

Civilian Personnel

Equal Employment Opportunity Complaint Handbook for Employees and Supervisors

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History. This UPDATE publishes a new USAREC pamphlet.

Summary. This pamphlet is a simplified record of the equal employment opportunity complaint process.

Applicability. This pamphlet is applicable to all elements of this command.

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Glossary

1. Purpose

This pamphlet is a simplified record of the equal employment opportunity (EEO) complaint process.

2. References

- a. Related publication. AR 690-600 (Equal Employment Opportunity Discrimination Complaints).
- b. Referenced form. DA Form 2590-R (Formal Complaint of Discrimination).

3. Explanation of abbreviations

Abbreviations used in this pamphlet are explained in the glossary.

Proponent and exception authority. The proponent for this pamphlet is the Assistant Chief of Staff, G-1. The proponent has the authority to approve exceptions to this pamphlet that are consistent with controlling law and regulation. Proponent may delegate this approval authority, in writing, to the equal employment opportunity manager.

Suggested improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to HQ USAREC, ATTN: RCPER-EE, 1307 3rd Avenue, Fort Knox, KY 40121-2726.

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4. Laws and regulations

Discrimination under Title VII is not just a bad management practice, it is against the law. The following laws and regulations cover prohibited discrimination:

- a. Civil Rights Act of 1964 (as amended). The Civil Rights Act covers discrimination based on race, color, national origin, sex, religion, and reprisal (for participation in a Title VII activity).
- b. Rehabilitation Act of 1973 covers physical and mental disabilities. This includes accommodation for people with disabilities.
- c. Americans with Disabilities Act. The Federal Government already had the Rehabilitation Act which covered everything that was covered in the Americans with Disabilities Act. If there is a conflict between the two, then the more stringent law applies.
- d. Age Discrimination Employment Act. This Act covers individuals who feel they are discriminated against who are 40 years of age and older. People who file a complaint under this law do not need to go through the Federal administrative process and can file in court; however, if they start the process they must finish. In addition, no attorney fees are recoverable under this Act.
- e. Equal Pay Act. This covers women who are doing the same work as a man, but are not being paid the same. Women who file under this Act can also go straight to court.
- f. Civil Rights Act of 1991 (as amended). This Act covers employees who have compensatory damages (pain and suffering) from the acts of discrimination. Compensatory damages are only payable when the person can show they have

been harmed and the discrimination was intentional. The Army has a cap of \$300,000 for compensatory damages.

g. Code of Federal Regulations Title 29 (Part 1614). This Part is an Equal Employment Opportunity Commission (EEOC) directive. Part 1614 gives the timeframes and establishes the complete guidelines for the complaint process.

h. Management Directive 110. Establishes how to establish the EEO Program to include special emphasis programs and gives more guidance on the actual setup of the complaint program.

i. AR 690-600. This regulation is currently under revision and the revision has not yet been published. This regulation gives explicit instructions for EEO counselors, managers, and EEO staffs on the complaint process.



5. Basis of the EEO complaint

a. This is the category under which you file your EEO complaint. It has to be under one of these categories in order to be within the purview of EEO.

(1) Race. Black, White, Hispanic, Asian, Native American, etc. This is the whole race, not Mexican, Chinese, or Apache. However, if you want to file a complaint based on your race (Puerto Rican), no one is going to argue with you and say that's incorrect. It's close enough. EEO will also use whatever term you use in order to describe your race (African American, Black, White, Caucasian, etc.). Example: If you feel your supervisor is discriminating against you by making you account for every minute you are late and you are Hispanic and he or she does not make the other people in your office account for their time and they are not Hispanic, then you could file due to your race (Hispanic).

(2) Color. This has to do with skin tone. It makes no difference what race, just the skin tone. For example: Your supervisor is Hispanic and so are you. Your supervisor's skin tone is very light and you are very dark. You don't feel you are being treated the same as others in the office because of your skin tone. Your supervisor may have made derogatory remarks in regard to dark-skinned Hispanics. You would file under color and not race.

(3) National origin. This has to do with where you came from or where your ancestors originated. It can be Germany, Puerto Rico, Mexico, Cherokee, Africa, China, etc. For example: You are Cuban and your supervisor is Mexican and you feel you are being discriminated against by your supervisor taking adverse actions and you feel it's because your

supervisor doesn't like Cubans. This is the category under which you would file.



(4) Religion. Any religion or none; truthfully, any strong belief or none. For example: You are a nonbeliever and your supervisor is a strong Christian; you feel you were not promoted due to this fact. Or, it may be that someone in your work area is a strong believer and they continue to try to convert you (harassment). Or, you may have a religion that requires some accommodation in your work schedule (cannot work overtime on Saturday because it is your Sabbath). Your supervisor refuses to accommodate you. One warning – you should try to accommodate religious beliefs, however, there is no requirement that they be accommodated to the disadvantage of other employees or the organization. For example: Your religion requires that you meditate each morning and you are unable to come to work until 1000. Your job requires that you have a report to do each morning by 0900. In order to allow you to come in late each morning, someone else would have to take over your duties and no one else is qualified or no one else is available. They don't have to accommodate. Then again, maybe you can do flex time and it's no problem. Each case is unique.

(5) Age. You have to be 40 years of age or older in order to file under this category. For example: You feel you were not selected for a position because you are 54 and close to retirement, the person selected was 30 or they could be 45. You can both be over 40, but there is normally some span between the ages before discrimination can be proven. Past cases from EEOC show at least 5 years.

(6) Sex. Male or female. You can file because you feel you are treated differently because of your sex, or because of sexual harassment, or because of a violation of the Equal Pay Act. Example of sex discrimination: A woman feels she is treated differently because of her sex when her coworkers, all male, get the good assignments, they make fun of her, and she feels very uncomfortable working with them. Example of sexual harassment: A male working in an area of all females is constantly harassed by his coworkers, they tell sexual jokes and make comments constantly about his "dates." Another example of sexual harassment: A male working in an area of other males is constantly asked whether or not he dates women, they make comments about whether or not he's masculine enough. This is "same-sex" sexual harassment. Another example of sexual harassment is the oldest one known: You can have the promotion, but you have to "treat me right." Last is an example of an equal pay violation: You have two workers, one male and one female, they basically do the same job, but the male is a lot higher grade and gets more pay.

