

Department of the Navy Equal Employment Opportunity (EEO)

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Welcome

Welcome to the Department of the Navy's Equal Employment Opportunity, or EEO, web-based training course. This course has been designed to provide management and employees, civilian and military, with a better understanding of what EEO is and the laws, regulations and policies relating to the fair treatment of employees.

Section 1: Overview of EEO

So, what is Equal Employment Opportunity, or EEO?

EEO is a term used to refer to employment practices that ensure nondiscrimination on the basis of race, color, religion, national origin, sex, or other factors protected by the law.

The principle behind EEO is that everyone should have the same access to opportunities in the workplace. EEO gives all employees freedom to compete on a fair and level playing field with equal opportunity for competition; that is, to advance based on merit. Equality of opportunity is recognized as an essential element of readiness. It is vital in attracting, developing and retaining a top-quality workforce.

Equal employment opportunity and job discrimination is protected by federal laws, regulations and policy guidance. In this training module, we will give you an overview of the EEO laws, regulations and guidance.

EEO Laws

[Title 7 of the Civil Rights Act of 1964.](#)

In 1964, President Lyndon B. Johnson signed into law the Civil Rights Act, prohibiting employment discrimination on the basis of race, color, religion, national origin, or sex. Recent case law now protects lesbian, gay, bisexual and transgender (LGBT) individuals under Title 7.

The law also requires that employers reasonably accommodate applicants' and employees' sincerely held religious practices, unless doing so would impose an undue hardship on the operation of the employer's business.

Title 7 prohibits reprisal or retaliation for participating in the complaint process or for opposing an unlawful employment practice under the Act.

[The Pregnancy Discrimination Act](#)

Title 7 of the Civil Rights Act of 1964 was amended to include the Pregnancy Discrimination Act which prohibits discrimination on the basis of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

[The Equal Pay Act of 1963](#)

The Equal Pay Act, or EPA, states that it is illegal to pay different wages to men and women if they perform equal work in the same workplace. This protects men and women who perform substantially equal work, requiring the same skill, effort, and responsibility that are performed under similar working conditions.

[The Age Discrimination in Employment Act of 1967](#)

The Age Discrimination in Employment Act, or ADEA, protects individuals who are 40 years of age and older from discrimination.

[Title 1 of the Americans with Disabilities Act of 1990](#)

Title 1 of the Americans with Disabilities Act, or ADA, prohibits employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments.

The law also requires that employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless doing so would impose an undue hardship on the operation of the employer's business.

[Civil Rights Act of 1991](#)

Other EEO laws include Sections 102 and 103 of the Civil Rights Act of 1991, which provide for monetary damages in cases of intentional employment discrimination. To include jury trials or compensatory and punitive damage awards in intentional discrimination cases.

[The Rehabilitation Act of 1973](#)

Sections 501 and 505 of the Rehabilitation Act of 1973 prohibit discrimination against qualified individuals with physical or mental disabilities who work in the federal government. It requires federal agencies to provide reasonable accommodation to qualified individuals with disabilities unless doing so would cause undue hardship.

[The Genetic Information Nondiscrimination Act of 2008](#)

Title 2 of the Genetic Information Nondiscrimination Act, also referred to as GINA, prohibits discrimination against employees or applicants because of genetic information. Genetic information includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder or condition of an individual's family members (i.e., an individual's family medical history).

[EEO Regulations and Guidelines](#)

In addition to federal laws, regulations and policy guidance have been issued to provide policies and procedures relating to equal employment opportunity.

29 CFR 1614

Title 29 of the Code of Federal Regulations, also called CFR, Part 1614 contains the regulations governing the processing of Federal sector discrimination complaints. It states that each agency will maintain a continuing affirmative program to promote EEO and to identify and eliminate discriminatory practices and policies.

EEOC Management Directive 110

Management Directive 110, referred to as MD 110, provides policies, procedures, and guidance relating to the processing of employment discrimination complaints. It describes in detail the procedures that must be followed when processing complaints of discrimination filed by federal employees and applicants for federal employment who allege employment discrimination under the amended 1614 regulations.

EEOC Management Directive 715

Management Directive 715, referred to as MD 715, establishes guidance for federal agencies for establishing and maintaining effective programs of equal employment opportunity.

We'll be discussing these laws, regulations and policy guidance in more detail throughout this training.

Knowledge Check 1

Now, let's take a moment to see what you've learned.

EEO is special treatment in employment, promotion, training, and other personnel actions for a selected group to meet quotas.

- a) True
- b) False

The correct answer is b. False. EEO is a term used to refer to employment practices that ensure nondiscrimination on the basis of race, color, religion, national origin, sex, or other factors protected by the law.

Knowledge Check 2

The Equal Pay Act of 1963 protects men and women who perform substantially equal work, which requires:

- a) The same skill
- b) The same effort
- c) Responsibilities that are performed under similar working conditions
- d) All of the above

The correct answer is d. The Equal Pay Act of 1963 protects men and women who perform substantially equal work, which requires the same skill, the same effort, and responsibilities that are performed under similar working conditions.

Section 2: Bases of Discrimination

Applicants for federal employment, current federal employees, and former federal employees are protected by laws from discrimination because of race, color, religion, sex, national origin, age, disability (physical or mental) or genetic information. These laws also protect individuals from retaliation because of complaints about job discrimination.

