



# National Postal Mail Handlers Union

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October 1, 2018

**To: Local Presidents  
Regional Directors/Representatives  
National Executive Board**

**Re: USPS update on the revisions to Publication 133, What You Need To Know About EEO**

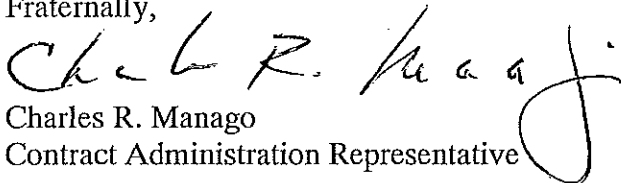
Dear Sisters and Brothers:

Please find enclosed a copy of the above-referenced document from the Postal Service concerning its plans to revise Publication 133, What You Need To Know About EEO.

According to the Postal Service, based on input from employee organizations, they have decided to revise Publication 133 to include language (page 7) indicating the timeframe for requesting EEO pre-complaint counseling. Additionally, a reference to the toll free telephone number used to request EEO counseling (page 10) is replaced with references to both the electronic filing and the written request methods. Please note that the electronic filing system is not yet operational.

Please disseminate this information, as you deem appropriate and should you have any questions, comments and/or suggestions regarding the above, please contact this office or forward your responses to the Contract Administration Department within the next 45 days.

Fraternally,

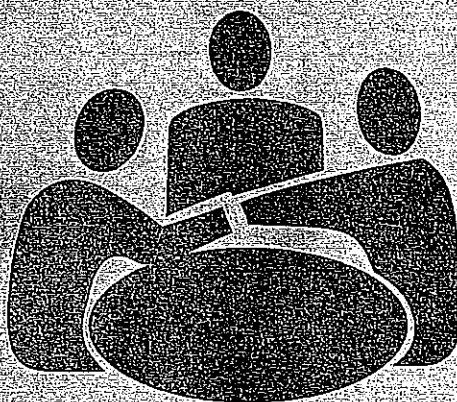
  
Charles R. Manago  
Contract Administration Representative

cc: Paul V. Hogrogian, National President  
Timothy M. Dwyer, National Secretary-Treasurer  
Teresa L. Harmon, Manager Contract Administration  
NCAD

With Track Changes

WHAT YOU NEED  
TO KNOW ABOUT  
**EEO**

Publication 133  
October 2012



 **UNITED STATES  
POSTAL SERVICE®**

WHAT YOU  
NEED TO  
KNOW ABOUT  
**EEO**

Publication 133  
October 2012

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## Introduction

This booklet provides an overview of the Equal Employment Opportunity (EEO) laws and the EEO complaint process for the Postal Service™ It explains your rights, responsibilities, and remedies under those laws and the EEO complaint process. Please read it carefully.

Although this booklet contains important information, it does not include all information on discrimination complaint laws or EEO complaint processing regulations. Title 29 Code of Federal Regulations (CFR) Part 1614 contains the regulations on EEO complaint processing for federal agencies, including the Postal Service. These regulations are administered by the Equal Employment Opportunity Commission (EEOC). You can obtain complete copies of the EEO laws and 29 CFR 1614 on the Internet at [www.eeoc.gov](http://www.eeoc.gov).

This booklet also provides an explanation of the REDRESS® program REDRESS, an alternative dispute resolution process, may offer you an opportunity to request mediation in addition to traditional EEO counseling. Detailed information about REDRESS is available on the Internet at <http://about.usps.com/what-we-are-doing/redress/welcome.htm>.

## **EEO Laws**

The following statutes, which are enforced by the EEOC, make it illegal to discriminate against employees or applicants for employment on the basis of race, color, religion, genetic information, national origin, sex (including pregnancy, sexual orientation, and gender identity, including transgender status), sex, age (40+), or physical or mental disability. In addition, a person who files an EEO complaint, participates in an investigation of an EEO complaint, or opposes an employment practice made illegal under any of the statutes enforced by the EEOC is protected from retaliation.

### **Equal Pay Act of 1963**

The Equal Pay Act (EPA) prohibits sex-based wage discrimination. The EPA prohibits agencies from paying employees of one sex lower wages than those of the opposite sex for equal work performed under similar working conditions.

### **Title VII of the Civil Rights Act of 1964, as Amended**

Title VII prohibits discrimination based on race, color, religion, sex, or national origin. Title VII also prohibits reprisal or retaliation for taking part in the discrimination complaint process or for opposing any unlawful employment practice under its authority.

