



CALIFORNIA MILITARY DEPARTMENT MANUAL

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FEDERAL EEO DISCRIMINATION COMPLAINT PROCESS

1. Purpose. This manual establishes procedures for the California Military Department (CMD) Federal Equal Employment Opportunity (EEO) Discrimination Complaint Process.
2. Cancellation. None.
3. Applicability. This instruction applies to all current and former Title 5 and Title 32 federal employees, to include job applicants for either status.
4. Procedures. See Enclosures.
5. Summary of Changes. Updated CAL GUARD logo.
6. Releasability. This issuance is approved for public release; distribution is unlimited.
7. Effective Date. This manual is effective upon publication.

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Director, Manpower and Personnel

Enclosures:

- A – General Information
- B – Informal Pre-Complaint Process
- C – Alternative Dispute Resolution
- D – Formal Complaint Process
- E – Final Agency Decision, Hearing, and Appeals
- F – Federal EEO Workflow Diagram
- G – References
- GL – Glossary

ENCLOSURE A

GENERAL INFORMATION

1. Proponent. The EEO Office is the proponent of the CMD's Federal EEO Program and is involved in all matters of EEO activity and the conduit for all EEO discrimination complaints. Furthermore, the term "EEO Counselor" may also refer to the EEO Office.

2. Objective. The purpose of the Federal EEO Discrimination Complaint Process is to provide prompt, fair, impartial processing and resolution of EEO complaints, consistent with its legal obligations under 29 Code of Federal Regulations (CFR), Part 1614 and Management Directive (MD) 110. The objective of EEO counseling is to seek opportunities to resolve issues at the lowest organizational level at the earliest possible time.

3. Scope of Program. An aggrieved person who believes he/she has been discriminated against on the basis of race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information -- or who believes that he/she has been subjected to sexual harassment or retaliated against for participating in the complaint process--must consult with an EEO Counselor or contact the EEO Office within 45 calendar days of the alleged incident. He/she may also contact an EEO Counselor or the EEO Office within 45 calendar days of when he/she became aware of a possible discriminatory action or 45 calendar days from the effective date of a personnel action. The 45-day time limit may be extended for reasons outlined in 29 CFR 1614.105(a)(2). Failure to contact an EEO Counselor within 45 calendar days may result in dismissal of a formal complaint.

4. Title VII, Civil Rights Act of 1964. Title VII prohibits discrimination based on race, color, religion, sex, and national origin. It also prohibits reprisal or retaliation for participating in the discrimination complaint process or for opposing any employment practice that the individual reasonably and in good faith believes violates Title VII. Title VII's prohibition against sex discrimination includes discrimination on the basis of pregnancy, sexual orientation, and gender identity including transgender status. Title VII has been amended over the years to supplement additional acts and basis(es).

5. Equal Employment Opportunity Commission (EEOC). The EEOC is responsible for, among other things, complaint processing, conducting hearings, and issuing decisions on complaints of discrimination in the federal sector, as well as enforcing compliance with section 717 of Title VII of the Civil Rights Act, as amended; sections 501 and 505 of the Rehabilitation Act, as amended; section 15 of the Age Discrimination in Employment Act, as amended; and the Equal Pay Act, as amended.

6. Stages of Complaints. Two stages exist in processing discrimination complaints. All federal EEO complaints begin at the informal pre-complaint stage which allows both the aggrieved and direct leadership to seek resolution at the lowest level possible, including use of the Alternative Dispute Resolution (ADR) process. The formal complaint stage begins when the informal stage ends and may involve investigative proceedings to determine the merit of complaints, which may be forwarded to an official arbitrator to decide courses of action.

7. Complaint Types. Various types of complaints exist in the EEO complaints process. Most common are individual, mixed case, and class complaint cases.

a. Individual complaints are normally straightforward, consisting of one individual and only involve EEO discriminatory issues.

b. Mixed Case complaints involve both an EEO basis and issues appealable to the Merit Systems Protection Board (MSPB). Issues may include adverse, performance-based, reduction in force, or suitability actions; improper restoration after compensable injury claims; challenges to employment practices; within grade increase denials; and Federal retirement benefit claims. An individual may process a mixed case complaint using the EEO complaint system or file a mixed case appeal through the MSPB, but not both.

c. A class complaint involves a group of people who feel that personnel, management policies, and/or practices discriminate against them as a group.

