



**Army
Equal Employment Opportunity (EEO),
Anti-Harassment (AH),
and
Notification and Federal Employee
Anti-Discrimination and Retaliation
(No FEAR) Act
Training
for Supervisors**



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Training Description

The training covers the No FEAR Act, Army Equal Employment Opportunity (EEO) Policy, the EEO Complaint Process, Reasonable Accommodations, Accessibility, Anti-Harassment Policy, Prohibited Personnel Practices, and Whistleblower Protection Laws. The training introduces employees to the forms of discrimination, the timeline for filing a discrimination or harassment complaint; examples of and the timeline for processing reasonable accommodations; types and effects of harassment; and the purpose and timeline for filing an action with the Office of Special Counsel or the Merit Systems Protection Board (MSPB).

Learning Objectives

- Understand the No FEAR Act which protects employees from employment discrimination and retaliation.
- Understand the types of discrimination covered under laws and Army policy.
- Understand the protections provided to Army Civilians against retaliation and reprisal.
- Understand the steps and timeline filing a complaint.
- Define reasonable accommodation (RA) and Personal Assistance Services (PAS), the basis for providing RA and PAS, the confidentiality requirements, and the tenets of the RA and PAS process.
- Understand examples of and the effects of harassment.
- Understand the reporting process for complaints of Civilian Sexual Harassment and Non-Sexual Harassment.
- Understand Prohibited Personnel Practices, Federal oversight, and reporting processes.
- Understand Whistleblower protection, Federal oversight, and the reporting processes.
- Understand the purpose and authority of the Merit Systems Protection Board and the requirements for filing a complaint or appeal.

Target Audience

Army Military and Civilian Supervisors of Civilians



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The No FEAR Act



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No FEAR Act

- ✓ **The No FEAR Act of 2002**, as amended by the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020, provides robust protections for federal employees, former employees and applicants for employment under existing discrimination, whistleblower protection, and retaliation laws.
- ❑ **The No FEAR Act requires that** "...Federal agencies be accountable for violations of anti-discrimination and whistleblower protection laws" by:
 - ❑ Notifying employees and applicants for employment about their rights under the Federal anti-discrimination and whistleblower laws.
 - ❑ Providing training to their employees on the rights and remedies available under anti-discrimination and whistleblower laws.
 - ❑ Posting data on their public websites about EEO complaints filed, findings made, and outcomes.
 - ❑ Paying awards, judgments, and settlements from Federal lawsuits and the administrative complaint process involving discrimination and whistleblower retaliation from their own funds.
 - ❑ Annotating personnel records to note adverse action taken against employees determined to have committed an act of discrimination or retaliation.





Army EEO Policy and Procedures



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Federal anti-discrimination laws protect employees from unlawful discrimination in the terms, conditions, and benefits of their employment. Some examples of these include:

- Hiring
- Promotion
- Reassignments
- Pay
- Leave
- Awards
- Performance Evaluations
- Training
- Career Development Programs
- Job Classification
- Reprimands
- Suspensions
- Terminations





Retaliation and Reprisal

❑ Retaliation

Federal agency officials may not fire, demote, harass, or otherwise “retaliate” against applicants or employees because they exercised their rights under any of the Federal antidiscrimination or whistleblower protections laws.

❑ Reprisal

Discrimination based on reprisal occurs when management treats employees differently because they are, or were, involved in a protected EEO activity. Examples of protected activities include seeking or participating in EEO counseling, providing testimony in an EEO investigation or at an EEO hearing, filing a discrimination complaint, speaking out against perceived discriminatory act, or requesting or receiving a reasonable accommodation.



Source (s): AR 690-12, “Equal Employment Opportunity and Diversity”



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Equal Employment Opportunity Discrimination Bases

The Army is committed to developing and maintaining a professional workplace in which all individuals are treated with dignity and respect, and supervisors have a legitimate, non-discriminatory reason for every personnel action and employment decision. This includes ensuring an environment for Army civilian employees free from discrimination on any of the following bases, in all aspects of employment, in accordance with anti-discrimination laws:

- Race** to include personal characteristics associated with race such as hair texture, skin color, or certain facial features.
- Color** of skin or complexion.
- Religion** (for example, an employee cannot be forced to participate or not to participate in a religious activity as a condition of employment, and reasonable accommodations must be provided unless they result in undue burden on the organization).
- Sex** (including sexual orientation, gender identity, pregnancy, and medical conditions related to pregnancy or childbirth).
- National origin** (being from a particular country or part of the world, appearance of a certain ethnic background, having an accent)
- Age (forty and over)**
- Disability** (mental and physical, including association or relationship with a disabled person)
- Genetic information (individual or family medical history** or genetic tests; such information is not to be requested and supervisors should seek to avoid participating in conversations where genetic information might be revealed)
- Reprisal or retaliation for opposing** discrimination, participating in discrimination complaint activities, such as being a witness for another employee, or requesting or receiving a reasonable accommodation.





