

***Managing Workplace Conflict:
Understanding the Options***

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INTRODUCTION

“All organizations have conflict...doing nothing is the least advisable course.”

All organizations have conflict. We can respond to conflict with choices that lead to destructive outcomes. These include escalating “battles” that lead to hurt and unsafe feelings or suppressed frustration that eats away at employees’ comfort. We can also respond to conflict in a manner that leads to constructive outcomes. While many employees would like a constructive resolution to conflict, we often do not know how to achieve such a resolution, and so may not believe that it is possible.

Frequently when we experience conflict, we can work things out by ourselves, quickly and satisfactorily. However, when a person feels a need for assistance in order to attempt to reach a constructive solution, the Federal Government and the Department of Transportation (DOT) offer a variety of kinds of assistance. This Guide is intended to help you choose an option best suited to your situation.

Formal avenues are available to employees, such as the grievance and EEO complaint processes. Like the court system, these are “rights-based” and end with a decision-maker determining the final outcome. Each approach has its own timeframes, procedures, and decision-making structure. The demands on an employee’s finances, time, and emotions, as well as the demands on the work environment, vary as well.

Informal avenues are also available. Alternative Dispute Resolution (ADR) leaves the resolution of conflict to the persons who have the conflict. ADR can help employees improve communication, build relationships, and understand another person’s perspective. The availability of ADR before, during, or in place of the formal dispute resolution avenues provides employees a more “personal” option for addressing their concerns. ADR is an “interest-based” option because it focuses on the interests of the parties.

Employees are encouraged to review this Guide. Should you face a workplace conflict, a call to the referenced contacts or a visit to the listed websites may provide you with some critical information. Protections against reprisal exist for employees who elect to pursue these options. Please note that this Guide is informational only and does not replace or take precedence over any laws, regulations or policies that govern the listed processes.

In most instances of conflict, doing nothing is the least advisable course of action. By seeking to address concerns early and choosing an appropriate avenue, you can increase the chances of resolving your situation in the most timely and effective manner.

INFORMAL APPROACHES

ALTERNATIVE DISPUTE RESOLUTION (ADR)

❖ What is ADR?

ADR is a voluntary alternative to, and not a replacement for, formal dispute resolution systems such as grievances, discrimination complaints, and appeals. Unlike more formal processes, where management and employees are placed in a contest to determine a “winner” and a “loser,” ADR provides an arena where individuals may thoroughly examine all the matters related to workplace concerns and develop solutions that are acceptable to all parties. In ADR, participants can generally arrive at resolutions much more quickly than decisions can be issued in the formal process, and resolutions are designed by the participants rather than by an external party.

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ADR consist of a variety of approaches and techniques for early intervention and dispute resolution that include mediation, conciliation, facilitation, early neutral evaluation, ombuds, and others. Each ADR technique provides a non-adversarial setting where employees can openly discuss issues and examine possible solutions with the assistance of a neutral third party.

❖ Who may use ADR?

Any employee, including managers, temporary appointees, professionals, and support and administrative staff, may ask to participate in ADR and may request that other involved individuals participate. ADR is appropriate for interpersonal disputes, possible disciplinary or performance-related actions, as well as concerns about violations of regulations or discrimination. ADR is available to an employee who is experiencing conflict with a co-worker, or with a supervisor, and may be requested whether or not a complaint, grievance, or personnel actions has been initiated over the matter. Employees maintain the right to pursue those more formal avenues as long as they meet the required deadlines.

Employees maintain the right to pursue more formal avenues as long as they meet the required deadlines.

❖ **How does ADR work?**

DOT encourages all employees to pursue available ADR options at the earliest possible time in order to minimize the disruptions and stress that often accompany conflict. Any employee can start an ADR process by contacting the agency's ADR programs listed below. If an employee is already in one of the formal dispute resolution systems, an opportunity to participate in ADR may be offered as a part of that system.

DOT encourages all employees to pursue available ADR options at the earliest possible time...