8. Alternative Dispute Resolution (ADR). The use of ADR is available throughout the complaint process and is highly encouraged for all EEO discrimination complaints. See Enclosure C for ADR procedures.

9. Sexual Harassment Allegations. Two avenues exist for sexual harassment: traditional EEO processing or an administrative investigation (i.e., Commander Directed Investigation (CDI), Army Regulation 15-6 investigation, Office of Complex Investigation, etc.). Both processes may be used separately or simultaneously.

- a. If an administrative investigation is chosen first, the aggrieved must contact the EEO Office within 10 calendar days of notification of investigation completion to state whether he/she intends to also use the EEO process.
- b. If the aggrieved pursues both the traditional EEO process and the Commander's investigation process simultaneously, the EEO Office will proceed with the EEO process at the same time the investigation is conducted.

10. Point of Contact:

- a. California Military Department
Joint Force Headquarters
Attention: EEO, Box 06
Sacramento, CA 95827-9101
- b. Helpline: (916) 854-3177
- c. Email: ng.ca.caarng.mbx.eo-eeo@mail.mil.
- d. Public Website: <https://calguard.ca.gov/eo-eeo/>.
- e. SharePoint:
<https://ngcasp16.ng.army.mil/sites/J1/EO-EEO/SitePages/Home.aspx>.

ENCLOSURE B

INFORMAL PRE-COMPLAINT PROCESS

1. Initiate an Informal Pre-Complaint. Within 45 calendar days of the alleged incident, the aggrieved informs an EEO Counselor that he/she wants to begin the process or states intent to file a complaint (or claim) regarding unlawful discrimination. Simply contacting an EEO Counselor does not actually start the EEO process. An aggrieved person may contact an EEO Counselor only to ask questions and obtain information. All EEO claims must start out in the informal stage; the informal stage cannot be bypassed.

2. EEO Counselor Actions. The EEO Counselor will complete a informal counseling within 30 calendar days or obtains written approval from the aggrieved and the EEO Office, prior to the 30th day, to extend counseling for no more than an additional 60 calendar days.

a. Informs the aggrieved that the 30 day calendar informal processing period starts when he/she states the intent to file a complaint.

b. Determines if a claim is acceptable for processing under 29 CFR Part 1614, Federal Sector Complaint Processing, and when appropriate, offers ADR or other informal dispute resolution procedures to resolve the issue. See ENCLOSURE C for ADR.

c. Processes all claims through the informal stage first, regardless of timeliness, merit, or other considerations. Claims may or may not reach the formal stage, depending upon whether they are settled, withdrawn, or referred to another process to be addressed.

d. Advises that complaints based on sexual orientation or gender identification may be covered under 29 CFR 1614.105(a) as sex stereotyping; therefore, an aggrieved person who believes he/she has been discriminated on the basis of sexual orientation may process a complaint under 29 CFR Part 1614 as sex discrimination.

e. Annotates "EEO General Assistance" when aggrieved person inquires for information or help in articulating a complaint but does not elect to start the informal process.

f. Informs the aggrieved in writing of his/her rights and responsibilities by issuing the Notice of Rights and Responsibilities.

g. Notifies aggrieved of his/her right to request an administrative investigation (i.e., Commander Directed Investigation (CDI), Army Regulation 15-6 investigation, etc.) if sexual harassment is alleged. Also advises that any administrative investigation runs concurrently with EEO complaint processing.

h. Informs aggrieved that disclosure of case file information falls under the Freedom of Information Act (FOIA) and Privacy Act guidelines. At the informal stage, the aggrieved will not be provided documents collected from the Directorate for Human Resources, also known as the Human Resources Office (HRO), or other agencies unless a FOIA office request is granted.

i. Submits a counselor's report to the EEO Office within five (5) calendar days after the issuance of the Notice of Right to File a Formal Complaint.

