

Date

MEMORANDUM FOR (Name of Aggrieved)

SUBJECT: Aggrieved Person's Rights and Responsibilities

1. **Purpose:** If you believe you have been discriminated against because of your race, color, religion, sex, national origin, age, physical or mental disability, and/or subjected to reprisal in an employment matter subject to the control of the Army, you may have a choice of options to pursue your Equal Employment Opportunity (EEO) complaint and have it resolved. The purpose of this memorandum is to advise you, in writing, of those rights and responsibilities.

2. **Rights for Employees Outside of a Bargaining Unit**

a. If you are not a member of a bargaining unit covered by a union contract, you have the right to pursue a discrimination complaint under the procedures covered by Army Regulation (AR) 690-600. Your first step under this procedure is to contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 calendar days of the effective date of the action. An EEO official, such as the EEO officer, specialist, or assistant, or an EEO counselor may offer you the opportunity to participate in the pre-complaint counseling process or, if determined appropriate, the alternative dispute resolution (ADR) method in lieu of traditional counseling. An individual contacting an EEO official or EEO counselor at the pre-complaint stage is referred to as the "aggrieved."

(1) ADR: Mediation is the ADR process preferred by the Department of the Army, however, other methods may be offered as determined by the activity. Mediation is a method by which an objective and impartial person (a trained mediator) facilitates communication between the aggrieved and management to resolve concern(s) or disputes(s). If you are offered and choose to participate in mediation, the pre-complaint period will be extended an additional 60 calendar days from the date you initiate the pre-complaint phase of the EEO complaint process to accomplish the mediation.

(a) If ADR is successful, a negotiated settlement agreement will be signed by the participants. A signed settlement agreement is binding on both parties.

(b) If ADR is not successful or if some issues remain unresolved after mediation, you will be given a Notice of Right to File a Formal Complaint of Discrimination.

(2) Traditional EEO Counseling: If mediation is not offered or you choose not to participate in mediation, an EEO counselor will be assigned to your pre-complaint within three (3) calendar days.

(a) During the initial interview with the assigned EEO counselor, the claim(s) previously identified by you during the initial intake interview will be discussed in order to define and record the specific dates and facts of the incidents or personnel actions alleged by you to be discriminatory. If additional matters not initially recorded during the pre-complaint intake interview are presented by you during the EEO counselor's inquiry, those issues must be recorded in the EEO counselor's report.

(b) You are obligated to cooperate with the EEO counselor in clearly defining the claim(s) and basis(es) for inquiry. The EEO counselor's inquiry is designed to facilitate a satisfactory resolution of your allegations. The EEO counselor will advise you of the results of the inquiry and discuss proposed solutions.

(c) If resolution of your complaint is not achieved, the EEO counselor will conduct a final interview with you within 30 calendar days of the date you initiated the counseling process, unless an extension of the counseling period is executed. The EEO counselor will then issue you a Notice of Right to File a Formal Complaint of Discrimination.

(d) Upon receipt of the Notice of Right to File a Formal Complaint of Discrimination, you may file a formal complaint of discrimination. The EEO counselor will advise you with whom to file your formal complaint and will explain the formal complaint procedures. Formal complaints of discrimination fall under two separate categories, non-mixed complaints and mixed complaints, and each are processed differently.

- A non-mixed complaint is one in which actions identified as discriminatory are not appealable to the Merit Systems Protection Board (MSPB). Formal complaint procedures in non-mixed cases include an investigation by the Department of Defense Office of Complaint Investigations (DoDOCI), your choice of requesting either a hearing before an Equal Employment Opportunity Commission (EEOC) administrative judge after which the EEO/Civil Rights Office (Deputy for EEO Compliance and Complaints Review (EEOCCR)) will issue a final action or you may request a decision by the Deputy for EEOCCR without a hearing by an EEOC administrative judge.