Although there are a number of different ADR techniques, mediation is the one used most frequently at DOT. In mediation, a trained neutral mediator usually begins the session with all the participants present by explaining the procedures and ground rules that will be used. The participants are then invited to present the issues important to them in their own words. They may voice their concerns and say what they are hoping for, while the mediator provides structure, balance, and fairness throughout the discussion. The mediator may meet separately with each participant to discuss matters further and to develop possible options for resolution. Throughout the mediation process, the participants listen to each other's concerns and try to focus on the kind of future they can build together. Although an agreed upon resolution between the parties is the primary goal, mediation is often considered successful if a better understanding or relationship between the participants is achieved.

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In addition to mediation, other ADR techniques are increasingly becoming available at DOT. All of these processes emphasize voluntariness, neutrality, confidentiality as permitted by law, and the ability of the parties to determine their own futures.

❖ **How do I learn more about ADR?**

The Center for Alternative Dispute Resolution (CADR) works with DOT employees and organizations to increase knowledge, quality, and use of ADR. Anyone who has questions about ADR or wishes to initiate an ADR process should call (202) 385-CADR (2237) or email CADR@ost.dot.gov. For additional information about ADR within the Department and a list of Dispute Resolution Council contacts see <http://www.dot.gov/adr>.

Finally, ADR is often offered as part of the EEO and grievance processes discussed later in the Guide. See the Formal Procedures section for the use of ADR as part of these formal processes.

EMPLOYEE ASSISTANCE PROGRAM (EAP)

❖ What is EAP?

EAP is a professional counseling and referral service designed to help you with your problems both on and off the job. It is free, confidential within the limits of the law, voluntary and available 24 hours/7 days a week. EAP provides employees with counselors who are prepared to assist with virtually any issue or problem that may arise. Some of the most common concerns relate to emotional issues, relationships, family matters, alcohol/other drug use, and the job. EAP offers legal and financial consultation as well.

EAP is a professional counseling and referral service designed to help you with your problems both on and off the job.

❖ Who may use EAP?

Any DOT employee and their immediate family members may use the EAP. In addition, consultations are available to managers/supervisors to discuss issues that may arise in the workplace.

❖ How does EAP work?

EAP provides immediate assistance to employees and their immediate family members. Employees simply contact an EAP counselor, who meets with them in a confidential setting. The counselor helps employees assess a problem, provides short-term counseling or problem-solving when appropriate, assists in selecting a community resource when necessary, and follows up to ensure employees receive quality assistance.

❖ How do I learn more about EAP?

To schedule an appointment, employees should call the EAP at 1-800-222-0364, TTY 1-888-262-7848; FAA employees should call 1-800-234-1327, TTY 1-800-456-4006 or for information about the EAP, contact your operating administration's EAP program coordinator or Human Resources office. Additional information can be found on their website at www.FOH4you.com.

FORMAL PROCEDURES

ADMINISTRATIVE GRIEVANCES

❖ **What is the administrative grievance procedure?**

The administrative grievance procedure provides employees an opportunity to raise concerns about dissatisfactions and work issues with management. Employees who believe that a violation of a personnel regulation has caused them harm may choose to file an administrative grievance. Management uses the process to examine the claims and provide a formal response, which can range from completely correcting the situation to reinforcing the reasons for the challenged action.

Administrative grievances can appropriately address a wide variety of potential employment situations, but are not applicable in every matter, such as complaints of discrimination.

The administrative grievance procedure is not the process for resolving grievances arising from the following matters:

- Non selection for promotion.
- Content of regulations and policies.
- Matters subject to negotiated agreement or other appeal body.
- Preliminary warnings.
- Terminations during a probationary period.
- The content of performance standards or work objectives.
- Incentive awards.
- Other matters listed as exclusions in DPM Letter 771-1 Agency Administrative Grievance System, May 18, 1988.

