



Use of Official Time in the Federal Sector EEO Process

Department of Labor (DOL) employees who use the Equal Employment Opportunity (EEO) complaint process are entitled to a reasonable amount of official time to prepare EEO complaints (against DOL) and to respond to requests for information, if otherwise on duty.¹ Employees using the EEO process are entitled to be accompanied, represented, and advised by a representative of their own choice at any stage in the process, and those representatives, if employees of the DOL, are also entitled to official time.

Reasonable Amount of Official Time

The Equal Employment Opportunity Commission (EEOC) has defined "reasonable" as whatever is appropriate, under the particular circumstances of the complaint, in order to allow a complete presentation of the relevant information associated with the complaint and to respond to requests for information from the Civil Rights Center (CRC), the DOL agency that investigates EEO complaints, or the Equal Employment Opportunity Commission (EEOC).² The actual number of hours to which a complainant and his or her representative are entitled will vary, depending on the nature and complexity of the complaint and considering the mission of the agency and the agency's need to have its employees available to perform their normal duties on a regular basis. The complainant and his or her supervisor should arrive at a mutual understanding as to the amount of official time to be used prior to the complainant's use of such time. Here are some specific guidelines regarding reasonable official time:

- **Meetings and Hearings:** Time spent by complainants and their representatives in meetings and hearings with DOL officials or with EEOC Administrative Judges is automatically deemed reasonable.
- **Preparation Time:** As presentation of a complaint involves preparation for meetings and hearings, complainants and their representatives are afforded a reasonable amount of official time to prepare for meetings and hearings, as well as time to prepare the formal complaint and any appeals that may be filed with the EEOC. However, because investigations are conducted by CRC or EEOC

¹ 29 C.F.R. § 1614.605(b)

² For further guidance, see the EEOC's [Management Directive \(MD\) 110, Section VII.C.](#)

personnel, "reasonable" with regard to preparation time is generally defined in terms of hours, not in terms of days, weeks, or months.

- **Aggregate Time Spent on EEO Matters:** The EEOC considers it reasonable for agencies to expect their employees to spend the majority of their time doing the work for which they are employed. Therefore, in addition to the general guidelines noted above, an agency may restrict the overall hours of official time afforded to a representative, for both preparation purposes and for attendance at meetings and hearings, to a certain percentage of that representative's duty hours in any given month, quarter, or year. Such overall restrictions would depend on the nature of the position occupied by the representative, the relationship of that position to the mission of the agency, and the degree of hardship imposed on the mission of the agency by the representative's absence from his or her normal duties. The amount of official time to be afforded to an employee for representational activities will vary with the circumstances, and therefore should be determined on a case-by-case basis.

Requesting Official Time

As stated above, the DOL employee, including his or her representative, and his or her supervisor should arrive at a mutual understanding as to the amount of official time to be used prior to the use of such time. The agency is entitled to a reasonable explanation of how the employee plans to spend the time requested (e.g., counseling, affidavit preparation, EEOC hearing, etc.). Requests for official time should indicate: 1) a general purpose for use; 2) the amount of time to be used; and 3) a proposed schedule for use.

It is not unreasonable for the agency to require some proof that the employee needs the official time to engage in EEO complaint activity. Moreover, an employee may be required to justify the amount of preparation time requested where that request is for a substantial number of hours. Employees may not withhold necessary information even when their supervisors are the subject of the complaints. However, the agency should not request more information than is needed to determine the need for official time (e.g., a supervisor may confirm with an EEO counselor that (s)he will be meeting with the employee for an EEO Counseling session, but the supervisor should not request specific details – such as the specific allegations or the identity of the alleged discriminator).

The agency must establish a process for deciding how much official time it will provide a complainant, and must inform complainants, their representatives, and others who may need official time, such as witnesses, of the process and how to claim or request official time. The process should incorporate the following steps: Once a request is received, the agency will determine whether to approve the request. The respective agency's EEO Manager may be helpful in this deliberation. If necessary, the EEO Manager may seek information and/or confirmation about the intended purpose/need for the use from the CRC. Upon obtaining, if the request involves participation in a meeting, the request should generally be approved absent concerns over the percentage of a representative's duty hours as described above. Regarding a request for preparation time, the agency must then assess the amount of time requested and the proposed schedule for use in

consideration of the agency's legitimate need to have employees perform the work for which they are employed. The agency must remember that employees are entitled to official time, so restrictions on that use must reflect the agency's actual needs at the time of the request. Requests should be addressed promptly as the EEO regulations establish strict timeframes for processing of complaints.

Denial of Official Time

If an agency official denies a request for official time, either in whole or in part, the agency official must prepare a written statement noting the reasons for the denial, and provide the employee or representative with a copy of that written statement. This statement must also be submitted to the CRC for inclusion in the complaint file. Disputes concerning official time should be made to the CRC at (202) 693-6503.

Witnesses

Witnesses who are Federal employees, regardless of their tour of duty and whether they are employed by the DOL or some other Federal agency, must be in an official duty status when their presence is required or authorized by agency or EEOC officials in connection with a complaint. Federal employees are required to cooperate in the EEO process, and produce such documentary and testimonial evidence as deemed necessary by the agency or the EEOC. Therefore, witnesses should treat preparation of affidavits or other participation in the EEO process as an assignment of work.

For More Information

Any questions on this guidance should be addressed to the Department of Labor's Civil Rights Center at 202-693-6500.