



**U.S. Immigration
and Customs
Enforcement**

OCT 14 2015

MEMORANDUM FOR: All U.S. Immigration and Customs Enforcement Employees

FROM: Scott F. Lanum *SFL*
Assistant Director
Office of Diversity and Civil Rights

SUBJECT: Guidance on the Use of Official Time in the Equal Employment Opportunity (EEO) Administrative Complaint Process

Purpose:

This memorandum sets forth ICE's policy and procedures regarding ICE employee requests to use official time during the EEO administrative complaint process.

Background:

U.S. Equal Employment Opportunity Commission (EEOC) regulations, found at 29 C.F.R. §1614.605, require ICE grant its employees who are complainants, representatives, and witnesses a reasonable amount of official time to prepare an EEO complaint and respond to requests for information by ICE, the U.S. Department of Homeland Security (DHS), and EEOC. Employees utilizing the EEO process are entitled to be accompanied, represented, and advised by representatives of their own choice at any stage in the process, and those representatives, if ICE employees, are also entitled to official time.

ICE employees are entitled to official time in several circumstances. First, complainants and their representatives, if those representatives are ICE employees and in a duty status, are entitled to official time when engaging in the following EEO administrative complaint process activities: preparing a complaint; responding to requests for information from ICE, DHS, or EEOC; preparing an appeal; or appearing when authorized or required by ICE, DHS, or EEOC during all stages of the EEO administrative complaint process (including during an investigation, mediation, or hearing). Second, an ICE employee is entitled to official time when representing a former ICE employee who initiates the EEO process concerning an adverse action relating to their prior employment with ICE. Finally, an ICE employee who is a witness to an EEO complaint, regardless of whether the EEO complaint is against ICE, another DHS component, or another federal agency, is entitled to official time when their presence is authorized or required by EEOC or agency officials. In all cases, in order to be entitled to official time, the ICE employee must be in a duty status when their presence is authorized or required by ICE, DHS, EEOC, or another federal Agency in connection with an EEO complaint. The Agency is not required to provide official time to employee representatives who are representing complainants against other federal agencies.

Definitions:

Official Time: Official time is time in a duty status. A duty status is an employee's normal hours of work.

Reasonable Amount of Official Time: The amount of time that is appropriate, under the particular circumstances of the EEO complaint, to allow a complete presentation of the relevant information regarding the EEO complaint and to respond to requests for information by ICE, DHS, and/or EEOC. The actual number of hours will vary depending on the nature and complexity of the EEO complaint and considering ICE's mission and need to have its employees available to perform their normal duties on a regular basis. Reasonable time for preparation (as opposed to time actually spent in meetings and hearings) is generally defined in terms of hours, not in terms of days, weeks, or months. What is reasonable depends on the individual circumstances of each complaint. Reasonable time does not include the time spent commuting to and from the employee's home, as employees are required to commute on their own time.

Meeting and Hearing Time: The majority of time spent by complainants and their representatives during the processing of a typical EEO complaint is spent in meetings and hearings with ICE officials or EEOC Administrative Judges. Whatever time is spent in such meeting or hearing is automatically deemed reasonable. Both the complainant and representative are entitled to official time for the duration of such meetings or hearings and are in a duty status regardless of their tour of duty. It is expected that ICE will, to the extent practical, schedule meetings during the complainant's normal working hours and that Agency officials shall provide official time for complainants and representatives to attend such meetings and hearings. If meetings and hearings are scheduled outside of the complainant's or the representative's normal work hours, the Agency should adjust or rearrange the complainant's or representative's work schedule to coincide with such meetings or hearings, or grant compensatory time or official time to allow an approximately equivalent time off during normal hours of work. The selection of the appropriate method for making the complainant or representative available in any individual circumstance shall be within the discretion of ICE; however, if a complainant or representative has already worked a full week and must attend a hearing or meeting on an off day, that complainant or representative is entitled to official time, which may require that ICE pay overtime.

Procedures:

- A. An employee should submit a written request for official time to their first-line supervisor, when possible, at least 48 hours in advance of the official time requested, otherwise as soon as practicable, in order to allow the supervisor sufficient time to respond to the request and meet the needs of the office or operational requirements. If the employee's first-line supervisor is unavailable, the request should be submitted to the second-line supervisor.
- B. Requests for official time must contain the following information:
 - Employee's name;
 - Number of hours requested and date(s), time(s) and location(s) official time will be taken;

- Use of ICE resources necessary (computer, fax, copier, etc.); however, complainant's or complainant's non-attorney representative's use of government property (copiers, telephones, word processors, etc.) must be authorized by the Agency and must not cause undue disruption of Agency operations; and
 - Purpose of official time (meet investigator, prepare exhibits, etc.).
- C. Supervisors, in coordination with ODCR, may request information from the individual requesting the official time to determine the reasonable amount of official time to grant. Additionally, a supervisor may also request information from ODCR to substantiate the need for official time. Employees should note that failure to provide the information or documentation requested may lead to a delay in or denial of the determination of a request for official time.
- D. In reviewing requests for official time, supervisors:
- Should consider the total amount of time requested and previously granted to the employee;
 - May restrict overall hours afforded to a representative, for both preparation purposes and attendance at meetings and hearings, to a percentage of their duty hours in a given month, quarter, or year. Such overall restrictions depend on the nature of the position occupied by the representative, the relationship of that position to ICE's mission, and the degree of hardship imposed on the Agency's mission by the representative's absence from their normal duties. The amount of official time to be afforded to an employee for representational activities will vary by circumstances; and
 - Are not required to change work schedules, incur overtime wages, or pay travel expenses in order to facilitate the choice of a representative or allow a complainant to confer with their representative; include the time spent commuting to and from the employee's home in official time computations; or provide official time to employee representatives who are representing complainants against other federal agencies.
- E. If approved, the supervisor should respond to the ICE employee in writing with the date(s), time(s), and number of hours of official time granted.
- F. If denied, in whole or part, the supervisor must provide the ICE employee and ODCR with a written statement explaining the reason for the denial. The supervisor may consult with ODCR before denying an employee's request for official time to prepare for their complaint, but is not required to do so.
- G. The supervisor must submit all documents associated with approved or denied requests to ODCR.
- H. This policy covers a reasonable amount of official time for complaints in the EEO administrative complaint process. ICE does not grant official time to an employee for time spent in their claims of discrimination in federal court proceedings; however, official time will be granted for the actual time in which the United States Attorney's Office deposes a plaintiff on their claims. Official time will not be granted for time spent preparing for this

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deposition. Official time will also be provided to ICE employees who are required to testify as witnesses in a federal court proceeding.

- I. Any official records created will be maintained by ODCR in accordance with an approved records retention schedule.

Assistance:

Questions or concerns regarding this memorandum should be directed to the Office of Diversity and Civil Rights via telephone at (202) 732-(b) (7)(E)