❖ **Who may file an administrative grievance?**

Grievances may be filed by employees who are not in a bargaining unit. Grievances may also be filed by bargaining unit employees concerning matters which are outside the scope of a negotiated grievance procedure, either because there is no negotiated grievance procedure or because management and the union agreed to exclude certain matters from coverage. Employees should contact their Human Resource Office or local union official to determine whether the administrative grievance procedure is the appropriate process for filing a grievance.

❖ **How does the administrative grievance process work?**

The employee initially presents an informal grievance to his/her supervisor orally or in writing, usually within 15 calendar days of either the personnel action or event that triggered the grievance, or the day when the employee became aware of the action or event. The supervisor will respond to this Step 1 grievance generally within 15 calendar days. If the grievance decision is unsatisfactory, or no decision is issued, the employee may take his/her grievance to the next higher official for a final decision.

An employee must file a written grievance to the deciding official within a given period of time, which can vary from 5 to 15 days after receipt of the Step 1 decision. The deciding official will determine an investigative method, and provide the employee with a written decision. This is the final agency decision.

There is a Department-wide administrative grievance procedure which is available to all eligible DOT employees. Some OAs may have supplemental grievance procedures. The Department's administrative grievance procedure requires:

1. employees to submit written grievances to their supervisors within 15 days;
2. supervisors to issue written decisions within 15 days;
3. employees to take step 1 decisions to the next higher official within 5 days of receipt of the decision; and
4. employees to file step 2 grievances with their immediate supervisor within 5 days of the expiration of the step 1 decision time limit if a decision is not issued.

The Department-wide grievance procedure also requires deciding officials to provide the grievant with a copy of a report of findings and reasons.

The grievant or any management official may ask to participate in ADR during any stage of the process prior to the agency's final decision.

The grievance terminates with a final decision, and is not subject to further review.

❖ **How do I learn more about this administrative grievance process?**

Employees who are interested in learning more about the administrative grievance procedure should contact their agency's Human Resources office. The Department's Administrative Grievance Procedure can be obtained at:

<http://dothr.ost.dot.gov/HRPolicy/Subject/subject.html#EmployeeRelations>

Employees should ask for a copy of their agency's supplemental administrative grievance procedures if one exists.

NEGOTIATED GRIEVANCES

❖ **What is the negotiated grievance procedure?**

The negotiated grievance procedure is a procedure developed by management and the union to resolve employee and union disputes. The negotiated grievance procedure is designed to address disputes at the lowest possible level over matters concerning conditions of

employment, violations of the terms of a collective bargaining agreement, or the interpretation of any law, rule or regulation affecting conditions of employment. All negotiated grievance procedures must provide for binding arbitration. Some grievances such as those concerning retirement, life insurance or health insurance cannot by law be resolved through the negotiated grievance procedure. If the union and management decide to exclude certain issues from the negotiated grievance procedure, these issues would then have to be raised under the administrative grievance procedure or some other alternative system developed by the parties.

Generally, negotiated grievance procedures provide for internal informal and formal opportunities for resolving workplace disputes, written decisions, and the elevation of grievances for resolution to officials up the chain of command. Should all of these opportunities fail, the union may ask an arbitrator to decide the unresolved issues.

❖ **Who may file a negotiated grievance?**

Any bargaining unit employee may file a grievance under the negotiated grievance procedure. Neither union membership nor union concurrence is necessary to file a grievance. Unions have an obligation to fairly represent employee interests without discrimination and without regard to whether an employee is a dues paying member of the union.

The first step for employees contemplating a grievance is to determine whether they are in the bargaining unit. Employees should contact their Human Resource Office or local union official for advice, or they can consult the collective bargaining agreement which usually states to whom the agreement applies. Generally, whether an employee is a bargaining unit member will be decided before the grievance moves forward.

Employees should first determine whether or not they are in the bargaining unit.

Once it has been determined that the employee is in the bargaining unit, the employee's next step is to read the negotiated grievance procedure, which spells out the procedures, timeframes, and issues covered since they vary according to the particular bargaining unit.