Types of Discrimination

Race Discrimination

Title Seven of the Civil Rights Act of 1964 makes it unlawful for employers to discriminate against any job applicant for employment or employee because of race in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment.

- Race discrimination can occur when a job applicant or employee is treated unfavorably because they are of a certain race or because of any personal characteristics that are associated with race.
- It is also considered race discrimination if an individual is treated unfavorably because of marriage to or association with an individual of a different race or membership in or association with ethnic based organizations or groups.
- Race discrimination can also occur when the victim and the person who inflicted the discrimination are of the same race.

Color Discrimination

Protection against color discrimination is also included in Title 7 of the Civil Rights Act of 1964. Even though race and color clearly overlap, they are not synonymous. Thus, color discrimination can occur between persons of different races or ethnicities, or between persons of the same race or ethnicity.

Although Title 7 does not define “color,” the courts read “color” to have its commonly understood meaning – pigmentation, complexion, or skin shade or tone. Thus, color discrimination occurs when a person is discriminated against based on the lightness, darkness, or other color characteristic of the person. Title 7 prohibits race/color discrimination against all persons, including Caucasians.

Religious Discrimination

Title Seven also prohibits treating a job applicant or an employee unfavorably because of his or her religious beliefs.

Employers are required to reasonably accommodate the religious practices of an employee or prospective employee, unless to do so would create an undue hardship upon the employer. A reasonable religious accommodation is any adjustment to the work environment that will allow the employee to practice his or her religion. Flexible scheduling, voluntary substitutions or swaps, job reassignments and lateral transfers are examples of accommodating an employee's religious beliefs.

Employers generally should not schedule examinations or other selection activities in conflict with a current or prospective employee's religious needs, inquire about a job applicant's future availability at certain times, maintain a restrictive dress code, or refuse to allow observance of a Sabbath or religious holiday, unless the employer can show that not doing so would cause an undue hardship.

Sex Discrimination

Sex discrimination involves treating a job applicant or employee unfavorably because of that person's sex or sexual orientation. Sex discrimination also can involve treating someone less favorably because of his or her connection with an organization or group that is generally associated with people of a certain sex or sexual orientation.

Discrimination against an individual because that person is transgender is considered discrimination because of sex and is a violation of Title 7 of the Civil Rights Act of 1964. This is also known as gender identity discrimination.

An employment policy or practice that applies to everyone, regardless of sex, can be illegal if it has a negative impact on the employment of people of a certain sex and is not job-related or necessary to the operation of the business.

Sexual harassment is also considered a form of sex discrimination, and is unlawful.

Sexual Orientation Discrimination

Executive Order 13087 prohibits discrimination based on sexual orientation. As previously mentioned, recent EEOC case law prohibits discrimination under Title 7 based on sexual orientation as well as gender identity. Any discrimination that is based on sexual orientation is considered a prohibited personnel practice.

National Origin Discrimination

Whether an employee or job applicant's ancestry is Mexican, Ukrainian, Filipino, Arab, American Indian, or any other nationality, he or she is entitled to the same employment opportunities as anyone else.

Title Seven of the Civil Rights Act of 1964 makes it unlawful to discriminate against any job applicant or employee because of the individual's national origin. No one can be denied equal employment opportunity because of birthplace, ancestry, culture, linguistic characteristics common to a specific ethnic group, or accent.

Equal employment opportunity also cannot be denied because of:

- Marriage or association with persons of a national origin group;
- Membership or association with specific ethnic promotion groups;
- Attendance or participation in schools, churches, temples or mosques generally associated with a national origin group; or
- A surname associated with a national origin group.

Age Discrimination

Age discrimination involves treating a job applicant or employee less favorably because of his or her age.

The Age Discrimination in Employment Act of 1967, or ADEA, protects individuals who are 40 years of age or older from employment discrimination based on age. The ADEA's protections apply to both employees and job applicants.

The ADEA only forbids age discrimination against people who are age 40 or older. It does not protect employees or job applicants under the age of 40.

Age discrimination can also occur when the victim and the person who inflicted the discrimination are both over 40.

Although the ADEA prohibits age discrimination against people age 40 or older, it is not illegal for an employer to favor an older worker over a younger one, even if both workers are age 40 or over.

Disability Discrimination

Disability discrimination occurs when an employer or other entity covered by the Americans with Disabilities Act, as amended, or the Rehabilitation Act, as amended, treats a qualified individual with a disability, who is a job applicant or employee, unfavorably because he or she has a disability.

Disability discrimination also occurs when an employer treats a job applicant or employee less favorably because he or she has a history of a disability (such as cancer that is controlled or in remission) or because the individual is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if the individual does not have such an impairment).

The law requires an employer to provide reasonable accommodation to a job applicant or an employee with a disability, unless doing so would cause significant difficulty or expense for the employer; in other words, "undue hardship".

The law also protects people from discrimination based on their relationship with a person with a disability, even if they themselves do not have a disability). For example, it is illegal to discriminate against an employee because his or her spouse has a disability.

Title 2 of GINA

Under Title 2 of the Genetic Information Nondiscrimination Act of 2008, known as GINA, it is illegal to discriminate against employees or job applicants because of genetic information.