Reporting Alleged Discrimination

- Employees seeking resolution of alleged unlawful discrimination, harassment or retaliation must contact the servicing EEO Officer:
 - Within 45 calendar days of the alleged discrimination,
 - Or of the date the employee first became aware of the alleged discrimination,
 - Or in the case of alleged ongoing discrimination, within 45 calendar days of the most recent incident of alleged discrimination.

- Employees covered by a Collective Bargaining Agreement who choose to pursue a discrimination complaint under the administrative grievance process may not also pursue an EEO complaint on the same matter under Title VII law.

- Employees alleging age discrimination are not required to pursue a complaint through the EEO administrative process. They also have the option of filing in Federal District Court.
 - If employee elects to proceed directly to Federal District Court, they must give the Equal Employment Opportunity Commission notice of intent to sue within 180 calendar days of the date of the alleged discrimination.

For procedures and time limits for initiating an EEO complaint see AR 690-600

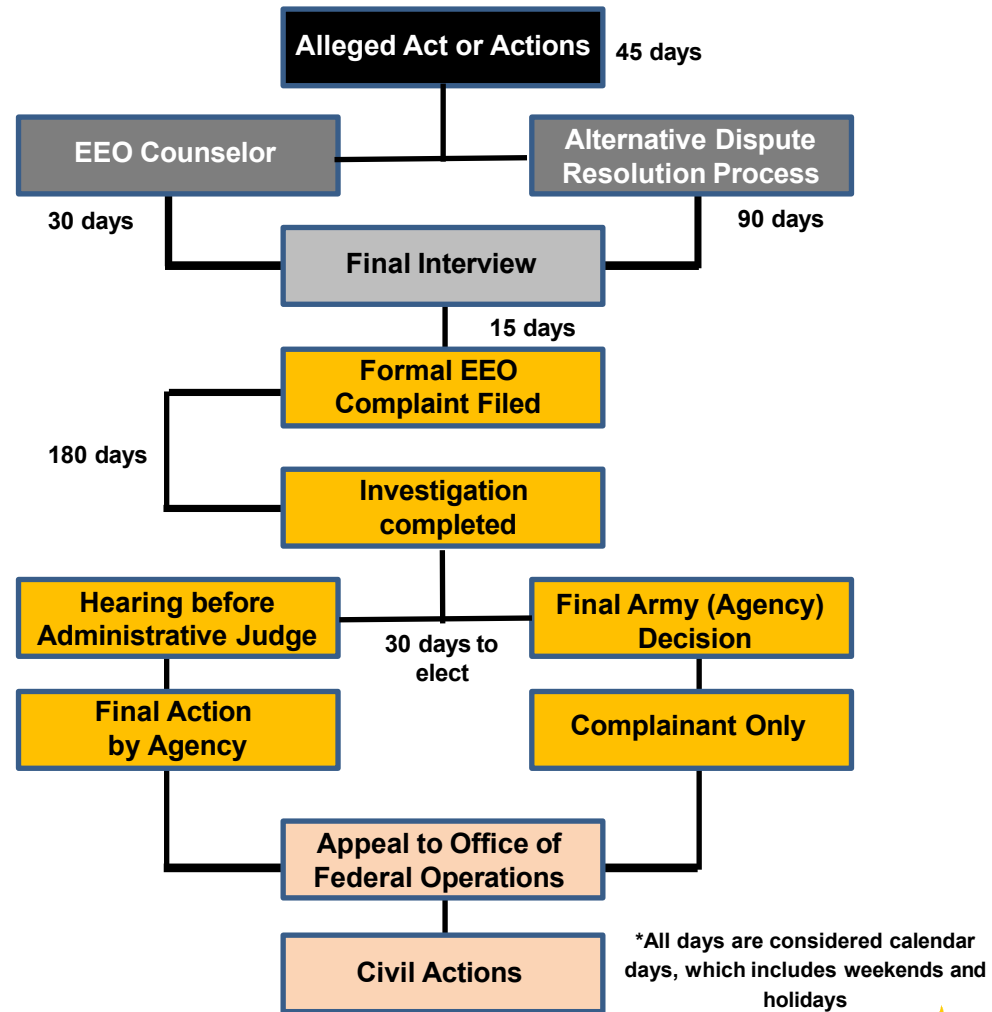


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EEO Complaint Process

- ❑ The EEO Complaint Process was created to determine whether an alleged act(s) of discrimination occurred within the nine protected categories.
- ❑ To initiate the EEO complaint process, an individual must first contact their EEO office **within 45 calendar days** of when the most recent incident occurred or when the individual first became aware of the alleged discriminatory practice or action.
- ❑ The process begins with an informal “pre-complaint” stage. If the matter is not resolved, the notice of right to file a formal complaint (form DA 2590) is given after the final interview.
- ❑ In order to file a formal complaint, the DA 2590 form needs to be signed and returned to the EEO office **within 15 calendar days**. Once returned and the EEO office accepts the DA 2590, the formal complaint process begins.



See AR 690-600, “EEO Discrimination Complaints.”



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Equal Employment Opportunity

If an employee you supervise has contacted the EEO office with a complaint or participated in EEO activity:

- × **DO NOT** confront the employee about the complaint or try to persuade the employee to drop the complaint.
- × **DO NOT** discuss the complaint or share information about the complaint with colleagues, subordinates, managers, or publicly. Instead, keep the matter as confidential as possible.
- × **DO NOT** try to avoid the employee or change your behavior toward the employee in a negative way; this can be perceived as retaliatory.
- × **DO NOT** threaten the employee, witnesses, or anyone else involved in processing the complaint.
