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**To: NARA Managers and Supervisors**

**Subject: Guidelines on the Use of Official Time in Regards to Equal Employment Opportunity (EEO) Complaints**

Pursuant to 29 CFR §1614.605, complainants and their representatives (if they are employees of the agency where the complaint arose and was filed) are entitled to a reasonable amount of official time to prepare the complaint and respond to the agency's request for information. Managers and/or supervisors are responsible for approving reasonable EEO official time for their employees. In addition, consistent with the AFGE Council 260 National Agreement, union representatives designated by bargaining union employees as personal representatives are also permitted to use EEO official time under 29 CFR 1614. This time will not be counted as union official time. Accordingly, these guidelines are offered to assist with the approval process.

**The 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 EEO complaint 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 must consider the need for employees to be available to perform work on a regular basis. In this regard, 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 to all managers and supervisors.

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

A reasonable amount of official time, measured in terms of hours vs. days or weeks, *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. A reasonable amount of 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

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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 or by phone the employee's representative; and, time to write the complaint.

At the formal complaint stage, official time *will* be granted to employees to prepare responses to questions or information requests from government officials responsible for processing and/or attempting to resolve EEO complaints (e.g. EEO Counselor, Agency Representative, Investigator, ADR Mediator, designated agency resolving official, Office of General Counsel, EEOC, and other agency officials etc.).

## **2. Meetings and Hearings**

Official time will be permitted for employees to travel to and attend meetings initiated by EEO Counselors, EEO complaints investigators, ADR mediators and other agency officials authorized to discuss and/or attempt complaint resolution. A reasonable amount of official time may be afforded for employees to prepare for such meetings with or without a designated representative. Although individual circumstances will 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.

*Note: Time spent commuting to and from home should not be included in official time computations because all employees are required to commute to and from their federal employment on their own time.*

## **3. Preparation Time**

Since presentation of a complaint involves preparation for meetings and hearings, as well as attendance at such meetings, conferences, and hearings, complainants and their representatives are also afforded a reasonable amount of official time, as defined above, to prepare for meetings and hearings. They are also to be afforded a reasonable amount of official time to prepare the formal complaint and any appeals that may be filed with the Commission, even though no meetings or hearings are involved. However, because investigations are conducted by agency or Commission personnel, the regulation does not envision large amounts of official time for preparation purposes.

## **4. Time Spent on EEO Matters by Representatives**

The Commission considers it reasonable for agencies to expect their employees to spend most of their time doing the work for which they are employed. Therefore, representation time may be restricted to a certain percentage of the representative's duty hours in any given month, quarter, or year. Such restriction depends on the nature of the position occupied by the representative, the relationship of the position to the mission of the agency, and the degree of hardship imposed on the mission of the agency by the representative's absence from his/her normal duties. The amount of official time to be afforded to an employee for representational activities will vary with the circumstances.

Moreover, 29 C.F.R. § 1614.605(c) provides that in cases where the representation of a complainant or agency would conflict with the official or collateral duties of the representative, the Commission or the agency may, after giving the representative an opportunity to respond, disqualify the representative. At all times, the complainant is responsible for proceeding with the complaint, regardless of whether s/he has a designated representative.

The Commission does not require agencies to provide official time to employee representatives who are representing complainants in cases against other federal agencies. However, the Commission encourages agencies to provide such official time.

## **5. Requesting Official Time and Authorization**

Since all duty hours reported on time and attendance records must be certified by the employee's supervisor, employees and their employee representatives seeking to use official time in conjunction with preparing an EEO complaint must obtain *prior approval*. Employees are expected to provide the 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. Employees and their representatives must request this time in advance from their supervisors.

If necessary, additional time can be negotiated verbally by the supervisor and the employee. The supervisor must document the approval of additional time in writing and provide a copy to the employee. Supervisors may set limits on the aggregate amount of time their employees may spend representing other employees in the EEO process to ensure continued normal work operations. Supervisors are encouraged to consult with the Human Capital Office, the EEO Office, and/or the Office of General Counsel with any questions pertaining to official time requests, especially if such requests exceed eight (8) hours.

## **6. Denial of Official Time**

If any official time is denied, a written statement will be required from the supervisor explaining the reason for the denial. A copy will be provided to the complainant and to the Office of EEO for inclusion in the complaint case file. Managers and supervisors are encouraged to consult with the EEO Office prior to denying a request for official time.

## **7. Relationship to Other Dispute Resolution Forums**

The information contained in this letter pertains only to complaints filed under the EEOC regulations contained in 29 CFR 1614. It does not change agency policy regarding official time and use of agency resources in conjunction with other dispute forums (e.g. negotiated grievance procedures, hotline complaints, Anti-Harassment complaints, etc.) which are similar to, but controlled by other rules and procedures.

For additional information regarding the use of official time in the EEO complaint process, or contact the EEO Office 301-837-0939 or visit <https://www.archives.gov/eo>. You may also visit

EEOC website at <https://www.eeoc.gov/federal-sector/management-directive/chapter-6-development-impartial-and-appropriate-factual-recgords>.

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