

WEST VIRGINIA DEPARTMENT OF HOMELAND SECURITY		Policy & Procedure EEO #1
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<u>CHAPTER:</u> EEO	<u>REFERENCE & RELATED STANDARDS:</u> West Virginia Code § 5F-2-2, Civil Rights Act of 1964, Equal Pay Act of 1963, Age Discrimination Act of 1975, Vocational Rehabilitation and Other Rehabilitation Services Act of 1973, Americans with Disabilities Act of 1990, Anti-Discrimination Act of 1977, Pregnancy Discrimination Act of 1978, Providing Urgent Maternal Protections (PUMP) for Nursing Mothers, Age Discrimination in Employment Act of 1967, Uniform Services Employment and Reemployment Rights Act, Genetic Information Nondiscrimination Act of 2008, The Immigration Reform & Control Act of 1986, 1990 & 1996, and the West Virginia Human Rights Act, WV Code §5-11-1 et seq, WV Division of Personnel Policy DOP-P6 Prohibited Workplace Harassment, WV Code § 21-3-19.	
<u>SUBJECT:</u> Equal Employment Opportunity (EEO) Counselors		
<u>Date:</u> February 26, 2024		<u>EFFECTIVE:</u> April 1, 2024

APPLICABILITY

This policy applies to all employees, applicants for employment, visitors, contractors, interns, externs, and individuals or groups who conduct business with or use the resources of the WV Department of Homeland Security (DHS), including the Division of Corrections and Rehabilitation, Administrative Services, Emergency Management, Justice and Community Services, Protective Services, State Fire Marshal, West Virginia Intelligence Fusion Center, and the Parole Board.

Purpose

To establish policy regarding the manner in which EEO Counselors evaluate and manage EEO claims processing.

Cancellation

Any previous written instruction on the subject including DHS policy directive 1; DHS Equal Employment Opportunity (EEO) Counselors dated November 1, 2022. This document is not all inclusive and management has the authority and discretion to address any issues not specifically mentioned herein.

DEFINITIONS

The following terms are defined as listed within the scope of this policy:

Complainant Person alleging illegal discriminatory/harassment conduct at any point within the employment process (application through separation).

Director, DHS Equal Employment Opportunity Services The individual selected by the DHS Cabinet Secretary authorized to provide direction and oversight to the DHS Equal Employment Opportunity program.

Division Head or Designee The head of the Division of Corrections and Rehabilitation, Administrative Services, Emergency Management, Justice and Community Services, Protective Services, State Fire Marshal, West Virginia Intelligence Fusion Center, and the Parole Board.

Equal Employment Opportunity (EEO) Counselor Any person trained to advise employees and management on proper EEO procedures. This person is responsible for reporting EEO complaints to the DHS EEO Director and may be called upon to assist with training and investigations.

Equal Employment Opportunity (EEO) Complaint A complaint alleging discrimination or workplace harassment based on race, color, religion, sex (including sexual orientation, gender identity, or pregnancy), national origin, age (beginning at age 40), disability, genetic information (including family medical history), military status, tobacco usage, political status or any status explicitly defined as protected under applicable State and Federal laws.

Illegal Discrimination Unequal treatment based on membership in a protected class.

Illegal Harassment Unwelcome conduct, based on membership in a protected class, which is unlawful when:

- a. Enduring the offensive conduct becomes a condition of continued employment, or
- b. The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.
- c. Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that the individual reasonably believes discriminate against individuals, in violation of these laws.

Respondent Individual accused of illegal discrimination or illegal harassment.

Workplace An employee, independent contractor, or volunteer's public employment or service location, including sites of social functions and conferences. The workplace includes, but is not limited to, facilities, property, buildings, offices, structures, automobiles, trucks, trailers, other vehicles, and parking areas provided by the State.

Procedure

1. Counseling in General

The EEO process begins when an individual who believes they have been aggrieved meets with an EEO Counselor. The EEO Counselor serves as a neutral party who provides an aggrieved individual with their rights and responsibilities under equal employment opportunity laws and gathers limited data.

- a. The EEO Counselor provides vital information regarding the EEO process and other processes that may be available to the aggrieved individual.
- b. The EEO Counselor plays a vital role in ensuring the prompt and efficient processing of the Formal Complaint.

2. EEO Counseling and Investigations

An EEO Counselor may not serve as an Investigator in a dispute in which they provided counseling to the Complainant.

- a. The EEO Counselor's role is to provide an environment for open dialogue leading to resolution of the complaint.
- b. The role is compromised if the EEO Counselor also serves as an Investigator of the complaint.

