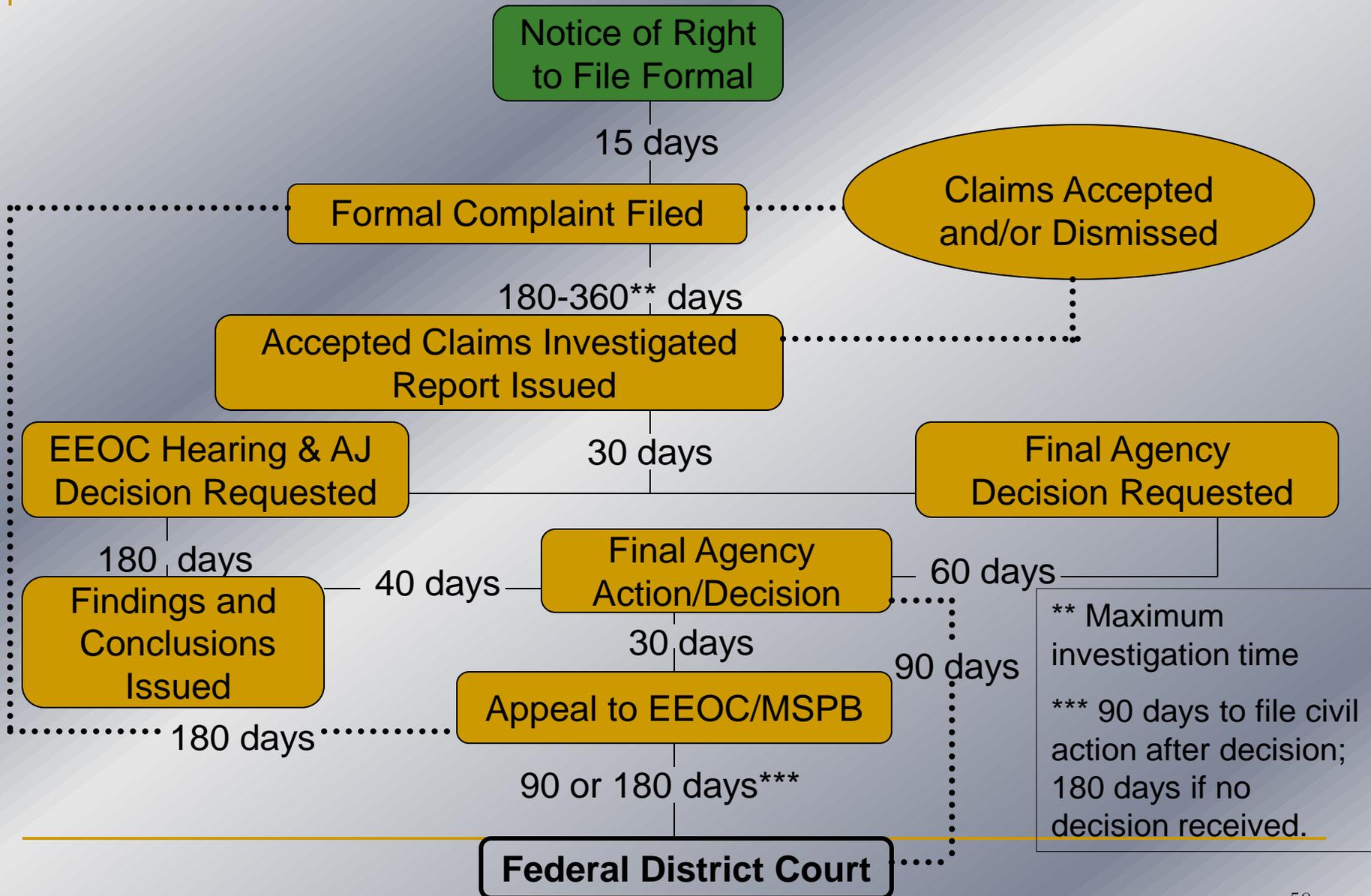
Informal (or Counseling) Stage



EEO Counseling:

- ❑ An individual must contact the EEO Office within 45 calendar days of the date of the incident that s/he believes to be discriminatory, or in the case of a personnel action, within 45 days of the effective date of the action.
- ❑ Limited inquiry conducted.
- ❑ Counselor seeks informal resolution of complaint.
- ❑ Within 30 calendar days a Notice of Right to File a Discrimination Complaint (NRTF) is issued (may be extended up to 90 calendar days).
- ❑ Complainant has 15 calendar days to file the formal complaint from the date the aggrieved received the NRTF.

