

*United States Army Garrison Baumholder
EEO Office
Presents*

Equal Employment Opportunity

Training



Overview

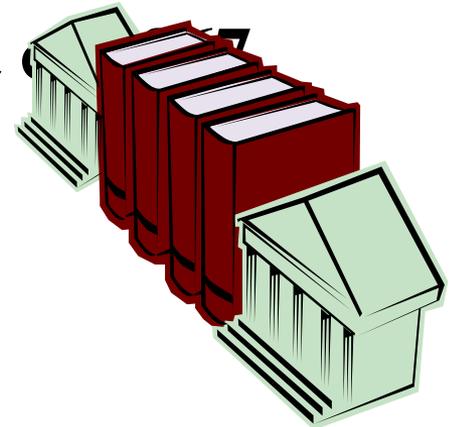


EEO Process

- **Laws & Regulations Governing EEO**
- **The No FEAR Act**
- **Prejudice and Discrimination**
- **Reasonable Accommodation**
- **EEO Complaint Process**
- **Alternative Dispute Resolution**
- **How to Prevent Discrimination**

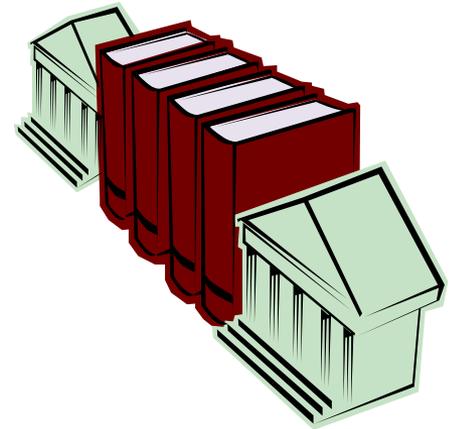
Laws & Regulations Governing EEO

- **Equal Pay Act of 1963**
- **Title VII Civil Rights Act of 1964, as amended**
- **Age Discrimination in Employment Act**
- **Rehabilitation Act of 1973**
- **Pregnancy Discrimination Act of 1978**
- **Americans with Disabilities Act of 1990**
- **Civil Rights Act of 1991**



Laws & Regulations Governing EEO

- **No FEAR Act of 2002**
- **29 Code of Federal Regulation (CFR) 1614**
- **EEOC Management Directives (MD) 110 and 715**
- **Genetic Information Antidiscrimination Act of 2008 (GINA)**



Laws & Regulations Governing EEO

The Genetic Information Antidiscrimination Act of 2008 (GINA)

Effective November 21, 2009, prohibits employment discrimination on the basis of genetic information of employees or applicants for employment. It strictly limits employers from requesting genetic information from and disclosing genetic information of employees and applicants. It also prohibits harassment of individuals on the basis of genetic information and retaliation against individuals who have initiated discrimination complaints on the basis of genetics.

“Genetic Information” includes information about diseases, conditions and disorders from genetic testing of individuals and their family members, as well as family medical history. The use of genetic information in employment decisions is prohibited because it bears no relation to an individual’s current ability to work.

Laws & Regulations Governing EEO

The Equal Pay Act of 1963 (EPA), as amended, prohibits discrimination in wage differences between men and women performing substantially equal work and prohibits reprisal or retaliation for opposing sex-based wage discrimination or participating in EPA complaints or lawsuits.

“Substantially equal work” means that the jobs do not need to be identical, but they must be of equal skill, effort and responsibility, in the same establishment and under similar working conditions.