### **Age Discrimination in Employment Act of 1967, as Amended**

The Age Discrimination in Employment Act (ADEA) prohibits discrimination in employment based on age (40 years or older).

### **Sections 501 and 505 of the Rehabilitation Act of 1973, as Amended**

Sections 501 and 505 of the Rehabilitation Act prohibit discrimination based on mental and physical disability and require agencies to reasonably accommodate

the known physical or mental limitations of qualified employees or applicants with disabilities.

## **Civil Rights Act of 1991**

The Civil Rights Act of 1991, among other things, provides monetary damages up to \$300,000 in cases of intentional employment discrimination.

## **Genetic Information Nondiscrimination Act of 2008**

The Genetic Information Nondiscrimination Act (GINA) protects applicants and employees from discrimination based on genetic information. GINA also restricts employers' acquisition of genetic information and strictly limits disclosure of genetic information.

# **Administrative Process for Complaints of Illegal Discrimination**

## **Precomplaint Process**

If you are a Postal Service employee or applicant for Postal Service employment and believe you have been discriminated against because of your race, color, religion, genetic information, national origin, sex (including pregnancy, sexual orientation, and gender identity, including transgender status), sex, age (40+), physical or mental disability or in retaliation for involvement in protected EEO activity, you have the right to file an EEO complaint with the Postal Service. You must take part in the EEO precomplaint process before filing a formal EEO complaint. The purpose of the precomplaint process is to advise you of your rights and responsibilities under the EEO process, to identify your claims, and to try to resolve the matter informally.

## **Beginning the EEO Process in a Timely Manner**

To begin the precomplaint process, you must contact the Postal Service Equal Employment Opportunity Office through the online Postal Service EEO eFile application at <https://efile.usps.com> (preferred), or by writing to: NEEOISO – EEO



Contact Center, PO Box 21979, Tampa FL 33622-1979, within 45 calendar days of the alleged discriminatory action, or in the case of a personnel action, within 45 calendar days of the effective date of the action. See 29 CFR 1614.105. A written request to initiate the precomplaint process will be considered timely if it is postmarked within 45 calendar days of the alleged discriminatory action, or in the case of a personnel action, within 45 calendar days of the effective date of the action.

If you request EEO counseling via mail, a package of EEO information and forms will be sent to you. After you complete and return the applicable forms to the address provided, an EEO Alternative Dispute Resolution (ADR) Specialist will contact you. If you fail to return the forms within 10 calendar days of receiving them, the EEO office may close the precomplaint process because the EEO ADR Specialist does not have enough information to process your counseling request.

~~To begin the precomplaint process, you must contact the Postal Service Equal Employment Opportunity Office using the central toll-free telephone number within 45 calendar days of the alleged discriminatory action, or in the case of a personnel action, within~~

*What You Need To Know About EEO*

~~45 calendar days of the effective date of the action.  
See 29 CFR 1614.105. The central telephone  
number is:~~

~~888-EEO-USPS (888-336-8777)~~

~~TTY: 888-325-2914~~

~~When you call, an automated answering system will  
ask you to give your name, social security or employee  
identification number, home (mailing) address,  
telephone number, and finance number. A packet of  
information that includes PS Form 2564-A, *Information  
for Precomplaint Counseling*, will be mailed to you.~~

~~Once you receive and read the information packet, you  
should decide if you want to move forward with the  
complaint process. If you decide to do so, you should  
send back all relevant forms within 10 calendar days  
after you received them to the address listed in your  
information packet. After you return the forms, an EEO-  
Alternative Dispute Resolution (ADR) Specialist will  
contact you and continue the precomplaint process as  
described in this booklet.~~

~~If you fail to return the forms within 10 calendar days  
of receiving them, the EEO office may close the  
precomplaint process because the EEO ADR Specialist  
does not have enough information to process your  
counseling request.~~

## **Representation**

You may designate a representative at any stage of the complaint process, including the precomplaint counseling stage. However, your designation of a specific representative may not cause unreasonable delay to the EEO process or unwarranted expense to the Postal Service. Further, the designation of a representative that may create a conflict of interest may not be allowed. You must designate your choice of a representative in writing.

## Official Time

Employee complainants and their designated representatives, if also employed by the Postal Service, may expect a reasonable amount of official time to present the complaint and to respond to agency requests for information, if they are in a duty status. The term *duty status* refers to an employee's normal hours of work. What constitutes a reasonable amount of official time may vary from case to case. However, with regard to preparation time, *reasonable* refers to hours or portions of hours. Employees seeking official time for EEO-related matters must receive advance approval from their immediate supervisors.

