



# IMCOM ID-T EEO Newsletter



## Mission

The mission of the ID-T EEO Directorate is coach, teach, and mentor IMCOM ID-T employees; ensuring equality of opportunity is realized by all.

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## FROM AN EEO PERSPECTIVE

In this volume 1 edition, we want to focus on information that will make employees more knowledgeable of the EEO program and processes.

In today's diverse workforce, supervisors face many challenges and have various roles and responsibilities. One major responsibility is practicing and embracing Equal Employment Opportunity (EEO). Accepting EEO as an essential component is critical in developing a high-performance organization that is inclusive and diverse. Understanding and implementing EEO principles in the work place is integral towards developing a work culture that is civil and respectful. Employing EEO principles are paramount to high-employee morale and mission accomplishment.

EEO can be regarded as a supervisor's worst nightmare. This may be attributed to the known consequences for not complying with Federal EEO laws or not contacting the servicing EEO office for guidance. To overcome this perception, there are a few points that should be considered:

- Supervisors must learn to recognize harassment and hostile behavior in the workplace;
- Monitor the conduct of your employees to ensure a work environment free of discrimination;
- Prevent all types of harassment whenever possible (to include non-verbal harassment, i.e., posters, calendars, etc.).
- Respond to complaints quickly, decisively, and fairly.
- Be familiar with the anti-discrimination /anti-harassment policy and the process you need to follow to report or investigate discrimination or harassment.

It is imperative that supervisors and managers have a solid understanding of their role and responsibilities. This will not only benefit supervisors and employees, but the agency as well.

This newsletter is only for informational purposes. The information contained can be used as a reference to assist managers, supervisors, and employees in developing and maintaining a high performance organization.

## Computer and Electronic Accommodation Program (CAP)

### What is CAP?

Established by the Department of Defense (DoD) in 1990, the Computer/Electronic Accommodations Program (CAP) is a centrally funded program that provides assistive technology (AT) and reasonable accommodations to people with disabilities and wounded Service members. CAP's mission is to ensure that people with disabilities and wounded Service members have equal access to the information environment and opportunities in the DoD and throughout the Federal government.

What is assistive technology?

The Assistive Technology Act of 1998 defines Assistive or Adaptive Technology as: products, devices, or equipment, whether acquired commercially, modified or customized, that are used to maintain, increase or improve the functional capabilities of individuals with disabilities.

### Reasonable Accommodation

Before we begin our discussion on reasonable accommodation, how do we define an individual with a disability? An "individual with a disability" is defined as someone who: (1) has a physical or mental impairment which substantially limits one or more of such person's major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment. See 29 C.F.R. § 1614.203. Major life activities are activities that an average person can perform with little or no difficulty, such as walking, breathing, seeing, hearing, speaking, learning, and working. When the phrase "individual with a disability" is used in this reasonable accommodation procedure, it is intended to refer to both employees and applicants for employment.

What is a reasonable accommodation?

In general, an accommodation is "reasonable" if it seems, on its face, feasible or plausible. To be reasonable, an accommodation must also be effective in meeting the needs of the individual. Reasonable accommodation is any modification or 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. The provision of reasonable accommodations is the responsibility of the employing agency. CAP serves as a resource to the DoD and partner agencies.

Requesting a Reasonable Accommodation (RA)

Requesting an accommodation is an interactive process between the employee and his/her supervisor or applicant and the hiring agency. To request an accommodation, an applicant or participant must let the employer know that s/he needs a service-related adjustment or change for a reason related to a disability. Furthermore, an individual may use plain English and need not mention the ADA or use the phrase "reasonable accommodation." An employee or job applicant may initiate a request for RA with their supervisor or hiring agency orally or in writing. The employee will be asked to complete an RA request form for record keeping purposes. However, a person's oral or written request starts the RA process.

The Interactive Accommodation Process

Once an accommodation has been requested, the participant or applicant and the supervisor or their designee should engage in an interactive process to clarify the individual's needs and possible accommodations. The nature of this discussion will vary. In some instances both the disability and the type of accommodation required will be obvious. In other situations, the supervisor may need to ask questions concerning the nature of the disability and the individual's functional limitations in order to identify an effective accommodation. While the individual with a disability does not have to be able to specify the precise accommodation, she or he does need to describe the problems posed by the workplace barrier. Moreover, the individual will need to provide medical documentation to support their accommodation request.