(7) Disability (mental or physical). This is another complicated basis. You can file because you are treated in an adverse manner due to your disability or because you are perceived as having a disability, or because you are associated with a person with a disability. Example: You are not promoted because the selecting official doesn't like being around people with disabilities. Example: Your supervisor doesn't believe you could handle the stress of a high-level position because you spent some time in therapy a few years ago. Example: You have an adult child, living with you, who has AIDS. Your coworkers start avoiding you and you are not allowed to attend necessary meetings (beginning of a hostile environment). Another facet of this basis is accommodation. So long as you can do the essential functions of the job, with or without accommodation, you are a qualified disabled person. You must always be able to do the essential functions. If you need an accommodation in order to assist you, then management is responsible for ensuring you receive any accommodation that is reasonable. Example: You need a special computer with a large screen in order to see clearly, management definitely has to do it. Example: You work on the third floor and you are unable to climb the stairs and you request an elevator be installed, this one's iffy. There's no requirement to go to an unreasonable expense to accommodate a disability; however, maybe they can move the entire office to the first floor (that's definitely doable). You don't necessarily get the accommodation you want, so long as it accommodates you (in the manner you need), it's okay.

(8) Reprisal. This is probably the simplest of all of them. It must be reprisal because of a prior Title VII activity. Example: You were an EEO counselor, a complainant, a witness in a complaint, or the supervisor in an EEO complaint and you feel that you were not selected for the position because of your involvement in the previous complaint. You must be able to show that management was aware of the previous complaint and that there is some relationship (don't try to say it's because of an EEO complaint that happened 10 years ago). One more thing, you can also file reprisal because you participated in a Title VII activity (Martin Luther King March, Women's Rights Protest, etc.).

b. Many times, discrimination is unintentional, because of backgrounds, the way you were brought up, etc. There are two types of discrimination that are ALWAYS intentional, sexual harassment and reprisal.

6. Claims of discrimination

The claim of discrimination is the reason why you are filing the EEO complaint. What happened to bring you to this point? It has to have already happened and it has to be an ADVERSE action. In other words, it can't be something like, "One of my coworkers told my supervisor that I wasn't getting to work on time." Did anything happen? Were you disciplined? Another example is: My supervisor is trying to get rid of me, I know she's planning on letting me go. Has it happened yet? Have you received notice? There are some "typical" claims listed below and what you would have to do to "PROVE" discrimination.

a. Nonselection. First you have to show that you applied for the position, you were qualified for the position, and the

selecting official bypassed you and selected someone outside of your protected group. The protected group is whatever basis you are filing on (race, sex, age, etc.). For example: You are 45 years old and you feel you were not selected because of your age. Your protected group is your age, so you are saying that someone outside of your age group was selected. In order to PROVE your case, you will have to show that you were the best qualified person for that position. Remember, the selecting official does not have to select the person with the most experience or the person who has been detailed in the position. All the selecting official has to do is to state a specific, legitimate, nondiscriminatory reason for making that selection. Example: The selecting official states, "I selected John Doe because of his vast experience with computer software and his knowledge of the hardware we use." The only way you could prove discrimination is to show that this isn't true or that your own experience with computer software and knowledge of the hardware is better.

b. Disciplinary action. This could be a counseling statement, reprimand, suspension, or termination of employment. Example: You feel you were discriminated against due to your race (Black) when you were given a counseling statement for being late to work. In order to PROVE discrimination you will have to show one of two things: (1) You are not late to work, or (2) Other people (outside your protected group) are late to work also and they are not given counseling statements. Your protected group in this case is your race (Black); so, in the second case, you would have to prove that people who are not Black are late to work and not given counseling statements.

c. Harassment. This is a series of incidents that make you feel the supervisor or your coworkers are picking at you. For example: You feel you are being harassed by your coworkers because you are female and work in an area with only males. They leave jokes about women on your desk; you find things missing from your area that you know they took; they help each other out, but never help you. If this happens for a length of time, then it might be harassment. In order to prove discrimination, you will have to show that the things are happening, that it doesn't happen to the males you work with, and that you told the supervisor and they took no action. The last thing is very important, you have to tell the supervisor, they are responsible for your environment. You cannot prove harassment unless you can show the supervisor was aware and did nothing about it.

d. Hostile environment. This is pretty much harassment, but it has gotten to such a level that you are unable to do your job effectively. Example: You feel you are in a hostile environment due to your national origin (Iranian) when you were subjected to extensive harassment over a period of several months. You reported many incidents to the supervisor and nothing has happened. You are stressed out and have missed many days of work because you can't stand the idea of being there anymore. You were hospitalized last week for an anxiety attack. The difference between hostile environment and typical harassment is mainly the intensity of the incidents. In order to PROVE discrimination, you will have to show that the incidents have happened, you told your supervisor, and nothing was accomplished, AND that people outside your pro-

tected group (not Iranian) are not harassed.

e. Sexual harassment. This is NOT harassment because of your sex. Sexual harassment is an action that is SEXUAL in nature and that is REPEATED and UNWELCOME. Example: Your coworker asks you out and you tell him no, is that sexual harassment? – NO. But, if he continues to ask you out and you have told him not to ask again, then it might be sexual harassment. Example: One of your coworkers tells a really dirty joke, you immediately go to the supervisor and complain, is that sexual harassment? Probably not, especially if the supervisor takes action and tells the coworker not to tell anything like that again. So now the coworker comes in the next day and tells another really dirty joke, is that sexual harassment? Probably not, the supervisor has taken some action and we'll have to see if they do more this time. If this happens several times and the supervisor does nothing, then it can be considered sexual harassment. Another type of sexual harassment (quid pro quo). Example: Your supervisor tells you that if you really want a promotion, he might be able to help you out, maybe you could discuss it this weekend on an overnight trip? Is this sexual harassment? Sounds bad, but a lot of sexual harassment cases depend on the tone of voice and what the supervisor intended; if this supervisor (male) is asking a female to spend a weekend with him then it's not proper. That's not to say that if the supervisor (male) is asking a male to spend the weekend with him that it would be proper; it all depends on the implications of what they're asking. If you can show that it's sexual, or you perceived it as sexual, then it could very well prove discrimination.