If Postal Service officials or EEOC officials require their attendance, employee complainants and their designated employee representatives may attend EEO meetings or hearings on official time. Postal Service employees seeking official time to attend an EEO meeting must present written requests within a reasonable amount of time to their immediate supervisors before the scheduled meeting.

## Maintaining Anonymity

You may remain anonymous during the precomplaint process. If you request anonymity, the EEO office will honor your request. However, in some instances, such as certain harassment cases, the EEO office is required to divulge information regarding your precomplaint to human resources and/or other appropriate officials.

## Taking Part in the Precomplaint Process — Counseling

The EEO ADR Specialist explains the EEO complaint process including time frames, your rights and responsibilities in the process, and appeal procedures. The EEO ADR Specialist also works with you to identify and define your claim(s). Your claim(s) is(are) the action(s) that caused you to believe you were discriminated against. In addition, the EEO ADR

Specialist explains your option to engage in REDRESS mediation during the precomplaint process. See the next section for more information about REDRESS. The EEO ADR Specialist is a neutral party and is not permitted to act as an advocate for either you or the Postal Service.

The EEO ADR Specialist conducts informal counseling inquiries and does not usually obtain extensive documentation or written testimony. The EEO ADR Specialist generally conducts EEO counseling by telephone, but may conduct it by mail or in person. During counseling inquiries, the EEO ADR Specialist usually communicates separately with you and the other party in the dispute. However, if both parties agree, the EEO ADR Specialist may communicate or meet with you and the other party at the same time.

The EEO ADR Specialist makes necessary inquiries of Postal Service employees and supervisors. He or she also reviews relevant agency regulations and documents, including comparative employee data, to help him or her understand the issues and resolve the matter. The EEO ADR Specialist cannot reveal the identity of the comparative individuals.

The goal of counseling is an agreeable resolution to the issue. In trying to resolve your dispute, the EEO ADR Specialist may discuss settlement alternatives with you and the representative of the Postal Service. Settlement discussions are confidential. A willingness to discuss resolution does not suggest that either party feels that his or her position is wrong or weak.

- If the matter is not resolved within 30 calendar days from the date you filed using efile or the postmark date, if you made your request via mail, or which you first called the central toll-free telephone number seeking EEO counseling, the EEO ADR Specialist may ask you to agree to extend the counseling period. The extension cannot be longer than 60 calendar days, resulting in no more than 90 total calendar days in the counseling period. Your agreement to extend the counseling period must be in writing.

- If the matter is not resolved at the end of the counseling period, including the extended period (if you have agreed to it), the EEO ADR Specialist conducts a final interview and issues you a notice of right to file a formal complaint. The notice is generally issued by mail.

## **REDRESS — A Conflict Resolution Process**

When you seek EEO counseling, the EEO ADR Specialist will tell you about REDRESS, an alternative dispute resolution process that provides an opportunity for you and the appropriate management official to discuss your complaint with the help of a professionally trained mediator. REDRESS mediators are not employees of the Postal Service. REDRESS mediators help the parties to identify the core issues of their dispute and explore possible solutions. Employees usually find this opportunity for direct communication and conflict resolution satisfying and effective.

Your participation in REDRESS is voluntary and may be done on the clock. The Postal Service pays the cost of the mediator. The mediator keeps everything said in mediation confidential.

Some issues are not appropriate for REDRESS. The EEO office will tell you when the issue you have raised is inappropriate.

When the EEO ADR Specialist offers you the option to take part in REDRESS and you agree in writing to do so, the precomplaint processing period is 90 calendar days from the date of your initial contact with the EEO office.

- If the matter is not resolved within 90 calendar days, the EEO ADR Specialist issues you a notice of your right to file a formal complaint.
- You may have discussed many issues during your REDRESS mediation session, but only those issues that you included in your timely request for EEO counseling and discussed with the EEO ADR Specialist may be included in a formal EEO complaint.

## Formal EEO Complaint Process

### Losing Your Right to Anonymity

If you decide to file a formal EEO complaint, your identity will not be kept confidential during the formal complaint process. When a complaint reaches the formal stage, the complaint file may be opened to those parties who are involved and who require access to it.

### Filing a Formal EEO Complaint in a Timely Manner

To file a formal complaint, you must put your complaint in writing and sign it. Your attorney, if one represents you, may sign it instead. If someone who is not an attorney represents you, you must sign the complaint yourself and designate your representative in writing.

EEOC regulations require that EEO complaints against the Postal Service must be filed with the Postal Service.

