

Defense Logistics Agency Instruction



DLAI 7406
September 10, 2009
DLA-DO

EEO Complaint Process

References: [29 CFR, Part 1614](#) and [EEOC MD-110](#). This Instruction supersedes DLA Regulation Number 1446.1, April 18, 1984.

1. PURPOSE.

a. This Instruction establishes, communicates, and implements policies, processes, and procedures necessary to process and adjudicate complaints of illegal discrimination filed against the Defense Logistics Agency (DLA). A “complaint of illegal discrimination” is generally defined as an allegation that an employer has failed or refused to hire or discharged an individual, or has otherwise discriminated against an individual with respect to compensation, terms, conditions, or privileges of employment, or has limited, segregated, or classified employees or applicants for employment in a way which deprived an individual of employment opportunities or otherwise affected his/her status, because of his/her race, color, religion, sex, national origin, age, disability, or because he/she had previously participated in protected discrimination prevention activities. Title 29 of the Code of Federal Regulations (CFR), Part 1614.102(a) requires agencies to maintain a continuing program to identify and eliminate discriminatory practices and policies by providing for the prompt, fair and impartial processing of complaints.

2. APPLICABILITY

a. This Instruction applies to HQ DLA and DLA Field Activities.

3. POLICY. It is DLA policy that EEO complaints be processed fairly, promptly, and in accordance with the complaint processing procedures set forth in 29 C.F.R. Part 1614, and in EEOC Management Directive (MD)-110, Federal Sector Complaints Processing Manual.

4. RESPONSIBILITIES. See [Enclosure 1](#).

5. PROCEDURES See [Enclosure 1](#).

6. EFFECTIVE DATE: May 5, 2003.

Col. Thomas Laffey

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Director DLA Enterprise Support

ENCLOSURES

Enclosure 1 – EEO Complaint Process Procedures

Enclosure 2 – Additional Information

Enclosure 1

PROCEDURES

a. Pre-complaint sub-process: An aggrieved person who believes he/she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or disability, or for having previously participated in protected EEO activity initiates this sub-process by contacting a DLA EEO Office or a DLA EEO Counselor. The aggrieved person must state the employment practice or policy being challenged and the basis for the complaint. The aggrieved person is informed of his/her procedural rights and options, the claim(s) and basis(es) of the potential complaint are identified, jurisdictional questions are determined, and efforts are made to resolve the dispute at this stage of the process. If applicable, the aggrieved person is afforded an opportunity to resolve the dispute through the RESOLVE program. See RESOLVE Chapter. If the dispute is resolved, either through the RESOLVE program or through regular counseling activities, the process terminates. If the dispute is not resolved, the aggrieved person is informed of his/her right to file a formal complaint of discrimination. If the aggrieved person does not file a formal complaint of discrimination, the process terminates.

a.(1) Formal individual complaint sub-process:

a.(1)(a) Non-mixed case complaint. A “non-mixed case complaint” is a complaint of discrimination that is not related to or does not stem from an action that can be appealed to the U.S. Merit Systems Protection Board (MSPB). An aggrieved person initiates this sub-process by filing a formal complaint of discrimination (DLA Form 1808) with the appropriate DLA EEO Office. The DLA EEO Office will issue a final Agency decision to dismiss the complaint if it does not meet the standards set forth in 29 CFR § 1614.107. The aggrieved person (complainant) may appeal the dismissal decision to EEOC. See appellate sub-process (4.6.4.). If the complainant does not appeal the dismissal decision, the process terminates. A complaint accepted for processing is investigated by an independent contract investigator or authorized investigative service. The investigator develops an impartial and appropriate factual record upon which to make findings on the claims raised by the complaint. The investigator prepares a report and provides copies to the complainant and DLA. The complainant may elect to have his/her complaint heard by an EEOC Administrative Judge (AJ) or may request that DLA issue a final Agency decision. If the complainant elects to have his/her complaint heard by an EEOC AJ, a hearing is held and the AJ issues his/her decision, which is sent to the DLA Corporate Equal Employment Opportunity Office (DO). DO will issue a final Agency decision adopting or rejecting the AJ’s decision. If the complainant does not appeal the final Agency decision, the process terminates. If the complainant requests that DLA issue a final Agency decision, or if the complainant does not elect to have his/her complaint heard by an EEOC AJ or receive a final Agency decision, the case record is transmitted to DO. DO will issue a final Agency decision. The complainant may appeal the Agency’s final decision to EEOC or he/she may file a civil action in an appropriate U.S. District Court. See appellate sub-process (4.6.4.). If the complainant does not appeal the final Agency decision, the process terminates.

a.(1)(b) Mixed case complaint. A “mixed case complaint” is a complaint of discrimination that is related to or stems from an action that can be appealed to MSPB. See 5

CFR, Part 1201. An aggrieved person initiates this sub-process by filing a formal complaint of discrimination (DLA Form 1808) with the appropriate DLA EEO Office. The DLA EEO Office will issue a final Agency decision to dismiss the complaint if it does not meet the standards set forth in 29 CFR § 1614.107. There is no immediate appeal to EEOC on a decision to dismiss a “mixed case complaint” based on the complainant’s prior election to have the dispute considered under U.S. Merit Systems Protection Board (MSPB) procedures and MSPB agrees it has jurisdiction over the matter. The case record is transmitted to DO. DO will issue a final Agency decision. The complainant may appeal the Agency’s final decision to MSPB. The complainant may petition EEOC to review MSPB’s final decision on the discrimination issue. See appellate sub-process (4.6.4.). If the complainant does not appeal the final Agency decision, the process terminates.