Grievances may be filed by the union on behalf of an employee even though the employee is not interested in filing a grievance on their own. These generally occur when the outcome of the grievance has wide implications for the bargaining unit.

❖ **How does the negotiated grievance process work?**

An employee, or union on the employee's behalf, must file a grievance in the manner required by the negotiated grievance procedure. In most cases the grievance is taken up with the employee's supervisor or other management official. The supervisor or management official considers and examines the concerns the employee has raised and provides a formal decision. If the grievant is not satisfied with the decision, he or she can then raise the issue or issues with the next higher official. The number of such "steps" varies from bargaining unit to bargaining unit. The managers' decision can range from finding for the grievant with

appropriate remedies to a denial of the grievance. If the grievant is not satisfied with the highest level decision, the matter may go to an external, neutral “arbitrator” for a binding decision. The decision to go to arbitration rests with the union.

Employees who file negotiated grievances have the right to have a union representative assist and represent them through every phase of the process. They cannot hire their own representatives unless the union states that the private representative is acting for the union. Further, employees may represent themselves, and unions must honor such requests. However, unions have the right to be present during grievance discussions in order to protect their institutional interests.

Both the union and his/her union representative, if the grievant has one, will be allowed to use official time to prepare and present the grievance. The time allotted is covered in the collective bargaining agreement.

❖ **How do I learn more about the negotiated grievance process?**

Employees who are interested in learning more about the negotiated grievance process should contact their local union or the labor relations specialist in their agency’s Human Resources office. You may contact these numbers for general assistance.

Federal Aviation Administration: 202-267-3421

National Air Traffic Controllers Association: 202-628-5451

Professional Airways Systems Specialists: 202-293-7277

National Association of Air Traffic Specialists: 301- 933-6228

American Federation of State, County, and Municipal Workers, Council 26: 202-393-5757, 202-267-5356, 202-267-8693 or 202-385-7274

National Association of Government Employees: 703-519-0300 or for Local R-3-10: 757-877-3638

National Federation of Federal Employees: 202-862-4400

American Federation of Government Employees: 202-639-6406

Professional Association of Aeronautical Center Employees: 405-954-3685

Laborers International Union of North America: 405-954-6588

Federal Railroad Administration: 202-493-6110

AFGE, Local 2814: 412-395-5424

Saint Lawrence Seaway Development Corporation: 315-764-3230

AFGE, Local 1968: 315-764-3289 or 315-764-3239

Maritime Administration: 202-366-4147

James River Reserve Fleet: 757-887-3233 (ext 21)

Beaumont Reserve Fleet, AFGE, Local 2413: 409-722-3433

Suisun Bay Reserve Fleet, Seafarers International Union of North America: 707-745-0487

Research and Special Programs Administration, Volpe National Transportation Systems Center: 617-494-2704

National Association of Government Employees, Local R1-195: 617-494-2024

EQUAL EMPLOYMENT OPPORTUNITY (EEO) COMPLAINTS

❖ What is the EEO complaint process?

The EEO complaint process provides aggrieved employees, former employees, or applicants an avenue to voice their concerns if they believe they have been subjected to illegal discrimination as to a term or condition of employment by a federal agency. These concerns may be personnel or work related, or they may result from an agency's failure to take actions. The EEO complaint process provides the employee opportunities to seek either a mutual resolution of those issues with management, or the opportunity to pursue the claims of discrimination in the formal EEO process.

...an aggrieved employee has 45 days from the alleged discriminatory action or the effective date of the personnel action she or he believes was discriminatory, to contact an EEO counselor.

❖ Who may use the EEO complaint process?

Any employee, former employee, or applicant who believes she or he has suffered in employment due to an action or decision by an official or employee of DOT, and believes that this action or decision was made because of race, color, religion, sex, age (40 and over), national origin, physical or mental disability, or retaliation for prior EEO activity, may file an EEO complaint. DOT recognizes sexual orientation as an additional protected basis, but violations on this basis are not enforceable in Federal courts or the Equal Employment Opportunity Commission (EEOC).