3. Selection of the EEO Counselor

The Division Head and the DHS EEO Director will collaborate to select persons to carry out the role of the EEO Counselor. Upon selection, the EEO Counselor:

- a. Will be required to attend counseling training.
- b. May be required to attend investigator training.
- c. May be called upon to provide training to staff.
- d. May be called upon to assist with EEO investigations.
- e. May be trained to write and compile EEO Investigative Reports.
- f. May be removed from their duties at any time.

4. Assignment of EEO Counselors

It is recommended that divisions with up to one hundred employees should have at least one EEO Counselor assigned and thereafter, one for every additional one hundred employees.

- a. Duties assigned are collateral duties.

5. The Roles and Responsibilities of an EEO Counselor

The EEO Counselor begins their role of educator when an individual seeks EEO counseling. The Counselor must ensure that the individual understands their rights and responsibilities in the EEO process. The EEO Counselor will perform the roles of information gatherer, facilitator, and possibly messenger. The EEO Counselor will:

- a. Meet with the Complainant within two days of receiving information regarding a possible EEO violation.
- b. Advise the complainant about the EEO complaint process and explain the reasonable accommodations available throughout the EEO process.
- c. Advise the Complainant that all information provided will be reported to the DHS EEO Director.
- d. Ensure the Complainant clearly defines the claim(s).
- e. Determine what action(s) were taken that causes the Complainant to believe they are the victim of discrimination and/or illegal harassment.
- f. Determine if the Complainant believes that their problem is the result of one or more of the protected categories.
- g. Conduct a limited inquiry with the Complainant once the Complainant determines the basis of the claim to assist in determining if the complaint falls within Title VII of the Civil Rights Act or WV law as a valid complaint.
 - i. The limited inquiry is performed regardless of whether the Complainant subsequently chooses to file a formal complaint or agrees to the informal process (depending on the severity of the claim).
 - ii. The scope of the inquiry will vary based on the complexity of the claim, the inquiry is intended to be limited and is not intended to be a fact-finding investigation, no other individuals are interviewed.
- h. Complete the necessary paperwork.
 - i. Provide and explain the Rights and Responsibility Form to Complainant and obtain a signature.

- ii. Complete the Intake Form; ask the Complainant each question, document the responses and obtain a signature. (The Complainant will not complete the Intake Form for the EEO Counselor.)
 - iii. Provide the Complainant with a Formal Complaint Form to complete. (The EEO Counselor will not complete a Formal Complaint form for an employee.)
 - iv. Forward the Rights and Responsibilities Form, Intake Form, Formal Complaint Form, and any necessary documentation to the DHS EEO Director within two days.
 - v. Note on any form the Complainant refuses to sign with "refused to sign" and initial. (Refusing to sign does not stop the process.)
 - vi. Store all EEO related documents in a secure manner.
 - i. Report allegations or witnessed events of illegal harassment which includes touching and/or threats immediately to the Division Head or designee and the DHS EEO Director.
 - j. Explain statutes and policy.
 - k. Have a good working knowledge of the complaint process and a sufficient familiarity with federal anti-discrimination statutes and agency policy to include:
 - i. Title VII of the Civil Rights Act of 1964
 - ii. Age Discrimination in Employment Act of 1967
 - iii. Rehabilitation Act of 1973
 - iv. Americans with Disabilities Act
 - v. Equal Pay Act of 1963
 - vi. Genetic Information Nondiscrimination Act of 2008 (GINA)
 - vii. Agency Policy Directive
 - h. Maintain neutrality, under no circumstances should the EEO Counselor attempt to dissuade an individual from filing a complaint.
 - i. Provide the DHS EEO Director with any requested documents, obtaining approval if necessary.
6. **Intake Form**
 The Intake Form must be completed in depth by the EEO Counselor.
- a. A precise description of the claim(s) and the basis identified by the Complainant must be documented on the Intake Form.
 - b. Pertinent documents submitted by the Complainant shall be attached to the Intake Form.
 - c. When a claim is beyond forty-five business days since the alleged occurrence, specific information on the timeliness must be documented on the Intake Form.
 - d. The EEO Counselor will summarize in their own words the alleged discrimination or harassment incidents and must be documented on the Intake Form.
 - e. The Intake Form must contain full names, titles, addresses, phone numbers, etc.
8. **Time Frames**
 The EEO Counselor:
- a. Must meet with the Complainant within two days of receiving notice of a possible EEO violation.
 - b. Must forward the Rights and Responsibilities Form, Intake Form and, if applicable, the Formal Complaint Form to the DHS EEO Director within two days of meeting with the Complainant.
 - c. Must immediately report an allegation of touching or threats to the Division Head or designee and the DHS EEO Director.

9. **Confidentiality**

Confidentiality is of the utmost importance. All parties involved in an investigation have a privacy interest that must be protected to the extent possible.

APPROVED SIGNATURE: *Terris J. Abshire* DATE: *3/26/2024*