## The Role of an EEO Counselor

EEO counseling is not only the first step in the EEO complaint process, but it also provides an opportunity for informal resolution at an early stage. For this reason, the EEO Counselor plays a vital role in this process.

The EEO Counselor establishes an open and objective channel through which employees may raise questions, find answers, discuss problems, and obtain resolution to employment discrimination conflicts. In addition, the counselor is an informal problem solver, educator, fact-finder, and bridge between employees and management.

The EEO Counselor must be sensitive to the employment problems faced by all employees (especially minorities, women, people with disabilities, and older workers). The Counselor must also be objective, communicate effectively, show good judgment in handling sensitive information, and be able to secure the confidence of both employees and management officials.

There are six clearly defined duties of an EEO Counselor which are as follows:

Advise the aggrieved about the EEO complaint process and other avenues of relief.

Determine the basis and the claims of the complaint.

Conduct a limited inquiry to furnish information for resolution efforts and formal complaints (if filed).

Seek resolution at the lowest possible level.

Advise the aggrieved of the right to file a formal complaint if the informal complaint is not resolved.

Prepare a sufficient Counselor's Report (DA 7510)

The EEO Counselor wears many hats. "Roles will change as the counseling progresses; therefore, the counselor should continuously reassess the situation in order to determine which role is necessary."

Did you know that EEO counselors possess certain authorities? During the EEO complaints process counselors are authorized to: 1) Cross organizational lines to interview employees, supervisors and managers who may contribute to the fact gathering process. 2) Review documents and records relevant to the matter (s) being counseled.

In addition to the authorities mentioned above, counselors are also protected from restraint, interference, coercion, discrimination, and/or reprisal in the performance of their duties as an EEO Counselor.

On the flip side, counselors do not have the authority to: 1) Administer an oath or take sworn statements. 2) Conduct intensive in-depth investigations. Investigations are conducted by the Investigations & Resolution Division (IRD), at the formal stage.

Resource: <http://www.usasac.army.mil/EEO/role.html> and DA Counselor's Handbook

### Protecting Privacy

Did you know that an EEO Counselor has the legal and ethical responsibility to safeguard the privacy of all employees? The Privacy Act of 1974 requires that any record located in a system of records (such as personnel records or EEO records) be protected against invasion of privacy.

EEO Counselors must be very careful not to divulge information obtained during the counseling process and other information obtained in EEO cases. In addition, EEO counselors are trained not to discuss or disclose privacy information to co-workers, friends or family members who do not have a need to know it. Failure to protect records or information can lead to a fine up to \$5000 and/or conviction of a misdemeanor. (DA EEO Counselor Handbook)

## EEO Discrimination Complaints Process

Discrimination in general terms may be defined as showing a difference or favoritism in treatment. For purposes of the EEO program, discrimination is defined as any act or failure to act, impermissible based in whole or in part on a person’s race, color, religion, sex, national origin, age, physical or mental disability, genetics, and/or reprisal, that adversely affects privileges, benefits, working conditions, results in disparate treatment, or has a disparate impact on employees, former employees, or applicants for employment.

Complaints of discrimination may be filed by individuals who fall within the following categories: Applicants for employment, current employees, former employees, and some contract employees for employment-related issues. These complaints are usually referred to as Title VII complaints. The majority of EEO complaints are filed in this category.

