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Administrative Bulletin

SUBJECT	REFERENCE	APPROVED BY
Equal Employment Opportunity (EEO) Internal Resolution Policies and Procedures	Department of Justice Administrative Manual, Chapter 7	 Director, Division of Administrative Support

SUPERSEDES DOJ Administrative Bulletin No. 04-09

PURPOSE

The purpose of this administrative bulletin is to affirm federal and state EEO laws by explaining the processes available to Department of Justice (DOJ) employees and job applicants seeking to resolve employment concerns that may involve discrimination, harassment (including sexual harassment), or EEO retaliation.¹ DOJ's Equal Employment Rights and Resolution (EER&R) Office is responsible for administering DOJ's EEO programs, including the internal resolution and complaint filing options discussed below.

STATUTORY AUTHORITY

The following authorities are collectively referred to as "EEO laws" in this bulletin:

- California Fair Employment and Housing Act (FEHA) of 1959 (including amendments)
- Title VII of the Civil Rights Act of 1964 (including amendments)
- Age Discrimination in Employment Act (ADEA) of 1967
- Rehabilitation Act of 1973
- Americans with Disabilities Act of 1990 (including amendments)
- California Genetic Information Nondiscrimination Act (GINA) of 2008

POLICY TO RESOLVE EEO CONCERNS AND TAKE APPROPRIATE CORRECTIVE ACTIONS

Consistent with EEO laws and DOJ's Administrative Bulletin No. 15-02, Policy Prohibiting Discrimination, Harassment, and Retaliation, DOJ provides various internal resolution options for DOJ employees and job applicants to raise workplace concerns that may involve EEO laws. DOJ, primarily acting through the EER&R Office, will attempt to resolve such workplace concerns consistent with the affected employee's wishes. Whichever internal resolution option an employee chooses, the EER&R Office will attempt to facilitate a practical resolution that is acceptable to the employee and DOJ. The EER&R Office may determine that not all of DOJ's internal resolution options described below are appropriate in every situation. Depending on the circumstances and the information known, DOJ may take whatever appropriate actions are necessary to fulfill its obligations to prevent and remedy any incidents of discrimination, harassment, or EEO retaliation.

Any employee or job applicant who believes that he or she has been discriminated against or harassed because of characteristics protected under EEO laws, or retaliated against for engaging in EEO activity,

¹ See DOJ Administrative Bulletin No. 15-02 for definitions of the terms "discrimination," "harassment," "sexual harassment," "EEO retaliation," and "EEO activity" which are used in this bulletin.

has a right to submit a formal complaint with the EER&R Office, with the assurance that there will be no retaliation for submitting that complaint or engaging in any EEO activity.

When an employee or job applicant follows the formal complaint process and submits written allegations raising a prima facie case² of discrimination, harassment (including sexual harassment), or EEO retaliation, DOJ shall conduct an appropriate inquiry or investigation consistent with its duties under EEO laws. In such cases, DOJ shall provide a timely and impartial review of the relevant allegations and facts, and issue a written decision responding to the complaint. If DOJ finds that an employee has violated DOJ's EEO policies prohibiting discrimination, harassment, or EEO retaliation, DOJ will also take appropriate corrective action to address and remedy the violation.

SUPPORTING EEO RIGHTS: REPORTING AND TAKING ACTION

An employee who reasonably and in good faith believes he or she has been subject to discrimination, harassment (including sexual harassment), or EEO retaliation is obligated to report the circumstances of that belief to their supervisor, another DOJ supervisor or manager, or the EER&R Office. If the alleged offender is the employee's direct supervisor, the employee should contact another supervisory employee or the EER&R Office. A DOJ employee who reasonably and in good faith believes that another DOJ employee has been subject to discrimination, harassment (including sexual harassment), or EEO retaliation is obligated to report their observations and/or concerns to a supervisor, manager or the EER&R Office. A failure to promptly report such incidents to a DOJ supervisor, manager, or the EER&R Office is inconsistent with DOJ's EEO policies because it may adversely affect DOJ's ability to promptly address the situation and take appropriate action.

DOJ supervisors and managers are required to take appropriate action in dealing with EEO workplace concerns brought to their attention. If a supervisor or manager becomes aware of alleged discrimination, harassment, or retaliation for EEO activity, that person must:

- Determine what actions are reasonable and appropriate to respond to the allegations made. If allegations of harassment are made, the supervisor or manager shall take immediate and appropriate corrective action that is responsive to the circumstances, including promptly consulting with the EER&R Office or a supervisor up the chain of command;
- Promptly report the alleged incident to a supervisor up the chain of command and/or the EER&R Office so that DOJ can take all reasonable steps necessary to prevent discrimination, harassment, and EEO retaliation.

Once a supervisor or manager is aware that an employee under their direct supervision has filed an EEO complaint or reported an EEO workplace concern, that supervisor or manager shall act reasonably to prevent future acts of discrimination, harassment, or EEO retaliation against that employee.

