

## §7.26

the matter alleged to be discriminatory or, in the case of a personnel action, within 45 days of the effective date of the action. EEOC's regulation at 29 CFR 1614.105 shall govern the Department's pre-complaint processing.

(b) The Department or the EEOC shall extend the 45-day time limit in paragraph (a) of this section when the individual shows that the individual was not notified of the time limits and was not otherwise aware of them, that the individual did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence the individual was prevented by circumstances beyond the individual's control from contacting the EEO Counselor within the time limits, or for other reasons considered sufficient by the ODEEO or the EEOC.

(c) At the initial counseling session, EEO Counselors must advise individuals, in writing, of their rights and responsibilities, including:

(1) The right to request a hearing and decision from an Administrative Judge of the EEOC or an immediate final decision from the Department following an investigation in accordance with 29 CFR 1614.108(f);

(2) Election rights pursuant to 29 CFR 1614.301 and 29 CFR 1614.302;

(3) The right to file a notice of intent to sue pursuant to 29 CFR 1614.201(a) and a lawsuit under the ADEA instead of an administrative complaint of age discrimination under this subpart;

(4) The duty to mitigate damages;

(5) Relevant time frames; and

(6) The requirement that only the claims raised in pre-complaint counseling (or claims like or related to claims raised in pre-complaint counseling) may be alleged in a subsequent complaint filed with the Department.

### **§7.26 EEO Alternative Dispute Resolution Program.**

(a) The aggrieved person may elect to participate in the EEO ADR Program or the traditional EEO counseling procedures. When ADR is chosen, the EEO Counselor shall advise the aggrieved person that if the dispute is resolved during the ADR process, the terms of the agreement must be in writing and signed by both the aggrieved person

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and the appropriate Department representative. The Director of EEO may execute ADR settlement agreements that are initiated in the EEO process. The EEO Counselor shall advise the aggrieved person that if no resolution is reached under the EEO ADR Program, or if the matter has not been resolved 90 days from the initial contact with the EEO Office, the aggrieved person will receive a final interview and the notice of right to file a formal complaint shall be issued by the EEO Counselor. Nothing said or done during attempts to resolve the complaint through ADR may be included in any EEO complaint (should ADR be unsuccessful) nor can the ADR proceedings be disclosed.

(b) In appropriate cases (as determined by the Director of EEO on a case-by-case basis), ADR is available during the formal complaint process. Participation in ADR at the formal complaint stage does not affect the normal processing of the formal complaint, including the investigation. Should ADR be initiated at the formal complaint stage, the time period for processing the complaint may be extended by agreement for not more than 90 days. If ADR does not resolve the issue(s), the complaint must be processed within the extended time period agreed upon by the parties, but no later than the 90th day.

### COMPLAINTS

#### **§7.30 Presentation of complaint.**

At any stage in the presentation of a complaint, including the counseling stage, the Complainant shall be free from restraint, interference, coercion, discrimination, or reprisal and shall have the right to be accompanied, represented, and advised by a representative of the Complainant's own choosing, except as limited by 29 CFR part 1614.

#### **§7.31 Who may file a complaint, with whom filed, and time limits.**

(a) *Who may file a complaint.* Any aggrieved person (referred to elsewhere in this part as the Complainant in the formal complaint stage) who has satisfied the requirements of §7.25, may file a complaint, unless there is an executed

settlement agreement or amended complaint of like or similar issues. The complaint must be filed with the Director of EEO within 15 days of receipt of the notice of right to file a complaint issued by the EEO Counselor. The Department may accept a complaint only if the Complainant has met the appropriate requirements of 29 CFR part 1614.

(b) *Filing and computation of time.* (1) All time periods in this subpart stated in terms of days are calendar days unless otherwise stated.

(2) A document shall be deemed timely if the document is received or post-marked before the expiration of the applicable filing period, or, in the absence of a legible postmark, if the document is received by mail within five days of the expiration of the applicable filing period.

(3) The time limits in this part are subject to waiver, estoppel and equitable tolling.

(4) The first day counted shall be the day after the event from which the time period begins to run and the last day of the period shall be included, unless the last day falls on a Saturday, Sunday or Federal holiday, in which case the period shall be extended to include the next business day.

#### § 7.32 Representation and official time.

(a) At any stage in the processing of an EEO complaint, including the counseling stage under 29 CFR 1614.105 and during participation in the EEO ADR Program, the Complainant shall have the right to be accompanied, represented, and advised by a representative of Complainant's choice, except as limited by 29 CFR part 1614.

(b) If the Complainant is an employee of the Department, the Complainant shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and to respond to Department and EEOC requests for information if the Complainant is otherwise in active duty status. If the Complainant is an employee of the Department and the Complainant designates another employee of the Department as the Complainant's representative, the representative shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and re-

spond to Department and EEOC requests for information.

(c) The Department is not obligated to change work schedules, incur overtime wages, or pay travel expenses to facilitate the choice of a specific representative or to allow the Complainant and representative to confer. The Complainant and the Complainant's representative, if employed by the Department and otherwise in a pay status, shall be on official time, regardless of their tour of duty, when their presence is authorized or required by the Department or the EEOC during the investigation, informal adjustment, or hearing on the complaint.

(d) In cases where the representation of a Complainant or the Department would conflict with the official or collateral duties of the representative, the EEOC or the Department may, after giving the representative an opportunity to respond, disqualify the representative.

(e) Unless the Complainant states otherwise in writing, after the Department has received written notice of the name, address and telephone number of a representative for the Complainant, all official correspondence shall be with the representative with copies to the Complainant. When the Complainant designates an attorney as representative, service of all official correspondence shall be made on the attorney and the Complainant, but time frames for receipt of materials shall be computed from the time of receipt by the attorney. The Complainant must serve all official correspondence on the designated representative of the Department and shall notify the Department of any changes of the representative and Complainant's address.

(f) The Complainant shall at all times be responsible for proceeding with the complaint and cooperating in the entire EEO complaint process, whether or not the Complainant has designated a representative.

(g) Witnesses who are Federal employees, regardless of their tour of duty and regardless of whether they are employed by the Department or some other Federal agency, shall be in a