Employees who believe they have been subjected to sex-based wage discrimination under the EPA can choose:

- 1) Contact EEO to initiate the complaint process, or**
- 2) File a civil action in the appropriate US District Court within 2 years of the date of discrimination or 3 years if discrimination is willful. Attorney fees, costs and comp damages are not recoverable in EPA claims filed under EEO**

Prohibited Personnel Practices

- **The Civil Service Reform Act (CSRA) of 1978 is a Federal Law created to promote overall fairness in Federal personnel actions.**
- **This law states that a federal employee who is authorized to take, direct others to take, recommend or approve any personnel action may not take certain types of personnel actions, referred to as prohibited personnel practices.**

Prohibited Personnel Practices

There are 12 types of prohibited personnel practices listed in the CSRA:

- 1. Discriminating against an employee or applicant based on race, color, religion, sex, age, national origin, mental or physical disability, marital status, political affiliation, genetic information and/or sexual preference.**
- 2. Asking for or considering employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics.**

Prohibited Personnel Practices

- 3. Coercing the political activity of any person.**
- 4. Deceiving or willfully obstructing anyone from competing for employment.**
- 5. Influencing anyone to withdraw from competing for a job to help or hurt the employment prospects of another person.**
- 6. Giving an unauthorized preference or advantage to anyone that helps or hurts the employment prospects of another employee or applicant.**

Prohibited Personnel Practices

- 7. Hiring, promoting or advocating the hiring or promotion of relatives (nepotism).**
- 8. Engaging in reprisal or retaliation against an individual for whistle blowing.**
- 9. Taking, failing to take or threatening to take or not take a personnel action against an employee for:**
 - Filing an appeal, complaint or grievance**
 - Testifying for or assisting another in the above**
 - Cooperating with or providing info to the OSC, IG; or refusing to obey an order that would require the individual to violate the law.**

Prohibited Personnel Practices

- 10. Discriminating based on personal conduct which is not adverse to the on-the-job performance of an employee, applicant or others.**
- 11. Taking or failing to take, recommend or approve a personnel action that would violate a veterans' preference requirement.**
- 12. Taking or failing to take a personnel action that violates any law, rule or regulation implementing or directly concerning merit system principles.**

Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act, 15 May 2002

- **The No FEAR Act (Public Law (PL) 107-174) requires that all Federal employees receive training regarding their rights and remedies under Federal antidiscrimination and whistleblower protection laws.**
- **Requires Federal agencies to report annual antidiscrimination complaint data to Congress, and to publicly post the data on agency web sites.**

No FEAR Act

Purpose

The No FEAR Act was enacted by Congress to ensure that Federal agencies:

- **NOTIFY** all Federal employees of their rights and remedies under Federal antidiscrimination and whistleblower protection laws
- **COMPLY** with these laws by requiring agencies to report antidiscrimination complaint data to Congress each year, and publicly post that data
- **ACCOUNTABILITY** for violations of these laws by requiring agencies to pay back the Department of Treasury Judgment Fund for awards, judgments and settlements in lawsuits involving discrimination and whistleblower retaliation

Avenues of Redress

- **The Office of Special Counsel:** Investigates complaint of prohibited personnel practices that do not fall under the authority of the EEOC, including discrimination on the basis of: marital status, political affiliation, conduct that does not adversely affect employee performance, whistleblower retaliation
- **Merit Systems Protection Board (MSPB):** is an independent Federal agency established to protect Federal merit systems against partisan political and other prohibited personnel practices and to protect Federal employees against abuses by management. The MSPB has the authority, in part, to review and issue rulings on: appeals of adverse actions such as removals, suspensions of more than 14 days, furloughs and demotions (list not all inclusive).

Avenues of Redress

- **Administrative Grievances:** appropriated Fund (AF) employees may be able to file administrative grievances with their servicing CPAC to resolve employment issues.

