

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
ICE Policy System (IPS)**

DISTRIBUTION:	ICE
DIRECTIVE NO.:	4-1.0
ISSUE DATE:	04/11/2006
EFFECTIVE DATE:	04/11/2006
REVIEW DATE:	04/11/2009
SUPERSEDES:	See Section 3 below.

DIRECTIVE TITLE: Equal Employment Opportunity Complaints Processing

1. **PURPOSE and SCOPE.** This Directive provides policy, standards, and implementing procedures for U.S. Immigration and Customs Enforcement (ICE) Federal Equal Employment Opportunity (EEO) Complaints Processing.
2. **AUTHORITIES.**
 - 2.1 Civil Rights Act, 42 U.S.C. 2000, Paragraphs (a) through (e); (1964), as amended.
 - 2.2 Civil Rights Act of 1991, Section 109.
 - 2.3 Title 29 of the Code of Federal Regulations, Part 1614; Federal Sector Employment Opportunity (1999).
 - 2.4 U.S. Equal Employment Opportunity Commission Management Directive 110: Federal Sector Complaints Processing Manual (November 1999).
 - 2.5 Administrative Dispute Resolution Act of 1996.
 - 2.6 Executive Order 13087, Dated May 28, 1998, Further Amendment to Executive Order 11478, Equal Employment Opportunity in the Federal Government.
 - 2.7 Equal Pay Act, 29 U.S.C. 206(d) (1979).
 - 2.8 Age Discrimination in Employment Act, 29 U.S.C. 621 (1978).
 - 2.9 Rehabilitation Act of 1973, as amended; 29 U.S.C. 791.
3. **SUPERSEDED/CANCELLED POLICY/SUMMARY CHANGES.** This Directive supersedes legacy U.S. Immigration and Naturalization Service (INS) Administrative Manual, Section 1.4.112.
4. **BACKGROUND.** ICE employees, former employees, contract employees, and applicants for employment may exercise their right to pursue a complaint of discrimination based on race, color, religion, sex, national origin, age, physical or mental disability, sexual orientation, parental status, protected genetic information, or reprisal. The ICE Office of Equal Employment Opportunity is responsible for processing EEO complaints of discrimination filed against the agency.

EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS PROCESSING

5. DEFINITIONS.

- 5.1 **Adjudicate** is to settle or determine with finality a case in the exercise of administrative or judicial authority.
- 5.2 **Affirmative action** is the policy requiring federal agencies and Government contractors to take positive steps to ensure equal opportunity in employment, development, advancement, and treatment of all employees and applicants for employment regardless of race, color, religion, sex, national origin, age, physical or mental disability, sexual orientation, parental status, and other unlawful factors. The policy also requires that specific actions be directed at the special problems and unique concerns in ensuring equal employment opportunity for minorities, women, and other disadvantaged groups.
- 5.3 **Aggrieved Person** is an employee, or former employee, contract employee, or applicant for employment who believes that he or she has been discriminated against based on his/her race, color, religion, sex, national origin, age, physical and mental disability, sexual orientation, parental status, protected genetic information, or reprisal with respect to one or more of the terms or conditions of employment and who files an informal complaint of discrimination.
- 5.4 **Age discrimination** is a claim of discrimination based on age by an aggrieved person who is at least 40 years of age at the time of the alleged discriminatory act.
- 5.5 **Allegation of Breach** is a petition or complaint by the complainant or agency alleging that the other party has failed to comply with the terms of a negotiated settlement agreement.
- 5.6 **Allegation of discrimination** is the statement of a party to an action, made in pleadings, setting out what is expected to be proved; a claim, assertion, or declaration. For example, an aggrieved person may allege that he/she was denied a promotion because he/she was a member of a protected class.
- 5.7 **Alternative Dispute Resolution (ADR)** is a process in which a neutral third party attempts to assist in resolution of disputes by using various techniques to reach a resolution acceptable to the parties. Forms of ADR include, but are not limited to, mediation, conciliation, ombuds, facilitation, fact-finding, mini-trials and arbitration, or any combination thereof.
- 5.8 **Appeal** is a request that an administrative body or court review the decision of a lower court or an administrative body.
- 5.9 **Applicant** is an individual seeking employment.
- 5.10 **Complainant** is an individual who files a formal, written complaint of employment discrimination or otherwise applies for a legal redress. In EEO cases, the complainant is the individual who alleges discrimination.
- 5.11 **Complaint** is a formal, written document containing allegations of discrimination.
- 5.12 **Claim of Non-Compliance** is a complaint or petition by an aggrieved party or complainant who alleges that the agency has not fully implemented an order as stipulated in a final agency decision or a decision rendered by the U.S. Equal Employment Opportunity Commission (EEOC), Office of Federal Operations (OFO).

