

## **Guidelines for Use of Official Time and Agency Resources Equal Employment Opportunity (EEO) Complaints**

On occasion, the Research, Education, and Economics (REE) mission area employees involved in the EEO complaint process may request official time to process their respective EEO complaints. Official time is time granted to an employee without charge to leave or loss of pay, when the employee would otherwise be in a duty status. Currently, employees are authorized official time to participate in EEO counseling, Alternative Dispute Resolution (ADR), EEO investigations, Administrative Hearings, etc. Official time should be granted to a complainant and his/her representative who are employees of the Agency and when otherwise in a pay status and an Agency employee who is a witness in a complaint regardless of whether the complaint is in the employee's Agency or another USDA Agency. The employee must be in a duty status and his/her presence must be authorized or required by the EEOC or Agency officials in connection with a complaint. The decision to grant official time to an employee rests with the employee's manager/supervisor.

Equal Employment Opportunity Commission (EEOC) regulations require managers and supervisors to allow complainants who are employees "a reasonable amount of official time, when in official duty status, to prepare their respective EEO complaints and to respond to agency and EEOC requests for information." EEOC Management Directive (MD)-110, defines "reasonable" as "whatever is appropriate under the circumstances of the complaint." For example, an employee may need additional time to meet with his/her representative, participate in settlement negotiations, meet with an EEO investigator, etc. Although the actual number of hours approved will vary according to the circumstances of the case, managers and supervisors should always consider the need for employees to be available to perform work on a regular basis. When official time is requested, it is important that the employee and the supervisor arrive at a mutual understanding as to the amount of official time to be used prior to the employee's use of such time.

The following guidance is provided.

### **1. Informal and Formal EEO Complaint Preparation and Presentation**

A minimum amount of four hours of official time will be allowed for an employee to make contact, discuss, and meet to attempt resolution of pre-complaint issues with EEO Counselors and/or Alternative Dispute Resolution (ADR) mediators. Additional time may be granted on a case by case basis. Time may be granted for an employee to prepare for an initial pre-complaint contact, including time to discuss issues with the employee's representative. Official time for such purposes will typically include time to assemble documents to be submitted in conjunction with the complaint; time at the employee's official duty station to meet in person with or to contact via telephone the employee's representative; and time to write the complaint.

At the formal stage, official time will be granted to employees to prepare responses to questions or information requests from persons or individuals responsible for processing and/or attempting to resolve EEO complaints (e.g., EEO Counselor, Agency Representative, Agency/contract Mediator, contract EEO investigator, designated resolving official, Office of the General Counsel Attorneys, EEOC, USDA Office of Adjudication and Compliance, etc.)

### **2. Meetings and Hearings**

Official time is permitted for employees to travel and attend meetings initiated by EEO Counselors, EEO complaint investigators, ADR mediators and other agency officials authorized to discuss and/or attempt EEO complaint resolution. A reasonable amount of official time may be permitted for employees to prepare for such meetings with or without a designated representative. Although individual circumstances may vary, the need for large amounts of time to prepare for meetings and hearings is expected to be rare, being defined in terms of hours (versus days or weeks). Official time is also permitted for employees to attend agency or EEOC initiated meetings or hearings which may last an entire day. An employee who is a witness shall be afforded official time when testimony is required, either in person or by sworn affidavit or declaration.

### 3. Official Time Authorization

Since all duty hours reported on time and attendance records must be certified by the employee's supervisor, employees requesting official time in conjunction with preparing an EEO complaint must obtain prior approval. Employees are expected to provide their supervisor with sufficient information to determine if the amount of time being requested is reasonable. Requests must be made and approved in writing but need not reveal confidential case information. If necessary, additional time can be negotiated by the supervisor and the employee. The supervisor must document the approval of additional time in writing and provide a copy to the employee. Other than union representatives whose use of official time is established under contract provisions, supervisors may set limits on the aggregate amount of time their employees may spend representing others to ensure continued normal work operations. Supervisors and employees are encouraged to consult with the Agricultural Research Service (ARS), Office of Outreach, Diversity, and Equal Opportunity (ODEO), their servicing Employee Relations Specialist, or their Agency Civil Rights Director with any questions pertaining to official time requests, especially if such requests exceed 8 hours.

If any official time is denied, a written statement will be required from the supervisor containing the reason for the denial. A copy will be provided to the complainant and to ODEO for inclusion in the EEO complaint file.

### 4. Agency Provided Resources

An employee has the right to a representative of his or her choosing during the EEO process. An Agency employee may serve as another employee's representative, provided that a written designation has been submitted and that the representative's functions do not constitute a conflict or apparent conflict of interest with the employee representative's official or collateral duties.

EEOC MD-110 outlines the following general rule regarding a complainant's use of government property in pursuing a discrimination complaint: "The complainant's or complainant's non-attorney representative's use of government property (copiers, telephones, word processors) must be authorized by the agency and must not cause any undue disruption of agency operations." (Chapter 6, Section VIII (E).