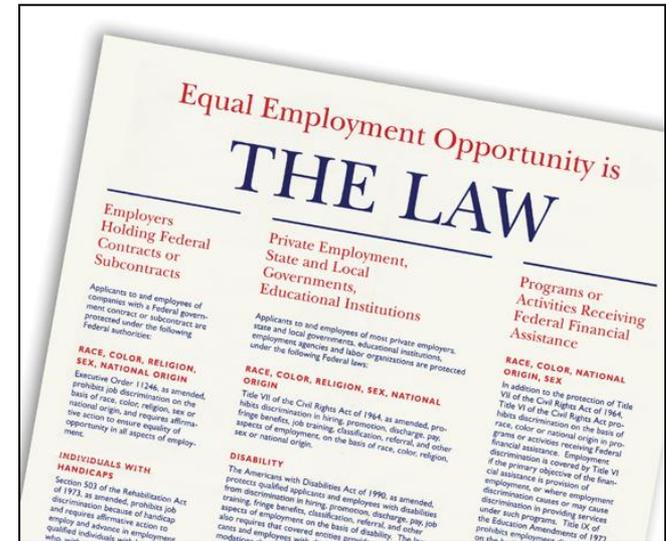
Certain employment issues cannot be grieved through this procedure, including any matter covered by a negotiated grievance procedure or subject to a formal review and adjudication by the MSPB or the EEOC.

For more information with respect to employment issues that can be administratively grieved or to submit a grievance, contact your servicing CPAC.

Equal Employment Opportunity

*Your right to employment free from discrimination based on **race, color, sex, religion, age, national origin, disability, and genetic information.***

- Antidiscrimination laws protect EEO
- Your employer must be committed to EEO
- All employees must adhere to EEO policies



USAREUR COMMANDING GENERAL

**Army in Europe Command Policy Letter 6, 6 May 09,
SUBJECT: Equal Employment Opportunity (in part)**

- **Army readiness begins with people.**
- **Successful mission accomplishment can be achieved only in an environment of mutual respect, dignity, and fair treatment.**
- **Leaders must ensure that employment decisions are based solely on merit-based factors to foster this environment.**
- **I endorse and promote the principles of equal employment opportunity, and I expect leaders who manage and supervise civilian employees to integrate these principles into daily management and employee relations.**

Prejudice and Discrimination

Discrimination, prejudice
and prejudice
What is it?

Prejudice Defined

- **Injury or damage resulting from some judgment or action of another in disregard of one's rights;**
- **An irrational attitude and a negative bias or distortion in an individual's perceptions of and beliefs about a racial, ethnic, gender, religious, etc., group; or to prejudge**

Prejudice Further Defined

Dr. Gordon Allport [Ph.D. in Psychology – Harvard University] theorized that prejudice has the following “Levels of Intensity”:

- **Antilocution**
- **Avoidance**
- **Active Discrimination**
- **Physical Attack (Violence – Homicide)**
- **Extermination - Genocide**

Discrimination Defined

- **The process by which two stimuli differing in some aspect are responded to differently, or to distinguish or by discerning or exposing differences**
- **Using power and/or position to establish unjust policies and to administer unfair treatment to a person or group on the basis of prejudice**

Discrimination Further Defined

Employment decisions that are based on personal characteristics protected by law that have nothing to do with a person's ability to do the job

Personal characteristics include:

- * **Race**
- * **Color**
- * **Religion**
- * **Sex**
- * **Age (40+)**
- * **National origin**
- * **Disability**

Reasonable Accommodations Terms

- **Individual with a Disability** – a person with a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is generally regarded as having such an impairment.
- **Qualified Individual with a Disability** – a person who is capable of performing the essential functions of a particular job, with or without reasonable accommodation for his/her disability.
- **Major Life Activities** – functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Reasonable Accommodations

- **Reasonable Accommodation** – any modification or adjustment to a job, an employment practice, or the work environment that makes it possible for an Individual with a Disability (IWD) to enjoy equal employment opportunities. [Case by case basis & undue hardship].
- **The Rehabilitation Act** – was the first “rights” legislation to prohibit discrimination against people with disabilities. It requires affirmative action and mandates that government contractors, colleges and universities receiving Federal funds of \$10,000 or more must make jobs and/or programs accessible to IWD.
- **The Americans with Disabilities Act** – mandates that all private sector employers (for profit and non-profit, religious entities, state and local governments, etc.) with 15 or more employees must provide equal employment opportunities to IWD.