7. Steps in filing an EEO complaint

a. Contact your servicing EEO office within 45 calendar days of the incident or within 45 calendar days in which you learned of a personnel action. During the first interview with the EEO counselor or during the intake with the EEO specialist, you may be asked if you are willing to participate in mediation or if you would prefer to have a traditional inquiry.

b. Mediation. If you choose mediation, you agree to extend the counseling time to 90 days. The reason for this is to get a mediator and set up the meeting. You will be notified when mediation has been set up. Be prepared to spend several hours in mediation. If settled, you will sign an agreement (contract) and your informal complaint will be stopped. Most mediations are held faster and take a shorter amount of time than the traditional inquiry. Mediation is a wonderful opportunity to "heal" the relationship and to have a "win-win" situation. It gives both parties an opportunity to tell everything and to work out their own solutions. The majority of mediations are resolved.

c. Traditional inquiry. If you choose the traditional inquiry, you will meet with an EEO counselor for an extended time. The EEO counselor will need all personal data (telephone numbers, addresses, etc.). Be prepared to tell the EEO counselor exactly what happened, why you feel it is discriminatory, and what basis you are filing under (race or color, sex, age, national origin, disability, religion, and/or reprisal). Remember, you have to decide and prove that it was an action taken based only on your protected group. It's a good idea to get your thoughts together beforehand and write down dates of

when something happened. This will help the counselor tremendously. Also write down names and telephone numbers of witnesses. Witnesses are people who have "firsthand" knowledge of the action or incident, not people who have just heard rumors. The EEO counselor will decide which witnesses he or she will interview. If you provide names and numbers of 20 witnesses who have firsthand knowledge of the same thing, then the counselor may decide to only interview a few of them. Inquiries are designed to obtain only that information necessary to reach an informal resolution to the complaint, not to do an extensive investigation.

d. Settlement. Hopefully, your informal complaint will be resolved and if it is, the EEO counselor will provide a negotiated settlement agreement (NSA) for you to sign. The NSA will list all the issues that have been agreed upon and both parties will sign and date the document. The NSA will give you rights to file noncompliance if the terms of your NSA have not been complied with during the appropriate time.

e. Termination of counseling. So, your complaint did not end in a settlement agreement. That doesn't mean you lost. Maybe you found out something during the inquiry that made you decide that it wasn't prohibited discrimination; other people might have received the same treatment who are outside of your protected group. Maybe you found out that your supervisor took the action unfairly, but not because of your race, sex, etc. You will not prevail if you continue on, find another avenue in which to address your problem. Then again, maybe you still feel it's prohibited discrimination and there's evidence (witnesses, etc..) that supports you. You will receive a Notice of Right to File from the EEO counselor. You have 15 calendar days in which to file a formal complaint.

f. Formal complaint. Make sure you stay in the timeframe, if not your complaint will be dismissed for timeliness. Make sure you fill out the form completely (DA Form 2590-R (Formal Complaint of Discrimination)). List the incidents that make you believe you were a victim of discrimination. If there are many little things (comments, conversations, small incidents) and you feel it's harassment, then that's what you are filing and the incidents will be listed under the claim of harassment. If you feel the harassment was so extensive that you are no longer able to work effectively, then you may be filing a claim of hostile environment. If so, the separate incidents will be listed under the overall claim of hostile environment. When you state what corrective action you want, be reasonable. You can only receive what you would have had if discrimination had not occurred. If you put in for a GS-09 and were not selected, don't ask for a GS-11 as corrective action. If you are filing a claim of compensatory damages, start getting your paperwork together, you will have to show (by statements from doctors, family, friends, etc..) that you suffered and how extensively. Don't think that a one-time incident of being humiliated will get you the maximum of \$300,000. The EEO office will continue to try and settle the complaint during the entire process.

g. Notice of receipt. Within a few days you will receive a notice of receipt (usually by certified mail). This letter will tell you the entire process, so get a folder and start keeping everything you get. It may also ask you for clarification on something on your formal complaint form. If so, make sure

you respond within the timeframe; your complaint can be dismissed if you fail to cooperate or fail to prosecute.

h. Notice of acceptance. Within a couple of weeks, if your complaint is accepted, you will receive notice that it has been accepted and it will list the basis and the claims. Read them carefully and if you have any changes, discuss them with the EEO office to make sure the claims you want investigated are listed correctly. If you have some claims that are accepted and some that are dismissed, don't worry, the dismissed claims and the reasons for dismissal will be looked at by the EEOC judge if your complaint is not resolved prior to that time. This letter will tell you the next steps in the process. You may also receive a copy of the request for investigator. This is a letter that is sent to the local office of complaints investigation (OCI). OCI is a group of investigators that work for Department of Defense. They will do the investigation in order for Army to have a complete record of the event. They may also call you and ask if you are willing to participate in mediation prior to investigation. Yes, again. Even more complaints are resolved by OCI during mediation.

i. Notice of dismissal with appeal rights. Okay, so they are notifying you that your complaint is being dismissed. They will list the claims and the reason for dismissal. This isn't personal; the EEO officer is required by regulation to dismiss complaints for very specific reasons. You will have appeal rights to justify your complaint to the Office of Federal Operations (OFO). The form and procedures are listed in the attachment to the dismissal letter. Look for appeal procedures for further information below.

(1) Timeliness. If you did not contact an EEO counselor within 45 calendar days from the date of incident OR you did not file your formal complaint within the 15-calendar day timeframe.

(2) Failure to state a claim. If your problem does not fall under the EEO realm, then it will be dismissed for this reason. For example, you want to file reprisal because your supervisor took action against you after you filed a union grievance, WRONG PLACE. You should have taken the action to the union again. EEO only processes reprisal complaints for activity within the EEO area. Another reason might be that you haven't really been harmed or the action has not affected the terms or conditions of your employment. For example, you overhear someone say something derogatory about you, or you hear something sexual and object. You tell the supervisor and nothing happens, so you file an EEO complaint. A one-time incident is seldom enough to justify filing a complaint OR maybe your supervisor has stated that they are considering terminating your employment. Has anything actually happened? No, wait until something concrete has happened.

(3) If the action is proposed (like the example above), then the complaint will be dismissed unless you can show that the action (like a proposed removal) is part of ongoing harassment.

(4) It is moot. The complaint is moot if there is no likelihood that the action or harassment will ever occur again (for example, you complain of harassment and the supervisor leaves the agency) AND you have not filed a claim for compensatory damages.

(5) The complaint has been filed in court. You cannot take the action through both processes. Once you file in civil court, then you have elected a different avenue.

(6) The complaint is part of a complaint under a timely filed negotiated grievance procedure (Union). Even if it doesn't mention discrimination you cannot elect to go through the union and EEO at the same time OR the complaint is already under appeal to the Merit Systems Protection Board (MSPB).

(7) It is not based on the categories covered by EEO (race, sex, age, etc.).

