



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

New Mexico State Office
1474 Rodeo Road
P.O. Box 27115
Santa Fe, New Mexico 87502-0115
www.nm.blm.gov



In Reply Refer To:
1400-713 (91400) P

May 4, 2005

EMS Transmission - 5/5/2005
Instruction Memorandum No. NM-2005-030
Expires: 9/30/2006

To: All Employees, NM/OK/TX

From: State Director

Subject: The Equal Employment Opportunity (EEO) Complaint Process

All Title VII discrimination and sexual harassment EEO complaints are to be handled solely by our New Mexico State Office, Office of EEO, NM (914). Hector Mendoza, EEO Specialist, is our full-time EEO Counselor. Hector can be reached at 505-438-7641. Rita M. Montoya, Complaints Manager, 505-438-7687, will assist Hector and/or procure an outside contractor to perform these duties when needed. Howard E. Harrell, EEO Manager, will continue to review and accept formal EEO complaints, as well as recommend dismissals of formal complaints to our BLM Washington Office EEO staff for approval. Howard can be reached at 940-262-4030. The EEO staff must be contacted directly if you, and/or an applicant for employment, believe that you/they have been discriminated against based on race, color, religion, sex, National origin, age, physical or mental disability, and/or reprisal (for prior EEO activity participation). The EEO staff will:

- Explain the informal complaint process to you and advise you and/or applicant in writing of your rights and responsibilities.
- Listen and help you specifically identify your claims of employment discrimination.
- Inform you about the Alternative Dispute Resolution (ADR)/Early Intervention Program (EIP) in an attempt to resolve your complaint.
- Conduct a limited inquiry.
- Discuss your concerns with an appropriate official who has authority to resolve your claims, but will only disclose your name with your permission as you have the right to remain anonymous.

- Attempt to resolve your concerns informally at the lowest level possible.
- Meet with the EEO Manager on a regular basis to discuss progress, activity of your complaint, and a possible resolution.

Our complaint process is being provided to you for information purposes and is posted on EEO's web page.

Procedures During the Informal Complaint Process: An employee/applicant for employment who feels he/she has been discriminated against based on race, color, religion, sex, National origin, age, physical or mental disability, and/or reprisal must contact the EEO Office within 45 calendar days of the date of the incident that gave rise to the complaint or, if it is a personnel action, within 45 calendar days of its effective date.

The EEO Counselor has 30 calendar days from the time the employee/applicant reports the issue to attempt an informal resolution of the matter. The 30-day period for EEO counseling may extend up to a maximum of 60 days if the employee/applicant agrees in writing to such an extension. The goal of an EEO Counselor is to facilitate an informal resolution of the matter between the parties when possible. If, at the end of this time (including any extension), the matter is not resolved, the employee/applicant will be advised in writing of his/her rights to file a formal complaint as specified below (The Formal Complaint Process).

An employee/applicant has the right to be represented at any stage of the process in presenting his/her complaint of discrimination, including the informal counseling stage. The employee/applicant may select any person (except EEO officials and Special Emphasis Program Coordinators) to represent him/her, including an attorney. You and your representative are entitled to a reasonable amount of official time in preparing and presenting your complaint. You have a right to remain anonymous during the informal counseling period.

If the employee/applicant elects to resolve the informal complaint by participating in the ADR/EIP, the precomplaint processing period will be 90 days. The BLM New Mexico State Office has many neutral third-party mediators from which to choose. The EIP, a service-first initiative with the U.S. Forest Service, is one option. Partnerships have been made with the Federal Executive Board Shared Neutrals Program, the State of New Mexico's Regulation and Licensing Department, the Los Alamos National Lab, and the City of Albuquerque. Rita will contact one of these organizations for mediation services.

The Formal Complaint Process: If the attempts to informally resolve your complaint are unsuccessful, you will be notified by the Counselor, in writing, of your right to file a formal complaint. If you decide to file a formal complaint, you or your representative have 15 calendar

days from the date of receipt of this notice to submit your formal complaint in writing. It is important to know that if you do not file your formal complaint within the 15-day time limit, the agency may dismiss your complaint.

Although it is not the duty of the EEO Counselor to file your complaint for you, he/she can answer your questions concerning the filing of your complaint. If you wish, your representative may file the complaint for you. Your written complaint must be specific and must be limited to the matters discussed with the EEO Counselor. The formal complaint must be filed, by you or your representative, using Department of the Interior Form DI-1892, with the EEO Manager. Form DI-1892 may be obtained from any one of the EEO staff. The Office of EEO will then identify your claims and notify you of the claims to be investigated. If the EEO Manager accepts a claim for processing, but dismisses one or more of the claims, only the accepted claims will be investigated. The EEO Manager will document the file with the reasons why some claims have not been accepted. There is no immediate right to appeal the nonaccepted claims at this stage. However, if the EEO Manager determines not to accept any of the claims in your complaint, the EEO Manager will refer the complaint to the Department of the Interior, Director, Office of Civil Rights (OCR), for a final agency decision on the dismissal of a complaint. If the Director finds that the dismissal of the complaint is not supported, he/she may remand the complaint back to the Bureau for further processing. If your complaint is dismissed, you will be given appeal rights to the Equal Employment Opportunity Commission (EEOC). Once your formal complaint is accepted, it will be investigated by an impartial investigator as defined by EEOC regulations located at 29 CFR 1614.108 and the guidance in EEOC MD 110, Chapter 6.

