

Filing a Discrimination Complaint

FEDERAL EMPLOYEES: YOU MUST ACT TO PROTECT YOUR RIGHTS AGAINST DISCRIMINATION

If you think you have been a victim of discrimination, you must protect your rights. While federal employees are protected by a number of anti-discrimination laws, you need to act quickly, or you could lose the right to do anything about the discrimination. And, it is always advisable to contact an experienced attorney if you think you have been discriminated against.

If you believe you are the victim of a discriminatory act, the first step is to contact an EEO Counselor at your agency within 45 days of the discriminatory action. After the agency receives the complaint, the agency may ask you if you wish to participate in either counseling or in Alternative Dispute Resolution (“ADR”). This is an attempt to informally resolve your complaint before you formally file a charge of discrimination. Most complaints of discrimination are not resolved at this stage, and you will have to file a formal complaint of discrimination with the agency.

After you file a formal complaint of discrimination, the agency must conduct an “impartial” investigation of the complaint. It is very important, at the start of this process, that you describe as accurately and fully as possible all the actions taken against you and why they are discriminatory. The agency will interview co-workers, supervisors, and others who may be witnesses. In the majority of cases, the agency will review the documentation and interviews, and still reject your claim of discrimination. While this might be frustrating, the record established through the investigation may be very helpful to you and your lawyer as you pursue your discrimination claim.

At the conclusion of the investigation, you will receive a set of documents called the “Report of Investigation” or “ROI.” It will contain the documents compiled by the investigator and the statements of witnesses. Even when the ROI has evidence that you have been discriminated against, in most cases, the agency will not issue a “final decision” admitting you were a victim of discrimination. In most cases, then, after the ROI is issued, you will probably want to request a hearing before an EEOC administrative judge.

In cases where a hearing is requested, you have the right to conduct “discovery,” that is, require the agency to produce documents and witnesses that may support your claim. You will then have a hearing before the administrative judge, who issues a decision within 180 days and sends the decision to both parties.

When the administrative judge finds that you have been discriminated against, the administrative judge orders appropriate relief. If the agency does not respond by issuing

a final order within 40 days after receiving the administrative judge's decision, the administrative judge's decision becomes the final action of the agency. If the agency issues an order notifying you that the agency will not fully implement the decision of the administrative judge, the agency also must file an appeal at the same time.

FILING AN APPEAL WITH EEOC

If you are not satisfied with the agency's final action, you must file an appeal with the Office of Federal Operations (OFO) of the within 30 days. If the agency does not agree with the EEOC administrative judge's decision, it must file an appeal within 40 days of receiving the administrative judge's decision.

YOUR RIGHT TO FILE A LAWSUIT

You also have the right to file a lawsuit in federal court. However, you first have to file an administrative complaint and wait for a period of time before having the right to go into court. The law requires you to "exhaust" this administrative procedure before filing in court, and your right to go to court -- and when -- depends on where you are in the administrative process. It is highly advisable to get legal counsel when considering a court action.

Remember: know your rights and protect them. If you think you have been a victim of discrimination, contact us at:

By: Daniel A. Katz -- respond via email at dkatz@a-f.net

To return to the Andalman & Flynn website click [here](#).

For more information from the EEOC on your rights, click here, <http://www.eeoc.gov/federal/fedprocess.html>