- You may use PS Form 2565, *EEO Complaint of Discrimination in the Postal Service*, to file your formal EEO complaint.
- To be timely, you must mail your formal EEO complaint to the National Equal Employment Opportunity Investigative Services Office (NEEOISO) postmarked no later than 15 calendar days after you receive PS Form 2579, *Notice of Right to File*. Following is the address to which you must mail your complaint:

NEEOISO — FORMALS  
U S POSTAL SERVICE  
PO BOX 21979  
TAMPA FL 33622-1979

## **Prohibition Against Using Penalty Envelopes and Limited Use of Postal Service Equipment**

Do not mail your complaint in a penalty envelope printed with the official mail emblem to avoid payment of postage. If you do, you may be subject to a \$300 fine.

Any use of Postal Service computers or office equipment such as photocopiers or facsimile machines to prepare or send EEO complaint documents must comply with the Postal Service policy concerning the limited personal use of office equipment and technology.

## **Changing Your Mailing Address**

If you change your mailing address, notify the EEO office by writing to:

NEEOISO  
U S POSTAL SERVICE  
PO BOX 21979  
TAMPA FL 33622-1979

It is your responsibility under EEO regulations to keep the Postal Service informed of your current address. If you do not respond to requests or notices are sent to the wrong address, your complaint may be dismissed.

## **Receiving Acknowledgment and Acceptance of the Complaint**

The Postal Service's complaint processing office will send you a letter to acknowledge that your complaint was received. You also will receive a separate letter telling you if the claim or claims in your complaint were accepted for investigation. If your entire complaint is not accepted, you will receive a letter explaining the reasons for the dismissal of your complaint and outlining your appeal rights should you disagree. (See *Appealing the Decision or Filing a Civil Action* on page 16.)

If the Postal Service believes that some but not all of the claims in your complaint should be dismissed, you will receive a letter outlining the claims that will be investigated and identifying the claims that will be dismissed. You may not appeal the dismissed claims at that time. The letter you receive will explain when and how you may appeal any dismissed claims.

## **Waiting for Investigation of the Complaint**

If the Postal Service accepts your complaint or any part of it, the Postal Service assigns the complaint to an EEO complaint investigator. The EEO complaint investigator collects factual information about the accepted issues and prepares a report. The EEO complaint investigator is responsible for gathering evidence. He or she does not take the side of any of the parties involved in the dispute. Complaint investigations are performed by contractors who are not Postal Service employees. The investigative report does not contain the complaint investigator's opinion on the merits of the case or his or her conclusion on a claim of discrimination.

While your case is in the investigative stage, you may ask to amend the issues originally accepted so the report includes an investigation into like or related issues. Your request must be put in writing and mailed or delivered to NEEOISO at the following address:

NEEOISO — FORMALS  
U S POSTAL SERVICE  
PO BOX 21979  
TAMPA FL 33622-1979

You should make your request within 45 calendar days of the date of the incident that you believe was discriminatory, or if a personnel action, within 45 calendar days of the effective date of the action. The Postal Service uses the postmark date to determine the timeliness of your request. The Postal Service will reply to your request to amend your complaint.



If you wish to document that the Postal Service received your amendment request, you may mail it using Certified Mail,<sup>™</sup> Delivery Confirmation,<sup>™</sup> or another service that provides documentation of the addressee's receipt of the piece of mail. If you have more than one complaint at the formal stage, the Postal Service may consolidate them into one investigation.

If you are dissatisfied with the way the Postal Service is processing your complaint, you may put your objections in writing and then mail your letter to NEEOISO at the following address:

NEEOISO  
U S POSTAL SERVICE  
PO BOX 21979  
TAMPA FL 33622-1979

You will receive a written response. The Postal Service will add both your letter of objection and the Postal Service's written response to the investigative case file.

The EEO complaint investigator typically completes the investigation within 180 calendar days of the date the complaint was filed, unless you and the Postal Service voluntarily agree in writing to extend the time up to an additional 90 calendar days.

However, if two or more complaints are consolidated for investigation, or if a complaint under investigation is amended to include additional like or related issues, the investigation may continue for up to 360 calendar days after the filing date of the original complaint.

## **Cooperating With the EEO Complaint Investigator**

The EEO complaint investigator takes testimony from relevant persons in affidavit form under penalty of perjury. Your appointed representative may help draft the language for your affidavit, but only you can sign it. Your statement must be true and correct.

The EEO complaint investigator asks you to provide evidence about the remedies to which you believe you are entitled. You must provide relevant evidence about the remedies, including medical reports and other personal documents.