3. Anonymity. The EEO Counselor advises the aggrieved of his/her right to remain anonymous during the informal stage. If anonymity is elected, takes appropriate measures to protect the aggrieved's identity until written permission is given to release name or a formal complaint is filed. The EEO office will document such a claim as "EEO General Assistance/Contact." If a complaint is pursued, the intake form will contain enough information to clarify the complaint and indicate a reliable source. As in all EEO complaints, the EEO Office has the responsibility of informing TAG or designee and briefing him/her on complaints raised by aggrieved when brought to the EEO Office, whether or not they relate to EEO matters; an anonymous claim is no exception. The Commander may decide an investigation outside of the EEO realm is appropriate. Persons interviewed in connection with the matter may be able to determine the identity of the individual making the complaint, but the EEO Office will not reveal the person's identity. Individuals have the right to anonymity only up to the point of filing a formal complaint.

4. Final Interview. The final interview concludes the informal process and is not required to be conducted face-to-face with the aggrieved and his/her representative, if any. The EEO Counselor will notify the aggrieved in the Notice of Right to File a Formal Complaint that any formal complaint must be filed with the EEO Office within 15 calendar days of receipt.

ENCLOSURE C

ALTERNATIVE DISPUTE RESOLUTION

1. Alternative Dispute Resolution (ADR). The use of ADR is highly encouraged for all discrimination complaints, as it is a method of settling disputes which provides an alternative to litigation. The most favored component of ADR is the mediation process, in which disputing parties work with a mediator deemed as a neutral party. The mediator assists participants in employing interest-based, problem-solving techniques to help reach or explore a resolution through compromises or settlements.
2. Choosing ADR. An aggrieved may choose ADR to address his/her complaint. The ADR process must be completed within 90 calendar days from when EEO processing commenced. If the matter is not resolved before the end of the authorized period, including extensions, a Notice of Right to File a Formal Complaint is issued to the aggrieved. If ADR is chosen, the informal processing period automatically extends to 90 calendar days.
3. Participation. The ADR process is not withheld due to alleged basis(es) of the complaint. Participation in ADR by both the aggrieved and management officials is encouraged to resolve the issue and reach a settlement agreement. If ADR is accepted by the aggrieved, the agency must enter the ADR process and provide a representative with settlement authority. If management is unwilling to participate in ADR, it is annotated in the counselor's report, and the limited inquiry continues.
4. Facilitation. The EEO Office will identify and assign a certified third-party neutral member to help facilitate the ADR. This certified mediator will normally be from either the Investigations & Resolutions Directorate (IRD) or the CMD ADR Program. An EEO Counselor will not conduct ADR if he/she is also the EEO case handler to avoid compromising the integrity and neutrality of the ADR program. However, the EEO Counselor may continue to maintain overall responsibility for tracking the complaint and the ADR process.
5. Settlement Agreements. Settlement agreements are confidential and may include remedial action, back pay, attorney's fees, and/or compensatory damages, if allowed by law and regulations.
6. Formal Complaint. If ADR fails or does not occur, the EEO Counselor must complete the inquiry and counselor's report to include informing the aggrieved of the right to file a formal complaint.

ENCLOSURE D

FORMAL COMPLAINT PROCESS

1. Initiate a Formal Complaint. The complainant (formerly the aggrieved) starts the formal complaint process by informing the EEO Office that he/she wants to begin the formal complaint process. The EEO Office must receive this notification within 15 calendar days from the date the aggrieved received the Notice of Right to File a Formal Complaint. The EEO Office processes formal complaints and will not attempt to encourage or dissuade the person from filing a complaint.

2. Complainant Actions. Works with the EEO Office on the following activities.

a. Completes the NGB Form 713-5-R, Formal Complaint of Discrimination.

b. Clarifies administrative data, basis(es), issues, and suggests corrective actions to resolve the issues (make the complainant whole). Examples of corrective actions may include telling the alleged offender to cease his/her discriminatory behaviors, receiving training to prevent future offensive behaviors, etc. Note: Disciplinary actions are at the discretion of leadership, not at the disposal of complainants.

c. Responds promptly to any inquiries from the EEO Office to clarify issues. Untimely responses may lead to delays in processing or dismissals.