(8) If you've already filed an EEO complaint over the same claim.

(9) Not within the purview of EEO. If you claim that someone from outside your agency took action against you it will be dismissed. For example: You have just entered civil service and you feel the background investigation was discriminatory, another agency handles background investigations, not Army. Or, you feel the Office of Personnel Management discriminated against you when they rejected your classification appeal.

(10) Failure to cooperate or failure to prosecute. Examples: If you do not respond to a request for clarification and the information is needed in order to process your complaint, it will be dismissed. Or, if you move and fail to notify the EEO office and they have been trying to contact you for an investigation, your complaint will be dismissed.

(11) If the claim has not been counseled. Example: You file an informal over a counseling statement you received. When you were filing your formal complaint you remember another incident (denied leave) that happened a few weeks prior and you include that as a claim. If the incident is timely (within the 45 days) or maybe it happens after you filed your informal and the inquiry has not been completed, AND, it is like or related to the claims you have already filed, then the formal complaint can be amended and the like or related claims can be added without further counseling.

j. Investigation by OCI. OCI will sometimes contact you and ask if you will consider mediation. This is a good opportunity to present your case and get it settled. If it's not successful, you lose nothing, the investigation will continue. If it's settled, all the better for you. If it's not settled and the investigation continues, then OCI will normally request documentation and a list of witnesses from you and from the agency. They will hold a "factfinding" conference. You will be under oath to tell the truth and there will be a court reporter to take verbatim transcript from the witnesses. Within 180 days you should receive the report of investigation (ROI).

k. Options letter. This will come to you from the EEO office with the copy of the ROI. Investigators do not find discrimination. They simply give you an analysis of the investigation and the documentation. Hopefully, you will be able to discern whether or not your claim is supported. If the claim is not supported, you might want to quit the complaint process. If you feel the investigator gave you a good analysis and the evidence supports your claim, then you have the right to appeal as stated below.

l. Decision without a hearing. You can request that Army review the documentation and make a decision. This is a good avenue when you feel the ROI really supports your claim

and it's obvious that there was discrimination. Final Army Decision, if you do not agree with the decision of the Army, then you have the right to appeal to OFO. If Army finds in your favor, they will decide on the corrective action.

m. Hearing before the EEOC. You can request a decision before an EEOC administrative judge (AJ). This is the avenue to take if you feel the investigator didn't look at everything you felt they should have or you feel the analysis is not correct. Or, maybe the agency makes you an offer to settle the complaint, but you cannot agree on the terms.

(1) EEOC decision. If the AJ finds in your favor, then action will be taken by the EEOC to determine the corrective action. This is final.

(2) Final Army action. If the AJ does not find in your favor, then Army will issue a final Army action. They will also issue a final Army action when the corrective action has been determined and the EEOC AJ has found in your favor.

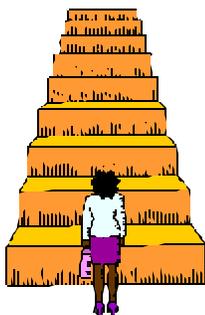
n. Hearing before an MSPB judge. Okay, this gets more complicated. You have appeal rights to the MSPB when your case is what we call a "mixed case." This means that you could have gone to MSPB originally or filed through EEO. People who are entitled to MSPB are people who have been terminated, suspended for more than 14 days, or people who feel they have been forced to resign (constructive discharge). There are a few more, but you will know when you have appeal rights; they will be listed in the proposed action taken against you. The MSPB judge will look at procedural error and Title VII discrimination.

o. Appeal process. If you don't agree with the final Army action you have the right to appeal to OFO. OFO will remand the case back to the office where the complaint ended (EEOC, Department of the Army, etc.).

p. Request for reconsideration. If you don't agree with the OFO' decision, you can ask for reconsideration, if you feel they did not review all the evidence, or if it was misinterpreted.

q. Civil action in district court. You can file a civil action in district court at any time after 180 days from the date you filed formal. However, most courts have ruled that you should go through the investigative stage (OCI) because they want a complete record of the complaint in order to make a decision to actually try the case. It's best to wait until the OCI ROI is in and at any time after that you may file in district court. If you file before the end of the administrative process, you must serve notice on the agency that you have filed a civil action and your complaint will be dismissed in the EEO administrative process.

r. See figures 1, 2, and 3 for more information on the steps in filing an EEO complaint.



8. Cost of discrimination complaints

a. EEO discrimination complaints cost the Government a tremendous amount of money. In addition, they cost the workplace a great deal in lost worktime, loss of trust, and low morale. The answer is not to do away with the complaints process, it's to train supervisors. If you believe the complaints program is unnecessary, then you need extensive training or a job in another organization besides Federal service. Good supervisors understand that people need communication. Ninety percent of the complaints that are filed are usually due to a lack of communication between the supervisor and the employee. People have a right to work in an environment free of discrimination. If you don't believe in EEO now, one day you will; one day you or a family member will suffer through some prohibited discriminatory action. It's almost guaranteed.

(1) Cost of investigation from OCI: \$250 (flat rate includes mediation).

(2) Cost of court reporter: \$600 to \$3,000.

(3) Cost of witness travel: \$1,000 to \$2,500.

(4) Cost of hearing: No cost to the agency.

(5) If the complainant prevails (estimates):

(a) Attorney fees: \$5,000 to \$30,000.

(b) Compensatory damages (pain and suffering): \$0 to \$300,000.

(c) Back pay (interest, thrift savings, retirement): \$0 to ??????? 2 years prior to filing.

(d) Front pay (unable to return to work): \$0 to until the person would normally have retired.

(6) When back pay and front pay are involved, it's unimaginable how much money can be involved. In one case, over \$800,000 was paid and that was before compensatory damages were involved. All of this comes out of the agency's pocket. If the complaint reaches the court stage, fees, in the past, have been paid for the agency – NOW, we will have to reimburse them.

b. If you are management, then the way to avoid these costs are to communicate with your employees, get advice from the civilian personnel administration center or civilian personnel office (CPO) on every personnel action, talk to EEO, be willing to resolve. Not necessarily to give in, just to compromise. Complaints cannot always be avoided, but good communication definitely helps. If the complaint cannot be avoided and you are advised that the action you took was appropriate, then you MUST continue on with the complaint. DO NOT try to resolve complaints with employees when the action was definitely fair and you have consulted with EEO, CPO, and legal. DO be willing to try and resolve if the person is a "good" employee and may have misunderstood or has a perception of discriminatory action.

c. If you are considering an EEO complaint, don't think you're going to get rich doing so. Attorney fees are only paid if the complainant wins the complaint. Compensatory damages are only paid if the discrimination is intentional AND you have to prove your suffering (doctor's statements, medical records, etc.). "I suffered \$300,000 worth" is not good enough. The EEOC who normally makes the decisions on compensatory damages, determines the amount by past cases. In the past, they haven't awarded tremendous amounts – the most

have gone to people who have suffered great losses, such as:

- (1) Mental anguish with hospitalization, continuous therapy. Unable to ever work again.
- (2) Loss of home, car, family, etc.



