

WEST VIRGINIA DEPARTMENT OF HOMELAND SECURITY		Policy & Procedure EEO #2
		Pages 6 plus 7 attachments
<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> DHS Equal Employment Opportunity (EEO) Claim Process		
<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 provide direction and set forth the appropriate procedure for processing Equal Employment Opportunity complaints, and the responsibility of staff and management.

CANCELLATION

Any previous written instruction on the subject including DHS policy directive 2; DHS Equal Employment Opportunity (EEO) Claim Process 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, 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 Any 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 law.

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 an individual reasonably believes will discriminate against individuals in violation of these laws.

Respondent Person accused of illegal discrimination or illegal harassment.

Responsible Agency Official Division Head or designee designated to review the Investigative Report and oversee any necessary follow-up, including disciplinary action.

Retaliation Adverse action pertaining to any aspect of employment taken against an individual for participating in a complaint and/or investigation process.

Substantiated Allegation An allegation that was investigated and the investigation produced sufficient evidence to determine the event did occur.

Unfounded Allegation An allegation that was investigated and determined to have not occurred.

Unsubstantiated Allegation An allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether the event occurred or not.

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.

PROCEDURES

1. Filing an EEO complaint

Employees, applicants for employment, visitors, contractors, interns, externs, and/or individuals or groups who have business with or use the resources of the Department of Homeland Security, may file complaints of Illegal Hostile Work Environment and/or Discrimination with an EEO Counselor, DHS Equal Employment Opportunity Office, any supervisor, Human Resources office, Division Head, or Division Head Designee.

- a. The complainant should:
 - i. Provide factual information relevant to the allegation(s) brought forth.
 - ii. Include times, dates, witnesses, alleged conduct or behavior or any information or document(s) relevant to proving the allegation.
 - iii. Report any additional allegations which may occur.
- b. At any time, the complainant may elect to file a complaint with the following agencies within the required time frames:
 - i. West Virginia Department of Homeland Security EEO Office
 - ii. Federal Equal Employment Opportunity Commission
 - iv. West Virginia Human Rights Commission

2. Forms

- a. Formal EEO Complaint Forms are located with:
 - i. DHS EEO Office
 - ii. Human Resources
 - iii. EEO Counselors
- b. There is no requirement for a complaint to be in writing or conform to a specific format by the individual filing; however, if an individual wishes to receive the outcome, a Formal Complaint Form must be submitted.

3. Representation

- a. An individual has the right at all stages of the EEO complaint process, including the counseling stage, to have a representative present.
- b. Representation other than legal counsel must be approved by the Division Head or designee.
- c. The Division Head may disallow the choice of representation if the representative is an employee who cannot be spared from their official duties, or if the representation would present a conflict of interest.

4. Chain of Command:

Any employee, contractor, or volunteer for the WV Department of Homeland Security filing a complaint is not required to follow the chain-of-command.

- a. **Employee:**
 - i. Does not have to report an EEO violation to their supervisor.
 - ii. May report an EEO violation to an EEO Counselor, any supervisor, Human Resources, or the DHS EEO Office.
- b. **Supervisor:**
 - i. Shall record any EEO violation witnessed or advised of in a confidential memo and provide the memo to an EEO Counselor, DHS EEO Director, and the Division Head or designee within two days unless it is an emergency situation. In an emergency situation, the allegation is an immediate report.
 - ii. Shall not share information with others except on a need-to-know basis.

5. **Managers and Supervisors**

Are responsible for providing equal opportunity in all established employment programs and for detecting and eradicating all discriminatory practices within their organizational units.

- a. The manager or supervisor will:
 - i. listen to an individual who reports an alleged EEO violation and document the conversation in a confidential memo,
 - ii. document all EEO violations witnessed in a confidential memo,
 - iii. forward the confidential memo reporting the allegation to the DHS EEO Director, EEO Counselor and Division Head or designee within two days.
 - a. If filing a complaint against the DHS EEO Director, EEO Counselor, Division Head, or the Division Head Designee, their level is skipped,
 - iv. not share or provide a copy of the documentation or complaint to any person alleged to have committed an EEO violation.

6. **EEO Counselor**

If the complaint is made to an EEO Counselor, the EEO Counselor will do the following:

- a. provide prompt information to individuals who have concerns regarding alleged illegal discrimination or harassment,
- b. review appropriate documentation with the individual and obtain a signature,
 - i. If the complainant refuses to sign a document, it must be noted on the document that the complainant refused to sign,
- c. forward signed documentation to the DHS EEO Director within two days,
- d. report all possible EEO violations on an Intake Form regardless of whether the individual wants to pursue a formal complaint,
- e. provide a copy of the forms reviewed to complainant upon request.

7. **Informal Resolution**

The DHS EEO Director may seek to resolve an allegation of a possible EEO violation prior to an investigation taking place.

- a. The DHS EEO Director must authorize the Informal Process.
- b. Informal Resolution is not required.

- c. The Division Director may request the DHS EEO Director to assist with the Informal Process.
- d. The Division Director or designee will interview both the complainant(s) and the respondent(s), either separately or together to obtain facts for resolution.
- e. The Division Director or designee will complete an agreement letter and all parties will sign the letter if an agreement is reached.
- f. The EEO Counselor will retain a copy of said agreement for their files, and a copy of the agreement letter will be given to the DHS EEO Director, Complainant, and Respondent.
- g. All parties sign an agreement that is reached during informal resolution; the agreement is binding and enforceable on all parties.
- h. In the event the complaint is not resolved informally, the Director or designee forwards a Failure of Informal Resolution letter to the complainant.
- i. The complaint may then be resolved by an investigation.
- j. Information revealed by the parties during informal resolution is not recorded or used for or against the parties.
- k. Depending on the severity of the allegation, Informal Resolution may not be an option.

8. EEO Director

The DHS EEO Director will exercise the responsibility and authority for all EEO Services division administrative and operational matters.

- a. The DHS EEO Director will exercise significant discretionary latitude and professional judgment.
- b. The DHS EEO Director will report directly to the Deputy in the Office of the Secretary or designee.
- c. Additionally, the DHS EEO Director will be required to:
 - i. Establish and maintain a tracking system whereby all EEO complaints and investigations authorized are accounted for,
 - ii. view each complaint to determine whether it meets the requirements for acceptance and determine whether to investigate or manage at the lowest level possible,
 - iii. open a third-party claim when there is an alleged EEO violation submitted verbally or by documentation and there is not a Formal Complaint Form submitted,
 - iv. maintain investigative oversight,
 - v. review each Investigative Summary Report and audit for accuracy,
 - iv. provide a decision letter to the Complainant (if a Formal Complaint was filed) and Respondent,
 - a. The Investigative Summary Report and decision letter will be forwarded to the Responsible Agency Official, and the Department of Homeland Security Legal department.
 - b. An extension from the DHS EEO Director may be requested if it is determined the Investigators are unable to render a decision within the time frame.
 - c. The agency may not disclose the specific details of any disciplinary action taken against the Respondent.
- d. The DHS EEO Director is the only individual authorized to approve the use of the informal process.
 - i. The EEO Director shall act as mediator for the informal process when necessary or requested.

9. Touching and/or threats

- a. Any allegation(s) or witnessed event(s) that include illegal harassment or discrimination, which involve touching and/or threats, is considered an emergency situation and are to be immediately reported to the Division Head or designee, and the DHS EEO Director.
- b. The Division Head or designee will set forth instructions for immediate reporting of the possible incident in emergency situations.

10. Timeline

- a. Investigators will be authorized in writing to begin an investigation, providing forty-five business days to complete the assignment.
 - i. The Complainant and Respondent will be advised in writing of a forthcoming investigation.
 - ii. Investigators will request timeline extensions in writing.
 - iii. The DHS EEO Director will determine timeline extensions. Authorized timeline extension letters will be sent to investigators, Complainant, and Respondent.
- b. The DHS EEO Director will review the Investigative Summary within fifteen days of receipt of the report.
- c. The DHS Director will provide a decision letter to the Complainant (if a formal complaint was filed) and Respondent within ten days of rendering a decision.

11. Retaliation

- a. Individuals are encouraged to immediately report allegations of retaliation to an EEO Counselor, Supervisor, Division Head or designee, or DHS EEO Director.
- b. Retaliation must be the result of a previous EEO claim or participation in the EEO process.

12. 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: _____

Jessie J. Parker

DATE: _____

3/26/2024

Attachments:

- #1 Confidentiality Agreement
- #2 Rights and Responsibilities
- #3 Intake Form
- #4 Formal Complaint Form
- #5 Informal Resolution Questions & Answers for employee
- #6 Parties' Agreement Letter Pursuant to Informal Resolution
- #7 Failure Informal Resolution

WV Department of Homeland Security

INVESTIGATION CONFIDENTIALITY AGREEMENT

By signature below, I understand that I am a participant in a workplace investigation being conducted by the WV Department of Homeland Security, and that all information disclosed to me and by me is considered confidential.

I understand that I am responsible for protecting the confidentiality of the investigation and that disclosure of any related information is to be done only to my personal representatives, and on a need-to-know basis when pre-authorized by Agency officials. Disclosure outside the Agency can be made only if pre-authorized by Agency officials, as required by law to governmental authorities, or to authorized personal representatives.

I also understand that if I make unauthorized disclosure of any information about this investigation during my employment, I may be subject to disciplinary action up to and including termination.

I further certify that all my statements are true and complete, and that I make these statements without any belief of threat or intimidation by the investigator.

Print your name

Time

Signature

Date

Witnessed by:

Date

Time

WV Department of Homeland Security

Rights and Responsibilities

Individuals who seek EEO counseling should be aware of their rights and responsibilities under the law, which include at a minimum the following:

- a. The **right** to work free of discrimination.
- b. The **right** to work free of harassment.
- c. The **right** to request reasonable changes to your workplace because of your religious beliefs, medical condition, pregnancy or childbirth related medical conditions.
- d. The **responsibility** to know that neither the EEO Director, EEO counselor or the EEO Investigator is an advocate for either the aggrieved party or the Agency but acts strictly as a neutral party in the EEO process.
- e. The **right** to participate in resolving the EEO problem through informal resolution following prescribed guidelines established by the Agency.
- f. The **right** to file a Formal Complaint Form when informal resolution is conducted, and a resolution is not reached.
- g. The **right** to complain about treatment that you believe is illegal job discrimination; you cannot be punished, treated differently, or harassed, even if it turns out the conduct was not illegal.
- h. The **right** to address your supervisor or manager or pursue the matter through the West Virginia Public Employees Grievance Procedure if it is determined the complaint does not fall within the parameters of EEO law. It is the **responsibility** of the aggrieved party to take affirmative steps to address the complaint in these forums, including understanding differing time frames or timeliness requirements for other state agencies.
- i. The **right** to go directly to a court of competent jurisdiction on claims of workplace discrimination or harassment based upon protected class or retaliation.
- j. The **right** to a decision within (70) working days from the complaint being appointed to investigators except for when an extension is granted or filing a grievance.
- k. The **responsibility** to keep the agency informed of your current mailing address, email address and telephone number(s).
- l. The **responsibility** to know that only those claims raised at the counseling stage or claims that are like or related to those that were raised, may be the subject of this formal EEO complaint.

- m. The **responsibility** to contact the EEO Director to ascertain proper procedure for amending a Formal EEO Complaint Form with claims that are like or related after it has been filed.
- n. The **right** to know the time frames in the EEO complaint process.
- o. The EEO Director will have the **responsibility** to determine if the complaint falls under EEO purview upon receipt of the EEO Complaint. If it is determined the claim may fall under EEO purview, investigators will be assigned by the agency.
- p. The appointed investigators have the **responsibility** to complete the investigation within (45) working days and submit the report unless the EEO Director approves an extension, in which case a notice of the extension will be relayed to the Complainant by an agency official.
- q. The EEO Director has the **responsibility** of completing their review within (15) working days from receipt of the report. Within (10) working days after rendering a decision, the EEO Director shall provide the Administrator and the Agency Legal Representative a copy of the Investigative Summary Report and Final Decision letter.

The respective "Rights and Responsibilities" listed above have been reviewed with, and explained to, the individual who has sought EEO Counseling by the EEO Counselor on this date.

Attested to by:

EEO Counselor

Date

Individual Counselee (voluntary)

WV Department of Homeland Security

Intake Form

To be completed by EEO Counselor

Case Number (for EEO Office use only) _____

Employee Information

Name _____

Division _____

Job Title _____

May Counselor call employee at work? Yes ___ No ___

Work telephone number _____

May Counselor call employee's personal telephone(s)? Yes ___ No ___

Personal telephone number _____

Home Address _____

Email Address _____

Name of Supervisor _____

Supervisor's Job Title _____

Supervisor's Telephone Number _____

Supervisor's Email Address _____

Has employee reported incident(s) to their supervisor? Yes ___ No ___

Basis of Complaint (check all that apply):

- | | |
|--|--|
| <input type="checkbox"/> Disability | <input type="checkbox"/> Political Affiliation |
| <input type="checkbox"/> Sex | <input type="checkbox"/> Military Affiliation |
| <input type="checkbox"/> Sexual Orientation | <input type="checkbox"/> Genetic Information |
| <input type="checkbox"/> Gender Identity | <input type="checkbox"/> Tobacco Usage |
| <input type="checkbox"/> Pregnancy | <input type="checkbox"/> Religion |
| <input type="checkbox"/> National Origin | <input type="checkbox"/> Other |
| <input type="checkbox"/> Race/Color | |
| <input type="checkbox"/> Retaliation (Identify earlier EEO complaint, with date, or protected workplace activity, with date) | |

Was your supervisor involved in the allegation? Yes ___ No ___

Date of alleged discrimination/harassment _____ Earliest _____ Latest _____
Check if continuing discrimination or harassment

Summary of Alleged Discrimination/Harassment Incident(s)

Name(s) of person(s) who participated in alleged harassment/discrimination

Names of witnesses to alleged incident(s)

Names of anyone you talked to about the alleged incident(s)

Location of alleged incident(s)

Documents relating to the incident(s) if any

Describe the harm you have suffered as a result of the event

Did you take any action to stop the perceived inappropriate behavior?

Resolution requested:

Will you agree to attempting Informal Resolution to resolve this case? Yes ___ No ___

Do you want to file a formal complaint? Yes ___ No ___

EEO Confidential Agreement

By signature below, I acknowledge that confidentiality is a requirement in this administrative process. I understand that I may not discuss the questions posed, my responses, or any other details of this investigation with anyone, except the EEO Counselor, Investigators involved, or my authorized personal representatives. Additionally, I acknowledge that my statements are true and complete.

Employee

EEO Counselor

Date

WV Department of Homeland Security

FORMAL EEO COMPLAINT FORM

Case Number (for EEO Office use only) _____

Name _____ Home/Cell Phone _____

Street Address _____ Work Phone _____

City, State, Zip Code _____

Email Address _____

Job Title _____ Division _____ Location _____

Alleged discrimination/harassment was based on (check all that apply)

- Disability
- Sex
- Sexual Orientation
- Gender Identity
- Pregnancy
- National Origin
- Race/Color
- Retaliation (Identify earlier EEO complaint, with date, or protected workplace activity, with date)
- Political Affiliation
- Military Affiliation
- Genetic Information
- Tobacco Usage
- Religion
- Other

Date of alleged discrimination/harassment _____ Earliest _____ Latest _____

Check if continuing discrimination or harassment

Explain what action was taken against you. Be specific: include dates, names, discriminatory acts, witnesses, places, etc. for all incidents. Include any evidence that supports the alleged act(s) of discrimination. If more space is required, use an additional sheet of paper, and be sure to sign and date each additional sheet of paper used.

WV Department of Homeland Security

Name(s) of person(s) who participated in alleged harassment/discrimination _____

EEO Confidential Agreement

By signature below, I acknowledge that confidentiality is a requirement in this administrative process. I understand that I may not discuss the questions posed, my responses, or any other details of this investigation with anyone, except the EEO Counselor, Investigators involved, or my authorized personal representatives. Additionally, I acknowledge that my statements are true and complete.

Signature: _____ Date: _____

INFORMAL EEO RESOLUTION
West Virginia Department of Homeland Security
Questions & Answers

What is EEO informal resolution?

The goal of the informal resolution is to resolve an EEO complaint before you have to file a formal complaint. Once the EEO Director authorizes informal resolution be utilized, the administrator and an EEO Counselor will meet with you and the respondent either together or separately. The administrator has 30 days to complete the informal resolution process.

Is informal resolution required?

No. Participation in informal resolution is strictly voluntary. Only the complaining party may elect informal resolution, the respondent's agreement is not required.

Is informal resolution confidential?

Attempts at reaching an informal resolution will remain between as few people as possible. If an agreement is reached, an agreement letter is compiled, and all parties will sign it. The Administrator or EEO counselor will retain a copy for their files, and a copy will be given to DHS EEO office. Informal resolution meetings are not recorded or transcribed.

Can I bring an attorney or other representative to an informal resolution?

Yes, you always have the right to have a representative with you in an employment dispute of this kind.

How long does the informal resolution process take?

Usually less than five days though thirty days are provided for the process to complete. The Administrator or designee and an EEO Counselor will meet with both parties and can usually ascertain in that first meeting if informal resolution is possible. Successful informal resolutions avoid a time-consuming formal investigation.

Are resolutions reached during informal resolution binding?

Yes. An agreement signed by all parties is binding and legally enforceable.

Can information revealed during an unsuccessful informal resolution be used during a subsequent formal investigation?

No. The entire process is restarted if informal resolution is unsuccessful. Information revealed by the parties during informal resolution is not recorded or used either for or against the parties.

What happens if a complaint is not resolved during informal resolution?

If not resolved during informal resolution, the complaint may then be investigated using the formal EEO investigatory procedures set forth by DHS Policy Directive EEO 3.

(Complete on Agency Letterhead)

Date _____

Complainant Name _____

Address _____

Address _____

RE: **INFORMAL RESOLUTION AGREEMENT LETTER**

Claim No. _____

Dear _____

This refers to the dispute which you first discussed with _____ on _____ when you alleged discrimination/hostile work environment.

You alleged that the following occurred _____

The purpose of this letter is to set out the terms of the informal resolution, which are as follows:

You indicated that you are satisfied with the outcome of the informal resolution.

Since an agreement has been reached by all affected parties, I ask that you please sign the Counselee signature line below. A copy of this LETTER OF AGREEMENT with all signatures will be returned to you.

Sincerely yours,

Superintendent

Counselee Date

Responsible Management Date

Respondent Date

cc: _____, DHS EEO Director
_____, EEO Counselor
File

(Complete on Agency Letterhead if resolution failed)

Date

Complainant Name

Address

Address

RE: FAILURE INFORMAL RESOLUTION
Claim No. _____

Dear _____

This letter serves as your NOTICE OF FAILED RESOLUTION for the EEO matter which you initially discussed with _____ on _____.

You alleged that the following occurred _____

You will be provided with a Formal Complaint Form. Please submit the completed form at your earliest convenience to an EEO Counselor.

Sincerely yours,

Superintendent

cc: _____, EEO Counselor
_____, DHS EEO Director
File