- 5.13 Class Complaint** is a written complaint of discrimination filed on behalf of a class by the agent of the class alleging that the class is so numerous that a consolidated complaint of the members of the class is impractical, that there are questions of fact common to the class, that the claims of the agent of the class are typical of the claims of the class, and that the agent of the class, or, if represented, the representative, will fairly and adequately protect the interests of the class. A class is defined as a group of employees, former employees, or applicants who are alleged to have been adversely affected by an agency personnel policy or practice which discriminates against the group on the basis of their common race, color, religion, sex, national origin, age, disability, or other unlawful factors.
- 5.14 Disability** is a physical or mental impairment that substantially limits one or more major life activities.
- 5.15 Discrimination** is any decision, action, or failure to act, based in whole or in part on a person's race, color, religion, sex, national origin, age, disability, sexual orientation, parental status, protected genetic information, or reprisal, that adversely affects privileges, benefits, working conditions, results in disparate treatment, or had a disparate impact on employees or applicants.
- 5.16 Due Process** is the basic procedural rules by which administrative and judicial hearings and related processes must be conducted in order to assure fairness to all parties and as equitable results as possible.
- 5.17 U.S. Equal Employment Opportunity Commission (EEOC)** is the federal agency established by Congress to enforce Title VII of the Civil Rights Act of 1964. EEOC is comprised of members appointed by the President. EEOC receives, processes, and investigates charges of employment discrimination of Title VII of the Civil Rights Act of 1964, Title I of the Americans With Disabilities Act, the Equal Pay Act of 1963, and the Age Discrimination in Employment Act of 1967, as amended.
- 5.18 Final Agency Decision (FAD)** is an action taken by an agency on an employment discrimination complaint. FADs are issued to address EEO complaints and for complaints when an administrative hearing has not been requested. The agency issues a final decision consisting of the findings on the merits of each issue in the complaint. Such findings should include a statement of the facts and legal analysis of the issues in the complaint.
- 5.19 Final Order** is the final action by an agency following a decision by an Administrative Judge (AJ). The final order must inform the complainant of whether or not the agency will fully implement the AJ's decision and must contain notice of the complainant's right to appeal the agency's final decision to the EEOC's OFO, the right to file a civil action in federal district court, the name of the proper defendant (head of the agency) in any such lawsuit, and the applicable time limits for appeals and lawsuits. A copy of the EEOC Form 573 must be attached to the final order. The final order must be issued within 40 days of the agency's receipt of an AJ's decision and corresponding hearing file.
- 5.20 Former employee** is an individual who previously worked for the Federal Government agency in question.
- 5.21 Grievance** is a procedure, either administrative or negotiated, by which employees may seek redress of any matter subject to the control of agency management.

