

Removing the Fear from Investigations

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The purpose of today's session

- Describe the EEO formal complaint investigation process as required by 29 C.F.R. § 1614.108 and further described in Management Directive 110 (MD-110), the Federal Sector Complaint Processing Manual.
- Discuss the U.S. Department of Transportation's procedures specific to this Agency.

Training References

- Code of Federal Regulations
29 C.F.R. § 1614.108 - Investigation of Complaints
- Federal Sector Complaint Processing Manual
Management Directive 110 (MD-110)
- www.eeoc.gov
Click on tab labeled “Federal Agencies”, then scroll to
“Federal Complaint Process”

Pursuant to 29 C.F.R. § 108(a)...

- Agencies are responsible for conducting an appropriate investigation of complaints filed against the agency.
- Per MD-110, an agency may contract out an investigation or may arrange for another agency to conduct the investigation, but the agency remains responsible for the content and timeliness of the investigation.

What is an Investigation?

- MD-110 defines an investigation of a formal complaint of discrimination as “an official review or inquiry, by persons authorized to conduct such review or inquiry, into claims raised in an EEO complaint.”
- The investigative process is non-adversarial. This means that the investigator is obligated to collect evidence regardless of the parties' positions with respect to the items of evidence provided.
- All federal employees must cooperate with the investigator.

What is the role of an EEO Investigator?

- The role of the investigator is to collect, discover, and present evidence related to a claim of discrimination.
- An investigator is neutral in this process and not an advocate of any of the parties but an advocate of the process.

What role does the Investigator have during the investigation process?

- The Investigator must be thorough. This means identifying and obtaining all relevant evidence from all sources regardless of how it may affect the outcome.
- Investigators in the federal sector complaint process collect and discover factual information concerning the alleged claim(s) for the complaint under investigation.
- The investigator is also expected to prepare an investigative summary as a component of the complete report of investigation.

What the Code of Federal Regulations expects:

- 29 C.F.R. § 1614.108(b), requires that "the agency shall develop a complete and impartial factual record upon which to make findings on the matters raised by the written complaint. "
- An appropriate factual record is one that allows a reasonable fact finder to draw conclusions as to whether discrimination did or did not occur.
- Why are we required to do this?

How do Investigators investigate complaints of discrimination?

- Interview witnesses that have information regarding the complaint of discrimination.
- Collect and review documents that are relevant to the claims of the discrimination complaint.

How does an Investigator investigate?

- A variety of methods are available and appropriate to use during an investigation.
- An Investigator may make inquiries by:
 - a. interviews (by telephone)
 - b. fact-finding conference (face-to-face interview)
 - b. requests for information
 - e. exchange of letters or memoranda, interrogatories, and affidavits.
- The methods of investigation may vary from agency to agency.

Timeframe for the Investigation

Investigations must be completed within **180** calendar days from the filing of the formal complaint.



When does an EEO Investigator know when the investigation is appropriate and sufficient?

- An appropriate investigation is one that allows a reasonable fact finder to be able to determine whether discrimination did or did not occur.
- The facts of each case will determine the scope of the investigation.
- The EEO investigator should exhaust the sources available to provide relevant evidence.

Sources of Evidence per MD-110

- The Complainant

The complainant will generally provide the initial information concerning the bases, issues, and incidents that gave rise to the complaint of discrimination.

- The Agency

Information from the agency may be obtained initially through a request for information.

Follow-up information may be obtained in a variety of ways, including further requests, affidavits, interrogatories, or a fact-finding conference.

- Witnesses

Witnesses can be identified by asking the complainant, the official involved in the alleged discriminatory action, or other obvious witnesses if they are aware of other persons who might have information related to the complaint.

- Documentary Evidence

What does a Report of Investigation look like?

- The report of investigation is issued in a report format with exhibits.
- The investigation file will include various documents and information which should be tabbed and indexed.
- Minimum guidelines regarding the contents of the ROI are established and listed in MD-110.

Contents of the Report of Investigation:

- The Notice of the Right to File a formal complaint
- The Counselor's Report
- The Formal Complaint
- The Acknowledgment Letter
- The Acceptance Letter and/or Amendment letters
- A record of any activity before the EEOC, Office of Federal Operations (Appellate/Remand Activity)
- Evidence collected by the investigator
- A summary of the investigation by the investigator

The Investigative Summary

- Per MD-110, “the investigative summary is a narrative document that succinctly states the issues and delineates the evidence addressing both sides of each issue in the case. The summary should state facts (supported in the complaint file) sufficient to sustain a conclusion(s).”
- The summary should cite to evidence and the exhibits collected.
- The summary and the report of investigation itself will not contain a decision. The Investigator will not make a recommendation as to whether discrimination occurred.

Who receives a copy of the Report of Investigation?

A copy of the Report of Investigation will be furnished to the Complainant, the Complainant's representative if applicable, and the Civil Rights Office of the Operating Administration.

MD-110 suggested format for the Complaint File

The following is the suggested format for reports of investigation:

- Heavy-duty cover or binder.
- Title/Cover Page.
- Summary: The summary of investigation/summary analysis of the facts.
- Case Index: The index to the file should list the contents of the file by tab and sequential page numbers.
- Tab A: This tab should contain the formal complaint and documents submitted by the complainant.
- Tab B: This tab should contain the EEO Counselor's report and all documents generated in the informal process. The Notice of Right to File a complaint should be included here.
- Tab C: This tab should contain the agency's notice of claims to be investigated (acceptance/amendment letters).
- Tab D: This tab should document attempts at informal resolution; however, documentation should not include the substance of such attempts.
- Tab E: This tab should contain any documentation of appellate activity and any decisions affecting the processing of the complaint.
- Tab F: This tab should contain the evidence and documents in a logical order, with documents further separated by numerical tabs as necessary.
- Tab G: This tab should contain any miscellaneous material.

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Thank you for attending!

