

Early Resolution of EEO Complaints (EREC) Program

Purpose

These procedures are established in accordance with Title 29 Code of Federal Regulations, Part 1614 (Federal Sector Equal Employment Opportunity); the Administrative Dispute Resolution Act of 1996 (110 Stat. 3870); and the U.S. Equal Employment Opportunity Commission (EEOC) Management Directives 110 and 715.

EEOC's regulations require Federal agencies to make available an Alternative Dispute Resolution (ADR) program during both the pre-complaint process and the formal complaint process for Equal Employment Opportunity (EEO) complaints (29 C.F.R. § 1614.102(b)(2)). Accordingly, the U.S. Department of Labor (the Department or DOL) has established the Early Resolution of EEO Complaints (EREC) Program to provide ADR for EEO complaints.

Background

It is DOL's policy to provide equal employment opportunity for all employees and applicants for employment in accordance with applicable Federal statutes, regulations, executive orders and departmental policy; to prohibit discrimination in employment based on 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, and parental status; and to prohibit retaliation for opposing any practice made unlawful by Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Equal Pay Act, the Rehabilitation Act, Executive Orders 11478 and 13145 or for participating in any stage of administrative or judicial proceedings under those statutes and Executive Orders. The DOL is committed to fostering a workplace that is free of unlawful discrimination and retaliation.

The EREC ADR Program has been designed to support this commitment by DOL, to comply with applicable Federal statutes, regulations, and policies; and to advance DOL's efforts for "Proactive Prevention of Unlawful Discrimination," an element required by EEOC's model EEO program (see EEOC Management Directive 715). The EREC ADR Program provides an additional option to the traditional EEO complaint process that focuses on resolving the issues in a complaint at its earliest stages.

ADR uses a variety of techniques, methods, or processes, usually involving a neutral third party, designed to address disputes in a manner that avoids the cost, delay, and unpredictability of more traditional adversarial and adjudicatory processes, such as litigation.

ADR includes, but is not limited to, the following techniques:

- **Negotiation** – Parties and their attorneys or representatives attempt to resolve a dispute through direct discussions with one another.

Facilitation – Involves the use of techniques to improve the sharing of information and communication between parties to a dispute. Facilitation focuses on providing procedural assistance to the parties to assist them in resolving a dispute.

- **Arbitration** – An authorized neutral party will review evidence, hear arguments, and issue a binding decision.
- **Mediation** – An informal process in which a trained mediator assists the parties in reaching a negotiated resolution of the dispute.
- **Mini-trial** – The use of a neutral evaluator to give opinions on each party's case and the likely court outcome.

ADR programs can offer efficient, cost effective, and less contentious methods to resolve disputes. ADR can avoid lengthy and unnecessary litigation by opening the lines of communication between employee and employer, which can, in turn, maintain or improve working relationships. Thus, ADR can reduce resources expended to process EEO complaints, while also promoting greater workplace harmony.

EREC Program

The DOL EREC Program utilizes mediation and facilitation as its ADR techniques to attempt to resolve EEO complaints. With mediation, a neutral third party, a mediator, helps to resolve a conflict by assisting the parties in communicating with each other, identifying issues, and finding mutually agreeable solutions. The mediator must be impartial, with no personal interest in the dispute. The mediator cannot authorize solutions, make decisions or declare a winning party. Rather, the mediator is expected to guide the negotiations and communications between the parties. In cases where the issues are clearly defined, the mediator may simply facilitate discussions. However, because mediators are specially trained and experienced in conflict resolution techniques, they are also able to help the parties work through strained or emotional communications, distrust and longstanding conflict.

With facilitation, the EREC Coordinator or other designated CRC staff will provide assistance to complainants, their representatives, agency designated settlement officials and Agency Workplace Equality Compliance Officers (WECOs) to try to resolve EEO complaints. In addition to or in lieu of actual meetings, the EREC Coordinator or designated CRC staff will assist with the development of ideas and elements that could be used to settle/resolve the issues or allegations of a complaint and provide guidance, where necessary. The EREC Coordinator or other designated CRC staff would then ensure that these ideas and elements are shared with the parties involved with the complaint. This process will allow participants to make decisions based on options and guidance provided.

Policy

1. DOL will offer ADR for disputes raised in an EEO informal (pre-complaint) or formal complaint of discrimination filed by a DOL employee, an applicant for DOL employment, or former DOL employee consistent with its obligations under both 29 C.F.R. Part 1614 and with the Administrative Dispute Resolution Act of 1996, 5 U.S.C. §571, et seq.