- A mixed complaint of discrimination is a complaint that stems from an alleged discriminatory action that can be appealed to the MSPB (see paragraph b. below). In mixed complaint cases, you have the right to an investigation by the DoDOCI, however, you do not have a right to a hearing by an EEOC administrative judge. A final decision will be issued by the Deputy for EEOCCR upon completion of the investigation by the DoDOCI.

b. Merit Systems Protection Board (MSPB): You may pursue a discrimination complaint under the MSPB appeal procedure without using the federal sector EEO complaint process. This procedure is available to you only if the alleged discriminatory action can be appealed to the MSPB. This type of complaint is referred to as a mixed case. The case is “mixed” in that it contains an action that may be appealed to MSPB and also alleges the action was discriminatory. Examples of personnel actions that are appealable to the MSPB include, but are not limited to, removal or suspension for more than 14 days of a non-probationary, competitive service employee. If you are subject to a personnel action that is appealable to the MSPB, you will be notified in writing of your right to appeal to the MSPB. The time limit for appeal to the MSPB is 30 calendar days after the effective date of the personnel action that you believe to be discriminatory in nature. Under such an appeal, you are entitled to a hearing by the MSPB. In addition, you may petition the EEOC to review the final decision of the MSPB on the allegation(s) of discrimination.

3. Options for Employees within a Bargaining Unit: If you are a member of a bargaining unit covered by a union contract, and if the negotiated grievance procedure excludes discrimination claims, your rights are the same as those shown in paragraphs 2a and 2b above. If you are a member of a bargaining unit covered by a union contract, and if the negotiated grievance procedure in that contract does not specifically exclude discrimination issues, you have the right to select one of the following options:

a. You may pursue a discrimination complaint under the procedures covered by AR 690-600 as described in paragraph 2a above. This includes the option to participate in ADR during the pre-complaint process.

b. You may pursue a discrimination complaint under the Merit Systems Protection Board (MSPB) appeal procedure as described in paragraph 2b above, if the issue(s) giving rise to your complaint are appealable to the MSPB.

c. You may pursue a discrimination complaint under the negotiated grievance procedure. Your union contract outlines the grievance steps. Note the following:

(1) Decisions in actions covered by Title 5, United States Code, Section 7512 or 4303 cases are not appealable to the Federal Labor Relations Authority (FLRA).

(2) In actions not appealable to the MSPB, but covered by the negotiated grievance procedure, you may choose between the grievance procedure or the EEO complaint procedure under AR 690-600.

(3) You may not seek redress under the EEO complaint procedure and the negotiated grievance procedure. When you select the negotiated grievance procedure by filing a written grievance, your decision is considered to be final and you cannot seek redress under the EEO complaint procedure.

(4) A grievance under the negotiated procedure may be rejected if you have filed a timely appeal with the MSPB or if you have filed a formal discrimination complaint under the EEO complaint procedure.

4. Allegations of discrimination that are subject to final administrative review by the EEOC may not be raised by an employee in the administrative grievance procedures. (See DoD Directive 1400.25M, Subchapter 771.)

**5. Additional Option for Age Discrimination in Employment Act of 1967 (ADEA), as amended, discrimination complainants (age 40 and over):** In lieu of filing a complaint under this regulation, a mixed case appeal with MSPB (if applicable) or a negotiated grievance (if applicable) as described above, you may elect to bypass the administrative procedure and file a civil action directly in an appropriate US District Court, after first filing a written notice of intent to file a civil action with the EEOC within 180 calendar days of the date of the alleged discriminatory action. Once a timely notice of intent to sue is filed with the EEOC, you must wait at least 30 calendar days before filing a civil action.

a. You must be aware that if you elect to file an administrative complaint rather than filing directly in U.S. District Court you must exhaust your administrative remedies before you can file a civil action.

b. In a non-mixed complaint, you will have exhausted your administrative remedies when one of the following occurs:

(1) after receiving notice of the final Army decision on your complaint, if no appeal has been filed; or, after 180 calendar days from the date you filed your complaint with the Army and the Army has failed to issue a final decision and no appeal has been filed; or

(2) after receiving the EEOC's final decision on your appeal; or after 180 calendar days from the date you filed an appeal with the EEOC and the EEOC has not issued a final decision on the appeal.

c. Should you elect to bypass the administrative procedure in an age discrimination complaint, you are responsible for providing the following information in your notice of intent to sue:

(1) The date prepared.

(2) Statement of intent to file a civil action under Section 15(d) of the ADEA, as amended.