3. EEO Office Actions. The EEO Office will acknowledge receipt of the complaint in writing within five (5) business days of receiving the formal complaint. This acknowledgement to the complainant includes date the complaint is considered filed and the right to request a hearing with an EEO Commission (EEOC) Administrative Judge (AJ) for any partial dismissals of the complaint, the right to appeal to the EEOC Office of Federal Operations (OFO) for any partial or full dismissals of the complaint within 30 calendar days from the date of receipt of dismissal notification or file a Civil Action within 90 calendar days.

a. Provides NGB Form 713-5-R, Formal Complaint of Discrimination, to the aggrieved and assists in clarifying basis(es), issues, or corrective actions prior to submission. Also provides the EEO Counselor's report to the complainant within 15 calendar days of the date the formal complaint is filed.

b. Upon receipt of the form, assigns a docket number to the claim then notifies the complainant and his/her representative (if designated) of the number with instructions to refer to it in all future correspondence.

c. Reviews the complaint file to determine if it has all required forms and supporting documents with signatures. This includes the counselor's report, complainant's employment status verification, and finalized/amended claims. Ensures information covered by the Privacy Act is protected.

d. Submits a proposed Acceptance or Dismissal (A/D) letter, including all proposed amendments, NGB Form 713-5-R (Formal Complaint of Discrimination), and counselor's report to the Staff Judge Advocate (SJA) within 21 calendar days of receipt of the formal complaint.

e. Notifies HRO, SJA, and the Inspector General (IG) of any non-frivolous allegations of wrong doing against any senior officials, colonels (or Civilian equivalents), or colonel selects.

f. Monitors progression of the complaint and advises the complainant of his/her case status.

4. Acceptance or Dismissal (A/D). The A/D letter shall be provided to the complainant no later than 30 calendar days from the date of filing. The CMD will compare the formal complaint to the counselor's report to ensure that the formal claims were addressed. The CMD will also ensure that EEOC's criteria to accept or dismiss (partially or in whole) were properly applied.

a. If accepted (partially or in whole), an investigation will be conducted and a Report of Investigation (ROI) completed within 180 days from the date of filing a formal complaint.

b. If dismissed in part or in whole, appeal rights will be provided to explain the following: A complainant may request that a partial dismissal be reviewed by an EEOC Administrative Judge (AJ). A complainant may also appeal to the EEOC/OFO when a final decision or final action is issued on a partial dismissal. For whole dismissals, a complainant has the right to an immediate appeal to the EEOC/OFO. The complainant may also file a Civil Action with the appropriate United States District Court.

5. Investigations. All investigative proceedings are conducted during the formal complaint stage. The A/D process must be completed before an investigation is requested through the IRD. If a formal complaint is not dismissed in its entirety within 30 calendar days of date submission, the EEO Office will request an IRD investigation. The IRD request will include the following:

a. Specific, accepted claims, whether partially accepted or whole.

b. Specific claims partially dismissed, including reasons and documentary evidence to support recommended dismissal(s).

- c. Complete case file and any other pertinent records.
 - d. Name; office symbol; address (including e-mail address); and phone and fax numbers of the management representative.
6. The Investigator's Role. Determines the scope of the investigation and compiles all investigated items into the ROI.
- a. May not unilaterally impose a requirement for any complaint to be investigated specifically via onsite, e-processing, or any other method which imposes additional costs.
 - b. Negotiates with the complainant or complainant's representative, if applicable, for extensions to the 180-day time limit for processing complaints. At the request of investigators, the EEO Office may act as an intermediary in these negotiations. Agreements to extend the 180-day time limit must be in writing and included in the investigative file.
7. Report of Investigation. The ROI is written after the completion of the investigation. It is created as an electronic copy by IRD and is made available on its web site and provided (in printed or electric copy form) to complainants and their designated representatives.

ENCLOSURE E

FINAL AGENCY DECISION, HEARINGS, AND APPEALS

1. Final Agency Decision (FAD). Is issued on a discrimination complaint after reviewing the ROI. The FAD is an agency decision appealable to the EEOC. It includes either an agency decision on a dismissal or on an appropriate course of action based on review of merits of the claim.

a. The EEO Office will send a complainant a copy of the completed ROI and a notice explaining his/her rights to request a FAD or an EEOC Hearing.

b. If the complainant desires an immediate FAD from the CMD without a hearing, he/she must request it from the EEO Office within 30 calendar days after receiving the ROI and notice.

c. The CMD will issue a FAD within 60 calendar days after the receipt of a complainant's request. If the complainant does not respond or elect an immediate FAD or a hearing within 30 calendar days, the CMD will issue a FAD within 60 calendar days from the end of the 30 calendar day notification. Further appeal rights will be provided at that time. The FAD is on the merits of the complaint will be based on a preponderance of evidence.