9. Frequently asked questions

a. Who can file a formal complaint?

(1) Federal employees. Permanent, temporary, term, appropriated fund, and nonappropriated fund.

(2) Potential employees. Anyone who is not already a Federal employee who is applying for a position in the Federal Government.

(3) Past employees. Anyone who has previously worked for the Federal Government and has a complaint that involves an action taken by the previous employer and the action has caused them harm.

(4) De facto employees. These are the contract people who “for all intents and purposes” are Federal employees. Each one is decided on a case-by-case basis. Some of the criteria used:

- (a) Who pays the employee?
- (b) Who pays their benefits?
- (c) Who has input into whether or not they are hired or fired?
- (d) Who has input into their performance ratings?
- (e) Who gives them their day-to-day assignments?
- (f) Who provides their equipment?

b. Who cannot file a formal complaint?

(1) Nonfederal employees. Even if you work on a Federal installation (bank, credit union, etc.,) you cannot file under this process (Federal process). Contact your local EEOC office in order to process your complaint. The local EEOC processes complaints that are NOT Federal.

(2) Contract employees. Who have their own process and are not covered as de facto employees.

(3) Military members. Military have their own process; they need to contact their equal opportunity representative, even if their complaint is against a civilian employee.

(4) Supervisors. Cannot file an EEO complaint against a subordinate employee. Complaints are actually filed against the Secretary of the Army, but usually a manager or supervisor is held responsible for the action. As a supervisor you are responsible for your employees and cannot file a complaint against them.

(5) Reprisal. You cannot file a reprisal complaint because you previously filed a negotiated grievance, MSPB, inspector

general, or any other type of complaint. Only EEO complaints are covered under reprisal.

c. Am I covered under EEO?

(1) Yes, everyone is covered under EEO in one or more of the protected groups. Everyone is either male or female, of some race, from some origin, they are some color, and they have some religion or no religion.

(2) The protected groups are:

(a) Race. White, Black, Hispanic, Native American, Asian, etc.

(b) National origin. African, Mexican, Cherokee, Chinese, and so on.

(c) Sex. Male or female (this is the group where you would file if alleging sexual harassment, equal pay, or just disparate treatment).

(d) Color. Most often used along with race. Some races have more than one skin tone and discrimination based on your color would be, for example, I am being treated differently than my coworkers because my skin color is so much darker than theirs. You may be Black and so may your coworkers who just have a lighter skin tone.

(e) Age. This only applies to individuals who are at least 40 years of age.

(f) Disability (mental and physical). This is probably the most complicated basis under which to file. To show you are disabled, you must have a disability that affects your everyday living (walking, talking, eating, sitting, etc.,) and you must show you can accomplish the essential functions of the job with or without an accommodation. You can file under this basis because you feel you are being treated different due to your disability, or because you are perceived as having a disability (maybe you don't really have one). Example of perception: Supervisor is treating you differently because they found out that you had a mental breakdown a few years previously and now you are treated as incompetent. This is also the basis you would file if you have requested an accommodation for your disability and have not been given one.

(g) Religion. Any religion or no religion. Also you can file if you are not being accommodated due to your religion.

(h) Reprisal. This only covers you if you have participated in a Title VII activity. For example, you may have been a witness in a previous EEO complaint or filed one yourself. You may have marched in a Martin Luther King March or participated in a Women's Rights Rally and you feel your supervisor is taking action against you because of your participation.

d. What's the difference between an informal and a formal complaint?

(1) Everyone who goes through the Federal administrative complaint process has to start with the informal stage. They call this the precomplaint, because it really has not been elevated to a complaint yet. It gives the organization a chance to resolve the problem before it becomes an actual complaint. To file an informal precomplaint you must contact your servicing EEO office in order to start counseling (see servicing EEO offices at table 1). The EEO office will assign an EEO counselor. The EEO counselor's job is to try and resolve the problem. If you choose mediation, then a mediator will be chosen and you will meet with the manager, along with the

mediator and try to resolve the problem in an informal meeting.

(2) If you choose the traditional method, the EEO counselor will conduct a "limited" inquiry into the problem to try and resolve it. They will contact the individuals they feel will have some bearing on the problem and interview them. Usually, the first person interviewed after the complainant will be the manager who allegedly took the action. The EEO counselor may ask you for suggestions on who they should interview; who saw the action or has direct knowledge of the action.

e. Should I file an EEO complaint? You are the only person who can answer that question. Do you honestly feel that the action was taken because of one of the basis listed (race, sex, etc.)? If the answer is no, then don't file. You have the burden of proving the action was done because of the basis you list. For example, if you feel you were given a counseling statement because of your race (Hispanic), you will have to prove it. The way you would do it is to show that either the counseling was not deserved or that people who are not Hispanic, but are in a similar job as yours, did the same thing and they were not counseled. Or, if there is no one else who has done the same thing, but you feel it is undeserved you would have to show that the supervisor has a prejudice against Hispanics by having witnesses who have heard racial remarks, comments, etc.

f. How can I make sure the guilty person is punished? If you only want to file in order to "get the supervisor" then be warned. You cannot ask for action to be taken against someone else as part of your corrective action. You can only ask for corrective action for yourself. Supervisors cannot be disciplined under the EEO complaint process. In order to do that, management would have to conduct another inquiry to take action.

g. Do I have to go through my chain of command before I file? Have you honestly tried to resolve the problem? There's no requirement to go through the chain of command, but usually management appreciates getting the opportunity to try and resolve. If you feel management has had their opportunity and not resolved it, or if you feel uncomfortable dealing with them, you can go straight to EEO.

h. Do I have to spend my own time processing a complaint? No, you have the right to be on "duty time" when the complaint process is ongoing. Usually, that pertains to interviews with the EEO counselor, investigations, etc. If you need administrative time in order to prepare your case, you are allowed a "reasonable" amount of time to do so. We're talking hours, not days. Four hours per formal complaint is usual unless there is an attorney involved and more time is then needed. If the supervisor feels the time you spend is unreasonable, then the EEO officer is the person who decides "what is reasonable."

i. How do I file an informal precomplaint? You must contact your servicing EEO office in order to start the informal process. If you don't know who that is, please contact the EEO or CPO point of contact at the recruiting battalion (Rctg Bn) or recruiting brigade (Rctg Bde) and they can tell you. Servicing EEO offices are listed in table 1. If you don't have a servicing EEO, or you are unable to find out the servicing EEO office, contact the Command EEO Manager at (502) 626-0237.

j. What rights and responsibilities do I have filing an EEO

complaint?