❖ How does the EEO complaint process work?

An aggrieved employee, former employee, or applicant has 45 days from the effective date of the personnel action she or he believes was discriminatory, or within 45 days of the matter alleged to be discriminatory, to contact an EEO counselor. During this "pre-complaint" or "informal" stage, the EEO counselor informs the employee in writing of her/his rights and responsibilities, including the right to select a representative to assist her/him during the complaint process. The EEO counselor works with the employee and management officials to explore informally the full scope of the employee's claims and tries to facilitate a resolution. The EEO counselor will offer the employee an opportunity to participate in ADR as an alternative to counseling. If either counseling or ADR fails to resolve the claims of discrimination, the employee may file a formal EEO complaint with DOT Departmental Office of Civil Rights. A formal complaint must be filed in writing, within 15 days of the employee's receipt of the notice of the right to file a formal complaint.

The formal complaint stage consists principally of the acceptance/dismissal, investigation, final decision or hearing, and appeal phases. The agency will decide whether to accept or dismiss the complaint filed by the complainant. If the agency accepts the complaint of discrimination, the case will proceed to investigation. If the agency dismisses the complaint, the complainant has the right to appeal to the EEOC within 30 days of receipt of the

dismissal. Following an investigation, the complainant has the right to request either a final decision from the agency or a hearing with the EEOC.

The complainant can appeal the final action or decision to the EEOC within 30 days of receiving a decision by either party. The complainant may file a civil action in federal court either within 90 days of receipt of a final action on an individual or class complaint if no appeal has been filed; after 180 days from the date of filing an individual or class complaint if no appeal has been filed and no final action on an individual complaint or no final decision on a class complaint has been issued; within 90 days after receipt of the Commission's final decision on appeal; or after 180 days from the date of filing an appeal with the Commission if there has been no final decision by the Commission. During the formal complaint stage, the complainant may again be offered an opportunity to participate in ADR. Because it can take as long as several years before a decision is issued in the EEO complaint process, complainants may wish to consider participating in ADR in an attempt to resolve a complaint early.

❖ **How do I learn more about the EEO complaint process?**

Employees who have questions about the EEO complaint process should contact their Civil Rights office. Employees who wish to initiate an EEO complaint should contact an EEO counselor. Additional information on the EEO complaint process can be found at www.dot.gov/ost/docr. Employees who have questions about using ADR for a Civil Rights/EEO discrimination complaint can also contact the ONEDOT Sharing Neutrals Program at (202) 366-4648 or 1732, or visit the program's website at <http://www.dot.gov/ost/docr/main.html> for additional information.

The EEOC has posted information on its website at <http://www.eeoc.gov>. The site includes the regulation that contains the requirements for the EEO complaint process (29 CFR 1614).

MERIT SYSTEMS PROTECTION BOARD (MSPB) APPEALS

❖ **What is an MSPB appeal?**

MSPB appeals exist to ensure that Federal employees are protected against abuses by agency management, that executive branch agencies make employment decisions in accordance with the Merit System Principles, and that Federal merit systems are kept free of prohibited personnel practices. Most Federal employees may appeal various personnel actions affecting them to the MSPB. Most matters appealable to the MSPB are personnel actions that have an adverse impact on employees, such as removal, suspension for more than 14 days, reduction in grade or pay, furlough for 30 days or less, reduction in force, performance-based actions, and certain other actions under regulations of the Office of Personnel Management.

❖ **Who may use the MSPB appeals process?**

Most, but not all, Federal employees may file appeals of adverse actions and performance-based actions to the MSPB. Probationary employees, non-appropriated fund activity employees, employees serving under a temporary appointment of 1 year or less, and employees in bargaining units with grievance procedures that cover any actions that may be appealed to the MSPB either do not have a right to file appeals or have restricted rights to do so.