(3) Your name, address, and telephone number.

(4) Name, address, and telephone number(s) of your designated representative, if any.

(5) Name and location of the Federal agency or installation where the alleged discriminatory action occurred.

- (6) Statement of the nature of the alleged discriminatory action(s).
- (7) Date(s) the alleged discriminatory action occurred.
- (8) Your signature or the signature of your designated representative.

d. Attorney's fees and costs are not recoverable in the administrative process and compensatory damages are never an available form of relief.

e. Notices of intent to sue under the ADEA must be submitted to the EEOC by facsimile (202) 663-7022 or sent/hand delivered to the following address:

Equal Employment Opportunity Commission  
Office of Federal Operations  
P. O. Box 19848 (if sent by mail)  
1801 L Street NW (if hand delivered)  
Washington, DC 20036

6. **Option for Equal Pay Act:** If you are alleging sex-based wage discrimination under the Equal Pay Act (EPA), you have the right to go directly to the US District Court even though such claims are also cognizable under Title VII. A civil action must be filed within 2 years of the date of the occurrence, or within 3 years of the date of the alleged violation if the violation is willful. Notwithstanding the two/three year limitations period applicable to the current action under the EPA, in order to present an administrative EPA claim, the aggrieved must contact an EEO counselor within forty-five (45) days of the date the aggrieved becomes aware of or reasonably suspects a violation of the EPA. The filing of an administrative complaint does not toll the time for filing a civil action. Attorney's fees and costs and compensatory damages are not recoverable in sex-based wage discrimination claims in the administrative process.

#### 7. **Additional Rights under the EEO Process**

a. You have the right to remain anonymous during the counseling. The counselor will refrain from revealing your identity except by your authorization. During the pre-complaint period, if you choose to participate in ADR, you will not be able to remain anonymous.

b. You have the right to a representative of your choice throughout the complaint process including pre-complaint counseling. This right to a choice of representation will be limited when there is a conflict of interest as defined in AR 690-600. Your right to representation is extended to the ADR process. However, the ADR neutral will decide the extent to which the representative actively participates in ADR. Nonetheless, you will have sufficient time to discuss resolution and review any proposed terms with your representative prior to finalizing a settlement agreement. If your representative is an attorney, all documents will be officially served on your attorney.

c. You have the right to receive in writing within 30 calendar days of the first counseling contact (unless you agree in writing to an extension for counseling) a notice terminating counseling and informing you of:

(1) the right to file a formal individual or class complaint within 15 calendar days of receipt of the notice,

(2) the appropriate official with whom to file a formal complaint, and

(3) your duty to immediately inform the agency if you retain counsel or a representative.

d. Any extension of the counseling period may not exceed an additional 60 calendar days. When notice is not provided and no extension is secured, you have the right to file a formal complaint of discrimination after the 30th day. Exception: If you agree to participate in mediation and unresolved issues remain after the mediation attempt, the written Notice of Right to File a Formal Complaint of Discrimination will be issued upon completion of the mediation process or within 90 calendar days of the initial contact, whichever comes first.

e. If you file a formal complaint, you have a right to be notified in writing whether the activity EEO officer accepts or dismisses your complaint. If you do not receive written notice within fifteen (15) calendar days of filing a formal complaint, you should contact the EEO officer. If your allegations are dismissed entirely or partially, you will be advised in writing of the basis and rationale for the entire or partial dismissal.

f. If you file a non-mixed EEO complaint and your allegations are dismissed in their entirety, you will be advised of your right to appeal the dismissal decision to the EEOC. If some but not all of your allegations are dismissed, the dismissed portion of your claim is not appealable to the EEOC until a final decision/action on the entire complaint is issued. However, the dismissed portion is subject to review by an administrative judge if a hearing is requested on the remainder of the complaint.

g. If you file a non-mixed EEO complaint, you have the right to request a hearing before an EEOC administrative judge after 180 calendar days from the filing of a formal complaint or after completion of the investigation, whichever comes first. Further, you have the right to file a civil action in an appropriate US District court:

(1) within 90 days of receipt of a final agency action/decision if no appeal has been filed

(2) 180 days after filing a formal complaint if an appeal has not been filed and a final agency action/decision has not been issued;