2. Hearings. In lieu of an immediate FAD, complainants have the right to request a hearing directly with an EEOC AJ from their local EEOC District Office within 30 calendar days after receiving the ROI notice. If a complainant's formal complaint is accepted but the CMD has not issued a notice of investigation completion within 180 calendar days after the formal complaint was filed (including any extension agreed upon but not to exceed 90 days), he/she also has the right to request a hearing with an EEOC AJ.

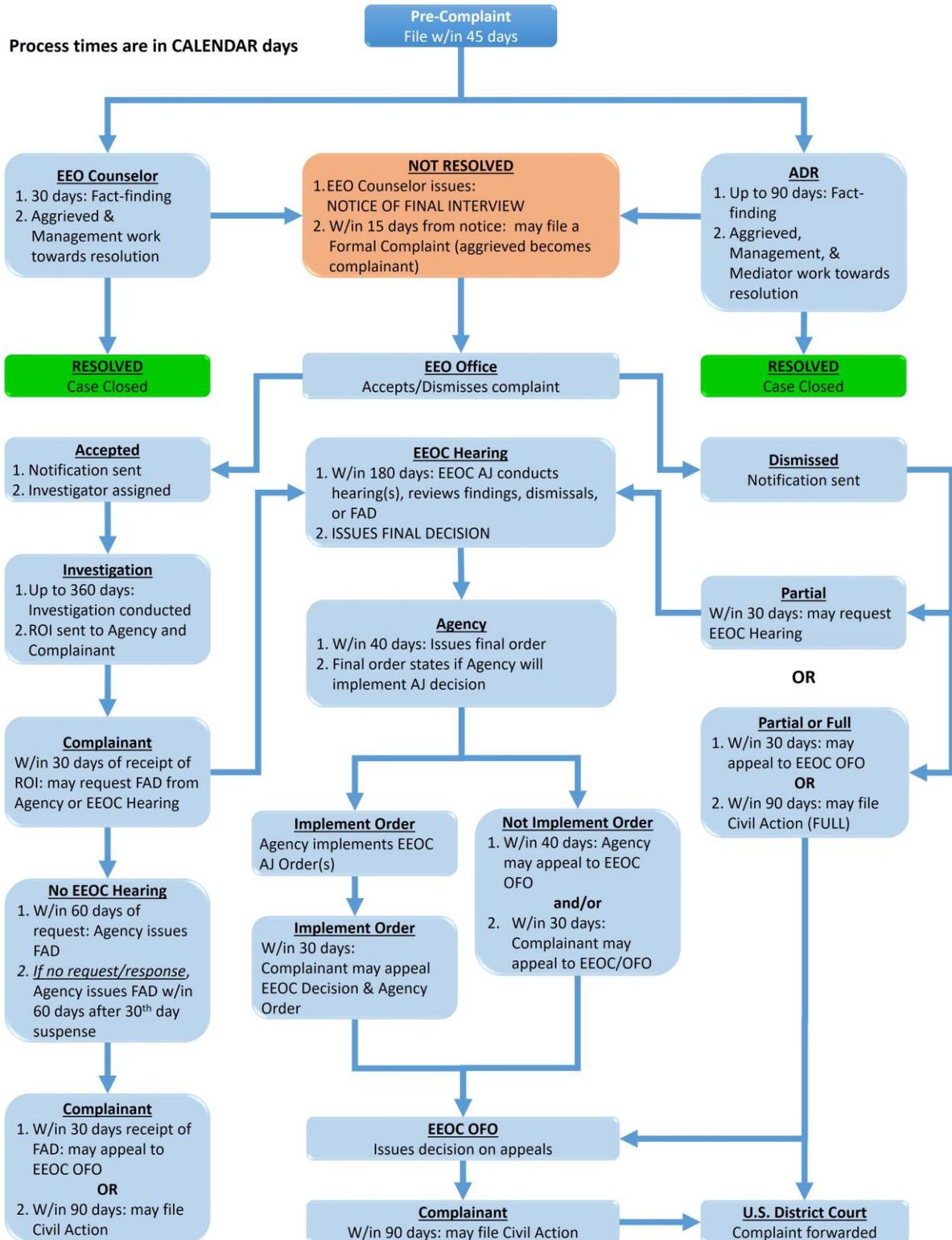
3. Appeals. If all or part of a complaint is dismissed or the complainant is dissatisfied with his/her FAD, he/she may file an appeal or a request for reconsideration (RFR) within 30 calendar days after receipt of a dismissal notice or FAD.