Genetic information includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about the manifestation of a disease or disorder in an individual's family members (that is, their family medical history). Family medical history is included in the definition of genetic information because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future.

GINA forbids discrimination on the basis of genetic information when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, fringe benefits, or any other term or condition of employment. An employer may never use genetic information to make an employment decision because genetic information is not relevant to an individual's current ability to work.

Reprisal

Reprisal occurs when a responsible management official takes (or threatens to take) an adverse personnel action against an individual, or withholds a favorable personnel action because the individual:

- filed a charge of discrimination,
- participated in a discrimination proceeding (such as discrimination investigation or lawsuit), or
- otherwise opposed discrimination, also called a protected activity.

There are four elements to a claim of reprisal:

- First, the individual expressed opposition to a discriminatory practice or engaged in a protected EEO activity.
- Second, the agency was aware of the protected activity and the individual who the complainant alleges reprised against them must have knowledge of their protected activity.
- Third, the complainant was subjected to adverse treatment by the agency after the complainant engaged in the protected activity.
- And fourth, the complainant can demonstrate a "causal connection" between the adverse action and the protected activity.

Discrimination – Other Factors

The U.S. EEOC does not enforce laws that prohibit discrimination based on political affiliation, marital status or status as a parent.

The methods of redress for alleged discrimination based on these bases are:

- the Administrative Grievance Procedure,
- the Office of Special Counsel, OSC, or
- the Merit Systems Protection Board, MSPB.

Examples of Discrimination

[Griggs v. Duke Power Company – 401 U.S. 424 \(1971\)](#)

In this case, the Duke Power Company denied employment to Mr. Griggs, an African American. They stated he failed to meet their selection criteria, which was possession of a high school diploma or a passing grade on a written test. The Supreme Court found that Duke Power Company's facially neutral employment criteria violated the law because it had a disproportionate impact on Mr. Griggs' protected group and the criteria was NOT job-related or consistent with business necessity.

[BNSF Railway Company v. White – 548 U.S. 53](#)

In *Burlington Northern & Santa Fe Railway Company v. White*, Ms. White, the only white woman working in her department, was removed from her position as a forklift operator and placed in a less desirable position after she complained of being sexually harassed. Although her immediate supervisor was disciplined, Ms. White was reassigned as a track laborer and suspended for 37 days without pay for alleged insubordination.

Burlington asserted that Ms. White did not suffer any "adverse employment action" because she was not fired, demoted, denied promotion, or denied wages. However, the Supreme Court found that Ms. White suffered retaliatory discrimination when she was reassigned to a less desirable position and suspended without pay. Although the duties were within the same job classification and pay was eventually reinstated, the actions were sufficiently harsh enough to constitute discrimination and deter a reasonable employee from complaining about discrimination.

She was later reinstated and given full back pay.

Methods of Redress

If you believe you are experiencing discrimination, there are established grievance channels that you can follow:

- Contact your local EEO Office within 45 calendar days from the date the alleged discriminatory incident occurred, the effective date of the specific personnel action, or the date you knew (or reasonably should have known) that it occurred.
- The Office of Special Counsel, OSC, protects federal government employees and job applicants from prohibited personnel practices including whistle blowing.
- And the Merit Systems Protection Board, MSPB, protects federal employees against prohibited personnel practices and abuses by agency management. Contact the MSPB if the action is appealable.

Knowledge Check 3

An employee or applicant may only file an EEO complaint on the basis of Age Discrimination if:

- a) The employee or applicant is a female born after 1990
- b) He or she is no younger than 60 years old
- c) He or she is between the ages of 18 and 39
- d) He or she is 40 or older

The correct answer is d. False. The ADEA protects individuals who are 40 years of age or older from employment discrimination based on age.

Knowledge Check 4

Which of the following is an example of discrimination on the basis of reprisal?

- a) Not providing off-site training and developmental assignments to an employee who uses a wheelchair because it would require that accommodations be made for that employee.
- b) A supervisor always sends a male employee on TDY assignments because they feel their female employee should stay home with her three children.
- c) An employee is denied a promotion solely because of their participation in the discrimination complaint process.
- d) Firing an employee after learning they have an increased risk of getting a disease, disorder, or condition in the future.

The correct answer is c. Reprisal occurs when a responsible management official takes an adverse personnel action against an individual because the individual participated in a discrimination.

Section 3: Pre-Complaint/Formal Complaint Process and ADR

Let's discuss the process and procedures for filing complaints and Alternative Dispute Resolution (or ADR).

EEO Counseling

EEO counseling is an essential part of the federal system for processing and resolving employee and job applicant EEO concerns. The opportunity for informal resolution at an early stage is an important feature of the counseling stage.

The EEO Counselor establishes an open and objective channel through which employees may raise questions, find answers, discuss problems, and obtain resolution to discrimination conflicts.

The EEO Counselor serves as a neutral party whose primary function is to mediate and conciliate the issues present in an informal manner, as quickly as possible and with the minimum possible interference with the operations of the workplace. The Counselor's role does not include a determination of either the existence or non-existence of illegal discrimination or the making of value judgments.

Pre-Complaint Process

The first step in the pre-complaint process for the employee or applicant, within this process known as a complainant, is to contact an EEO Counselor at the agency where he or she works or where he or she applied for a job. A complainant must contact the EEO Counselor within 45 calendar days from the day the discrimination occurred or the day that he or she became aware that the discrimination occurred. In most cases the EEO Counselor will give the complainant the choice of participating either in EEO counseling or in an alternative dispute resolution (ADR) program, such as a mediation program.