(3) within 90 days of receipt of the EEOC's final decision on an appeal; or

(4) 180 calendar days after filing an appeal with EEOC if there has been no final decision by the EEOC.

h. If you file a mixed EEO complaint and a final agency decision is not issued within 120 days after filing a mixed complaint, you have the right to either appeal the matter to the MSPB at any time after the 120<sup>th</sup> day or you may file a civil action.

i. If you file a mixed EEO complaint and are dissatisfied with the final agency decision, you have the right to appeal the matter to the MSPB, not the EEOC, within 30 days after receipt of the final agency decision.

j. When you have filed two or more complaints, you have the right to receive in writing a notice that the agency is consolidating your complaints; that the investigation will be completed within the earlier of 180 days after the filing of the last complaint or 360 days of the filing of the first complaint; and that you may request a hearing with an administrative judge at any time after 180 days of the filing of the first complaint.

k. You have the right to amend the pending complaint to add additional incidents or claims that are like or related to those raised in the pending complaint at any time prior to the completion of the investigation. The agency is required to complete its investigation within the earlier of 180 days after the last amendment to the complaint or 360 days after the filing of the original complaint.

## 8. **Responsibilities**

a. You are responsible for cooperating with those individuals involved in the processing of your complaint.

b. At all times during the administrative processing of your complaint, you are responsible for updating, in writing, the activity EEO officer and the EEOC of any changes to your current mailing address. Failure to keep the agency and the EEOC informed of your current address may result in dismissal of your complaint.

c. You are responsible for filing a formal EEO complaint within 15 calendar days after receipt of the counselor's Notice of Right to File a Formal Complaint of Discrimination, in the event that you wish to file a formal complaint at the conclusion of counseling or ADR.

d. You are responsible for electing your avenue of redress. The formal action you file first (a MSPB mixed case appeal, a discrimination complaint under the EEO complaint procedure, or a written grievance under the negotiated grievance procedure) is considered to be an election to proceed only in that forum as to the alleged discrimination. Thus, you should be aware that:

(1) An appeal to the MSPB will not be accepted if you have filed a timely formal complaint in writing under the EEO complaint procedure or a timely written grievance under the negotiated procedure.

(2) A discrimination complaint filed under the EEO complaint procedure will be

dismissed if you have first filed a timely appeal to the MSPB or a timely written grievance under the negotiated procedure on the same matter.

e. If you file a formal complaint, you are responsible for informing the EEO officer whether you are represented, by whom, and the address and telephone number(s) of the individual. You must also inform the EEO officer of any change in representation. You are responsible for electing your avenue of redress.

f. If you request a hearing before an administrative judge, you are responsible for sending your request directly to the appropriate EEOC field office and providing the EEO officer a copy of that request. You are also responsible for certifying to the administrative judge that you provided the EEO officer with a copy of your request for a hearing, including how it was served.

g. You must also be aware that you have a legal obligation to mitigate damages, i.e. on back pay and out of pocket expenses, regardless of whether it is later determined that you were a victim of unlawful discrimination. A successful complainant claiming back pay will be paid the amount that would have been earned had it not been for discrimination, less any amount actually earned or could have been earned with due diligence, plus interest. Interest on back pay is not payable to Federal employees or applicants who prevail on employment discrimination claims brought under the Age Discrimination in Employment Act or the Equal Pay Act.

h. The rejection of an offer of resolution made by the agency may result in the limitation of the agency's payment of attorney's fees or costs.

i. You are responsible for serving notice of appeal and a copy of the brief (if any) on the agency, i.e., Deputy for EEOCCR and the agency representative should you elect to appeal an agency decision to the EEOC, Office of Federal Operations.

9. You are further advised that only matters of discrimination raised in the pre-complaint processing to include those matters of discrimination like or related to matters of discrimination raised in pre-complaint processing may be alleged in a subsequent formal complaint filed with Army.

10. If you have any other questions on this matter, you may contact your activity EEO office.

Signature of EEO officer or official

Figure 3-1 Sample Aggrieved Person's Rights and Responsibilities Notice

NOTE: This template is available on the EEO/Civil Rights Office website at <http://eeoa.army.mil>.