Federal Sector Complaint Process: Formal



EEO Complaint Process: Formal Stage

- Formal complaint filed with NEXCOM EEO Office.
- Procedural review: Acceptability determination by EEO Director.
- If complaint accepted for further investigation; it is assigned to an EEO Investigator from the Investigations and Resolution Division of the DOD Civilian Personnel Management Service.
- Upon completion of the EEO Investigation (within 180 days of date of formal filing), complainant receives copy of Investigative Report (IR) and Advisement of Rights.
- Complainant's options: FAD, Hearing, Withdraw, and/or civil action.

Rights and Responsibilities of Complainants during the EEO Process:

RIGHTS:

- Right to use the EEO complaint process.
- Right to an EEO Counselor.
- Right to Representation.
- Right to remain anonymous (informal stage).
- Right to freedom from restraint, interference, coercion, or reprisal.
- Right to file a formal complaint.

RESPONSIBILITIES:

- Use the complaint process for its intended purpose.
- Cooperate throughout the entire process.
- Make good faith efforts for resolution at the lowest level possible.
- Adhere to all regulatory time frames.
- Request a reasonable amount of official time.
- Provide written advisement of representative and changes in representation.
- Be specific about the incidents alleged.
- Keep EEO Office informed of any address change.
- Use information for intended purpose.

Responsible Management Official's (RMO) Rights:

- Be informed of the charges.
- Be represented.
- Respond to charges.
- Receive a copy of the investigative report if disciplinary action results.
- Be informed of Final Agency Decision.

RMO's Responsibilities:

- Cooperate with ongoing investigations.
 - Provide all relevant and material information.
-

Management/Supervisor Responsibilities:

- Ensure a work environment free from all forms of discrimination.
- Attempt resolution at the lowest level possible.
- Inform employees who allege discrimination to contact EEO Office, or local union, where applicable.
- Take a proactive approach for managing EEO complaints.
- Reinforce/Reiterate EEO Policies in the workplace.

Recommendations for Supervisors:

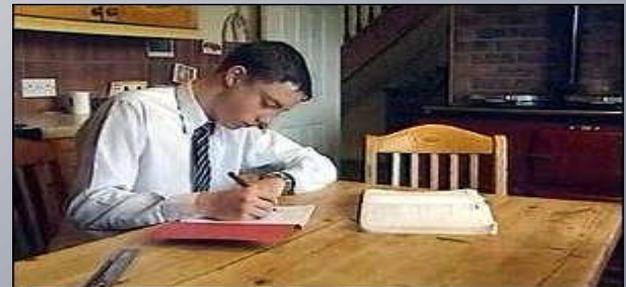
- ✓ Treat all complaints seriously and confidentially.
- ✓ Post EEO policies and notices for filing a discrimination complaint.
- ✓ Encourage participation in the ADR process.
- ✓ Respond to information requests in a **timely** and **accurate** manner.
- ✓ Do not engage in behavior that may be viewed as retaliatory or obstructive to the complaint process.
- ✓ Set example; “walk the talk.”
- ✓ Be accessible; have an “open door policy.”
- ✓ Communicate regularly with staff; reiterate EEO policies during staff meetings.
- ✓ Monitor workplace behaviors; enforce respect in the workplace.



If you feel you have been discriminated against...

Contact NEXCOM EEO Office:

Indicate that you believe you have been discriminated against and want to speak to the servicing EEO Counselor to initiate the EEO process.



EEO:
Essential to the Success of NEXCOM as a High-Performing Organization

This concludes the EEO training module. In order to update your PeopleSoft record, please click [HERE](#) to register by entering course code EEP/MS.

To print a certificate, please click [HERE](#)



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