

~~ADMINISTRATIVE - INTERNAL USE ONLY~~

Date: 12/22/99 (Regulations may contain various dates)

Category: 9 - Equal Opportunity

OPR: OEE0

Title: AR 9-3 EMPLOYMENT DISCRIMINATION COMPLAINT
SYSTEM

SUMMARY: 22 December 1999 (0373)

AR 9-3 is added to the Agency regulatory system and incorporates portions of paragraph d, Complaint Procedures, which was formerly contained in AR 9-1. It sets forth current Agency Policy, responsibilities, and procedures for handling complaints of employment discrimination; and provides more complete guidance to employees and supervisors on how to prevent and respond to allegations of employment discrimination. This regulation also incorporates current guidance from the Equal Employment Opportunity Commission on the processing of complaints of discrimination.

Because this regulation is new, boldfaced text has not been used.

The revision of this regulation was initiated by the Office of Equal Employment Opportunity, (secure).

(b)(3)

3. EMPLOYMENT DISCRIMINATION COMPLAINT SYSTEM

SYNOPSIS. This regulation sets forth Agency policy, responsibilities, and procedures for handling complaints of employment discrimination on the basis of Federally-protected categories--that is, race, color, religion, sex, national origin, disability, age (40 and over), and reprisal for opposing employment discrimination and/or for participating in the Equal Employment Opportunity (EEO) process--and against other categories protected by written Agency policy.

a. AUTHORITY

- (1) The Central Intelligence Agency Act of 1949, as amended; the National Security Act of 1947, as amended; the Civil Rights Act of 1964, as amended; the Equal Pay Act of 1963, as amended; the Age Discrimination in Employment Act of 1967, as amended; the Rehabilitation Act of 1973, as amended; and other applicable law.
- (2) This regulation implements applicable provisions of Equal Employment Opportunity Commission (EEOC) regulations (29 C.F.R. Part 1614), directives, and advisories and the statutes on which they are promulgated.

- (3) Executive Orders 11246, as amended, (Equal Employment Opportunity in Federal Employment) and 11478, as amended, (Equal Employment Opportunity in the Federal Government).

b. POLICY

- (1) Discrimination in employment is an unlawful employment practice in which an Agency official:
 - (a) fails or refuses to hire any individual, or otherwise discriminates against any individual with respect to his or her compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, disability, age (40 and over), or reprisal for opposing employment discrimination and/or for participating in the equal employment opportunity (EEO) process; or
 - (b) limits, segregates, or classifies employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee, because of such individual's race, color, religion, sex, national origin, disability, age (40 and over), or reprisal for opposing employment discrimination and/or for participating in the EEO process.

It is not discrimination if an individual cannot perform a bona fide occupational qualification reasonably necessary to the particular business or enterprise even if that qualification is related to the individual's membership in one of the protected categories.

- (2) The protections of this regulation apply to all Agency staff and contract employees, and applicants for Agency employment. Independent contractors and employees of Agency contractors may be protected under the circumstances outlined in the EEOC enforcement guidance on contingent workers. Foreign nationals employed outside the United States and bona fide employees of Agency proprietary companies are not protected by this regulation.
- (3) All individuals have the right to seek EEO counseling regardless of when the allegedly discriminatory act occurred. However, employees should report allegations of discrimination to the Office of Equal Employment Opportunity (OEEO) within 45 days of occurrence in order to preserve the right to pursue all remedies available under Federal law.
- (4) Agency policy prohibits discrimination based on sexual orientation even though it is not a category protected by Federal statutes. Reports of discrimination based on sexual orientation or other category protected by written Agency policy will be handled by management exclusively. Management's decisions regarding complaints of sexual orientation-based discrimination may not be appealed through the Federal EEO complaint system.

c. RESPONSIBILITIES

- (1) The target is responsible for notifying OEEO of an act of discrimination. Contacts with Grievance Officers, supervisors, and component-appointed diversity advisors do not relieve the target of the responsibility to notify a designated EEO counselor/investigator from OEEO.