If the complainant does not settle the dispute during counseling (to be completed in 30 calendar days) or through ADR (to be completed in 90 calendar days), he or she can file a formal discrimination complaint against the agency with the agency's EEO Office. The complainant must file within 15 calendar days from the day he or she receives the "Notice of Right to File" from the EEO Counselor.

Formal Complaint Process

Once the complainant has filed a formal complaint, the agency will review the complaint and decide whether or not the case should be dismissed for a procedural reason. For example, the claim was filed too late – after the 15 calendar day time limit.

If the agency doesn't dismiss the complaint, it will conduct an investigation. The agency has 180 calendar days from the day a complainant filed his or her complaint to finish the investigation.

When the investigation is finished, the agency will issue a notice giving the complainant two choices: either request a hearing before an EEOC Administrative Judge or request a Secretary of the Navy final agency decision without a hearing from the DON EEO Office of Complaints and Adjudication.

If the complainant does not request a hearing within 30 calendar days of receipt of notice, the agency will automatically forward the investigation case file to the DON EEO Office of Complaints and Adjudication so that they can issue a final agency decision.

If a complainant wants to ask for a hearing, he or she must make the request in writing within 30 calendar days from the day he or she receives the notice from the agency about his or her hearing rights. If the complainant requests a hearing, an EEOC Administrative Judge will conduct the hearing, make a decision, and order relief if discrimination is found.

Once the agency receives the Administrative Judge's decision, the agency will issue what is called a final order which will tell the complainant whether the agency agrees with the Administrative Judge and if it will grant any relief the Judge ordered. The agency will have 40 calendar days to issue the final order. It will also contain information about the complainant's right to appeal to EEOC, his or her right to file a civil action in federal district court, and the deadline for filing both an appeal and a civil action.

Alternative Dispute Resolution

Alternative Dispute Resolution, or ADR, generally refers to a continuum of processes and approaches that are designed to resolve disputes in a manner in which avoids the cost, delay, and unpredictability of more traditional processes such as litigation, hearings and appeals.

The use of ADR techniques can be used for complaints alleging discrimination, including harassment, or for non-EEO related matters.

Most agencies use mediation in their ADR programs. Mediation is DON's preferred method of ADR.

Agencies and complainants have realized that utilizing ADR during the EEO process has many advantages:

- It offers the parties the opportunity for an early, informal resolution of disputes in a mutually-satisfactory fashion.
- Rather than receiving a decision from an unknown third party, such as an Administrative Judge, the parties have an opportunity to write their own agreement in a manner which satisfies both of their needs.
- Not only does ADR provide a win-win resolution for the parties, but it also usually costs less and uses fewer resources than traditional administrative or adjudicative processes.

As previously stated, mediation is DON's preferred method for ADR.

Mediation is an informal process in which a neutral third party (a mediator) assists an aggrieved party and an appropriate management official to reach a voluntary, negotiated resolution of a charge of discrimination. 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 solutions.

A mediator does not impose a decision on the parties. Instead, the mediator helps the parties to agree on a mutually acceptable resolution.

For more information on ADR and the ADR process:

- Visit the [DON ADR website](#)
- Contact your local EEO and Diversity Office
- Contact the Employee Relations Office

Knowledge Check 5

How many calendar days does an individual have to contact an EEO Counselor to initiate the discrimination complaint process?

- 15
- 30
- 45
- 60

The correct answer is c. A complainant must contact the EEO Counselor within 45 calendar days from the day the discrimination occurred or the day that he or she became aware that the discrimination occurred.

Knowledge Check 6

Why is mediation advantageous?

- Ongoing relationships are not considered in mediation.
- Parties reach a mutually agreeable resolution.
- A management official familiar with the parties determines the outcome.
- None of the above.

The correct answer is b. Mediation offers the parties the opportunity for an early, informal resolution of disputes in a mutually-satisfactory fashion.

Section 4: Individuals with Disabilities and Reasonable

Accommodation

Now, let's discuss Individuals with Disabilities and Reasonable Accommodation, as well as accommodations for people with disabilities.

DON Disability Program

The DON is dedicated to providing equality of opportunity in the hiring, placement, and advancement of Individuals with Disabilities (IWD) and Individuals with Targeted Disabilities (IWTD). The DON has set a goal to ensure that at least 2 percent of our total workforce is comprised of IWTD.

Some actions that can be taken toward achieving the 2 percent goal are: utilizing special hiring authority under Schedule A, 5 CFR, section 213.3102, paragraph (u); and self-identification of a disability via the Standard Form 256 (SF-256).

Special Hiring Authority

Schedule A, 5 CFR, section 213.3102, paragraph (u) is a non-competitive hiring authority for hiring people with intellectual disabilities, severe physical disabilities, or psychiatric disabilities. Appointment of an applicant under this authority can be on a permanent, time-limited, or temporary basis.

There are no requirements to clear the Priority Placement Program (PPP). Documentation is required to verify the applicant is eligible under this authority; however, the specific disability does not need to be listed.

Individuals appointed under Schedule A Authority may qualify for conversion to permanent status after two years of satisfactory service. Applicants are required to complete the Standard Form 256, "Self-Identification of Disabilities."