a. The RFR or appeal must be in writing on EEOC Form 573, "Notice of Appeal/Petition," indicating what is being appealed. Complainants should attach a copy of their FAD and/or the AJ's decision. Copies of the appeal and any statement or brief in support must also be provided to the EEO Office.

b. If a complainant is represented by an attorney of record, the 30 calendar day time period will be based on the date of the receipt from when his/her attorney received the dismissal notice or FAD.

ENCLOSURE F

EEO COMPLAINT PROCESS WORKFLOW DIAGRAM



ENCLOSURE G

PART I. REFERENCES

- a. Title VII of the Civil Rights Act of 1964.
- b. Title 5, United States Code (USC), Government Organization and Employees.
- c. Title 29, United States Code (USC) § 206 (d), Prohibition of Sex Discrimination.
- d. Title 32, United States Code (USC), National Guard.
- e. Title 29, Code of Federal Regulations (CFR), Part 1614.
- f. EEO-MD-110, Equal Employment Opportunity Management Directive.
- g. DoD Directive 1440.1, The DoD Civilian Equal Employment Opportunity (EEO) Program.
- h. CMD Instruction 9601.01, National Guard Discrimination Complaint Program.

PART II. TAG POLICY MEMORANDUMS

- a. Policy Memorandum 2018-02, Equal Employment Opportunity, dated 1 October 2018.
- b. Policy Memorandum 2018-03, Prevention of Sexual Harassment, dated 1 October 2018.
- c. Policy Memorandum 2018-05, Workplace Consideration of Others, dated 1 October 2018.
- d. Policy Memorandum 2018-06, Diversity, dated 1 October 2018.
- e. Policy Memorandum 2018-07, Fair Treatment, dated 1 October 2018.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

A/D	Acceptance or Dismissal
ADR	Alternate Dispute Resolution
AJ	Administrative Judge
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
FAD	Final Agency Decision
HRO	Human Resources Office
IRD	Investigations and Resolutions Directorate
MSPB	Merit Systems Protection Board
OFO	Office of Federal Operations
ROI	Report of Investigation
RFR	Request for Reconsideration
SJA	Staff Judge Advocate

PART II. DEFINITIONS

Administrative Judge (AJ) -- For the purpose of this instruction and pursuant to 29 CFR 1614.109, an AJ is an individual appointed by the EEOC when a hearing is requested. He/she assumes full responsibility for adjudication of the complaint---including oversight of the development of the record.

Age (Age Discrimination) -- Persons who are age 40 or older.

Aggrieved Person -- An individual who believes he/she has been discriminated against on the basis of a listed protected category during the pre-complaint or informal complaint stage of the EEO process.

Allegation -- An assertion by an aggrieved/complainant that an act or personnel action is discriminatory.

Alternative Dispute Resolution (ADR) -- A method of settling disputes which provides an alternative to litigation. It equally values people in dispute and does not judge or blame. This process creates a safe, non-threatening atmosphere for both aggrieved/complainants and respondents of complaints.

Basis -- The "reason" alleged for discrimination. An aggrieved/complainant must assert a basis, or reason, when bringing forward a complaint of unlawful discrimination against a protected group.

Class -- A group of employees, former employees, and/or applicants for employment who allegedly have been or are being harmed by an agency's personnel policy or practice, based on their common protected category.