- × **DO NOT** isolate the employee or deny the employee information, equipment, or benefits provided to others performing similar duties.
- × **DO NOT** interfere with the EEO process;
- ✓ **DO** provide clear and accurate information during the EEO process



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Reasonable Accommodations



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Reasonable Accommodations

❑ In general, under the Rehabilitation Act, a reasonable accommodation (RA) is any change in the work environment or in the way things are customarily done that enables a person with a disability to enjoy equal employment opportunities.

❑ **The three RA categories include:**

1. Modification to the job application process
2. Modifications to the work environment, or to the manner or circumstances under which the position held or desired, is customarily performed
3. Modifications that enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by similarly situated employees without disabilities

❑ **The Pregnant Worker's Fairness Act (PWFA)**, amends the Rehabilitation Act by requiring employers to provide RA for a worker's known limitations related to pregnancy, childbirth, or related medical conditions, regardless of whether the conditions qualify as disabilities, unless the accommodation would impose an undue hardship on the employer's operations.

❑ **The Civil Rights Act** requires RA of an employee's religious beliefs or practices, unless doing so would cause an undue hardship upon the Army. The RA is usually a modification/exception to a rule or policy or an adjustment to a work schedule that enables an employee to abide by sincerely held religious beliefs, and/or observe religious practices, without disrupting Army operations, compromising workplace safety, infringing the rights of others, or causing other undue hardships.



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Reasonable Accommodations

Common types of accommodations include:

- ☐ Modifying work schedules or supervisory methods
- ☐ Granting breaks or providing leave
- ☐ Changing how or when job duties are performed
- ☐ Removing and/or substituting a marginal function
- ☐ Moving to different office space
- ☐ Providing telework beyond that provided by the collective bargaining agreement or workplace agreements
- ☐ Making changes in workplace policies
- ☐ Providing assistive technology (hardware and software), communications equipment or specially designed furniture
- ☐ Providing a reader or sign language interpreter
- ☐ Removing an architectural or physical barriers in office spaces or cafeteria, including reconfiguring workspaces
- ☐ Providing accessible parking
- ☐ Providing materials in alternative formats (e.g., Braille, large print)
- ☐ Providing a reassignment to a vacant position for which the person is qualified (if the person cannot be accommodated in their current job).
- ☐ Permitting the use of the individual's service dog.





