

SSC Supervisor's Guide to EO

This guide is intended to provide general assistance to supervisors when there are questions regarding equal opportunity (EO) issues in the workplace. It is written for quick reference and if you have specific issues to be dealt with, it is best to contact the Office of Diversity and Equal Opportunity (ODEO) or check one of the links incorporated into this guide for more detail. The Federal Regulations concerning discrimination complaints processing for the Federal Sector may be found at <http://www.eeoc.gov/federal/index.cfm>

Please keep in mind that the Diversity and Equal Opportunity (DEO) Officer is always available to you to discuss issues or provide guidance in confidence. You may reach Jo Ann Larson, DEO Officer, at 688-2079 or stop by the ODEO in Building 1100, Room 11147.

Being a supervisor is not always an easy job, and when personnel issues and complaints surface, the job can be even more difficult. It is hoped that this brief guide will give you some insight into the EO processes and help answer your questions.

Introduction

It is the policy of the NASA John C. Stennis Space Center (SSC) to provide equal employment opportunities for all qualified persons. SSC prohibits discrimination because of race, color, religion, national origin, physical or mental disability, sex, age, or genetic information. SSC, through affirmative plans of action, seeks the full realization of the public policy governing equal employment opportunity. All SSC employees, supervisors, and managers are expected to abide by the spirit of the program as well as adhere to the letter of the EO laws and regulations (see <http://www.eeoc.gov/federal/index.cfm>).

EO Complaint Process

EO is the right of all persons to work and advance on the basis of merit, ability and potential. EO policies provide all employees, applicants for employment, and contingent workers the right to be treated fairly and equally.

Supervisors should be aware of basic EO regulations and strive to build an organization that is free of all types of discrimination, where the diversity of the organization is valued and appreciated, and all individuals are respected.

As a supervisor, your actions and your ability to communicate with your employees provide you with the opportunity to set an example in the workplace. If your treatment of employees and your interviewing and selection process are fair and consistent, you will gain the respect of your organization and your example will be passed on to the workforce.

SSC's EO Counseling (<http://www.eeoc.gov/federal/directives/md110/chapter2.html>) Program is the first step that an employee, applicant for employment, or contingent worker should take when they feel that they have been discriminated against based on their race, color, religion, sex

(including sexual harassment), age, national origin, disability, reprisal, or genetic information. The discrimination complaints process is an administrative procedure (<http://www.eeoc.gov/federal/directives/md110.cfm>) that provides employees the opportunity to contact an EO Counselor and discuss allegations in confidence. EO Counselors are neutral in the process and are not on the side of the aggrieved individual or management. An aggrieved individual should never be discouraged from seeking the advice of a counselor, in fact, as a supervisor you should keep in mind that an employee has the legal right to seek redress if they feel discriminated against. Your first step, of course, should be to attempt to resolve issues before they get to the EO complaint stage.

A counselor must have permission to reveal an aggrieved individual's name, so if a counselor is asking you questions but won't reveal the identity of the person they are talking about, it is because the individual chose to remain anonymous. Supervisors, on the other hand, do not have the right to anonymity when responding to a counselor's questions and the information provided may be used in a counselor's report if there is no resolution and a formal complaint is filed. The best practice is to be honest with the counselor and answer questions to the best of your recollection. If you don't remember an event, it is okay to say so. If you ever have concerns about a counselor visiting your office, please feel free to contact the DEO Officer and discuss those concerns.

EO Counselors assist the Center with the EO complaints process, and have been trained in EO laws, regulations, and procedures. They meet with employees, listen to their allegations, inform them of their legal rights and advise them of the EO regulations and guidelines. They are limited to a 30-calendar day period in which to do limited fact finding into the employee's allegations. During this informal part of the process, the goal is to resolve issues at this lowest possible level. Supervisors are a valuable source of resolution possibilities. If legitimate circumstances cause counseling delays, the aggrieved individual may request a short extension to the 30 days and the DEO Officer has the authority to grant the request if it appears that a resolution is possible.

As a supervisor, you should work with EO counselors and assist them as much as possible in an attempt to resolve issues and complaints during this informal part of the process. By resolving issues early, everyone involved is able to resume working without the disruptions that can be caused by EO processing of a formal complaint. A complaint of discrimination that moves from the informal stage to the formal stage may take years to settle and can cause workplace disruptions and take a great deal of the supervisors, co-workers and other management officials time. Good communication with employees is the best way to avoid complaints.

There are EO posters on official bulletin boards throughout the Center that address the counseling process and have the counselor's information on them. If an employee comes to you and wants to file an EO complaint, you should refer them to the information on the poster or have them contact the ODEO at 688-2079. As a supervisor, you may also contact the DEO Officer to discuss possible issues in confidence, and by doing so, you may eliminate the source of a potential complaint. Since an employee only has 45 calendar days from an event to contact a counselor, it is very important that you take this into consideration, even if you are working with the employee to attempt to resolve issues.

A counselor will also explain the Agency Alternative Dispute Resolution (ADR) (<http://www.eeoc.gov/federal/adr/index.cfm>) process to the aggrieved individual and ask if they would like to attempt their issue through mediation.

Alternative Dispute Resolution (ADR)

Facts About Mediation

Mediation is a form of Alternative Dispute Resolution (ADR) (<http://www.eeoc.gov/federal/directives/md110/chapter3.html>) that is offered by NASA SSC as an alternative to the traditional investigative or litigation process. Mediation is an informal process in which a neutral third party (mediator) assists the opposing parties to reach a voluntary, negotiated resolution of a charge of discrimination. The decision to mediate is completely voluntary for the charging party and the employer.