a.(2) Class complaint sub-process: A group of complainants or a single complainant who wishes to file a formal complaint of discrimination on behalf of a group of employees or applicants for employment initiates this sub-process by filing a class complaint. The complaint is transmitted to EEOC, which issues a decision to accept or dismiss the complaint. EEOC’s decision is transmitted to DLA, which issues a final Agency decision adopting or rejecting EEOC’s decision. The class agent may appeal the Agency’s final decision to EEOC or he/she may file a civil action in an appropriate U.S. District Court. See appellate sub-process (4.6.4.). If the final Agency decision is to dismiss the class complaint and if the class agent does not appeal this decision, this sub-process terminates. If the final Agency decision is to dismiss the class complaint, the class agent is notified that the complaint will be processed under the individual formal complaint sub-process (4.6.2.). If the final Agency decision is to accept the class complaint, DLA will notify all members of the class of the complaint. The EEOC AJ will obtain evidence from DLA and the class agent, afford the parties an opportunity to resolve the complaint, hold a hearing if a resolution is not reached, and issue a report of findings and recommendations to DO. DO will issue a final Agency decision. The class agent may appeal the Agency’s final decision to EEOC or he/she may file a civil action in an appropriate U.S. District Court. See appellate sub-process (4.6.4.). Where discrimination is found, appropriate relief is effected. Any member of the class may appeal to EEOC the Agency’s finding that he/she is not entitled to relief. See appellate sub-process (4.6.4.).

a.(3) Appellate sub-process. A complainant initiates this sub-process by filing an appeal from a final Agency decision or, in the case of a “mixed case complaint,” by filing an appeal from a MSPB decision. DLA initiates this sub-process by filing an appeal from an AJ’s decision. A member of the class in a class complaint initiates this sub-process by filing an appeal of an approved resolution of the class complaint or by filing an appeal on a final Agency decision on the matter of individual relief. Appeals are generally made to EEOC; however, a complainant may file a civil action in an appropriate U.S. District Court in lieu of filing an appeal with EEOC. A complainant or DLA may petition EEOC to reconsider an EEOC appellate decision. If a complainant or DLA does not petition EEOC to reconsider its decision, the process terminates. An EEOC decision is final for DLA. A complainant may appeal an EEOC decision by filing a civil action in an appropriate U.S. District Court. If the complainant does not appeal the U.S. District Court’s decision, the process terminates. A complainant may appeal a U.S. District Court decision to an appropriate Federal Circuit Court. If the complainant does not appeal the Federal Circuit Court’s decision, the process terminates. A complainant may

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appeal a Federal Circuit Court decision to the U.S. Supreme Court. The decision of the U.S. Supreme Court is final.

Enclosure 2

Additional Information

Input recorded by the DLA Equal Employment Manager (EEM). Input to EEOC Form 462, Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints; Notification of Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) Reports posted quarterly on the DLA public website and prepared annually to DOD.

Method of recording: entry of data on EEOC Form 462 via iComplaints, an automated discrimination case management and information tracking tool.

Data elements recorded: Pre-complaint counseling: number of individuals counseled; non-alternative dispute resolution (ADR) settlements with benefits (and the dollar amount); non-ADR settlements with non-monetary benefits. Formal complaint activities: number of complaints on hand at the beginning of the fiscal year; number of complaints filed during the fiscal year; number of complaints remanded to DLA for further processing as ordered by an EEOC appellate decision; number of complaints not consolidated; number of complaints closed during the fiscal year; number of complaints on hand at the end of the fiscal year; number of individuals filing complaints; number of bases and issues alleged in complaints filed during the fiscal year; number of closures during a fiscal year by relevant statute; number of complaints withdrawn by the complainant during a fiscal year; number of complaints settled by the complainant and DLA during the fiscal year; number of complaints decided by a final Agency decision during the fiscal year; number of complaints dismissed by DLA during the fiscal year; number of final Agency decisions without an AJ decision finding discrimination, no discrimination, and cause to dismiss during a fiscal year; number of final Agency decisions with an AJ decision that fully implements the AJ decision and finds discrimination, fully implements the AJ decision and finds no discrimination, does not fully implement the AJ decision and finds discrimination, does not implement the AJ decision and finds no discrimination, and implements the AJ decision to dismiss the complaint during the fiscal year; number of complaints closed with corrective action during the fiscal year; number of complaints closed with monetary benefits (back/front pay and lump sum payments) during the fiscal year; number of complaints closed with non-monetary benefits during the fiscal year; number of complaints closed with compensatory damages during the fiscal year (and total dollars); number of complaints closed with attorney's fees and costs during the fiscal year (and total dollars); number of complaints closed with corrective actions by type during the fiscal year; number of investigations completed during the fiscal year; cost of the investigations during the fiscal year; number of investigations completed in 180 calendar days or less during the fiscal year; number of investigations completed between 181-360 calendar days during the fiscal year; number of investigations completed that took 361 or more calendar days to complete during the fiscal year.

Aggregated data. Period of aggregation: one year. Records of data are stored in the DLA Corporate EEO Office and EEOC.