2. As part of this program, DOL will attempt to resolve EEO complaints, whether informal or formal, using the ADR technique(s) of mediation and/or facilitation.
3. It is CRC policy that, where ADR may be used to resolve a complaint, ADR shall be employed limited exception. However, the CRC, following consultation with the Agency WECO, reserves the right to determine, on a case-by-case basis, that a complaint is not appropriate for ADR.
4. Agency participation in ADR is required when the election for ADR is requested by the aggrieved individual or complainant, unless the Agency WECO can provide information to the CRC, demonstrating that the case is inappropriate for settlement/resolution via ADR at the time requested. The Agency WECO will petition the CRC for this purpose.
5. If it is determined by the CRC that a complaint is not appropriate for ADR, whether informal or formal, the aggrieved individual/complainant will be notified in writing, informed of their rights and provided further instruction concerning continuing in the EEO process, if desired.
6. While generally an aggrieved individual or complainant must request ADR, the CRC will review all informal complaints filed to assess whether resolution is possible. If the CRC determines that resolution may be possible, upon agreement by the aggrieved individual or complainant, the CRC will engage the parties for the purpose of scheduling mediation or attempting facilitation to attempt to resolve the matter(s)-at-issue. The Agency WECO may also review information and suggest complaints for which ADR may be beneficial.
7. Participation in ADR by a complainant is voluntary. Additionally, willingness to resolve a complaint is voluntary and the terms by which to resolve a complaint are negotiable and subject to approval by all parties.
8. When mediation is used, a mediator, who is generally not a DOL employee, is utilized, underscoring the neutrality and impartial nature of this process. Towards this end, the DOL will obtain mediators from the Federal Sharing Neutrals Program (SNP) of the U.S. Department of Health and Human Services, the United States Postal Services' (USPS') National EEO Investigative Services Office (NEEOISO), or other appropriate mediator sources.
9. When facilitation is used, the EREC Coordinator or other designated CRC staff will serve as the intermediary providing assistance and guidance as well as ensuring that all relevant information is shared with the parties. The EREC Coordinator will also ensure that all regulatory time limits are met.

ADR Process

DOL employees, applicants for employment, and former DOL employees may request EREC ADR verbally or in writing to resolve an allegation(s) of employment discrimination raised in either the informal (precomplaint) or formal EEO complaint process. However, to participate in EREC ADR, the aggrieved individual/complainant must sign, date and submit an ADR Agreement to the CRC.

A. Informal (pre-complaint) Process

1. During the initial counseling session, the EEO counselor will advise/remind the aggrieved individual of their rights and responsibilities in the EEO process, including the option to elect ADR via the EREC

program. Should the aggrieved individual choose to participate in the EREC ADR program, they must inform the EEO counselor or CRC during the initial 30 calendar day counseling period.

2. The CRC will promote the use of EREC ADR to resolve conflicts and will ensure that the aggrieved individual is aware that ADR may occur in either the form of mediation or facilitation and that the CRC, in consultation with the Agency WECO, reserves the right to determine, on a case-by-case basis, that a complaint is not appropriate for ADR at the time.

3. If a conflict is not appropriate for EREC ADR via facilitation or mediation, the EREC Coordinator or other designated CRC staff member will provide written notification to the aggrieved person that DOL will not participate in ADR at that time. In such a case, the EEO counselor will continue to process the informal complaint in accordance with existing EEO counseling procedures.

4. Each DOL Agency will designate one or more senior-level management official who is authorized to serve as the agency's settlement official to participate in mediations or facilitations to attempt to settle/resolve EEO complaints. Once the CRC, in consultation with the Agency WECO, determines that the EEO complaint is appropriate for ADR, the settlement official designated by the Agency WECO will represent the Agency in one of the two aforementioned ADR techniques.

5. As discussed more fully below, if mediation is utilized, the EREC Coordinator or other designated CRC staff will be responsible for: a) obtaining the mediator for mediation, b) ensuring that logistical arrangements and scheduling have been set, c) providing the mediator with appropriate documents (i.e., Agreement to Mediate, settlement template, signed confidentiality agreements), and d) notifying the appropriate officials regarding the outcome of the mediation. Additionally, the EREC Coordinator or other designated CRC staff will be responsible for the facilitation process of ADR, where applicable/appropriate.