- 5.22 Hearing** is an adjudicatory proceeding that completes the process of developing a full and appropriate record. A hearing provides the parties with a fair and reasonable opportunity to explain and supplement the record and, in appropriate instances, to examine and cross-examine witnesses.
- 5.23 Informal Complaint** is a matter of alleged discrimination, which an aggrieved person brings to the attention of an EEO Intake Counselor before a formal discrimination complaint is filed. The informal complaint process is the first step to filing a complaint of discrimination for the aggrieved party.
- 5.24 Mediation** is a method of dispute resolution that uses a neutral third party to facilitate communication between the parties to promote a settlement based on the interests of the parties. The mediator has no authority to render a decision. Rather, the objective is to encourage the parties to create a variety of possible solutions that will benefit their interests and to mutually agree on the settlement terms.
- 5.25 Mixed Case Complaint** is a complaint of employment discrimination based on race, color, religion, national origin, sex, age, disability, reprisal or other unlawful factors related to or stemming from an action taken by the Department of Homeland Security (DHS) against the complainant, which action may be grieved to the U.S. Merit Systems Protection Board (MSPB). The complaint may contain only an allegation of employment discrimination or it may contain additional allegations that the MSPB has jurisdiction to address. Examples of actions that may be grieved to the MSPB are removals, suspensions for more than 14 days, reductions-in-grade (demotion), separations, demotions or furloughs for more than 30 days through reduction in force procedures, denials of within-grade increases, and furloughs for 30 days or less. Additionally, an allegation of constructive discharge or forced retirement may be grieved to MSPB.
- 5.26 Mixed Case Appeal** is an appeal filed directly with MSPB that alleges that an agency action was effected, in whole or in part, because of discrimination on the basis of race, color, religion, sex, national origin, disability, age, or reprisal or other unlawful factors. There is no right to a hearing before an EEOC AJ on a mixed-case complaint.
- 5.27 Notice of Right to File a Complaint of Discrimination** is a written notice issued to the aggrieved party advising him/her of the right to file a **formal complaint** of discrimination.
- 5.28 EEO Intake Counselor** is an individual assigned by the EEO Office to initially advise an aggrieved party of his/her rights and responsibilities and options to pursue traditional counseling or participate in the agency's ADR Program.
- 5.29 Reasonable Amount of Official Time** is a reasonable amount of on-duty time approved in advance by a supervisor for an employee to participate in the EEO complaints process as a complainant or agency witness. Reasonable amount of official on-duty time includes all time actually spent by an employee or representative in meetings and hearings required by an ICE, Department of Homeland Security, or EEOC official and a reasonable amount of time to prepare his/her case. Reasonable time is generally defined in terms of hours, rather than days, weeks, or months.
- 5.30 Rehabilitation Act of 1973 (as amended)** requires an employer to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, except when such accommodation would cause undue hardship.

6. POLICY.

- 6.1 It is the policy of ICE to process EEO complaints, both informal and formal, in a timely and just manner while attempting to resolve disputes at the lowest possible level. Employees, former employees, contract employees, and applicants for employment may exercise the right to pursue a complaint of discrimination based on race, color, religion, sex, national origin, age, physical and mental disability, sexual orientation, parental status, protected genetic information, or reprisal. If an EEO complaint is based on misconduct by an ICE employee, the complainant must also notify the Office of Professional Responsibility of the alleged misconduct.
- 6.2 During the informal stage of the process, aggrieved persons may elect traditional counseling or may be able to request participation in the agency's EEO ADR Program.
- 6.3 If the complaint cannot be resolved informally, the aggrieved person may exercise his/her right to file a formal complaint.
- 6.3.1 It is the policy of ICE to ensure that formal complaints are processed in a timely manner in accordance with applicable statutes and regulations.
- 6.3.2 Employees who have exercised the right to file a discrimination complaint and/or serve as a representative have the right to request a reasonable amount of official time, if otherwise on duty, to prepare a complaint and respond to agency and EEOC requests for information.