(1) Anonymity. At the very beginning of the informal process you must decide whether or not you want to remain anonymous. It's very difficult to do any type of inquiry when the complainant refuses to allow you to give their name. It's your choice, but remember, it will definitely impact on the EEO counselor's ability to try and resolve. You cannot remain anonymous at the formal stage. You will probably be asked to sign a waiver if you choose not to remain anonymous.

(2) Representation. You have the right to be represented at every stage of the complaint process. It can be an attorney or not. Attorney fees are not reimbursable at the informal stage and only at the formal stage if there is a finding of discrimination. Many times at the informal stage, people who have representatives choose someone they feel close to simply for moral support. It cannot be an EEO counselor, nor can it be anyone involved in the complaint. It can be a member of the union if you are a bargaining unit employee. You must inform the EEO counselor as soon as you obtain representation and provide the name, address, and telephone number of the representative. If you have an attorney and they continue to represent you at the formal stage, then correspondence will be served on the attorney and not you.

(3) Responsibility. You also have a responsibility at all stages of the complaint process. You have to ensure that the EEO office is kept informed of any address or telephone changes you may have. You should keep them informed if you must take any extended leave. Your formal complaint can be dismissed for "failure to prosecute" if you fail to inform the EEO office of a change of address and they have been trying to contact you. Much of the correspondence is required to be sent by certified mail.

k. What happens if my complaint is resolved? If an EEO counselor resolves your EEO complaint, an NSA will be drawn up and signed by all parties. You will be given the right to allege noncompliance in the NSA if the terms are not completed. Almost the same thing happens if resolved during mediation. Sometimes different EEO offices use different types of settlement agreements for mediation, but the compliance rights are the same. This can happen even at the formal level. Just because you have filed a formal complaint does not mean the EEO office does not continue to try to resolve your complaint. You have 30 days in which to file noncompliance to the Office of Equal Employment Opportunity Complaints and Compliance Review.

l. What's a mixed case? A mixed case is when the adverse action that was taken can also go through the MSPB. Example is a suspension over 14 days or a termination of employment. The appeal rights in these cases is different. Instead of asking for an AJ from EEOC for a hearing, you would go straight to the MSPB judge for a hearing. They will look at the discrimination charges, but they also look at the procedural aspects of the action.

m. I'm the manager, do I have any rights at all? Yes, you do. You have the right to know the allegations that are filed against you. If the complaint is anonymous, you may not know who filed, but you will know the claim. You also have the right to have a representative. This cannot be someone in the chain of command, nor can it be the labor counselor. The labor counselor represents Army, not management.

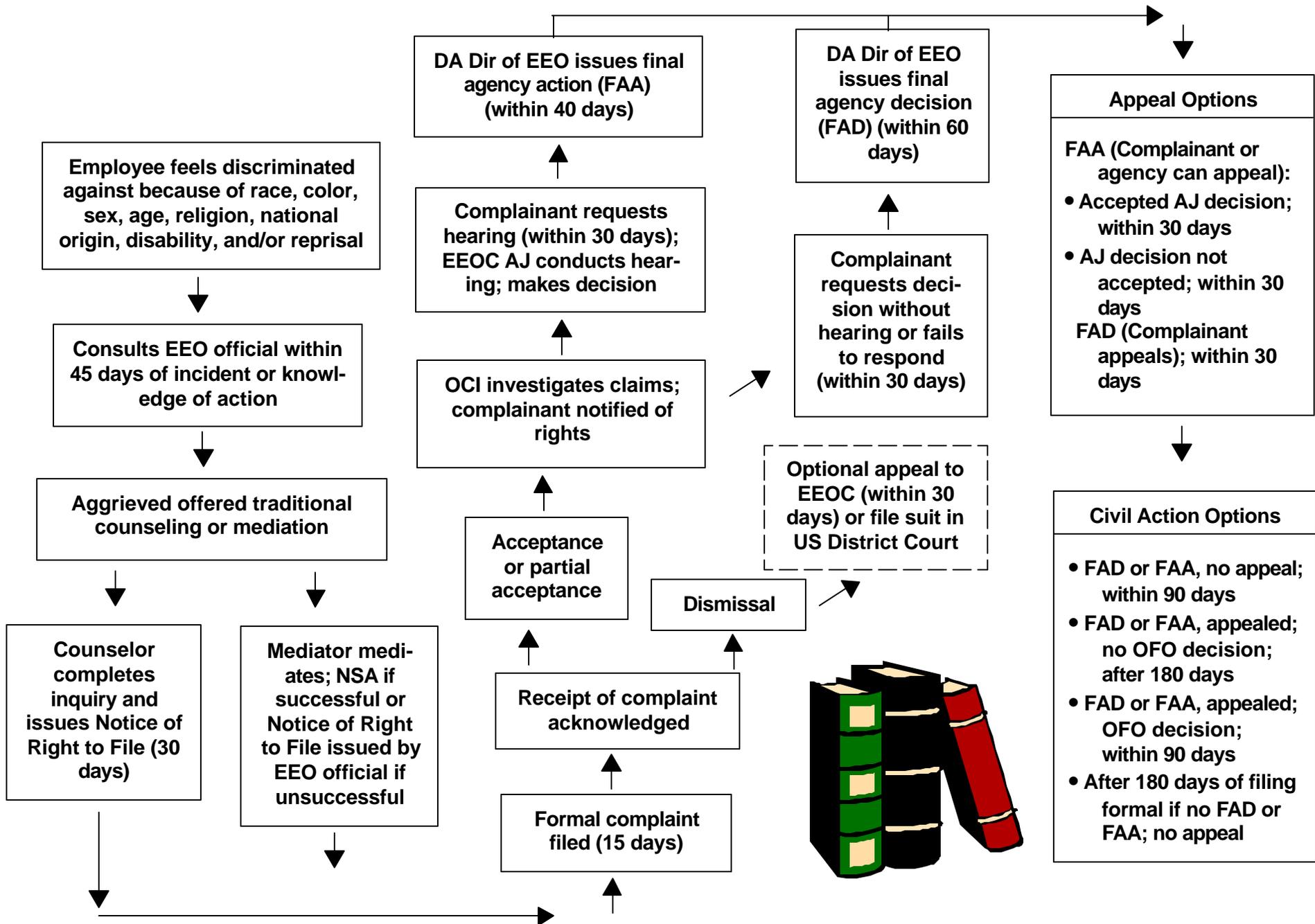


Figure 1. Complaint process (nonmixed cases)