6. Each mediation session may last up to three (3) hours. However, if the mediator recommends that an additional session would be beneficial, and the parties agree, more than one mediation session may be used. In any case, the pre-complaint/informal process cannot extend beyond 90 calendar days from the date the aggrieved person contacted an EEO Counselor or the CRC to begin the EEO precomplaint/counseling process.

Facilitation is not limited to a certain number of hours or sessions. However, the informal process cannot extend beyond 90 calendar days from the date the aggrieved person contacted the CRC or an EEO Counselor to begin the EEO pre-complaint process.

B. Formal Complaint Process

The aforementioned procedures are generally applicable at the formal phase of EEO processing with the following caveats:

1. A complainant may elect ADR at any time following the filing of a formal complaint.

2. The request to participate in ADR following the filing of a formal complaint should be made in writing to the EREC Coordinator or other CRC designated staff member.

3. The CRC, in consultation with the Agency WECO, reserves the right to determine, on a case-by case basis, that a formal complaint is not appropriate for ADR.

4. The CRC also reserves the right to determine when to schedule ADR. Generally, ADR will not be scheduled until completion of an investigation, unless ADR is pending (due to being requested during the pre-complaint stage) at the time the formal complaint is filed.

5. If the formal complaint has been accepted for investigation, the investigative process may not exceed the regulatory 180 time period from the filing of the formal complaint. However, when a formal complaint has been amended, the investigation shall be completed within the earlier of 180 days after the last amendment or 360 days after the filing of the original complaint.

6. At the conclusion of an investigation, a complainant is generally given two options: to request a hearing before an Administrative Judge (AJ) of the Equal Employment Opportunity Commission (EEOC) or to request a Final Agency Decision prepared by DOL. If a complainant elects a hearing before an AJ of the EEOC, ADR will generally not be scheduled/conducted by the CRC. Rather, the AJ may engage in settlement negotiations.

C. Mediator

The mediator's role is to be a neutral third party, who leads and manages the discussion between the disputing parties without making decisions or judgments.

1. Generally, the mediator will not be employed by DOL.

2. The mediator will be a member in good standing of a recognized mediation program.

3. The mediator must have a working knowledge of EEO laws and regulations, which includes but is not limited to:

- 29 C.F.R. Part 1614
- EEOC Management Directive 110
- The laws enforced by the CRC

4. At the outset of the mediation, the mediator will:

- a) Make introductions;
- b) Set the ground rules for the session;
- c) Explain that each party's representative may participate throughout the mediation process;
- d) Explain the purpose of mediation;
- e) Explain the role of the mediator;
- f) Remind the parties that all information revealed during mediation is confidential and cannot be used as evidence in any subsequent litigation or administrative process;
- g) Inform the parties that mediation may be terminated upon request by either party or, at the mediator's discretion, anytime during the mediation session; and

If a resolution is reached by the parties, the mediator will:

1. Capture the elements of the proposed resolution and provide said elements to the EREC Coordinator or other designated CRC staff member, who will prepare the Settlement Agreement or provide the resolution elements to the applicable WECO for preparation of the Settlement Agreement for review and signatures by interested parties; or
2. In cases where resolution elements have been approved by the Agency as being appropriate and available prior to mediation: a) insert the elements of the proposed resolution in a template settlement agreement provided to the mediator by the CRC EREC Coordinator prior to mediation; b) ensure that the Settlement Agreement is signed and dated by applicable parties, c) ensure that the signed settlement agreement is forward to the EREC Coordinator or other designated CRC staff for distribution to the parties and closure of the applicable complaint.

If an agreement for resolution is not reached at the conclusion of the mediation session, the mediator will inform the EREC Coordinator of the outcome of mediation.

D. National Coordinator of EEO Counselors & EEO Counselors

1. The National Coordinator of EEO Counselors, or a designated CRC staff member, shall provide the following information/documents to the aggrieved individual during intake for the informal/precomplaint stage of the EEO process:

- a) An EEO Rights and Responsibilities Memorandum;
- b) An ADR Agreement/Extension Election Form;
- c) A Benefits of EREC/ADR fact-sheet;
- d) A Set of EEO Counseling Intake Questions;
- e) An Informal Complaint Form (including anonymity waiver and option to designate a representative).

2. The assigned EEO counselor will discuss both the traditional EEO counseling and ADR options with the aggrieved individual.