There are penalties for making false statements. Section 1001, Title 18 of the United States Code states that whoever, in any matter within the jurisdiction of the executive branch of the United States government, which includes the Postal Service, knowingly and willfully does the following:

*...falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years or both.*

Providing information that an EEO complaint investigator requests is mandatory both for you and any Postal Service employee witnesses. If you do not provide the information the EEO complaint investigator requests, your complaint may be dismissed.

### **Filing Both a Complaint and a Grievance**

If you file an EEO complaint and a grievance covering the same matter, the Postal Service may defer processing the EEO complaint until the grievance procedure ends. The Postal Service will notify you in writing if it decides to defer your case.

## **Requesting a Final Postal Service Decision or an EEOC Hearing Before the Postal Service Issues a Final Action**

When the investigation is complete, you will receive a copy of the investigative file and a notice explaining your options at this point in the EEO process. The notice explains that within 30 calendar days of the

date you receive the investigative file, you may request either a hearing before the EEOC or a final Postal Service decision without a hearing based on the EEO case file (a merit final agency decision).

## **Procedures for Requesting an EEOC Hearing**

To request an EEOC hearing, send your request directly to the EEOC District or Field Office that serves your geographic area within 30 calendar days of your receipt of the investigative file. Be sure to send a copy of your request to the Postal Service NEEISO office at the same time. The addresses of both offices will be included in the letter that you receive with your investigative file.

If you request a hearing in a timely manner, the Postal Service will send your EEO complaint file to the EEOC. The EEOC then decides whether it will conduct a hearing on some or all of the issues in the case or whether an EEOC administrative judge will issue a decision based on the record in the case. In either case you will receive a decision from an EEOC administrative judge.

The EEOC administrative judge will send the hearing record, if applicable, and copies of his or her decision containing findings of fact and conclusions of law to you and to the Postal Service. The Postal Service has 40 calendar days from the date of its receipt of the administrative judge's decision to issue you its Notice of Final Action (final action) on your EEO case.

The Postal Service's final action may be to implement the administrative judge's decision, in full or in part, or to decline to implement the administrative judge's decision. If the Postal Service decides that its final action will not fully implement the administrative judge's decision, then the Postal Service must file an appeal with the EEOC. The Postal Service will mail its final action to you and provide you with applicable appeal rights within 40 calendar days of its receipt of the administrative judge's decision.

## **Procedures for Requesting a Postal Service Decision (Merit Final Agency Decision)**

To request a final agency decision from the Postal Service without a hearing based on your case file, (a merit final agency decision) send your request directly to NEEOISO within 30 calendar days of your receipt of the investigative report. The applicable address for NEEOISO will be included in the notice that you receive with your investigative file. The Postal Service will issue a merit final agency decision on your EEO complaint with applicable appeal rights within 60 calendar days of receiving your request.

## **Procedures When You Fail to Make a Request**

If you do not request either a hearing by the EEOC or a merit final agency decision by the Postal Service, you will receive a merit final agency decision by the Postal Service within 60 calendar days of the end of the 30-day period that you were given to respond to the notice explaining your options.

## **Appealing the Decision or Filing a Civil Action**

### **Appealing to the EEOC Office of Federal Operations**

#### **Dismissal**

If your entire complaint was not accepted for investigation and you receive a Postal Service final agency decision dismissing it, you may appeal the dismissal decision to the EEOC Office of Federal Operations (OFO) within 30 calendar days of receipt of the dismissal.

### Final Agency Action After a Hearing (Decision by an EEOC Administrative Judge)

After an administrative judge issues a decision without a hearing or a decision following a hearing, you should receive a final action from the Postal Service regarding the administrative judge's decision. You have 30 calendar days from the date you receive the Postal Service's final action to appeal that final action or to appeal the EEOC administrative judge's decision to the OFO.

If the Postal Service does not issue a final action within 40 calendar days from the date it receives the administrative judge's decision, you may appeal the administrative judge's decision to the OFO within 30 calendar days of the expiration of the Postal Service's 40-day review period.

### Merit Final Agency Decision After Investigation

If you receive a merit final agency decision from the Postal Service following the conclusion of the investigation, you may appeal that final agency decision to the OFO within 30 calendar days of the date you receive it.

### Appeal Form and Process

Send appeals to the OFO on EEOC Form 573, *Notice of Appeal/Petition to the Equal Employment Opportunity Commission*. This form and the address for the OFO will be provided to you with any final agency action or final agency decision you receive. EEOC Form 573 can also be found at [www.eeoc.gov](http://www.eeoc.gov).