7. RESPONSIBILITIES.

- 7.1 **The Assistant Secretary for ICE** is responsible for delegating sufficient authority to the Director, EEO, to process and resolve informal and formal complaints of discrimination, and monitor compliance with EEO directives.
- 7.2 **The Director, EEO**, is responsible for processing and assisting in the resolution of informal and formal complaints of discrimination and monitoring compliance with EEO directives. Responsibilities also include ensuring that informal and formal complaints are processed expeditiously in accordance with applicable regulations and that complaint processing procedures are prominently posted in the workplace.
- 7.3 **The Director, Human Capital**, is responsible for:
- 7.3.1 Ensuring that EEO officials (EEO Intake Counselors, EEO Investigators, Agency Representatives, and EEO Staff) who are responsible for the processing of both informal and formal complaints are given appropriate access to personnel records and provided copies, when needed;
- 7.3.2 Providing technical support to EEO officials responsible for complaints processing; and
- 7.3.3 Retaining relevant records or documents until notified that no further administrative or legal decision is pending.
- 7.4 **The Office of Principal Legal Advisor/Field Counsel** is responsible for:
- 7.4.1 Advising the Assistant Secretary on EEO law;
- 7.4.2 Acting as the ICE representative in EEOC proceedings;

- 7.4.3 Reviewing proposed settlement agreements for legal sufficiency in accordance with relevant Delegations of Authority; and
- 7.4.4 Advising ICE regarding the settlement of claims of attorney's fees or costs and claims for compensatory damages.

8. PROCEDURES.

- 8.1 EEO complaint processing procedures contained in the EEO Complaint Processing Guide (CPG) and EEO ADR Program procedures include, but are not limited to, the following:
 - 8.1.1 An aggrieved person (complainant) must contact an EEO Intake Counselor within 45 calendar days of the date of the matter giving rise to the complaint, or, if a personnel action, within 45 calendar days of its effective date.
 - 8.1.2 The EEO Intake Counselor advises complainant of the option to pursue traditional counseling or request participation in the agency's EEO ADR Program.
 - 8.1.3 If the aggrieved person elects traditional counseling, the EEO Counselor has 30 calendar days to conduct an inquiry unless an extension is granted. The aggrieved person may agree to extend counseling up to an additional 60 calendar days. If the complaint is not resolved, the aggrieved person may elect to file a formal complaint. The formal complaint must be filed within 15 calendar days of receiving the Notice of Right to File a Formal Complaint.
 - 8.1.4 If the aggrieved person's request to mediate in the agency's EEO ADR Program is approved, a mediator will be assigned and mediation is conducted within 90 calendar days of the date of initial contact with the EEO Intake Counselor. If the complaint is not resolved through mediation, the aggrieved person is issued a Notice of Right to File a Formal Complaint. If the aggrieved person elects to file a formal complaint, the formal complaint must be filed within 15 calendar days of receiving the notice.
 - 8.1.5 The formal complaint is either accepted for investigation or dismissed (in whole or in part). The dismissal notice constitutes a Final Agency Decision and the complainant may appeal the decision to the EEOC, OFO, within 30 calendar days of receipt of the decision.
 - 8.1.6 The investigation of the accepted formal complaint is to be completed within 180 calendar days of the date of filing the formal complaint.
 - 8.1.7 The agency transmits the final Report of Investigation (ROI) to the complainant.
 - 8.1.8 The complainant may request an EEOC Hearing or Final Agency Decision within 30 calendar days of receipt of ROI.
 - 8.1.9 When a hearing is requested, the EEOC AJ issues a decision. After the decision is issued, the agency has 40 calendar days to issue a final order, accepting, modifying, or rejecting the AJ's decision.
 - 8.1.10 If the agency's final order does not fully implement the AJ's decision the agency must simultaneously appeal the decision to EEOC, OFO, within 40 calendar days. A complainant may also appeal the agency's final decision to EEOC, OFO, within 30 calendar days of its receipt.