INTERNAL RESOLUTION AND COMPLAINT FILING OPTIONS

Employees have several options by which to resolve their concerns about possible discrimination, harassment, or EEO retaliation, one or more of which is generally available, depending on the circumstances:

A. Informal Resolution Process

The goal of the informal resolution process is to achieve a practical resolution to an

² The term "prima facie case" is defined below in the section discussing the formal complaint process.

employee's workplace concerns that is mutually acceptable to the employee and other involved parties. When an employee is concerned about possible discrimination, harassment, or retaliation for EEO activity, that employee can consult with an EER&R analyst to explain their situation and explore the informal resolution process, as well as other options that may be appropriate for their workplace concerns. An EER&R analyst can be reached by calling the EER&R Office at 916-324-5482.

Employees may also present their workplace concerns about suspected violations of DOJ's EEO policies directly to their supervisor, who will attempt to resolve the issues informally through mutually agreeable solutions and at the lowest organizational level, as appropriate. In some instances, the supervisor or employee may determine that consultation with the EER&R Office is appropriate to address the employee's concerns.

When the informal resolution process involves the EER&R Office, that process will conclude within a reasonable period of time. The EER&R Office will decide with the employee whether a mutually agreeable resolution can be reached. If such a resolution cannot be reached, an employee has other options, including filing a formal complaint.

The informal resolution process may be appropriate under various circumstances, including where facts indicate that a legitimate business reason is the cause of the employment action that the employee has identified as a concern.

At times, informal resolution is inadequate and a formal inquiry or investigation may be required or desired. If an individual chooses to use the informal resolution process, the individual is agreeing to first attempt to resolve their concerns using a process that does not include a formal investigation or a determination of whether a policy violation occurred.

B. Mediation Process

If all involved parties agree, DOJ may provide an alternative dispute resolution option using the mediation process. Mediation is a confidential process that is completely voluntary. Through mediation, employees, supervisors, and managers work with a professionally-trained, non-DOJ mediator in one or more sessions to attempt to reach mutually-agreeable solutions to workplace disputes. Not all cases are appropriate for mediation.

C. Grievance Process

The Memorandum of Understanding (MOU) for a collective bargaining unit may include provisions whereby discrimination, harassment (including sexual harassment), and EEO retaliation complaints may be addressed through the grievance process. In certain cases, this process can provide an alternative resolution option. Employees choosing this process should refer to their specific MOU and contact their union representative. DOJ may need to take additional action to address EEO issues that are raised in the grievance process.

D. Formal Complaint Process

A DOJ employee or applicant (complainant) who believes he or she has been subjected to discrimination, harassment, or EEO retaliation, may wish to use the formal complaint process. To initiate this process, the complainant first submits a written complaint to the EER&R Office. The EER&R Office provides a written complaint form (JUS 8866) that requests all relevant information needed to file a formal complaint.

An employee who wants DOJ to conduct a formal investigation of their EEO concerns should use the formal complaint process. The following points apply to this process:

- The written complaint must provide details of the alleged discriminatory, harassing, or retaliatory act(s), the person(s) involved, and how the complainant has been harmed. The complainant must provide specific facts that support their belief that the conduct or employment action occurred because of the complainant's protected characteristic or EEO activity. By providing this information, the complainant provides essential facts supporting a potential or "prima facie" case of discrimination, harassment, or EEO retaliation. This information is necessary for DOJ to take appropriate action to address the allegations.
- A prima facie case exists when the written complaint identifies facts to support all of the following: (1) harassing conduct or an adverse employment action against the complainant, (2) that was caused by, (3) the complainant's protected characteristic or EEO activity. If a DOJ employee or applicant submits a written complaint to the EER&R Office that describes facts supporting a prima facie case of discrimination, harassment, or EEO retaliation, then the EER&R Office will accept the complaint, which becomes filed on the date of acceptance.
- If the EER&R Office receives a written complaint that it determines does not meet the prima facie case requirement for acceptance as a formal complaint, the EER&R Office will notify the complainant in writing. This written notice will inform the employee of the basis for the determination, and the employee's right to provide additional information showing a prima facie case exists.
- After a formal complaint is accepted, the EER&R Office will initiate an investigation and take appropriate action to address and resolve the complaint.
- DOJ will use all reasonable efforts to issue a written decision responding to the formal complaint within 90 days after the complaint is filed. Generally, DOJ's written decision will be issued by the Chief Deputy Attorney General, or their impartial designee, based on a written report. The written decision will include DOJ's determination as to whether or not the preponderance of evidence supports a finding that there was a violation of DOJ's EEO policies. If the written decision finds a violation of DOJ's EEO policies, DOJ will then take appropriate corrective action.
- If circumstances require more time, DOJ will provide a written response to the complainant explaining why a written decision will not be issued within the usual 90 days.
- To utilize the formal complaint process, a written complaint must be filed with the EER&R Office within 365 calendar days after an alleged discriminatory, harassing, or retaliatory act.
- Once a written complaint is accepted for filing, the complainant and DOJ employees are expected to cooperate fully in the formal complaint process that follows.

For further guidance regarding these internal resolution options, please contact the EER&R Office at 916-324-5482.