Reasonable Accommodations and Personal Assistance Services

- ❑ **RA are provided to job applicants and to qualified employees** due to disability, pregnancy, childbirth, medical conditions resulting from pregnancy or childbirth, or due to sincerely held religious beliefs, practices or observances, unless doing so would cause undue hardship.

- ❑ **Personal Assistance Services (PAS)** are provided to qualified employees with severe disabilities.

- ❑ **The RA and PAS procedures** are the same and begin with the employee or applicant or a third party representing the employee or applicant, informing the supervisor or other management official of the need for a modification in the work environment or in the way things are customarily done, because of a medical condition, pregnancy, childbirth or religious limitation.

- ❑ **The requester** may make an oral or written request, is not required to use any special words, such as “reasonable accommodation, disability or Rehabilitation Act”, and does not have to have a particular RA in mind at the time of the request.

- ❑ **RA and PAS decision makers** are usually the immediate supervisor, or in the case of an applicant, the Human Resources official involved in the hiring action.

- ❑ **Within two days of receipt of the request**, decision makers shall notify the servicing Disability Program Manager (DPM) of the request, and promptly process PAS and RA requests. Failure to promptly process requests may result in a violation of the law. Decisions on requests must be made within 30 days or less of the initial date of request.





Reasonable Accommodations and Personal Assistance Services

- ❑ **The decision maker** may be able to immediately grant and provide the requested accommodation if there is sufficient information to make an informed decision.

- ❑ **If the disability or need for accommodation is not obvious or already known**, the decision maker shall consult with the servicing DPM to request necessary medical information limited to the condition for which the accommodation is being requested.

- ❑ **The medical information** will be provided to the DPM who will evaluate its sufficiency for determining the existence of a disability or condition requiring an accommodation.

- ❑ **Based upon the medical information provided**, the DPM will provide the decision maker information regarding the limitations imposed by the disability.

- ❑ **The decision maker** shall engage in an individualized assessment and interactive discussion with the requester. Discussion should focus on limitations resulting from the disability and identifying effective reasonable accommodations. Under the PWFA, there shall not be any discussion of disability since disability is not at all applicable under the PWFA.





Reasonable Accommodations and Personal Assistance Services

- ❑ **The decision maker** does not have to provide the specific accommodation requested if there are reasonable and effective alternatives available. An effective RA is one that enables a person to apply for a job or perform the job without the lowering of performance or conduct standards.

- ❑ **The accommodation must be reasonable.** Elimination of essential job functions, changing supervisors, and lowering performance standards or lowering conduct standards are not considered reasonable. Under the PWFA, the limitations are expected to be temporary, and it may be considered reasonable to remove essential functions temporarily.

- ❑ **The decision to grant or deny an accommodation** shall be promptly communicated, orally and in writing to the requester. A decision to provide an alternative effective RA other than the one requested is still a decision to grant an accommodation.

- ❑ **Denials of requests and offers of alternative RA** require the decision maker to consult with the servicing DPM and legal advisor **in advance** of issuing a decision.





Reasonable Accommodations and Personal Assistance Services

- Requests for RA and PAS, medical documentation, and all associated information** are confidential, filed separate from other personnel information, and shared only with those who have a need to know.

- For more information**, contact the servicing EEO office, consult AR 690-12.





Harassment



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Harassment

Army Anti-Harassment Policy for the Workplace

- ❑ Workplace harassment based on race, color, religion, sex (including sexual orientation, gender identity, pregnancy, childbirth, or a medical conditions related to pregnancy or childbirth), national origin, age (forty and over), disability, genetic information (individual or family medical history), reprisal or retaliation is not acceptable in either the military or civilian ranks, association (association or relationship with a person of a protected group).
- ❑ Harassment includes, but is not limited to, any offensive conduct such as slurs, jokes or other verbal, nonverbal or physical conduct that has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, offensive, or hostile environment.
- ❑ Even if a single utterance, joke or act does not rise to the level of actionable harassment under the law, such conduct is contrary to Army values.





Harassment

- If you, as supervisor/manager, receive a complaint of harassment, bullying, intimidation, or stalking, it is your responsibility to take prompt and appropriate action to stop the behavior when it is found to have occurred, and to take appropriate disciplinary action.