❖ **How does the MSPB appeals process work?**

Employees must file a written appeal of the agency's final action with MSPB's regional or field office serving the area where the duty station is located. Appeals must be filed within 30 calendar days of the effective date of the action, or within 30 calendar days of receipt of the decision, whichever is later. In those cases where the parties mutually agree to attempt resolution through ADR, MSPB regulations extend the appeal filing time for an additional 30 days. MSPB encourages the parties to explore settlement of issues at any time during the appeals process, to prevent the need for an administrative hearing.

An MSPB administrative judge makes an initial decision, which becomes final unless a party petitions the full Board for review. The Board's final decisions may be reviewed in the U.S. Court of Appeals for the Federal Circuit or, in some instances, Federal district court.

❖ **How do I learn more about MSPB appeals?**

Employees interested in learning more about the MSPB appeals process or who wish to initiate an appeal should contact their agency's personnel office, MSPB, or an MSPB field office serving the area where their duty station was located when the action was taken. MSPB offers additional information on its website at <http://www.mspb.gov>.

OFFICE OF SPECIAL COUNSEL (OSC) COMPLAINTS

❖ **What are OSC complaints?**

OSC, an independent agency, has as its primary mission safeguarding the merit system by protecting Federal employees and applicants from "prohibited personnel practices" (PPP), including reprisal for whistleblowing. A personnel action (such as appointment, promotion, reassignment or suspension) may need to be involved for a PPP to occur. Generally stated, OSC provides that a federal employee authorized to take, direct others to take, recommend or approve any personnel action may *not*:

1. discriminate against an employee or applicant based on race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation;
2. solicit or consider employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics;
3. coerce the political activity of any person;
4. deceive or willfully obstruct anyone from competing for employment;
5. influence anyone to withdraw from competition for any position so as to improve or injure the employment prospects of any other person;
6. give an unauthorized preference or advantage to anyone so as to improve or injure the employment prospects of any particular employee or applicant;
7. engage in nepotism (i.e., hire, promote, or advocate the hiring or promotion of relatives);

8. engage in reprisal for whistleblowing;
9. take, fail to take, or threaten to take or fail to take a personnel action against an employee or applicant for exercising an appeal, complaint, or grievance;
10. discriminate based on personal conduct which is not adverse to the on-the-job performance of an employee, applicant, or others; or
11. take or fail to take, recommend, or approve a personnel action if taking or failing to take such an action would violate a veterans' preference requirement; and
12. take or fail to take a personnel action, if taking or failing to take action would violate any law, rule or regulation implementing or directly concerning merit system principles.

OSC receives, investigates, and prosecutes complaints that an agency has committed PPPs.

❖ Who may use the OSC complaint process?

The OSC complaint process is open to most Federal employees or applicants in Executive Branch agencies and the Government Printing Office who believe that a PPP or reprisal for whistleblowing activities in violation of § 2302(b) of title 5 of the United States Code (U.S.C.) has been committed against them or other employees.

❖ How does the OSC complaint process work?

Employees may file PPP complaints with OSC, using OSC's required Form OSC-11, at any time after the alleged prohibited activity occurred. With a PPP complaint, it may be necessary for there to have been a related personnel action taken, such as an appointment, promotion, reassignment, or suspension. OSC analyzes the complaint to determine whether an investigation is warranted. OSC offers the parties the opportunity to voluntarily participate in mediation as an alternative to an investigation. If matters remain unresolved through the investigation phase, OSC conducts a legal review and analysis to determine whether the investigation established a violation of law, rule, or regulation, and whether the matter warrants corrective action, disciplinary action, or both. OSC may seek corrective action during the complaint process, either through negotiation with the parties or in litigation before the Merit Systems Protection Board.

❖ How do I learn more about the OSC process?

Employees who wish to learn more about the OSC complaint process may call 1-800-872-9855 or 202-653-7188. Additional information about the complaint process may be found on OSC's website at <http://www.osc.gov>.