Complaint based on race, color, religion, sex, national origin, age, disability, or reprisal related to or stemming from an action that may be appealed to the MSPB

May raise claims as a direct appeal to the MSPB or as a mixed-case EEO complaint, but not both

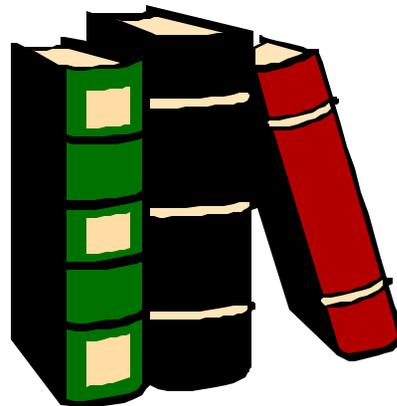
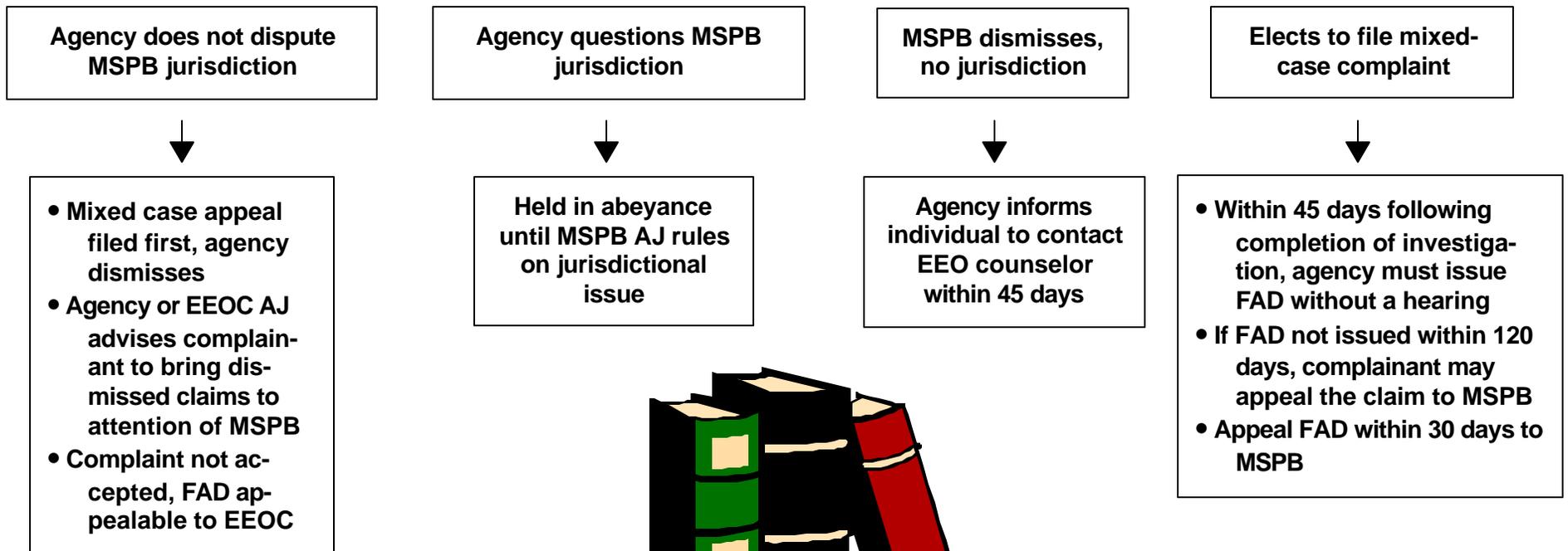


Figure 2. Complaint process (mixed cases)