- It is Army policy and managers responsibility to:
 - Ensure all employees are treated with dignity and respect,
 - Actively prevent harassment,
 - Conduct timely, thorough, and impartial inquires into allegations of harassment, regardless if an EEO complaint has been filed; not all allegations are EEO-related or filed with EEO,
 - Take prompt and appropriate disciplinary action when it is determined harassment has occurred
 - Protect from retaliation, those who report harassment and those involved in the investigation, and
 - Protect confidentiality of all involved to the extent possible, consistent with legal obligations.

- Investigations of allegations of harassment must begin within 10 calendar days of the manager becoming aware of the allegations regardless if the person reporting the harassment wants an inquiry.

- Upon becoming aware of harassment or of allegations of harassment, immediately report this to the EEO Office and consult with the servicing legal advisor.

- If harassment occurred, it is the manager's responsibility to take corrective action, including discipline that is proportionate to the severity of the conduct, the impact on the overall workplace, the disciplinary history of the harasser, and other relevant factors.





Harassment

Examples of Harassment

Include but are not limited to:

- Verbal Conduct** that could include
 - Racial or sexual epithets
 - Foul language
 - Unwanted sexual flirtations
 - Ethnic jokes
 - Derogatory statements or slurs
- Physical conduct** that includes improper touching or sexual assault; or
- Visual harassment** that could include racially or sexually explicit or derogatory posters, cartoons or drawings, obscene gestures, or items such as a noose.

Effects of Harassment

- Lower productivity and morale
- Emotional, physical, and economic harm
- Higher turnover; loss of talent
- Higher costs for hiring and training
- Potential liability for damages and attorney's fees
- Embarrassment to the Army
- Degrades the Army's reputation and ability to attract top talent
- Degrades mission readiness

- Penalties for Harassment:** Discipline up to and including termination from employment if harassment claim is substantiated, dependent on the severity of the harassment



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Harassment

Sexual Harassment

- ❑ Sexual harassment is a form of sex discrimination.
- ❑ There are two formally defined types of sexual harassment: Quid pro quo and hostile environment.
 - a. Quid pro quo is a Latin phrase literally meaning “this for that”.
 - b. Hostile environment, to include the work environment, can occur when Soldiers or DA Civilians are subjected to offensive, unwanted and unsolicited comments, or conduct of a sexual nature.
- ❑ Sexual harassment includes unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:
 - a. submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay or career; or
 - b. submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or
 - c. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile or offensive working environment.





Harassment

Procedures for Reporting

Civilian Sexual Harassment and Non-Sexual Harassment

- If a DA Civilian believes they have been subjected to sexual harassment, the individuals should:
 - Communicate to the alleged harasser, in a manner that is comfortable, that the behavior is unwelcome and it must stop immediately.
 - Promptly notify his/her supervisor of the unwelcomed comments/conduct.
 - Contact their local EEO Office.
 - If the supervisor is the one making unwelcomed comments/conduct, the employee should notify the next higher supervisor or other management officials in the organization.
 - Once the supervisor or next higher supervisor has been made aware, an investigation should be initiated immediately.
 - If you believe you have been sexually harassed, you have the right to file an EEO complaint using the EEO complaint process.





Harassment

Online Misconduct

"Electronic Communications" is

- The transfer of information (signs, text, images, sounds, or data) transmitted by computer, phone, or other electronic device.
- Not limited to: text messages, emails, chats, instant messaging, screen savers, blogs, social media sites, electronic device applications, and web/video conferencing.



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Harassment

Online Misconduct

- "Online Conduct"** is the use of electronic communication in an official or personal capacity that is consistent with Army Values and standards of conduct.

- "Online Misconduct"** is the use of electronic communication to inflict harm; examples include, but are not limited to:
 - Harassment
 - Bullying
 - Hazing
 - Stalking
 - Discrimination
 - Retaliation, or any other types of misconduct that undermines dignity and respect.





Prohibited Personnel Practices



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Prohibited Personnel Practices

- ❑ Federal law makes it illegal to discriminate or retaliate against Federal employees because of their marital status, political affiliation or activities, sexual orientation, and whistleblowing.
- ❑ Employees who believe this type of discrimination or retaliation has occurred may file a complaint with the U.S. Office of Special Counsel or the Merit Systems Protection Board.