Mediation gives the parties the opportunity to discuss the issues raised in the charge, clear up misunderstandings, determine the underlying interests or concerns, find areas of agreement and, ultimately, to incorporate those areas of agreements into resolutions. A mediator does not resolve the charge or impose a decision on the parties. Instead, the mediator helps the parties to agree on a mutually acceptable resolution. The mediation process is confidential and information disclosed during a mediation session will not be revealed to anyone not involved in the process.

How Mediation Works

The aggrieved individual will be offered the opportunity to participate in mediation early in the counseling process by the counselor. If the DEO Officer approves the election to participate, the aggrieved party and the person named in the complaint will be contacted to see if a mediation session is an option. If both parties agree, a mediation session conducted by a trained and experienced mediator is scheduled. While it is not necessary to have an attorney in order to participate in SSC's Mediation Program, either party has the right to have a representative present. It is important that persons attending the mediation session have the authority to resolve the dispute. That is why SSC has a Settlement Official (a senior SSC manager who is trained in mediation) present during the session. If mediation does not result in an agreement, the charge is investigated like any other charge and the employee has the right to proceed with filing a formal complaint.

Advantages of Mediation

Mediation is an efficient process that saves time and money. Successful mediation avoids a time consuming investigation and achieves a prompt resolution of the charge. The majority of mediations are completed in one session, which usually lasts for one to five hours.

Mediation is fair. Mediators are neutral third parties who have no interest in the outcome. Their role is to help the parties resolve the charge.

Mediation avoids lengthy and unnecessary litigation.

If an aggrieved individual elects to participate in the Agency's ADR Program, the most likely form of ADR will be mediation. Mediation is a confidential process where the aggrieved individual, the mediator, the responsible official (the NASA official who is named in the complaint), and a Settlement Official are in the room. The mediator is a neutral in the process and his or her job is to encourage a dialogue exchange between the aggrieved individual and the responsible official that may result in a resolution of the issue(s). Mediation frequently works because the two individuals with the dispute have the opportunity to work together to come up with a solution. The mediator is in charge of the process and he or she guides the individuals through the session by encouraging open and honest dialogue. The goal of mediation is resolution of the complaint to the satisfaction of the aggrieved individual and the Center. The Settlement Official is to be present during the process, and if the parties reach a resolution, he or she will approve a settlement agreement on behalf of the Center Director.

The sessions are not tape-recorded or transcribed. Notes taken during the mediation are discarded. Settlement agreements secured during mediation do not constitute an admission by the employer of any violation of laws enforced by the EEOC. No records are kept of the mediation proceedings, and if a settlement is reached, only a written settlement agreement results from the session.

Employee Rights

Equal opportunity is the right of all persons to work and advance on the basis of merit, ability and potential. Supervisors are expected to follow EO guidelines and to ensure that their employees have an awareness of EO processes, procedures and guidelines.

Definitions of Discrimination

It is the policy of the Government of the United States to provide EO in employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, age, handicap, or genetic information and to promote the full realization of EO through a continuing affirmative program in each agency.

Discrimination is defined in civil rights laws as unfavorable or unfair treatment of a person or class of persons in comparison to others who are not members of the protected class because of race, color, religion, sex, national origin, genetic information, age or handicapping condition, or in reprisal for participation in past EO process.

An employer is prohibited from discriminating against persons in all aspects of employment, including recruitment, selection, evaluation, promotion, training, compensation, discipline, retention and working conditions, because of their protected status.

Many people confuse what they perceive to be unfair treatment with discrimination. Treating anyone differently from others may violate EO laws only when that person's protected status is a factor in that treatment. The key to avoiding this type of situation is to ensure that you use consistency in your treatment of all employees, follow merit principles in your interviewing and

selection process, and deal with problem employees in accordance with guidance provided by the Office of Human Resources.

Some Strategies for Preventing Discrimination

- Be consistent.
- Be fair and impartial in all personnel decisions.
- Treat all employees with respect.
- Never tolerate any form of discriminatory behavior in your organization.
- Take immediate action if sexual harassment** is reported to you.
- Keep in mind that perceptions are everything.
- Take immediate action to correct conduct or behavior that is aimed at a particular individual or group.
- Avoid jokes about groups of people and religion.
- Be aware of your workplace and possible offensive pictures, signs or behaviors.
- Seek the advice of the DEO Officer, Office of Human Resources or Chief Counsel before making decisions about personnel when you have doubts.

**A word about allegations of sexual harassment (<http://www.eeoc.gov/facts/fs-sex.html>)

There are two types of sexual harassment; quid pro quo and hostile environment. They are both serious, and they are both illegal. Quid pro quo harassment is sometimes called this-for-that, and usually involves a supervisor or someone the employee perceives as having authority over them or their career asking for or expecting sexual favors for something of value to the employee.

Hostile environment harassment falls under a broader category and consists of behaviors that include unwelcome comments or actions perceived to be of a sexual nature that an individual feels creates an intimidating, hostile, or offensive work environment. This would also include gender discrimination, which is treatment of an individual differently because of their sex.

Contrary to popular belief, sexual harassment victims are not all women. While the women in the workforce are many times the ones alleging sexual harassment, there have been numerous cases of men alleging harassment and also of same sex harassment.

Recent changes to EO law (<http://www.eeoc.gov/facts/fs-sex.html>) now make the Agency more vulnerable than ever from allegations of sexual harassment. Supervisors must be familiar with what constitutes sexual harassment and what actions they need to take to prevent it.