You must send a copy of your EEOC Form 573 appeal to the Postal Service on the same day you send that appeal to the OFO. You must be able to provide proof that you sent a copy to the Postal Service. Send the copy of your EEOC Form 573 appeal to the Postal Service at the following address:

NEEOISO — APPEALS  
U S POSTAL SERVICE  
PO BOX 21979  
TAMPA FL 33622-1979

### **Timeliness**

If your representative is an attorney, the deadline for filing an appeal with the OFO begins when your attorney receives the Postal Service's final agency decision or final action. If you are not represented by an attorney during the complaint process, your deadline for filing an appeal with the OFO begins when you receive the final agency decision or final action.

### **Filing a Civil Action**

You may file a civil action in an appropriate United States district court:

- Within 90 calendar days of receipt of either the Postal Service's final action on the complaint or its final agency decision provided you have not appealed to OFO as described above
- After 180 calendar days from the date of filing your formal complaint if you have not filed an appeal with the OFO and the Postal Service has not issued you a final action regarding an administrative judge's decision or issued you a final agency decision.
- Within 90 calendar days after you receive the OFO's final decision on appeal.
- After 180 calendar days from the date of filing an appeal with the OFO if the OFO has not issued a final decision.

## **Age Discrimination in Employment Act Cases**

### **Option to File a Formal EEO Complaint or a Civil Action**

If you believe that you have been discriminated against based on age (40 years or older), you have the right to either: (1) file a formal EEO complaint under the EEO administrative complaint processing procedures described in this booklet, or (2) bypass the EEO

administrative complaint processing procedures and file a civil action in the appropriate United States District Court pursuant to the Age Discrimination in Employment Act (ADEA).

## Filing an ADEA Civil Action

If you decide to file a civil action, first you must give the EEOC a written notice of intent to sue under the ADEA. You must file the notice with the EEOC within 180 calendar days of the date of the action you believe to be discriminatory. When you have filed the notice of intent to sue in a timely manner, you must wait at least 30 calendar days before filing a civil action.

Notices of intent to sue must be filed in writing with the EEOC. Mail the notice of intent to sue under the ADEA to:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
OFFICE OF FEDERAL OPERATIONS  
FEDERAL SECTOR PROGRAMS  
PO BOX 77960  
WASHINGTON DC 20013-8960

Alternatively, if the notice is 10 pages or fewer, you may fax it to: 202-663-7022

The notice of intent to sue should be dated and must contain the following information:

- 1 Statement of intent to file a civil action under Section 15(d) of the Age Discrimination in Employment Act of 1967, as amended.
- 2 Name, address, and telephone number of the employee or applicant.
- 3 Name, address, and telephone number of the complainant's designated representative, if any.
- 4 Name and location of the Postal Service facility where the alleged discriminatory action occurred.
- 5 Date on which the alleged discriminatory action occurred.

6 Statement of the nature of the alleged discriminatory actions.

7 Signature of the complainant or complainant's representative.

**Reminder:** After the notice of intent to sue is timely filed, you must wait at least 30 calendar days before filing your civil action.

How long you have after that to file your civil action depends on the law where your civil action will be filed, so it is *important* that you consult with an attorney to make sure your civil action is filed on time.

## Filing a Formal EEO Complaint Under the ADEA

If you choose to file a formal EEO complaint under the EEO administrative complaint processing procedures, you must complete certain steps in the EEO administrative process before you may file a civil action in a United States District Court. You may file a civil action in an appropriate United States District Court only:

- ▣ Within 90 calendar days of receipt of either the Postal Service's final action on the complaint or its final agency decision, provided you have not appealed to OFO.
- ▣ After 180 calendar days from the date of filing your formal complaint if you have not filed an appeal with the OFO and the Postal Service has not issued you a final action regarding an administrative judge decision or issued you a final agency decision.
- ▣ Within 90 calendar days after you receive the OFO's final decision on an appeal.
- ▣ After 180 calendar days from the date of filing an appeal with the OFO if the OFO has not issued a final decision.



## Equal Pay Act Cases

You may file an Equal Pay Act (EPA) wage discrimination lawsuit in a court of competent jurisdiction without filing a sex-based administrative complaint under the EPA or Title VII. Alternatively, you may choose to file a sex-based administrative complaint of wage discrimination with the Postal Service under the EPA, Title VII, or both.