- 8.2** A complainant may file a civil action in an appropriate United States District Court:
- a) within 90 calendar days of receipt of an agency's final action, if no appeal has been filed;
 - b) after 180 calendar days of filing a formal complaint if no appeal to EEOC has been filed;
 - c) within 90 calendar days after receipt of the EEOC final decision on an appeal; or
 - d) after 180 calendar days of filing an appeal to EEOC if no decision has been rendered by EEOC.
- 8.3** A complainant or representative must request the use of official time from his/her supervisor in advance to prepare the complaint and/or to respond to agency and EEOC requests for information. Disagreements as to what is "reasonable" time are resolved by an appropriate management official in consultation with the servicing EEO Office. ICE is not obligated to change work schedules, incur overtime wages, or pay travel expenses in order to allow the complainant to select a specific representative or confer with him/her.
- 8.4** If a complainant believes that the agency has failed to comply with the terms of a settlement agreement, the complainant shall notify the Officer for Civil Rights and Civil Liberties, Department of Homeland Security, Office for Civil Rights and Civil Liberties, (CRCL), Washington, DC 20528 in writing of the alleged non-compliance within 30 calendar days of when the complainant knew or should have known of the alleged non-compliance.
- 8.4.1** The complainant may request that the terms of the settlement agreement be specifically implemented, or alternatively, that the complaint be reinstated for further processing from the point at which processing ceased. DHS shall respond, in writing, to the complainant's written allegations of non-compliance.
- 8.4.2** If DHS has not responded to the complainant in writing, or the complainant is not satisfied with DHS attempts to resolve the matter, the complainant may appeal to the EEOC for a determination as to whether DHS has complied with the terms of the settlement agreement or for a final agency decision. The complainant may file such an appeal 35 calendar days after he or she has served DHS with the allegations of non-compliance, but must file an appeal within 30 calendar days of his or her receipt of the DHS response. The complainant must serve a copy of the appeal to DHS, which may submit a response to EEOC within 30 calendar days of receiving the notice of appeal.
- 8.5** Complaints alleging discrimination on the following bases may be accepted for processing:
- 8.5.1** Statutory:
- a) Title VII of the Civil Rights Act of 1964 (as amended); (race; color; religion, sex, national origin, and reprisal);
 - b) The Age Discrimination in Employment Act, as amended; 29 U.S.C. 621 (1978) (age when the aggrieved is at least 40 years of age);
 - c) The Rehabilitation Act of 1973 (physical and mental disability);

- d) The Equal Pay Act, as amended; 29 U.S.C. 206(d) (1979) (sex-based wage discrimination).

8.5.2 Non-Statutory:

- a) Executive Order 13087 (Sexual Orientation);
 b) Executive Order 13145 (Protected Genetic Information); and
 c) Executive Order 13153 (Parental Status).

8.6 Complaints Alleging Statutory and Non-Statutory Bases of Discrimination:

- a) If a complaint that alleges a non-statutory basis of discrimination only is accepted, it may be adjudicated only by issuance of FAD. The FAD may not be appealed.
 b) If a complaint that alleges both a statutory and non-statutory basis is accepted, the complainant may elect a hearing regarding the statutory basis of discrimination only.
 i) If a hearing is elected, the allegations with a non-statutory basis of discrimination must be forwarded to CRCL to be adjudicated by FAD.
 ii) If a FAD is elected, the entire complaint must be forwarded to CRCL for adjudication by issuance of a FAD.

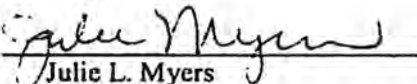
8.7 The regulatory requirement for class complaints of discrimination is a four-stage process. At the first stage, the class agent is required to seek counseling from an agency EEO Counselor. The second stage is a determination from an EEOC AJ, subject to agency final action, as to whether to certify the complaint as a class action. The third stage, assuming that the complaint has been certified as a class action, involves a recommended decision from an AJ on the merits of the class complaint, subject to final agency action in the form of a final decision. The fourth stage, where there has been a finding of class-based discrimination, is the determination of the claims for relief of the individual class members.

8.8 Some employment actions that are the subject of a discrimination complaint under Title 29 of the Code of Federal Regulations, Part 1614, may also be appealed to MSPB. In such cases, the employee must elect to proceed with a complaint as a "mixed-case complaint" or a "mixed-case appeal" before MSPB. Whichever is filed first is considered an election to proceed in that forum.

9. ATTACHMENT. There are no attachments to this Directive.

10. NO PRIVATE RIGHT STATEMENT. This Directive is an internal policy statement of ICE. It is not intended to, and does not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States; its departments, agencies, or other entities; its officers or employees; or any other person.

Approved


 Julie L. Myers
 Assistant Secretary

EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS PROCESSING