Prohibited Personnel Practices

The Office of Special Counsel (OSC) is an independent Federal agency that investigates complaints of prohibited personnel practices other than those enforced by EEOC under the Civil Service Reform Act of 1978, including discrimination on the basis of:

- marital status
- political affiliation or activities
- sexual orientation
- whistleblower retaliation
- conduct that does not adversely affect employee performance



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Whistleblower Protections



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Whistleblower Protections

- A federal employee authorized to take, direct others to take, recommend or approve any personnel action may not retaliate against an employee for protected whistleblowing.

- Whistleblowing is when an employee or applicant discloses information that he or she reasonably believes is evidence of:
 - A violation of a law, rule or regulation
 - Gross mismanagement
 - Gross waste of funds
 - Theft
 - Unethical or unjust behavior in the workplace
 - An abuse of authority, or
 - A substantial and specific danger to public health or safety

- Disclosures may be made to superiors in the chain of supervision, Inspectors General (IG), Congress, law enforcement officials, agency ethics officials, or any other agency officials responsible for ensuring integrity and acting against malfeasance within the agency.

- If disclosure is barred by law, or information is required by Executive Order to be kept secret in the interest of national defense or conduct of foreign affairs, then employees are only protected if disclosure is made to Office of Special Counsel (OSC), IG, or Agency designee. Improper disclosures of protected information may result in discipline and/or prosecution.





Whistleblower Protections

- The Office of Special Counsel (OSC) also provides a secure channel through which employees may make confidential disclosures (“whistleblowing”).
- OSC evaluates the disclosures to determine whether there is a substantial likelihood that one of the categories listed above has been disclosed. If such a determination is made, OSC has the authority to require the head of the agency to investigate the matter.
- If you believe that you have been subjected to whistleblower retaliation or other prohibited personnel practice you may access the forms from the OSC website and either file your complaint to OSC online or print the forms and submit by mail.
- OSC requires the use of specific forms to file a complaint **not** submitted via online form. These forms are available on the OSC Web site below.

For more information:

U.S. Office of Special Counsel, 1730 M Street NW, Suite 218,
Washington, DC 20036-4505; Telephone: 202-254-3600



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Merit Systems Protection Board



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Merit Systems Protection Board

- The Merit Systems Protection Board (MSPB)** is an independent Federal agency established to protect Federal merit system principles against partisan political and other prohibited personnel practices and to protect Federal employees against abuses by management.

- The MSPB has the authority** (in part) to review and issue rulings on:
 - Appeals of personnel actions such as removals, suspensions of more than 14 days, furloughs, and demotions.

 - Appeals of administrative decisions affecting rights or benefits under the Civil Service Retirement System or the Federal Employees' Retirement System.

 - Complaints filed under the Whistleblower Protection Act, the Uniformed Services Employment and Reemployment Rights Act, and the Veterans Employment Opportunities Act, and

 - Cases brought by OSC.





Merit Systems Protection Board

- If you believe** that a personnel action of the type that are appealable to the MSPB has been taken on the basis of your race, color, religion, sex (including sexual orientation, gender identity, pregnancy, childbirth, or a medical conditions related to pregnancy or childbirth), national origin, age (forty and over), disability, genetic information (individual or family medical history), or in retaliation for opposing such discrimination or participating in the discrimination complaint process you may choose to file an EEO complaint, or to file an appeal with the MSPB, but not both.

- The appeal** must be filed with the MSPB within 30 days of the effective date of the personnel action.



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Additional Resources

Note: Direct links for the resources below can be found at the LOI and pasted into your browsers for more information.

1. U.S. Office of Personnel Management – No Fear Act
2. U.S. Office of Personnel Management – No Fear Act Notice
3. U.S. Equal Employment Commission – Discrimination by Type
4. U.S. Equal Employment Opportunity Commission – Federal EEO Complaint Processing Procedures
5. Army Regulation 690-600 - EEO Discrimination Complaints
6. Army Equity and Inclusion Agency – Civilian Equal Employment Opportunity
7. U.S. Equal Employment Commission – Enforcement on Reasonable Accommodation and Undue Hardship under ADA
8. U.S. Equal Employment Commission – Questions & Answers: Federal Agencies' Obligation to Provide Personal Assistance Services Under Section 501 of the Rehabilitation Act
9. U.S. Equal Employment Commission – What You Should Know: Workplace Religious Accommodation
10. Job Accommodation Network (JAN)
11. Computer / Electronic Accommodations Program (CAP)
12. Army Regulation – