

PROCEDURES FOR PROCESSING ALLEGATIONS  
OF DISCRIMINATION OR HARASSMENT  
BECAUSE OF SEXUAL ORIENTATION

1. Precomplaint Counseling

All Departmental employees, including those who are not members of a bargaining unit covered by an agreement which prohibits discrimination because of sexual orientation, and applicants for employment, should be informed of their entitlement to present to an EEO counselor individual concerns that they may have been subjected to discrimination or harassment because of their sexual orientation. Employees should be informed that their entitlement in this regard derives from Departmental policy and not from Equal Employment Opportunity Commission (EEOC) regulations which govern the processing of discrimination complaints in the Federal sector. In this regard, Counselors are responsible for advising employees of relevant distinctions between complaints based on sexual orientation and those processed under EEOC regulations. For example, complaints based on sexual orientation cannot be the subject of either a hearing before an Administrative Judge of the EEOC or an appeal to EEOC. When contacted by such employees, EEO Counselors are responsible for providing them with appropriate counseling, utilizing traditional methods, including use of alternative dispute resolution techniques. Counselors are also responsible for advising employees of, among other things, their right to anonymity (unless waived) during counseling, and their right to representation throughout the complaint process, including the counseling stage. In the event counseling is unsuccessful, complainants should be informed in writing of an entitlement to file a formal complaint with the Director, Office of Human Relations (OHR), in the same form and within the same time limits as those filed on any of the bases covered by EEOC complaint processing regulations.

2. Formal Complaints of Discrimination

A. Intake and Investigation. Formal complaints of discrimination or harassment because of sexual orientation should be filed with the Director, OHR. The complaint will be reviewed to assure that it meets jurisdictional prerequisites; e.g., timeliness. The Complainant will be promptly notified of the acceptance or rejection of the formal complaint. Accepted complaints will be investigated the same as any other allegation of discrimination accepted by the Department. In the event a complaint is received which contains an allegation of discrimination based on sexual orientation and, in addition to any of the bases covered by EEOC regulations, all allegations will be investigated concurrently. However, following investigation, those allegations not based on sexual orientation will be processed according to existing procedures governing complaints filed under EEOC regulations. Reports of investigation will be provided to the appropriate Departmental EEO Official for appropriate action.

- B. OPDIV and Regional Director (RD) Review and Decision. Upon receipt of a Report of Investigation (ROI) of an allegation of discrimination or harassment based on sexual orientation, the OPDIV or RD is responsible for preparing a summary of the record of the case. The summary should succinctly state the issues and delineate the evidence addressing both sides of each issue in the case. The summary should state those facts, supported by the record, which will sustain a conclusion. Upon completion of the summary, a copy of the entire record will be provided to the Complainant. The OPDIV or RD is also responsible for making every reasonable effort to resolve the complaint. If attempts to resolve the complaint are unsuccessful, the OPDIV or RD is responsible for issuance of a decision which addresses the merits of each allegation of discrimination or harassment based on sexual orientation, and for providing the Complainant with appropriate information regarding his or her entitlement to appeal the decision to the Department's Director of EEO, within 30 days of receipt of the decision. The decision should inform the Complainant that a copy of any appeal must be provided to the OPDIV or RD. A copy of the decision must be provided to the Department's Director of EEO. Where the OPDIV or RD determines that a Complainant has been denied equal opportunity because of sexual orientation, an appropriate remedy must be provided the complainant.
- C. Appellate Decision by Director of EEO. Upon receipt of an appeal from an OPDIV or RD decision, the Director of EEO will ensure that the full record of the case is obtained from the OPDIV or RD and that the OPDIV or RD is provided with an opportunity to comment on any representations made by the appellant. Following a review of the record, the Director of EEO will issue a decision which will consist of findings on the merits of each issue in the complaint and, when discrimination is found, order appropriate remedies and relief. The appellate decision of the Director of EEO is final and there is no entitlement to further administrative review of the complaint.

### 3. Remedies and Relief

When it is determined that an individual has been denied equal employment opportunity because of sexual orientation, an appropriate "make whole" remedy must be fashioned. Even though complaints based on sexual orientation are not within the jurisdiction of the EEOC, the guidance provided in 29 C.F.R., Sections 1614.501(b) and (c) may be utilized to develop relief for either an applicant or an employee.

4. Representation and Official Time

- A. At any stage in the processing of a complaint of discrimination or harassment because of sexual orientation, including the counseling stage, the complainant is entitled to be accompanied, represented, and advised by a representative of complainant's choice.
- B. If the complainant is an employee of the Department, he or she shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and to respond to agency requests for information. If the complainant is an employee of the Department and designates another employee of the Department as representative, the representative shall similarly have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and to respond to agency requests for information.
- C. The agency is not obligated to change work schedules, incur overtime costs, or pay travel expenses to facilitate the choice of a specific representative or to allow the complainant and representative to confer.