WITHDRAWING A COMPLAINT

An employee or job applicant may request to stop using any of DOJ's internal resolution options identified above. DOJ will then attempt to resolve the matter in accordance with those wishes. However, depending on the circumstances and the information known to DOJ at that time, DOJ may be

required to take additional action and reasonable steps to prevent the occurrence of discrimination, harassment, and EEO retaliation. In some circumstances, DOJ may determine it is necessary to conduct an inquiry or formal investigation even after a complaint is withdrawn.

FILING COMPLAINTS WITH THE STATE PERSONNEL BOARD (SPB)

Any employee or job applicant who reasonably believes that he or she has been subjected to discrimination, harassment, retaliation, or denied reasonable accommodation based on a known physical or mental disability may file a complaint with the SPB. As a prerequisite to the filing of a complaint with the SPB, the employee or applicant shall first file a written complaint with the EER&R Office to give the DOJ the first opportunity to address the complaint. The complained of act(s) or omission(s) must have occurred no more than one year prior to the date that the complaint was filed with the EER&R Office. Further information can be obtained at www.spb.ca.gov.

OTHER EXTERNAL COMPLAINT FILING OPTIONS

An employee or job applicant may choose to file a complaint for discrimination, harassment, or EEO retaliation with an external state or federal agency. Regardless of whether an employee or applicant uses one or more of DOJ's internal resolution options, an employee or applicant may file a complaint concurrently, or alternatively, with the following external agencies:

California Department of Fair Employment and Housing (DFEH)

The DFEH has authority to investigate complaints of employment discrimination, harassment, and EEO retaliation. Generally, complaints must be filed with the DFEH within 365 days of the alleged occurrence of a discriminatory, harassing, or retaliatory action, with an additional 90 day extension of time possible if the complainant first obtained knowledge of the facts which show the alleged unlawful action after the 365 days has passed. For assistance with this process, an employee or applicant can contact the DFEH at (800) 884-1684 (TTY (800) 700-2320) or obtain information at www.dfeh.ca.gov.

United States Equal Employment Opportunity Commission (EEOC)

The federal EEOC investigates charges of employment discrimination, harassment, and EEO retaliation. The EEOC has jurisdiction over claims asserted under various federal EEO laws, including under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (ADEA) of 1967, the Equal Pay Act of 1963, Section 501 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA) of 1990. Generally, employees and applicants have 300 days after the alleged discriminatory action, or within 30 days of termination of any state proceeding, whichever comes first, to file a complaint with the EEOC. Other EEOC requirements may also apply. For assistance with this process, an employee can contact the EEOC at (800) 669-4000 or obtain information at www.eeoc.gov.

United States Department of Justice (U.S. DOJ)

Title VI of the Federal Civil Rights Act and the Omnibus Crime Control and Safe Streets Act of 1968, as amended, prohibits specified discrimination by agencies that receive federal financial assistance. Because DOJ is a grant recipient agency, DOJ employees or job applicants may seek to file complaints of discrimination with their nearest U.S. DOJ Office of Civil Rights or the Civil Rights Division in Washington D.C. Generally, discrimination complaints must be filed with the U.S. DOJ within 180 to 365 days of the most recent unlawful act, depending on applicable statutes. For assistance with this process, an employee can contact the U.S. DOJ at (202) 514-2000 or obtain information at www.justice.gov.

CONFIDENTIALITY

Confidentiality facilitates DOJ's ability to consider, investigate and respond to allegations of discrimination, harassment, and EEO retaliation. Therefore, the EER&R Office files (including communications, informal resolution efforts, formal investigation reports, and other information) are kept confidential and not disclosed to any person except as reasonably necessary and in compliance with the law. The circumstances under which information and materials may be disclosed from EER&R Office files will depend on the information sought, the legal rights of the person seeking disclosure, and the legal rights and privacy interests of all persons who would be affected by the disclosure. DOJ will determine what information may be disclosed on a case-by-case basis, in accordance with applicable laws and in response to a specific request for disclosure.

DOJ recognizes the importance of maintaining confidentiality concerning an employee's use of DOJ's internal resolution and complaint filing options. Whenever reasonably possible, DOJ will promote confidentiality in an effort to prevent embarrassment and protect employee privacy. Various laws may also require some information be kept confidential. Thus, information will be handled with sensitivity and in accordance with applicable laws, and shall not be unreasonably disclosed to others.

Depending on individual circumstances, including the proper discharge of DOJ's duties, it may become appropriate or necessary for DOJ to disclose some confidential information to those who have a legitimate need to know. For example, disclosure of an employee's concerns to relevant persons could occur during the informal resolution process when the EER&R Office is seeking to resolve an employee's concerns. Further, DOJ may be required by law to take remedial, preventative, or corrective actions, including during the investigation process or during attempts at informal resolution, which actions may be inconsistent with an individual's desire to keep the matter completely confidential.

REFERENCE

For additional information regarding the DOJ's EEO policies and procedures, please see:

- Administrative Bulletin No. 15-02, Policy Prohibiting Discrimination, Harassment, and Retaliation
- DOJ Administrative Manual, Chapter 7

CONTACT

Questions regarding this bulletin should be directed to the EER&R Office at 916-324-5482.