Some possible sources for finding applicants include the OPM Shared List of People with Disabilities and the Workforce Recruitment Program (WRP).

In order to increase hiring of individuals with disabilities, one best practice includes providing hiring managers with qualified Schedule A(u) applicants prior to putting in a Request for Personnel Action (RPA). The Area of Consideration (AOC) on all vacancy announcements should include individuals with disabilities. In addition, targeted recruitment efforts should be made with vocational rehabilitation facilities and local colleges.

Additional Resources

[OPM Shared List of People with Disabilities](#)

Known as "The Bender List", the Office of Personnel Management (OPM) maintains this database of qualified candidates with disabilities. Candidates on this list have been screened by Bender Consulting Services, Inc. based on their ability to meet position requirements and workplace readiness. This list contains candidates seeking jobs in a number of fields.

The DON can utilize the Schedule A - 5 CFR, section 213.3102, paragraph (u) authority to bring on board candidates from the OPM Shared List.

Visit the [MAX.gov website](#) to obtain more information and to browse candidates on the OPM Shared List.

Workforce Recruitment Program

The Workforce Recruitment Program, or WRP, is a Department of Labor (DOL) program that connects federal agencies with college students and recent graduates with disabilities. DoD provides centralized funding to support WRP participants for 14 weeks of full-time employment at DoD components to include DON commands.

Hiring managers as well as EEO and HR professionals can access the WRP candidate database. All candidates are eligible to be appointed via the Schedule A - 5 CFR, section 213.3102, paragraph (u) authority for temporary, term, or permanent positions.

Please visit the [WRP website](#) for more information on the Workforce Recruitment Program.

Standard Form 256

The SF-256 is a voluntary self-identification form issued by the Office of Personnel Management (OPM). This form is used to gather disability employment information in aggregate form for internal reports on hiring, placement, and advancement of IWD and IWTD. Disability information is kept strictly confidential and is limited to EEO professionals for reporting purposes.

You are encouraged to update your disability status annually via the [MyBiz portal](#) because a person's disability status can change at any time.

Targeted Disabilities

Targeted disabilities are a subset of disabilities that are identified to be severe. This distinction of targeted disabilities is made on the SF-256 through the following categories:

- Hearing
- Vision
- Missing Extremities
- Partial Paralysis
- Complete Paralysis
- Epilepsy
- Severe Intellectual Disability
- Psychiatric Disability
- Dwarfism

Not every targeted disability is defined in the SF-256. For example, Post-Traumatic Stress Disorder (PTSD) is considered to be a “psychiatric disability,” but is not listed on the form.

Disability Etiquette

Disability etiquette refers to how we approach and interact with individuals who have disabilities. Proper disability etiquette creates a comfortable work environment and supports equal access and advancement for all.

In addition to having the right tools for success, a respectful work environment can play an important role in an individual's success.

While a person's disability is an integral part of who they are, it does not define them. Treat them as individuals. Think before you speak, use common sense and be respectful in all of your professional interactions.

- Speak directly to a person with a disability, not to his or her companion, aide, or sign language interpreter.
- Respect an individual's privacy.
- Make sure to use "people first" language. Instead of "disabled person", say "individual with a disability".
- It is okay to use common phrases, such as “It was good to see you” and “See you later” to a person who is blind.
- Ask before you act. Don't assume that because a person has a disability that he or she needs help.
- Be respectful of personal space. Treat a co-worker with a disability as you would anyone else in the workplace. Avoid touching a person's wheelchair, scooter, or cane.

The Computer/Electronic Accommodations Program, or CAP, has created a series of training modules focused on providing Reasonable Accommodation for employees with disabilities.

- "Disability Etiquette Part One: Introduction and Background" is targeted to supervisors and co-workers of individuals with disabilities. The training is intended to provide basic tips that can serve as a guideline when interacting with an individual who has a disability.

You can access the Disability Etiquette module from the Resources page of this training.

What is Reasonable Accommodation?

The Rehabilitation Act of 1973 and Civilian Human Resources Manual, subchapter 1606 require that federal agencies provide reasonable accommodation to qualified individuals with disabilities unless doing so would cause undue hardship.

So – what does reasonable accommodation mean?

In general, a reasonable accommodation is a modification or an adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions. Reasonable accommodation also includes adjustments to assure that a qualified individual with a disability has rights and privileges in employment equal to those of employees without disabilities.

A qualified individual with a disability is a person with a disability who meets the requisite knowledge, skills and experience of a position and can perform the essential functions of the position with or without reasonable accommodation.

Essential functions of a position are those duties that are so fundamental to the position that an individual cannot do the job without being able to perform those duties.

Factors to consider in determining if a function is essential include: whether the reason the position exists is to perform that function; the number of other employees available to perform the function or among whom the performance of the function can be distributed; and the degree of expertise or skill required to perform the function.

There are a number of possible reasonable accommodations that an employer may have to provide in connection with modifications to the work environment or adjustments in how and when a job is performed. For example:

- Making existing facilities accessible,
- Job restructuring,
- Modifying work schedules,
- Acquiring or modifying equipment,
- Providing qualified interpreters, or
- Teleworking.