A thorough investigation will be conducted. The investigation will encompass all the information relevant to the accepted claims and may, when appropriate, include comparative data on other individuals who were similarly situated. The investigations may be conducted by verbatim statements, interrogatories, position papers, or by other forms of fact-finding information. During the investigation, you will have an opportunity to present all the facts that you believe show unlawful discrimination.

The BLM has 180 calendar days from the date you filed your complaint to notify you that the investigation has been completed. After the investigation is completed, a Report of Investigation (ROI) and a summary of the ROI will be sent to you. By written agreement between you and the BLM within those time periods, the time period may be extended an additional 90 days. Your complaint may also be amended with like or related claims raised before the completion of the investigation. If your complaint is amended, the time period will be extended by 180 days from the date of the amendment. Once the ROI is issued to you, you will have 30 days from the date of your receipt of the ROI to exercise your right either to request a hearing before an EEOC Administrative Judge (AJ); or to request a decision without a hearing by the Department of the Interior, Director, OCR. This notice is called the notice of your right to an “election.”

If you have a claim that is also appealable to the Merit Systems Protection Board (MSPB), you are not entitled to a hearing by the EEOC. A final agency decision will be issued by the Department of the Interior, Director, OCR, and you will be given appeal rights to the MSPB.

Your request for a hearing will be sent directly to the appropriate EEOC Field Office with a copy to the Field Solicitor. Once you have elected a hearing, the AJ will have full and complete authority over your complaint. You will be allowed to present witnesses and evidence on your behalf. The hearing is recorded and transcribed verbatim. The AJ will have 180 days from the date the EEOC received your request for a hearing to conduct the hearing, issue findings and conclusions, and a decision on your complaint. The time frame may be extended by the AJ. You should be advised, however, that there may be circumstances where the AJ may decide that a hearing is not necessary.

The AJ will issue a decision on your complaint that will become the final action of the Department, if the Department does not appeal the AJ's decision within 40 days of the date the decision was received.

If a hearing has been conducted, the AJ will send you a copy of the decision with a copy to the Department. The Department of the Interior, Director, OCR, will have 40 days to issue a final order after receipt of the AJ's decision. If the Department rejects the AJ's decision, it must simultaneously appeal to the EEOC. A copy of the appeal will be sent to you.

If you do not ask for either a hearing or a decision, without a hearing, within 30 calendar days after you receive the notice of election described above, the Department of the Interior, Director, OCR, may issue an immediate final agency decision based upon the evidence in the ROI. You will be given appeal rights if you are dissatisfied with the final decision.

The Department of the Interior, Director, OCR, as the designee of the Secretary, will issue you a final agency decision on your complaint within 60 calendar days from the date of your request for an immediate decision; or the end of the 30-day period after you receive the notice of election.

The final agency decision may include an analysis on the merits of each claim accepted in your complaint or a decision to dismiss some or all of your claims. If a finding of discrimination is made, the final decision will also identify the corrective action to which you are entitled.

If you are dissatisfied with the Department's final decision, you may, within 30 calendar days of the date of which you received the decision or notice of dismissal, appeal the decision to the Director, Office of Federal Operations, EEOC, P.O. Box 19848, Washington, DC 20367. You must also send a copy of the appeal to the Department of the Interior, Director, OCR, MIB, Rm. 5221, 1849 C Street, NW, Washington, DC 20240.

The New Mexico State Office, Office of EEO, will continue to visit each District, Field, and Division Office to provide on-site and/or computer-based training on the EEO Complaint Process, Sexual Harassment, and other EEO topics. Please direct all questions concerning the EEO Complaint Process to the EEO staff. Telephone numbers are listed on page 1.

The BLM New Mexico State Office managers, supervisors, and employees are directed to adhere and comply with the attached EEO policy memoranda related to zero tolerance of discrimination, zero tolerance of sexual harassment, and maintaining a diverse workforce.

Authenticated by:
Cathy Velarde
Staff Assistant

Signed by:
Gary Johnson
Acting

3 Attachments:

- 1 - IB No. 2005-083 (2 pp)
- 2 - IB No. 2005-101 (2 pp)
- 3 - IB No. 2005-112 (1 p)

Distribution

WO (720, J. Hicks), MIB, Rm. 7417 - 1
Arthur Arguedas, Field Solicitor - 1
Ana Parada, U.S. Forest Service, Albuquerque, NM - 1