Color -- A person's skin pigmentation (lightness or darkness of the skin), complexion, shade, or tone.

Compensatory Damages -- Payments intended to fully compensate victims of intentional discrimination, if allowed by law, for pecuniary and non-pecuniary losses directly resulting from discrimination. These damages are in addition to equitable relief such as back pay, interest, reinstatement, and attorney's fees.

Complaint -- An allegation of unlawful discrimination based on a protected category and filed by an individual.

Complainant -- During the formal complaint stage, an employee, former employee, or applicant for employment who files a discrimination complaint or submits allegations of unlawful discrimination or sexual harassment.

Complaint Clarification -- A process of gathering information regarding a formal complaint to determine whether a "preponderance of evidence" exists and/or that unlawful discrimination has occurred.

Formal Complaint -- Allegation of unlawful discrimination or sexual harassment submitted on a form NGB-713-5-R by a complainant to the EEO Office. Formal complaints may only be filed after completing the informal stage.

Confidentiality -- Protection from voluntary or compulsory disclosure, to certain dispute resolution communications given in confidence for the purposes of a dispute resolution proceeding.

Discrimination -- Any action resulting in unequal treatment of persons based on any of the covered protected categories.

Disparate Treatment -- Treatment that is different because of an individual's protected category.

Equal Employment Opportunity Commission (EEOC) -- The Commission is responsible for, among other things, conducting hearings and issuing decisions on complaints of discrimination in the federal sector and enforcing compliance with section 717 of Title VII of the Civil Rights Act of 1964, as amended; sections 501 and 505 of the Rehabilitation Act of 1973, as amended; section 15 of the Age Discrimination in Employment Act of 1977, as amended; and the Equal Pay Act, section 6(d) of the Fair Labor Standards Act of 1938, as amended.

Equal Employment Opportunity Commission Office of Federal Operations (EEOC/OFO) -- The office responsible for federal sector complaint processing.

Fact Finding -- This process is not in the same scope as an inquiry. This process is designed to present basic facts to the commander, supervisor, or manager at the level the complaint is raised. Basic fact finding is used to facilitate resolution at the lowest level.

Final Agency Decision (FAD) -- A decision on the merits of a discrimination complaint, filed under this directive, issued by or in the name of the Adjutant General or higher authority. A Final Agency Decision may or not be subject to further review or appeal, and it exhausts the administrative process.

Formal Complaint -- A written complaint filed using the appropriate form IAW applicable regulations. Formal investigations are conducted at this level.

Genetic Information Nondisclosure Act (GINA) -- GINA prohibits discrimination on the basis of genetic information. It creates a separate form of unlawful discrimination distinct from disability discrimination under the Rehabilitation Act. GINA prohibits discrimination based on genetic information and not on the basis of a manifested condition. The Rehabilitation Act and the Americans with Disabilities Act prohibit discrimination on the basis of manifested conditions which meet the definition of disability. For example, a woman who carries the genetic marker posing a risk for breast cancer (BRCA 2) but who does not actually have breast cancer is covered by GINA. If she develops breast cancer, she is likely covered by the Rehabilitation Act but not by GINA.

Good Cause -- Where substantial grounds exist to justify taking, or failure to take, a particular action. Many factors can establish good cause and must be reviewed within the scope of each particular circumstance.

Harassment -- Behavior that is unwelcome or offensive to a reasonable person, whether oral, written, or physical, that creates conditions that may interfere with work performance or creates a hostile work environment. Harassment can occur through electronic communications, including social media, other forms of communication, and in person. Harassment may include unwanted physical contact, offensive jokes, epithets or name-calling, ridicule or mockery, insults or put-downs, displays of offensive objects or imagery, stereotyping, intimidating acts, veiled threats of violence, threatening or provoking remarks, racial or other slurs, derogatory remarks about a person's accent, or displays of racially offensive symbols.

Hostile Work Environment -- A hostile work environment is a series of acts which are so severe or pervasive as to alter the terms and conditions of service or employment. The acts may be discreet or may be ones which taken alone, do not rise to the level of an adverse action.

Informal Complaint -- Allegations of unlawful discrimination or sexual harassment made either orally or in writing by an aggrieved. Impartial inquiries or fact finding are conducted at this level to include the options of ADR and/or resolutions at the lowest level. Synonymous with Pre-Complaint.