Modifications or adjustments that are not considered forms of reasonable accommodations include:

- Removing or eliminating an essential function from a job,
- Lowering production standards, or
- Providing personal use items such as a prosthetic limb, a wheelchair, eyeglasses, hearing aids, or similar devices if they are also needed off the job.

The Department of the Navy Civilian Human Resources Manual, subchapter 1606 provides procedures for processing requests for reasonable accommodation within the DON.

The first step is for an employee to present a request for reasonable accommodation to their first-level supervisor or local Reasonable Accommodation Point of Contact, or RA POC. This can be done at any time, orally or in writing. For documentation purposes, oral requests must be followed up in writing. The written request should be signed and dated by the requestor, and presented to the first-level supervisor.

Once the request is made, this begins the interactive process between management and the employee.

First-level supervisors will receive, process, and approve all requests within their area of delegated responsibility expeditiously. Upon receipt of the request for reasonable accommodation, the supervisor should immediately contact the activity's RA POC.

Working with an Advisory Team, the RA POC is responsible for providing recommendations to the supervisor or manager responsible for making the decision on a request for reasonable accommodation.

Religious Accommodations for Religious Exercise

Another type of accommodation that managers are required to make is a religious accommodation. A reasonable religious accommodation is any adjustment to the work environment that will allow the employee to comply with his or her religious beliefs. The need for religious accommodation most frequently arises where an individual's religious beliefs, observances, or practices conflict with a specific task or requirement of the job or the application process.

The employer's duty to accommodate will usually entail making a special exception from, or adjustment to, the particular requirement so that the employee or applicant will be able to practice his or her religion. However, an employer can refuse to provide a religious accommodation if it would pose an undue hardship or would interfere with the efficient accomplishment of the agency's mission.

Requests for accommodation of a "religious" belief or practice could include, for example, a Catholic employee requesting a schedule change so that he or she could attend church services on Good Friday.

Knowledge Check 7

Now, let's take a moment to see what you've learned.

How can DON employees assist in increasing the participation rate of IWD and IWTD in our workforce?

- a) By fostering a workplace environment that promotes equal access and opportunities for all
- b) By voluntarily self-identifying their disability through the SF-256
- c) By advocating for and utilizing targeted recruiting of IWD and IWTD
- d) All of the above

The correct answer is D. DON employees can assist in increasing the participation rate of IWD and IWTD through fostering a workplace environment that promotes equal access and opportunities for all; voluntarily self-identifying their disability through the SF-256; and advocating for and implementing targeted recruiting of IWD and IWTD

Knowledge Check 8

Where can an employee file a request for reasonable accommodation?

- a) With the employee's first-level supervisor
- b) With the Reasonable Accommodation POC
- c) Both A and B
- d) None of the above

The correct answer is c. An employee can present a request for reasonable accommodation to their first-level supervisor or local RA POC.

Knowledge Check 9

True or False? A verbal reasonable accommodation starts the reasonable accommodation process.

- a) True
- b) False

The correct answer is a. True. A request for reasonable accommodation can be done at any time, orally or in writing. The request begins the reasonable accommodation process.

Section 5: Employment Rights

Let's discuss the employment rights and protections afforded employees and job applicants under Federal anti-discrimination, whistleblower protection and retaliation laws.

Whistleblower Act

The Whistleblower Protection Act, or WPA, is a United States federal law that provides confidentiality and protection from retaliation to federal employees, former employees, or applicants who report allegations of violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety.

These individuals are more commonly referred to as “whistleblowers”.

A Federal agency violates the WPA if agency authorities take, fail to take, or threaten to take retaliatory personnel action against any employee or applicant because of disclosure of information that is reasonably believed to evidence:

- Violations of law, rule or regulation;
- Gross mismanagement;
- Gross waste of funds;
- An abuse of authority; or
- A substantial and specific danger to public health or safety.

Protected Disclosure

A protected disclosure is one that can be made to anyone in a position to correct the alleged wrongdoing, except the wrongdoer.

There are some disclosures that are not protected, such as a disclosure that is specifically prohibited by law, and one that is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

One thing to remember regarding disclosures, under the WPA, an employee is not required to go through his or her chain of command to report allegations of wrongdoing.

OSC Role in Whistleblower Protection

The Office of Special Counsel, or OSC, is an independent agency whose primary mission is to protect Federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing.

The OSC provides a secure channel through which current and former employees and job applicants may make confidential disclosures about various workplace improprieties.

The OSC has the authority to investigate these disclosures to determine whether there is a substantial likelihood that one of the conditions previously discussed has been disclosed.

If such a determination is made, the OSC has the authority to require the head of the agency to investigate the matter.

To make a disclosure, contact:
The U.S. Office of Special Counsel
1730 M Street, NW, Suite 218
Washington, DC 20036-4505

You may also call (202) 254-3640, or toll-free (800) 572-2249. Hearing and Speech Disabled can use Federal Relay Service (800) 877-8339.

Protection Against Retaliation

As previously mentioned, whistleblowers are afforded protection from retaliation under the law. What should you do if you believe whistleblower retaliation has occurred? You can file a complaint with the OSC using Form OSC-11. You can either mail in your complaint to the aforementioned address or submit it online through the [OSC website](#).

Merit System Principles

As part of the Civil Service Reform Act of 1978, The Merit System Principles, are nine basic standards used to govern the management of the Executive Branch workforce.