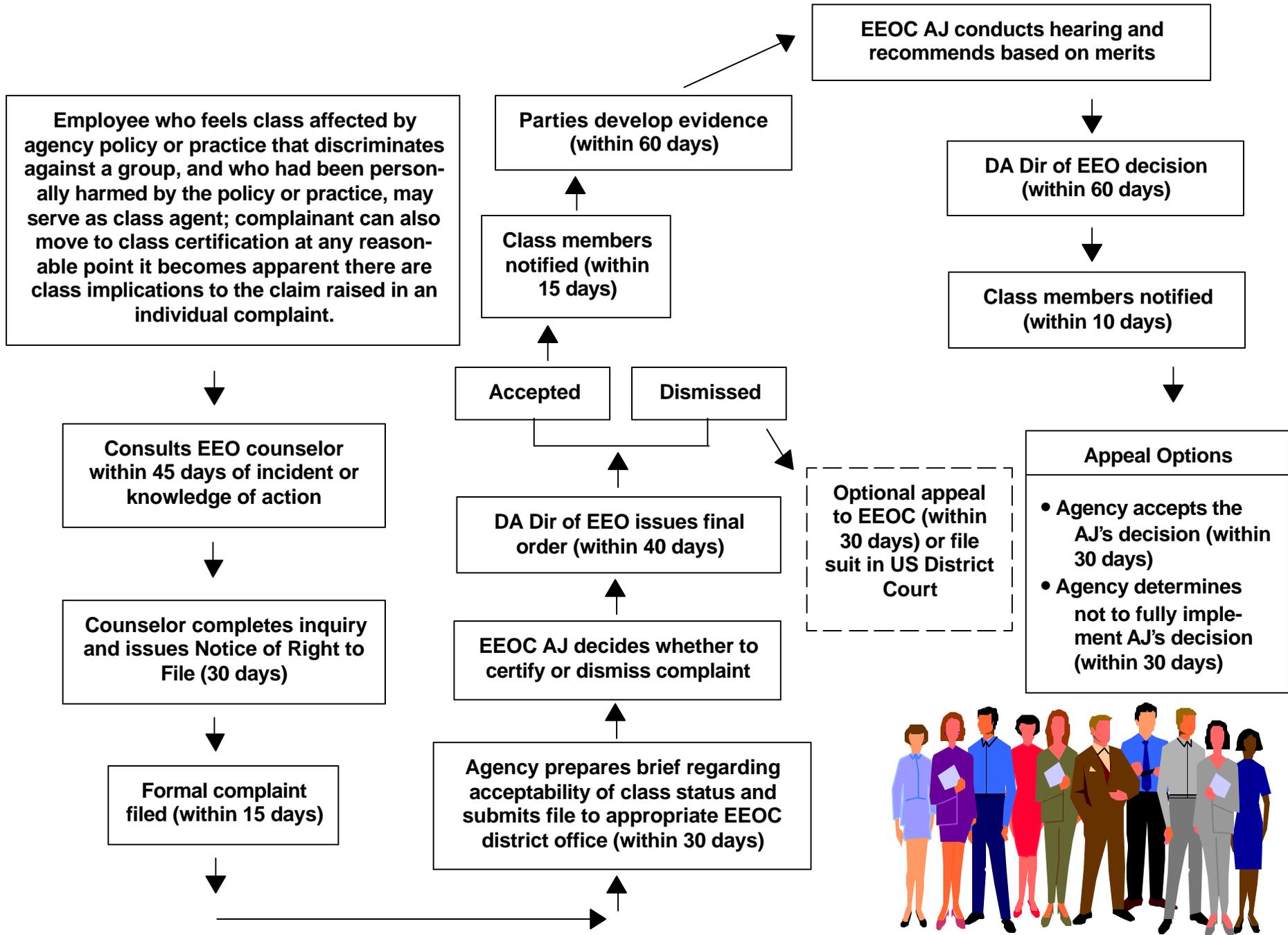


Figure 3. Class Complaint process

Table 1
Servicing EEO offices

NOTE: This table shows where to go to file an EEO complaint or where to get assistance on EEO matters.

HQ USAREC	Fort Knox EEO Office - (502) 624-6196/2545
USAAC at Fort Knox	Fort Knox EEO Office - (502) 624-6196/2545
1st Rctg Bde, 1st AMEDD Det, and Baltimore Rctg Bn	Fort Meade EEO Office - (301) 677-6296
Albany Rctg Bn	Watervliet Arsenal EEO Office - (518) 266-5308
Beckley Rctg Bn	Huntington COE EEO Office - (304) 529-5600/5294
Harrisburg Rctg Bn	Letterkenny Army Depot - (717) 267-8817
Mid-Atlantic Rctg Bn	Fort Dix EEO Office - (609) 562-2482
New England Rctg Bn	HRO Groton EEO Office - (860) 694-3245
New York City Rctg Bn	New York COE EEO Office - (212) 264-9115
Pittsburgh Rctg Bn	Pittsburgh COE EEO Office - (412) 395-7511/7512/7513
Syracuse Rctg Bn	Tobyhanna Army Depot - (570) 895-7179/7575
2d Rctg Bde, 2d AMEDD Det, and Atlanta Rctg Bn	Fort McPherson EEO Office - (404) 464-3359/2896
Columbia Rctg Bn	Fort Jackson EEO Office - (803) 751-7248
Jackson Rctg Bn	Vicksburg COE EEO Office - (601) 631-5427/6062/6063
Jacksonville Rctg Bn	Jacksonville COE EEO Office - (904) 232-1188
Miami Rctg Bn	HQ USAREC EEO Manager - (502) 626-0237
Montgomery Rctg Bn	Maxwell AFB EEO Office - (334) 953-6558
Nashville Rctg Bn	Fort Campbell EEO Office - (270) 798-5113/2581
Raleigh Rctg Bn and Golden Knights	Fort Bragg EEO Office - (910) 396-5214
San Juan Rctg Co	Fort Buchanan EEO Office - (787) 707-2227/2228
Tampa Rctg Bn	MacDill AFB EEO Office - (813) 828-2505/7325
3d Rctg Bde, 3d AMEDD Det, and Indianapolis Rctg Bn	Fort Knox EEO Office - (502) 624-6196/2545
Chicago Rctg Bn, Columbus Rctg Bn, Cleveland Rctg Bn, Great Lakes Rctg Bn, Milwaukee Rctg Bn, and Minneapolis Rctg Bn	Fort McCoy EEO Office - (608) 388-3107
5th Rctg Bde, 5th AMEDD Det, Houston Rctg Bn, and San Antonio Rctg Bn	Fort Sam Houston EEO Office - (210) 221-2762/9356
Dallas Rctg Bn	Dallas COE EEO Office - (817) 886-1321/1322/1323
Des Moines Rctg Bn	Omaha COE EEO Office - (402) 221-3911
Kansas City Rctg Bn	Kansas City COE EEO Office - (816) 983-3700
New Orleans Rctg Bn	New Orleans COE EEO Office - (504) 862-2823/2410
Oklahoma City Rctg Bn	Fort Sill EEO Office - (580) 442-4024
St Louis Rctg Bn	Fort McCoy EEO Office - (608) 388-3107
6th Rctg Bde, 6th AMEDD Det, and Sacramento Rctg Bn	HQ USAREC EEO Office - (502) 626-0237
Denver Rctg Bn	Fort Carson EEO Office - (719) 526-4413
Honolulu Rctg Co	Fort Shafter EEO Office - (808) 438-1132
Los Angeles Rctg Bn and Southern California Rctg Bn	Fort Irwin EEO Office - (760) 380-3778
Phoenix Rctg Bn	Fort Huachuca EEO Office - (520) 538-0275/0279
Portland Rctg Bn	Portland COE EEO Office - (503) 808-4530
Salt Lake City Rctg Bn	Tooele Army Depot EEO Office - (435) 833-2694
Seattle Rctg Bn	Seattle COE EEO Office - (206) 764-3501/3502

Glossary

AJ

administrative judge

CPO

civilian personnel office

EEO

equal employment opportunity

EEOC

Equal Employment Opportunity Commission

FAA

final agency action

FAD

final agency decision

MSPB

Merit Systems Protection Board

NSA

negotiated settlement agreement

OCI

office of complaints investigation

OFO

Office of Federal Operations

Rctg Bde

recruiting brigade

Rctg Bn

recruiting battalion

ROI

report of investigation