## Mixed EEO and Merit Systems Protection Board Cases

### Definition of Mixed Case

A *mixed case* occurs when an employee has an action that is appealable to the Merit Systems Protection Board (MSPB) and also is appealable through the EEO complaint process because the employee claims the action was taken as the result of discrimination based on race, color, religion, genetic information, national origin, sex (including pregnancy, sexual orientation, and gender identity, including transgender status), sex, age (40+), physical or mental disability or in retaliation for involvement in protected EEO activity. If you have a mixed case, you have the option of filing a mixed-case appeal with the MSPB or filing a mixed-case EEO complaint with the Postal Service, but not both.

### Examples of Mixed Cases

The following actions are appealable to the MSPB by Postal Service employees:

- ▣ Failure to restore to duty after full or partial recovery from a compensable work-related injury.
- ▣ Adverse personnel action against an employee with 1 or more years of current continuous service in the same or a similar position and who is one or both of the following:

- Eligible for veterans' preference.
- An employee covered by Public Law 100-90, Postal Employee Appeal Rights Act of 1987, which includes postmasters, employees in supervisory positions, a limited group of management employees, and some employees in confidential positions

Adverse personnel actions include:

- Suspension of more than 14 days.
- Reduction in grade, pay, or both.
- Furlough of 30 days or less.
- Constructive discharge.
- Removal.
- Reduction in force (only if the employee is a preference eligible).

If any of these actions occurred and you believe the Postal Service acted because of discrimination, you have a mixed case.

## Processing Mixed-Case Complaints

You may receive precomplaint counseling on mixed-case issues, but you may not file both a formal EEO mixed-case complaint with the Postal Service and a mixed-case appeal with the MSPB at the same time. What you choose to do first, that is, file an appeal with MSPB or file a formal EEO complaint of discrimination, determines where and how your claim is processed.

## Filing a Mixed-Case Appeal With the MSPB

If you are eligible to file an appeal with the MSPB, and you decide to do so, you must file your appeal within 30 calendar days of the adverse disciplinary or personnel action involved. Additional information on how to file an MSPB appeal can be found at [www.mspb.gov](http://www.mspb.gov).

If you file a mixed-case appeal and it is accepted by the MSPB:

- ▣ You may request a hearing from the MSPB. You will receive a final MSPB decision.
- ▣ You may appeal the final MSPB decision regarding the alleged discriminatory act to the EEOC OFO. You will not receive a hearing by the EEOC on your appeal — you will receive a written EEOC OFO decision.
- ▣ If the EEOC OFO written decision on your appeal differs from the final MSPB decision, and the MSPB does not adopt the EEOC's decision on your appeal, the matter will be referred to a Special Panel.
- ▣ At each of the appeal steps shown above, the complainant may choose to file a civil action in district court instead of choosing the next administrative appeal step. That is, the complainant may file a civil action within 30 calendar days of his or her receipt of: (1) the final MSPB decision, (2) the EEOC OFO decision, or (3) the decision of the Special Panel.
- ▣ If your appeal is dismissed by the MSPB for lack of jurisdiction, you will have the right to process your discrimination complaint through the formal EEO complaint process.

### **Filing a Mixed-Case EEO Complaint With the Postal Service**

If you decide to file a formal mixed-case EEO complaint with the Postal Service you must participate in the precomplaint process. If your issues are not resolved in the precomplaint process, then you must follow the usual procedures for filing a formal EEO complaint as outlined in your notice of right to file a formal complaint.

If your formal EEO complaint is accepted, it will be assigned to an EEO complaint investigator. After the investigation is completed, you will receive a copy of the investigative file and a notice advising you that you will receive a merit final Postal Service decision within 45 calendar days. *You do not have the option*

to request a hearing from the EEOC in a mixed-case complaint. For mixed-case complaints, both the investigation and the merit final agency decision should be completed within 120 calendar days of the date you filed your formal complaint.

You may appeal the Postal Service merit final agency decision as follows:

- Within 30 calendar days of your receipt of the final Postal Service decision, you may appeal that decision to the MSPB (not the EEOC). If you appeal the final Postal Service decision to the MSPB, you may request a hearing from the MSPB. You will receive a final MSPB decision.
- If you appealed the Postal Service final agency decision to the MSPB and disagree with the final MSPB decision on your appeal, you may appeal the final MSPB decision regarding the discrimination aspects of your case to the EEOC OFO.
- If the EEOC OFO written decision on your appeal differs from the MSPB decision, and the MSPB does not adopt the EEOC OFO decision on your appeal, the matter will be referred to a Special Panel.
- At each of the appeal steps shown above, the complainant may choose to file a civil action in district court instead of taking the next step in the administrative appeal process. That is, the complainant may file a civil action within 30 calendar days of his or her receipt of: (1) the final Postal Service decision, (2) the MSPB's final decision, (3) the EEOC OFO decision, or (4) the decision of the Special Panel.