1. Recruit, select, and advance on the basis of merit after fair and open competition
2. Treat employees and applicants fairly and equitably
3. Provide equal pay for equal work; reward excellent performance
4. Maintain high standards of integrity, conduct and concern for the public interest
5. Use human resources effectively and efficiently
6. Retain or separate employees on the basis of their performance
7. Provide employees with effective training and education
8. Protect employees from reprisal for lawful disclosures
9. Protect employees from improper political influence

Prohibited Personnel Practices

Prohibited personnel practices are those things a Federal employee with personnel authority may not do.

A federal employee has personnel authority if they can take, direct others to take, recommend, or approve any personnel action. This includes appointments, promotions, discipline, details, transfers, reassignments, reinstatements, or any decisions concerning pay, benefits, and training.

People with personnel authority – managers and supervisors – are charged with avoiding these 12 prohibited personnel practices:

1. Illegally discriminate for or against any employee/applicant
2. Solicit or consider improper employment recommendations
3. Coerce an employee's political activity
4. Obstruct a person's right to compete for employment
5. Influence any person to withdraw from competition for a position
6. Give unauthorized preference or improper advantage
7. Employ or promote a relative
8. Retaliate against a whistleblower, whether an employee or applicant
9. Retaliate against employees or applicants for filing an appeal
10. Unlawfully discriminate for off-duty conduct
11. Knowingly violate veterans' preference requirements
12. Violate any law, rule, or regulation which implements or directly concerns the merit principles

Freedom from Reprisal

In a previous training module, we talked about what constitutes a reprisal action and the process for submitting a reprisal claim.

The eighth and ninth prohibited personnel practices protect Federal employees and applicants for employment from retaliation.

Title 29 of the Code of Federal Regulations Section 1614.101(b) includes the following provision that guarantees freedom from reprisal:

“No person shall be subjected to retaliation for opposing any practice made unlawful by Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Equal Pay Act, or the Rehabilitation Act, or for participating in any stage of the administrative or judicial proceedings under those statutes.”

Elements of Proof for Whistleblower Reprisal

The following are elements of proof that must be established for a claim of whistleblower reprisal:

- First, the individual must show that the information they provided falls under the categories of disclosure that are protected under U.S. Code 5, Section 2302(b) (8).
- Second, the individual must show that a personnel action was taken, not taken, or was threatened as a result of the disclosure.
- Third, the individual must show they had actual or constructive knowledge of the protected disclosure.
- And fourth, the individual must show that the protected disclosure was a contributing factor in the personnel action.

Protected Activities

Opposition to Discriminatory Practice

Another anti-retaliation protected activity is opposition to a discriminatory practice.

The anti-retaliation provisions under Title 7 of the Civil Rights Act make it unlawful to discriminate against an individual because he or she has opposed any practice that has been made unlawful by Title 7, the ADEA, the EPA, or the Rehabilitation Act

A complaint amounts to protected opposition only if an individual explicitly or implicitly communicates a belief that the practice constitutes unlawful employment discrimination.

The opposition clause does not require the person be correct in their belief that the agency's employment practice they opposed actually violated Title 7, the ADEA, the EPA, and/or the Rehab Act.

The opposition clause does not require the individual be correct in their belief that the agency's employment practice they opposed actually was unlawful; and it protects the individual, provided that they had a good faith and reasonable belief that a violation of the EEO statutes had occurred or was occurring.

Participation in EEO Process

Participation in the EEO process is another protected activity under EEO statutes.

Title 7, the ADEA, the EPA, and the Rehab Act make it unlawful to discriminate against any individual because he or she has filed a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, hearing, or litigation under any of the antidiscrimination statutes.

While the opposition clause applies only to those who protest practices that they reasonably and in good faith believe are unlawful, the participation clause applies to all individuals who participate in the EEO complaints process.

An agency can be found liable for retaliating against an individual for filing an EEO complaint, regardless of the merits or reasonableness of the original complaint.

Retaliation for Engaging in Protected Activity

A Federal agency may not retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protections laws listed previously

If you believe that you are the victim of retaliation for engaging in a protected activity, you must follow, as appropriate:

- procedures described in the antidiscrimination law and whistleblower protection law sections; or
- the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee who has engaged in discriminatory or retaliatory conduct, up to and including removal.

If the OSC has initiated an investigation under Title 5 U.S. Code 1214, then the agency must seek approval from OSC prior to initiating disciplinary action against an employee for, among other activities, engaging in prohibited retaliation.

Additional Resources

For more detailed information on Federal antidiscrimination, whistleblower protection and retaliation laws:

- Visit the [EEOC website](#), or
- the [OSC website](#)

Knowledge Check 10

Now, let's take a moment to see what you've learned.

Which of the following is NOT a prohibited personnel practice?

- a) Obstructing a person's right to employment.
- b) Influencing any person to withdraw from competition for a position.
- c) Unlawfully discriminating for off-duty conduct.
- d) Considering proper employment recommendations based on personal knowledge or records of job-related abilities or characteristics.

The correct answer is d. It is not a prohibited personnel practice for employment decisions to be based on personal knowledge or records of job-related abilities or characteristics. In fact, these are the only legal bases for making employment decisions.