### EEO Discrimination Complaints Process

Pre-Complaint	Individual contacts servicing EEO office to file a pre-complaint within 45 days of the alleged discriminatory incident, the date that the individual became aware of discriminatory act, or the effective date of the personnel action.	0 - 45 calendar days
	EEO specialist conducts an intake interview and assigns an EEO counselor or schedules mediation based on the offer made by the EEO Officer and Aggrieved’s election.	Traditional counseling 30 days; mediation 90 days
	If the pre-complaint is resolved, a Negotiated Settlement Agreement (NSA) is prepared and signed identifying the terms to which both parties have agreed. The NSA must be reviewed by the servicing Labor Counselor and/or Civilian Personnel official for legal and civilian personnel sufficiency prior to affixing any signatures on the NSA.	
	If the pre-complaint is not resolved upon completion of either traditional counseling or mediation, a Final Interview is conducted with the Aggrieved and s/he is informed of the right to file a formal complaint.	15 days from receipt of Notice of Right to File a formal complaint
Formal Complaint and Investigation	The Aggrieved is now referred to as the Complainant. Investigations are usually conducted as fact-finding conferences. Alternative Dispute Resolution (mediation) is also available during the formal process.	180 days
	In the event the formal complaint is resolved, an NSA is prepared and signed. If no resolution is reached, the Complainant will be given a Report of Investigation along with the Notice of Post-investigative Options and will: <ul style="list-style-type: none"> <li>• Elect to pursue a hearing with the EEOC. An EEOC Administrative Judge will conduct the hearing and issue a recommended decision; or</li> <li>• Elect to have the Agency issue a Final Army Decision based on the record; or</li> </ul>	30 days
Post-complaint	If the complaint is unresolved, the Complainant may appeal to the EEOC Office of Federal Operations or file a civil action with the US District Court where s/he resides.	30 days 90 days
	Reconsideration Decision to Filing of Civil Action	90 days

## Alternative Dispute Resolution

### WHAT IS ALTERNATIVE DISPUTE RESOLUTION?

Alternative Dispute Resolution, commonly referred to as ADR, is a term which covers many alternatives to traditional methods for resolving conflicts or disputes. ADR has been used as a tool in resolving workplace disputes arising from poor communication, personality conflicts, or alleged discrimination. All ADR processes aim to achieve the following desirable results:

- to motivate parties to focus their attention on the issues;
- to give parties the opportunity to present their perspectives on the situation;
- to provide parties the opportunity, often for the first time, to hear a clear explanation of each other's view point; and
- to provide parties with a window of opportunity to identify common interests and points of agreement, and to fashion mutually acceptable settlement options to resolve disputed issues.

The Department of the Army has chosen mediation as its primary ADR method for EEO disputes because it empowers the parties to reach an acceptable resolution of the conflict, through the intervention of a third party. However, the DA's ADR program also conducts settlement conferences, and has piloted other techniques, such as fact-finding and early neutral evaluation.

### WHAT IS MEDIATION?

Mediation is familiar to most people as a means of resolving labor management and international disputes, but it also has been used to settle contract, interpersonal, human resource, and EEO conflicts. Mediation involves the intervention of a third person, or neutral, into a dispute to assist the parties in negotiating jointly acceptable resolution of issues in a conflict. The mediator meets with the parties at a neutral location where the parties can discuss the dispute and explore a variety of solutions. Each party is encouraged to be open and candid about his/her point of view. The mediator, as a neutral third party, can view the dispute objectively and assist the parties in considering alternatives and options that they might not have considered. The mediator is neutral in that he or she does not stand to personally benefit from the terms of the settlement, and is impartial in that he or she does not have a preconceived bias about how the conflict should be resolved.

The mediation session is private and confidential. Matters unique to the mediation discussion have been held by Federal courts to be privileged and inadmissible in any adversarial administrative or court proceeding with the exception of certain issues such as fraud, waste and abuse, or criminal activity. If a settlement is not resolved during a mediation session, and the dispute was litigated in any administrative or judicial proceeding, neither the mediator nor his/her notes can be subpoenaed by either party.

## Traditional Counseling vs Mediation

### Discrimination Complaint Process -- Pre-complaints

#### Traditional Counseling

- The EEO counselor is a neutral party responsible for:  
Conducting an inquiry within 30 calendar days; interviewing witnesses; facilitating resolution, if possible; and preparing and submitting EEO Counselor's Report.
- Management officials identified as witnesses are notified and presented with their rights and responsibilities and are provided with the opportunity to respond to the allegations of discrimination.
- An NSA is prepared if complaint is resolved.
- If there is no resolution, the Aggrieved is issued a Notice of Right to File a Formal Complaint of Discrimination.

#### Mediation

- Army's preferred method of dispute resolution.
- Mediation is voluntary for both the Aggrieved and the Commander's designee.
- Mediators are neutral parties.
- Normally scheduled within two weeks, but can take up to 90 days to be completed.
- Mediation is a confidential process -- all notes are destroyed and information disclosed is confidential.
- An NSA is prepared if complaint is resolved.
- If there is no resolution, the Aggrieved is issued a Notice of Right to File a Formal Complaint of Discrimination.

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