3. The EEO counselor will notify or remind the aggrieved individual that a traditional counseling or ADR election should be made as soon as possible during the initial 30 day counseling period.

4. An ADR election will extend the 30 day EEO counseling period up to an additional 60 calendar days; but will not exceed a total of 90 calendar days from the date of initial EEO counselor contact to begin the EEO pre-complaint/counseling process.

5. The EEO counselor shall address any questions or concerns the aggrieved party may have concerning the EREC ADR process.

6. EREC ADR processing begins immediately upon the aggrieved person's election. The EEO counselor will alert the National Coordinator of EEO Counselors and EREC Coordinator immediately of an ADR election and forward the signed ADR Agreement to said individuals.

7. Even If EREC/ADR is elected, the EEO counselor will complete pre-complaint fact finding inquiries with involved parties (including the aggrieved individual and relevant management officials).

E. EREC ADR Coordinator

1. The Director of the CRC and Chief of Internal Enforcement will designate an EREC ADR Coordinator, who will coordinate the processing of all EEO ADR requests.

2. The EREC Coordinator is responsible for addressing inquiries from involved parties during the mediation or facilitation process.

3. When facilitation is used, the EREC Coordinator or other designated CRC staff will serve as the intermediary providing assistance and guidance, as well as ensuring that all relevant information is shared with the parties. The EREC Coordinator will also ensure that applicable regulatory time limits are met.

4. The EREC Coordinator will coordinate and consult with the Chief of Internal Enforcement, CRC Program Manager and/or Agency WECO in determining those cases which may not be appropriate for EREC ADR, as described above.

5. The EREC Coordinator will coordinate with SNP, USPS-NEEOISO or other approved mediator provider to set up a time and location for mediation that is agreeable to participating parties within applicable timeframes.

6. The EREC Coordinator will ensure that the mediator has a template of the settlement agreement, as applicable.

7. The EREC Coordinator will work with the mediator to provide the necessary logistical arrangements for the mediation, including a telephone, fax machine, copier, computer, and any reasonable accommodations, as required or appropriate.

8. Once the mediation or facilitation periods have concluded, the EREC Coordinator will log the outcome of the EREC/ADR process into the tracking system. The EREC Coordinator will notify the EEO Counselor about the outcome of the EREC ADR, if EEO counseling is ongoing.

9. If there is a resolution of the dispute via EREC ADR, the EREC Coordinator will place the original signed settlement agreement in the aggrieved person's file. Soon after receiving the settlement agreement, the EREC Coordinator will inform the aggrieved person in writing that, in the event of the Agency's failure to comply with the agreement, the aggrieved person must notify CRC of such noncompliance within 30 calendar days of the date when they knew, or should have known, of the noncompliance.

10. If resolution is not achieved during EREC ADR at the informal/pre-complaint stage of the EEO process, the EREC Coordinator will immediately instruct the EEO counselor to proceed with producing and submitting a Counselor's Summary Report to the CRC (if a report has not been previously submitted to the CRC by the counselor) and subsequently issue the aggrieved individual a notice of right to file a formal complaint.

F. Workplace Equality Compliance Officer (WECO)

The agency WECO will work with the EREC Coordinator and/or designated CRC staff member to process all DOL EREC ADR requests. The agency WECO is responsible for the following during ADR processing:

1. Consulting with agency officials to explore possible remedies for resolving the matter(s)-at-issue via ADR.
2. Reviewing all ADR requests for the agency(ies) serviced by the WECO for assessment of conduciveness for ADR/resolution and communicating the WECO's recommendation to the CRC EREC Coordinator or designated CRC staff member for CRC consideration.
3. Designating settlement officials to represent the Agency for cases deemed conducive for ADR.
4. In some instances, preparing settlement agreements for EEO complaints resolved via ADR.
5. Assisting with and monitoring the agency's compliance with agreed upon terms of resolution, and providing proof of compliance to the CRC in a timely manner and/or when requested.

G. Agency Settlement Officials

Each DOL Agency must appoint at least one senior-level management official with authority to settle matters raised in EEO complaints on behalf of the Agency. Agency Settlement Officials are responsible for:

1. Representing the Agency during ADR mediations and facilitated settlement discussions.
2. Consulting the Agency WECO to obtain the relevant information needed to have informed resolution discussions and make informed agency decisions during ADR.
3. Signing settlement agreements for agency EEO complaints resolved via EREC ADR.

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