Knowledge Check 11

What Act does a Federal agency violate if agency authorities take, or threaten to take, retaliatory personnel action against any employee or applicant because of disclosure of information by that employee or applicant?

- a) Whistleblower Protection Act
- b) National Security Act
- c) Employment Act
- d) Fair Labor Standards Act

The correct answer is a. A Federal agency violates the WPA if agency authorities take, fail to take, or threaten to take retaliatory personnel action against any employee or applicant because of disclosure of information.

Section 6: Identifying and Eliminating EEO Barriers

Now, let's go over how to identify and eliminate EEO Barriers.

A barrier is defined as a policy, procedure or practice that limits or tends to limit equal employment opportunities for members of a particular sex, race, or ethnic background, or based on an individual's disability status.

Elimination of these types of barriers is vital!

Barrier Analysis

Barrier Analysis is the investigation of anomalies found in workplace policies, procedures, and practices with an eye toward identifying their root causes, and, if those root causes are potential barriers, devising plans to eliminate them.

Barrier Analysis is conducted in four steps:

1. Find Triggers,
2. Identify Barriers,
3. Devise Action Plans, and
4. Assess Results

Finding Triggers

The first step in the barrier analysis process is finding or identifying a trigger. A trigger is a "red flag" that indicates the possible existence of a barrier to equal opportunity; a trend, disparity, or anomaly that suggests the need for an inquiry into an employment policy, practice, or procedure.

Examples of triggers include:

- High separation rate of people with disabilities
- A large number of non-selection complaints
- Conversation with a special emphasis program manager that Hispanics have experienced hostilities by co-workers
- Exit interviews indicating lack of promotional opportunities for Blacks
- Low participation rates of Asian males in executive/senior level positions

Possible source for identifying triggers include:

- Workforce statistics (starting point)
- Complaints data
- Conversations with EEO and HR staff
- Results of surveys, focus groups, and exit interviews

Identifying Barriers

The second step in the barrier analysis process is connecting triggers to possible barriers.

Barriers can be found in a number of processes such as recruitment and hiring, competitive and career-ladder promotions, training, awards and incentives programs, and even in separations.

Some examples of barriers include:

- A policy that requires education for positions where there is no positive education requirement
- A practice when supervisors are not providing a listing of their subordinate employees who should be considered for selection for developmental assignment(s)
- A procedure not to disseminate formal career development opportunities for GS-12s to all employees in this grade level

Devising Action Plans

Once an agency has analyzed all available source materials, followed clues to pinpoint potential barriers, and conducted thorough investigations of those potential barriers; the next step is to develop a plan for improvement, including overall objectives for barrier elimination, with corresponding action items, responsible personnel and target dates.

An objective, with accompanying action items, is a description of what specific actions the agency will take to eliminate or modify barriers to equal employment opportunity in its workplace. Each action item in the Plan must set a completion date and identify high-level agency officials who are responsible for ensuring that the action item is timely completed. Responsible officials can include management officials, supervisors or managers, special emphasis groups, and HR or EEO professionals.

Remember, a plan is nothing more than a piece of paper if it's not implemented.

Assessing Results

The fourth and final step in the barrier analysis process is assessing whether implementation of the Action Plan was successful.

Once a thorough investigation has been conducted and barriers to equal employment opportunity uncovered, a report on the findings and arising action items must be produced.

The report should also include a blueprint for periodic self-audits of the Action Plan to ensure that the agency is on schedule and meeting its goals.

The purpose of the EEO Barrier Analysis process is to drill down, identify, and correct a policy, practice or procedure that limits or tends to limit equality of opportunity.

It is important to remember that barrier analysis is an ongoing effort! Everyone can contribute in identifying and eliminating barriers.

For more information on Barrier Analysis, you can visit:

- the [Defense Equal Opportunity Management Institution](#) website (DEOMI), or
- the [EEOC website](#)

Knowledge Check 12

Now, let's take a moment to see what you've learned.

What is the main EEO analysis that examines relevant data, trends, and benchmarks to identify a policy, practice or procedure that limits or tends to limit equality of opportunity?

- a) SWOT Analysis
- b) Root Cause Analysis
- c) Force Field Analysis
- d) Barrier Analysis

The correct answer is d. Barrier Analysis is the investigation of anomalies (or triggers) found in workplace policies, procedures, and practices with an eye toward identifying their root causes and eliminating them.

Knowledge Check 13

Identify which of the following examples is a barrier:

- a) Females, in all groups, receive cash awards in the category of \$501 at a lower rate when compared to all males.
- b) A supervisor does not disseminate formal career development opportunities for GS-12s to all his employees in this grade level.
- c) An identified trend of a higher separation rate for Individuals with Targeted Disabilities when compared to their accession rate over the same time period.
- d) None of the above.

The correct answer is b. An example of a barrier is when a supervisor does not disseminate formal career development opportunities for GS-12s to all his employees in this grade level.

Completion

Congratulations! You have just completed Equal Employment Opportunity training. This course was developed as a training tool for gaining a better understanding of the different bases of discrimination and how it can be prevented, the pre-complaint and formal complaint process, reasonable accommodation, the laws and policies that protect employee rights, and barrier analysis.



Certificate of Completion

Has completed

DON Equal Employment Opportunity Training

Celina M. Kline

Celina M. Kline, Director
Department of the Navy
Office of Equal Employment Opportunity