

FACT SHEET

IMSE-KNX-EEO

SUBJECT: Fact Sheet - Employee Use of Official Time and Resources for the Processing of Equal Employment Opportunity (EEO) Complaints

PURPOSE: Advise supervisors on regulatory requirements and restrictions

The Standard

1. Civilian employees who file Equal Employment Opportunity (EEO) complaints have certain rights and incur responsibilities with regard to their complaint. Army Regulation (AR) 690-600, paragraph 7-6, provides the basic rule for supervisors and employees to follow regarding use of official time. First, the employee must request official time from his or her supervisor before he or she uses such time to work on the complaint. The supervisor must grant the employee a reasonable amount of time to prepare his or her case and attend required meetings and hearings.
2. Civilian employees who file an EEO complaint are also entitled to the representative of their choice, which may be another civilian employee. The right to official time extends to the complainant's representative for both attending meetings and preparing the case, provided the complaint is against the Army. To use duty time as a complainant's representative, the individual must be designated by the employee in writing to the EEO Office.

Guidelines for "Reasonable Amount of Time"

Although there is no hard and fast rule for what is considered a "reasonable amount of time," the following information was gathered from EEOC guidance and case decisions.

1. Reasonable time will be considered in terms of hours, and not in terms of days, weeks, or months.
2. A reasonable amount of official time to work on EEO complaints is defined as whatever is appropriate under the circumstances of the case; management may restrict the overall hours to the extent necessary to ensure that employees spend most of their time doing the work for which they are employed.
3. For a complainant, any time spent in an Army-required or Equal Employment Opportunity Commission (EEOC)-required meeting or hearing is reasonable, and official time will be granted. For employee-representatives, official time will be granted for the duration of any Army- or EEOC-required meeting or hearing, regardless of the tour of duty, *if the representative is otherwise in an on-duty status.*

4. Witnesses who are federal employees, regardless of their tour of duty and whether they are employed by the respondent agency or another federal agency, must be in a duty status when their presence is authorized or required by the EEOC or agency officials in connection with a complaint. Usually the employee/witness will be informed in advance of when their presence is required.

5. Supervisors must change the duty schedule of employees called as witnesses, the complainant and the complainant's representative, if they are called to an investigation or hearing outside of their normal tour of duty. If this is not possible, the employee must be paid overtime or compensatory time for the time spent in the hearing or investigation. This includes travel time if the location of the hearing or investigation is away from their normal duty station. Since most EEOC hearings are held in Louisville, if the employee does not live in the Louisville area, travel time to and from the site of the hearing should be included in the computation of overtime/compensatory time due. In addition, since the employee is performing official business, they are entitled to reimbursement for travel expenses (including parking) when required.

6. Preparation time for any hearing or meeting may also be considered reasonable. While the supervisor must grant some amount of preparation time, the actual amount granted is within the supervisor's discretion, based on the following factors:

- a. Nature and complexity of the complaint
- b. Mission requirements of the unit/directorate
- c. Agency need to have employees available to perform normal duties

7. The Army is not obligated to change the work schedule of the complainant, incur overtime wages, or pay for travel expenses merely to allow the complainant to select a representative or to confer with such representative.

8. Supervisors and employees should come to an agreement as to a reasonable amount of time needed for the complaint. It is not unreasonable for a supervisor to deny a request for official time if the employee fails to explain the necessity of his request and the amount of time required.

9. Disputes as to the reasonableness of requested time will be referred to the EEO Officer. That decision may be further appealed to the Garrison Commander.

Denial of Official Time

1. The complainant's and representative's right to reasonable official time is independent of the credibility of an EEO complaint. The EEOC can award relief to a complainant who was denied reasonable official time.

2. A supervisor who denies official time, in part or in full, to either a complainant or representative must provide a written statement to be placed in the EEO Complaint File stating the reason for the denial. If the complaint has not yet been filed, the supervisor

will provide a written notice to the employee stating the reason for the denial and provide a copy of such written notice to the EEO Office for placement in the Complaint File if the employee subsequently files a complaint. Supervisors will consult the EEO Office (624-2545) or the Labor Counselor (624-4668/6752) before deciding to deny a request for use of official time as unreasonable.

3. *Denial of Representative*: Employees are expected to spend their official time performing official duties. If the employee's representation of the complainant would cause a conflict (or create the appearance of a conflict) with the employee's official or collateral duties, then the employee may be denied permission to represent the complainant. This decision to deny permission to represent the complainant will be made by the EEO Officer. The decision may be further appealed to the Garrison Commander, or his designee in his absence, after consultation with the installation Staff Judge Advocate's office.

Use of Government Resources for EEO Complaints

1. Employees with EEO complaints and their non-attorney representatives may use government resources (to a limited extent) while preparing for or attending EEO-related meetings on "official time." The complainant's or non-attorney representative's use of government property (copiers, telephones, word processors, etc.) must be authorized by the agency and must not cause undue disruption of agency operations.

2. Supervisors should contact the EEO Office or the Labor Counselor on questionable cases before denying requests for use of government resources for EEO complaint preparation.

When Official Time Should Not Be Granted

1. Employees are not entitled to use official time to pursue an EEO complaint in the Federal Court system.

2. Employees called as witnesses are not entitled to use official time to meet with the complainant's attorney or representative.