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Instruction Memorandum No. OR-2004-081
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To:  All Oregon/Washington Employees

From:  State Director, Oregon/Washington

Subject:  Official Time to Prepare and Present Equal Employment
          Opportunity (EEO) Complaints

Program Area:  Equal Employment Opportunity

Purpose:  This memorandum defines the Bureau of Land Management (BLM) Oregon/Washington policy on determining the reasonable amount of official time to grant employees for the purpose of preparing and presenting EEO complaints.

Policy/Action:  Under federal regulations, 29 Code of Federal Regulations (CFR) 1614.605, employees who file a complaint of discrimination and their representative are entitled to a “reasonable amount of official time to prepare the complaint” during normal working hours and while they are in a duty status. The employee is entitled to the use of official time only when he or she is preparing and presenting the complaint during the administrative process. Employees are not entitled to official time for pursuing an EEO claim in the federal courts.

What constitutes a “reasonable amount of official time” depends upon the circumstances of the particular complaint in order to allow a complete presentation of relevant information associated with the complaint and to respond to information requests. The actual number of hours to which complainant and his/her representative are entitled will vary, depending on the nature and complexity of the complaint. In determining whether a complaint is complex or not it may be necessary to confer with the EEO Office. Generally, supervisors and managers may grant official time in terms of hours not days.

Employees are responsible for requesting official time in advance. Except for mandatory situations when employees must be released, such as EEO hearing and agency investigations, supervisors and managers are responsible for the scheduling of such time to accommodate employee needs and office workload.

When a supervisor/manager approves an employee’s use of official time, the employee should be advised of the amount of time granted and any limitation on its use. For example, employees should not take official time away from the work area without supervisory authorization. If an employee requires and requests additional time, the supervisor and the employee should make new arrangements.
When a request for use of official time is denied, the supervisor should explain the reasons for denying the request in writing. The decision should be based upon a verifiable work situation and a copy provided to the EEO Manager.

In the event that an employee has filed an EEO action in federal court and had requested time to prepare and present his or her case in court, a supervisor may only approve annual leave or leave without pay. The Office of Personnel Management (OPM) provides guidance on the granting of court leave. The employee is entitled to court leave only when the employee is summoned to appear “as a witness on behalf of any party in judicial proceeding to which the United States … is a party.” Thus, an employee who files a civil action against a federal agency is not a “witness” and is not entitled to court leave.

Supervisors and employees often mistake administrative leave for official time. Administrative leave is an authorized absence from duty with pay and without charge to leave. Official time, however, is to be used during normal working hours when employees are in a duty status.

A complainant’s use of government property, like telephones, computers, and supplies, in the processing of a complaint, must be authorized by the agency. The use of electronic mail (email) messages and other electronic forms of communication, such as the Internet, are government resources that may be covered by the Federal Records Act and/or Freedom of Information and Privacy Acts. It is noted that privacy in the use of such forms of communication cannot be guaranteed.

**Timeframe:** Ongoing

**Budget Impact:** None

**Background:** EEOC Regulation 29 CFR 1614.605(b) requires an agency to provide official time to a complainant “to prepare the complaint and to respond to agency and EEOC requests for information.” An employee is entitled to a reasonable amount of official time to present his or her EEO complaint. “Reasonable” is defined as whatever is appropriate, under the particular circumstances of the complaint, in order to allow a complete presentation of the relevant information associated with the complaint and to respond to agency requests for information. Even when an employee is entitled to official time for EEO complaint purposes, the employee still is expected to spend the majority of his/her time completing work assignments. The amount of official time that is reasonable for a given activity in any given case must be considered on a case-by-case basis. A policy which restricts the number of hours of official time for presenting an EEO complaint, without considering the complexity of the complaint, is inconsistent with the regulations and invalid. Of course, granting official time requires a request for official time. Complainants are not entitled to simply take official time without first asking for it and having it approved.

**Manual/Handbook Sections Affected:** None

**Coordination:** Management officials will decide how much official time they will provide a complainant to prepare his/her EEO complaint. The Oregon State Equal Employment Opportunity Office will inform complainants, their representatives, and others who may need official time, such as witnesses, of the process and how to claim or request official time.

**Contact:** If you have any questions or require further clarification, please contact Karen Bell, EEO Manager via email or at (503) 808-6341.

**Districts with Unions** are reminded to notify their unions of this Instruction Memorandum and satisfy any bargaining obligations before implementation. Your servicing Human Resources Office or Labor Relations Specialist can provide you assistance in this matter.