**Note:** If you do not receive a Postal Service merit final agency decision within 120 days of the date you filed your EEO mixed-case complaint, you may appeal the matter to the MSPB.

## Withdrawals and Settlements

You may withdraw or settle a complaint at any stage of the process.

### Withdrawing a Complaint

If you decide to withdraw a complaint, put your withdrawal in writing and sign it. If you are withdrawing your complaint during the precomplaint process, mail your written withdrawal to the EEO ADR Specialist who counseled you. If you withdraw your complaint during the formal complaint process, mail your withdrawal to:

NEEOISO  
U S POSTAL SERVICE  
PO BOX 21979  
TAMPA FL 33622-1979

### Settling a Complaint

Postal Service practice is to settle complaints informally through good faith negotiation and mutual agreement whenever possible and practicable. When you agree to settle a complaint, you are agreeing that you have received something that has value to you—in other words, something that has merit, desirability, or importance to you.

- If you wish to do so, you may seek the advice of an attorney or other qualified representative before you agree to settle your EEO complaint.
- If you agree to settle a complaint based on one or more stipulations, these must be written down, agreed on, and signed both by you and a management designee.
- EEOC regulations specify the procedures to follow if either party comes to believe the settlement agreement has been breached. Read the EEOC settlement agreement procedures for further information or consult the EEO office.

## **Offer of Resolution**

The Postal Service may make an offer to resolve your EEO complaint by providing you appropriate relief. Such an offer is made in writing and explains the consequences of rejecting it. If you reject an offer, your rejection could serve to limit the Postal Service's liability for attorney's fees and other compensation from the date of the offer of resolution forward if there is a finding of discrimination in your EEO case.

## **Remedies**

If there is a finding of discrimination in your EEO case, the remedies may include requiring the Postal Service to:

- ▣ Post a notice to all employees advising them of their rights under the laws the EEOC enforces and their right to be free from retaliation.
- ▣ Take corrective or preventive actions to cure or correct the source of the identified discrimination
- ▣ Nondiscriminatorily place you in the position you would have occupied if the discrimination had not occurred.
- ▣ Pay compensatory damages (may not exceed \$300,000)
- ▣ Pay back pay (with interest if applicable) and lost benefits.
- ▣ Pay some or all of your attorney's fees.
- ▣ Stop the specific discriminatory practices involved.

## Remedies Not Available to You Under the Law

The following remedies are not available to federal employees in discrimination cases:

- ▣ Punitive damages.
- ▣ Attorney's fees during the administrative process if:
  - ▣ The fees are incurred before you file a formal complaint, unless the complaint goes to a hearing, the administrative judge finds in your favor, the Postal Service decides not to carry out that decision and appeals to EEOC, and EEOC agrees with the administrative judge.
  - ▣ You fail to notify the Postal Service that an attorney is representing you.
  - ▣ Your finding of discrimination is based only on age or is based only on an Equal Pay Act claim.
- ▣ Compensatory damages if discrimination is found only on the basis of age or only on the basis of the Equal Pay Act.
- ▣ Compensatory damages if discrimination is found based on a failure to provide a reasonable accommodation under the Rehabilitation Act if the Postal Service made a good faith effort to provide a reasonable accommodation.

## Interim Relief

If you prevail before an administrative judge in an EEO complaint involving termination or indefinite suspension and the administrative judge orders retroactive restoration, you are entitled in most cases to return to work temporarily if the Postal Service appeals the administrative judge's ruling, pending the outcome of the Postal Service's appeal. You may decline this interim relief if you wish.

If you want to return, the Postal Service could decide that returning you to the workplace during its appeal would be unduly disruptive. If the Postal Service makes that determination, its decision is not reviewable, but the Postal Service would still be required to provide you with the pay and benefits you would have received had you actually returned to work while the Postal Service's appeal is pending.

### **Your Duty to Mitigate Back Pay Awards**

If you are awarded back pay, you must provide information about your efforts to secure other employment during the entire back pay period.

If you prevail in an EEO complaint involving separation or indefinite suspension, and you return to work for the Postal Service, you are not required to provide any information about your inability to secure other employment during the first 45 calendar days of your separation or suspension. After that time, your back pay will be reduced to reflect:

- Salary you earned or could have earned through reasonable diligence during the period of separation or indefinite suspension.
- Salary you could not have earned during any period in which you were not ready, willing, and able to return to duty because you were ill or injured.
- Salary for any period during which you were unavailable to return to duty for reasons that are not related to unlawful discrimination.