- (2) A target has the right to remain anonymous during the informal counseling phase of the complaint process; however, by choosing anonymity, a target may limit the counselor's ability to resolve a complaint.
- (3) All Agency employees who have authority to affect the terms, conditions, or privileges of another's Agency employment must carry out those responsibilities in a lawful, nondiscriminatory manner.
- (4) Upon receiving an allegation of discrimination prohibited by this regulation, the supervisor and/or the appropriate Operating Official will refer the employee to OEE0.
- (5) OEE0 is responsible for educating employees and supervisors about diversity and how to build a work environment free of discrimination, and for advising them how to respond to allegations of employment discrimination. OEE0 will also be responsible for reviewing corrective actions taken by management in response to allegations of employment discrimination.
- (6) All persons covered under this regulation have an obligation to cooperate with the EEO counselor/investigators and to maintain the confidentiality of the investigative process.

d. PROCEDURES

(1) INFORMAL COUNSELING PHASE

- (a) At the initial counseling session, the EEO counselor will work with the target to identify the specific discrimination claim or claims. The counselor shall advise the target in writing of his or her rights and responsibilities under Federal EEO laws and regulations.
- (b) In appropriate cases, the counselor will offer the target the opportunity to request, in writing, mediation through the Agency's Alternative Dispute Resolution (ADR) program as an alternative to the informal process when both parties consent to ADR.
- (c) The counselor will try to resolve the dispute at the lowest possible level. Within 30 calendar days after the date of the discrimination allegation, the counselor will issue a Notice of Final Interview to the target unless the target has agreed in writing to an extension of the counseling period, not to exceed 60 additional days. If the target files a formal complaint, the counselor will prepare a counseling report which will be made available to the target.
- (d) All allegations based on sexual orientation or other category that is not protected by Federal statute will be handled by management exclusively.

(2) FILING A FORMAL COMPLAINT OF DISCRIMINATION

- (a) Upon receipt of the Notice of Final Interview, the target may choose to file a formal complaint of discrimination if he or she is dissatisfied with the outcome of the informal process.
- (b) The Agency will assign an impartial EEO investigator who will complete an investigation and issue a report of investigation within 180 days unless the target has agreed in writing to an extension of the investigative period, not to exceed 90 additional days. Amendments to the complaint or the filing of multiple complaints

may result in an automatic extension of the investigative period in accordance with Federal regulations.

- (c) ADR will remain available to the target in appropriate cases, but any ADR sessions will be held in addition to the ongoing EEO investigation.
- (d) The investigator will conclude the formal process by advising the target of the right to continue the administrative process, including the right to request a hearing before an EEOC Administrative Judge, or a Final Agency Decision from the Agency. The investigator will also notify the target of the right to appeal a dismissal, final Agency action, or Agency decision to the EEOC.

(3) CORRECTIVE ACTION

- (a) Based on the results of the investigation, management will take whatever corrective action is warranted. If management takes disciplinary measures as a corrective action, the requirements of HR 20-6, Conduct and Discipline, will apply, including all recordkeeping requirements. Employees who are found to have engaged in employment discrimination will be subject to disciplinary action up to and including termination according to the requirements of HR 20-6.
- (b) If a person's employment situation is not solely under Agency control, the Agency will coordinate any disciplinary measures with the person's employer.

e. RECORDKEEPING

- (1) The results of discrimination investigations will be recorded in investigative files to be maintained by the Director, EEO (D/EEO). After resolution of the complaint, no record of the complaint will be retained by supervisors, Operating Officials, or their components except those documents that would normally be included in non-EEO systems of records such as personnel, security, or disciplinary files. An EEO investigative file will include the following:
 - (a) All statements from the alleged discriminating official, target, and witnesses about the alleged behavior.
 - (b) Any investigative documents.
 - (c) Copies of all relevant administrative correspondence and forms.
 - (d) Copies of all management deliberative records.
 - (e) Copies of all records of corrective and disciplinary actions.
- (2) The D/EEO will release investigative/complaint information concerning an employee only on a strict need-to-know basis and pursuant to a written request. Persons who may be allowed access to this information include:
 - (a) The target.
 - (b) Operating Officials who are deciding and/or enforcing appropriate disciplinary and remedial actions.
 - (c) The Inspector General or designee.
 - (d) The General Counsel or designee.

- (e) The Director, Center for CIA Security or designee.
- (f) Other appropriate Agency officials as determined by the D/EEO.