Reasonable Accommodations Steps

- **Be Prepared** – Have a process in place for facilitating accommodation request. Ensure employees understand it.
- **Facilitate Requests** – the employee must inform the employer of the need verbally or in writing. The employee only has to indicate that they have difficulty carrying out their tasks due to a disability.
- **Analyze Jobs and Identify Functional Limitations** – take a look at the essential functions of the job and discuss the employee's limitations. Determine where the intersection occurs with the duties.
- **Determine Reasonable Solutions** – this step requires creative and collaborative thinking. When cost is a concern, an employer should explore if funding is available from an outside source.

EEO Complaint Process

[As governed by AR 690-600]

Any employee, former employee or applicant for employment (AF, NAF, and certain contract employees) who believes that he/she has been discriminated against may file a pre-complaint of discrimination.

EEO Complaint Process

No one is above the law. All employees must be held accountable for their actions.

Managers have the right and responsibility to supervise, reward, as well as discipline their employees.

EEO Timelines

Must file **45 Calendar Days** from the date of the alleged act or action

Appeals Process – Civil Action

Decision Rendered by AJ or Final Decision by the Army

Investigations and Resolutions Division (IRD)

Decision to Accept/Dismiss Rendered

15 Calendar Days to File a Formal EEO Complaint



An EEO Counselor is Assigned to Process the Pre-complaint

30 Calendar Days to Conduct an Inquiry

{Or elect}

Alternative Dispute Resolution (ADR)

30 days + 60 days

Final Interview Conducted – Notice of Right to File Issued

Alternative Dispute Resolution (ADR) Process

- **The ADR Act of 1990**
- **29 Code of Federal Regulations 1614 – All agencies must have an ADR program for EEO complaints. Agencies can decide case by case whether to offer ADR. If offered, complainants can choose to participate. All parties can have representation.**

USAREUR COMMANDING GENERAL

**Army in Europe Command Policy Letter 7, 6 May 09,
SUBJECT: Alternative Dispute Resolution (in part)**

- **Participation in ADR encourages improved employee- management relations, minimizes workplace disruptions, and significantly reduces the cost and time associated with judicial and administrative processes.**
- **ADR will be used when the commander or designee determines that it is appropriate in the individual case to resolve an EEO matter and the aggrieved person agrees to participate.**
- **Leaders are encouraged to offer ADR at all stages of the EEO complaint process when appropriate. Managers and supervisors are expected to participate in the ADR process...**

Alternative Dispute Resolution (ADR)

- **A concept that offers various methods to resolve issues in lieu of administrative or judicial processes**
- **Defines and clarifies issues**
- **Starts dialog between parties**
- **Clarifies options/choices**
- **Facilitates cooperation between management and employees**

Why Use Alternative Dispute Resolution (ADR)?

- **Decisions reached faster**
- **Less expensive**
- **Less contentious and can improve morale**
- **More creative, efficient and sensible outcomes**
- **Management/Employee maintain control over the outcome**

Army's ADR = Mediation

Principles of Mediation

- **Issues, not people, personalities or faults**
- **Issues at hand, not the past**
- **Making interests understood**
- **Understanding other's interests**
- **Recognizing the *real* problem**
- **Facilitating resolution**

Manager Involvement in EEO Complaints

- **Should always work to resolve the issue at the lowest level possible**
- **Must articulate non-discriminatory reasons for your actions & provide appropriate documentation**
- **Must ensure the individual is not reprimed against for filing an EEO complaint**
- **Must communicate with the agency's attorney and cooperate with EEO officials in regard to the complaint**

Forums for Redress

- **Chain of Command**
- **Alternative Dispute Resolution**
- **Classification Appeal**
- **Administrative Grievance Procedures**
- **Inspector General**
- **Equal Employment Opportunity**
- **Office of Special Counsel (OSC)**
- **Merit Systems Protection Board (MSPB)**

Antidiscrimination Laws and EEO

- **Antidiscrimination laws protect employees from discrimination in the terms, conditions and benefits of their employment, such as:**

hiring

promotion

reassignment

pay

awards

time & attendance

training

classification

performance evals

- **And adverse actions such as reprimands, suspensions and terminations.**

- **These laws also protect employees from unlawful harassment (sexual and non-sexual), hostile work environment and reprisal.**

How to Prevent Discrimination

- **Treat everyone with dignity and respect**
- **Report discrimination to management if it occurs**
- **Support your agency's zero tolerance policy of discrimination**



The Bottom Line

Discrimination hurts everyone
and it has a negative effect on:

- **Morale**
- **Productivity**
- **Employee Retention**

Our success depends
on mutual respect.



