

## DECISIONS, DECISIONS... YOUR ELECTION RIGHTS FOLLOWING AN INVESTIGATION IN THE EEO COMPLAINT PROCESS

The Equal Employment Opportunity (EEO) Complaint Process is available to Department of Labor (DOL) employees and applicants for DOL employment who believe they have been discriminated against by DOL on the basis of race (including dress and grooming), color, national origin (including ethnicity or ancestry, accent, and use of a language other than English), religion or religious creed (including reasonable accommodation of religious beliefs or practices), physical or mental disability (including reasonable accommodation of physical or mental disability), genetic information, sex (including pregnancy, childbirth, lactation, abortion, and related medical conditions and procedures), sexual orientation, gender identity, gender expression, intersex conditions, age, parental status, and/or retaliation for prior protected EEO activity.

Now that you have been provided with the enclosed Report of Investigation (ROI) into your complaint, you are faced with an important decision to make:

1. Do I request a final agency decision (FAD) from the Civil Rights Center (CRC), based on the ROI? Or
2. Do I request a hearing before an Administrative Judge (AJ) of the Equal Employment Opportunity Commission (EEOC)?

The CRC does not endorse or recommend either course of action, when both options are available to the complainant,<sup>1</sup> but wishes to provide the following information to assist you in making an informed decision.

### INFORMATION TO AID YOU IN DECIDING WHETHER TO REQUEST A FINAL AGENCY DECISION

An advantage to requesting a FAD is the timeframe in which you will receive the final decision. If you request a FAD, CRC must issue the FAD within 60 days of its receipt of your request, or no more than 90 days from the time you receive the notice of your election rights. If you feel that the investigative record was sufficiently developed, a FAD may provide you a speedy decision on the allegations.

A possible disadvantage of requesting a FAD is your inability to include certain additional evidence in the investigative record. The useful tools discussed below, such as live witness examination and the discovery process that are available to help you obtain additional evidence during the EEOC hearing process, are not available if you elect a FAD. If you believe that additional evidence beyond the ROI would be helpful to prove that you were subjected to unlawful discrimination, you may want to consider requesting a hearing before the EEOC.

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<sup>1</sup> "Mixed-Case" EEO complaints, which are related to or stem from actions appealable to the Merit Systems Protection Board, do not provide the right to request an EEOC hearing.

## INFORMATION TO AID YOU IN DECIDING WHETHER TO REQUEST A HEARING BEFORE THE EEOC

You may feel that the hearing process will be too complicated and daunting, or you may be discouraged at the possibility of arguing your case before an AJ. While there are some complexities, the hearing process is afforded to you to ensure that the workplace is free of unlawful discrimination. In other words, the hearing process exists to protect federal employees.

If you elect a hearing before the EEOC, you may be offered an opportunity to develop your case and seek a proper resolution before a hearing is scheduled. An AJ with the EEOC will be assigned to your case to assess the complaint record and consider an appropriate course of action. Recognizing the success of mandatory settlement conferences, the AJ may determine that your case is suitable for referral to an alternative dispute resolution (ADR) program such as mediation.

If the parties cannot reach a settlement through ADR, the AJ may order that the formal hearing process continue, which may include allowing the parties to conduct prehearing discovery. Discovery can be an important tool to support the search for and development of additional evidence relevant to the unlawful discrimination claims you are alleging. This goes both ways. Discovery also allows the agency to gather evidence to defend itself against your allegations of unlawful discrimination.

Discovery of evidence may be developed through:

- Interrogatories: written questions that must be answered under oath to obtain sworn or affirmed written testimony
- Depositions: out-of-court oral testimony, developed through live questioning of witnesses, that is reduced to writing for later use in court
- Stipulations: agreements between opposing parties prior to a hearing, such as agreements concerning certain facts that do not need to be disputed during the hearing
- Requests for Admissions: questions in the form of statements that may be either admitted or denied by the other party and, if admitted, will then be taken as true
- Requests for Production of Documents: formal demands to obtain documents that are relevant to proving or disproving the allegations of unlawful discrimination

You may also be afforded the opportunity to question witnesses during the hearing through direct or cross examination, which can be a very important tool. Questioning witnesses may allow you to extract information that other discovery mechanisms were not able to uncover. This tool may also permit you to shed light on the credibility of witnesses, which may be important if you feel that evidence in the investigative record is not truthful or accurate.

If you elect a hearing before the EEOC AJ, you have the option to proceed with or without an attorney. It is recommended that you consider hiring—or at least speaking with—an attorney rather than representing yourself before an AJ. You will be responsible for the cost of your legal representation but, if an AJ makes a finding of unlawful discrimination, your attorney’s fee may be awarded to you.<sup>2</sup>

## MAKING YOUR REQUEST

The notice you received with your ROI includes detailed instructions for making your request for a hearing or a FAD. You must make your request within 30 calendar days of receiving the notice. If you elect a hearing, you must submit a hearing request directly to the EEOC District Office that has jurisdiction over your complaint. You may file your hearing request online by using the EEOC Public Portal at <https://publicportal.eeoc.gov/Portal/Login.aspx>. You must also send a copy of your hearing request to the CRC at [CRC-Formal-Complaints@dol.gov](mailto:CRC-Formal-Complaints@dol.gov). Failure to do so may forfeit your right to a hearing. If you elect a FAD, you must submit your request to the CRC. Keep in mind that if you do not make a timely election, a final decision will be prepared by the Civil Rights Center by default within sixty (60) calendar days following the 30-day period you were provided to make your request.

## YOUR RIGHT TO FILE A LAWSUIT

If 180 days have passed since you filed your formal complaint and no final decision has been issued, you have the right to file a lawsuit in an appropriate U.S. District Court, or you may request a hearing with the EEOC. If you file a lawsuit, CRC and the EEOC will stop processing your case.

## YOUR RIGHT TO APPEAL

Whether you elect a FAD or a hearing before an EEOC AJ, you have a right to appeal the final decision to the EEOC’s Office of Federal Operations. If you are not satisfied with the outcome of your appeal, you may file a lawsuit in an appropriate U.S. District Court or you may file a Request for Reconsideration with the EEOC.

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You may obtain additional information on the EEO Complaint Process from DOL’s LaborNet or by contacting the CRC, Room N4123, 200 Constitution Avenue, N.W., Washington D.C. 20210, (202) 693-6500 or 7-1-1 (relay), [CRC-Formal-Complaints@dol.gov](mailto:CRC-Formal-Complaints@dol.gov). To learn more about the federal sector EEO process, please visit the CRC website at [Internal Enforcement \(DOL Employees and DOL Job Applicants Only\) | U.S. Department of Labor](#) or the EEOC website at [Federal Employees & Job Applicants | U.S. Equal Employment Opportunity Commission \(eeoc.gov\)](#).

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<sup>2</sup> See generally EEO MD-110, Chapter 11