Inquiry -- An impartial, fact finding process used to determine the validity and merit of discrimination allegations. It may involve the review of records and directives; examination of material evidence; and interviews of persons who may have direct knowledge of the facts. This process is appropriate when the commander receiving the complaint is not authorized to appoint an investigator. It is also appropriate at the lowest command level to help facilitate resolution of the complaint.

Investigation -- A duly authorized, systematic, detailed examination to uncover facts and determine the truth. It is a formal process which must produce sufficient detail to support either a finding of discrimination or no discrimination. Investigations of discrimination allegations are conducted under the authority of this directive.

Investigations and Resolutions Division (IRD) -- Component of the Department of Defense (DoD), Civilian Personnel Management Service (CPMS) responsible for investigating discrimination complaints for other DoD components. The IRD also provides ADR services.

Merit Systems Protection Board (MSPB) -- Federal agency responsible for holding hearings and issuing decisions on complaints or appeals of adverse personnel actions, including disciplinary actions and performance based actions. Appeals to the MSPB may also contain allegations of discrimination, i.e., mixed cases.

Mixed Case Appeal -- An appeal filed with the MSPB alleging that a federal agency action over which the MSPB has jurisdiction was effected, in whole or in part, because of discrimination based on race, color, religion, sex, national origin, age, disability, or reprisal.

Mixed Case Complaint -- A complaint of employment discrimination based on race, color, religion, sex, national origin, age, disability, or reprisal related to or stemming from a federal agency action that can be appealed to the MSPB. The complaint may contain only an allegation of employment discrimination, or it may contain additional allegations under MSPB jurisdiction.

Moot -- A complaint or an issue would be considered moot when, at the time the complaint is filed, all actions that would be required if discrimination were substantiated, have already been taken due to other circumstances. For example, the issue is promotion, but the individual has already been promoted at the time of the complaint. Or the issue is training and the individual has already received training.

National Origin -- An individual's or ancestor's place of origin. Also applies to a person who has physical, cultural, or linguistic characteristics of a national group.

Neutral -- An individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy without taking any sides. This individual may be a Federal government employee or someone outside the Government. For purposes of determining whether communications are confidential, the term "neutral" also includes ADR intake or other administrative personnel identified and designated by the ADR Manager as responsible for taking information from the party/parties of a dispute to assist them in deciding whether to use ADR to resolve the matter.

On the Merits -- A decision rendered based upon the substantive facts, rather than on any technical or procedural rule.

Pre-Complaint -- Allegations of unlawful discrimination or sexual harassment made either orally or in writing by an aggrieved. Impartial inquiries/fact finding conducted at this level to include ADR and/or resolutions at the lowest level. Synonymous with Informal Complaint.

Protected Category -- Specific list of bases associated with the discriminatory act.

Race -- A division of human beings identified by traits transmissible by descent which are sufficient to characterize persons possessing these traits as a distinctive human genotype.

Religion -- A personal set or institutionalized system of attitudes; morals; or ethical beliefs and practices held with the strength of traditional religious views, characterized by ardor and faith, generally evidenced through specific religious observances.

Report of Investigation (ROI) -- Summary of facts and documents collected during an investigation issued by the investigator, pursuant to the investigation of a formal complaint of discrimination.

Reprisal/Retaliation -- Unlawful retaliation against an individual for opposing employment practices that discriminate based on any of the protected categories or for filing an unlawful discrimination charge, testifying, or participating in any way in an investigation, proceeding, litigation, or expressing opposition to a perceived discriminatory practice.

Sex -- Distinguished respectively as female or male especially on the basis of their reproductive organs and structures

Sexual Harassment -- Unwelcome sexual advances; requests for sexual favors; and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Substantiated -- A substantiated finding occurs when a preponderance of evidence supports (more likely to have occurred than not occurred) the complainant's allegation of a violation of law, regulation, or policy/standards. The documented facts indicate a violation occurred.

Withdrawal of the Complaint -- A voluntary, written, signed, and dated statement by the aggrieved/complainant indicating an unconditional willingness to stop further processing and pursuit of the complaint.