USAREUR COMMANDING GENERAL

Army in Europe Command Policy Letter 6, 6 May 09

SUBJECT: Anti-Harassment (in part)

- I am deeply committed to ensuring a workplace that is free of all types of harassment. Harassment in any form is not conducive to respect and must not occur within this command.**
- All USAREUR leaders are responsible for conducting prompt, thorough, and impartial investigations into allegations of harassment and for stopping harassment ...**
- Leaders have a special responsibility to prevent harassment by setting an example of how to treat others and promoting an environment of respect for all employees. This applies both on and off duty.**
- Leaders must also ensure that all civilian employees are aware of the EEO policy and participate in annual EEO training.**

Costs of Complaints



Number of claims are on the rise



Investigation of claims takes time



Litigation is costly



Settlement amounts

continue to increase

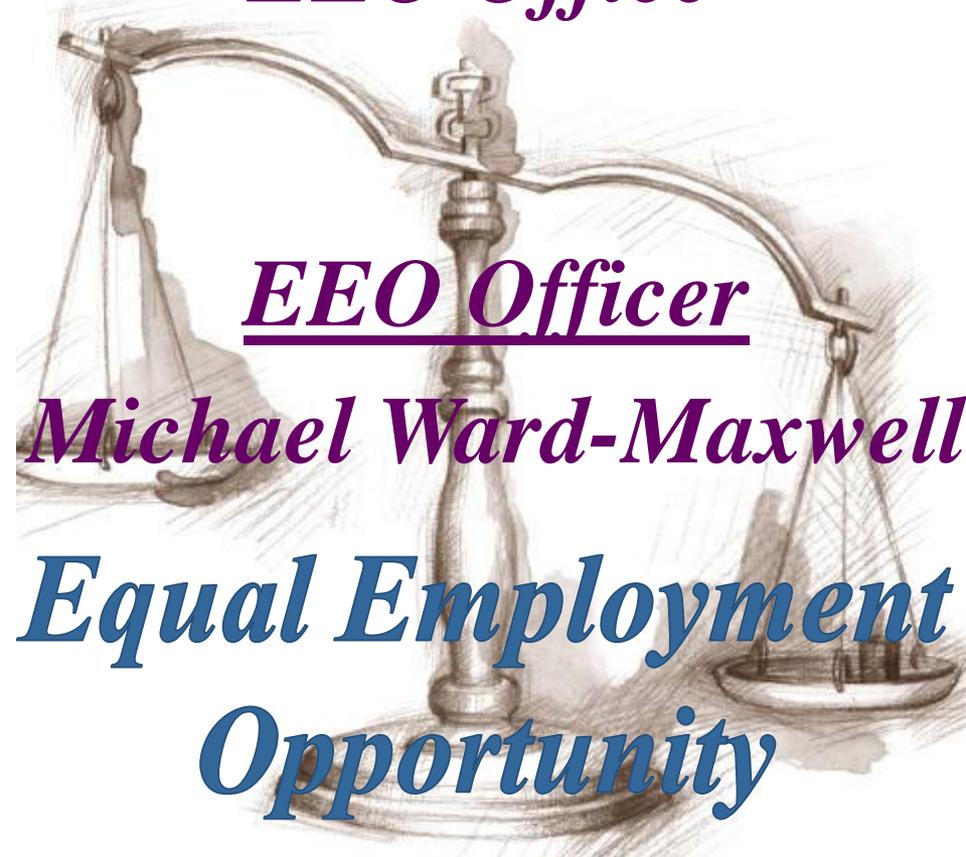


Questions & Answers





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*Equal Employment
Opportunity*



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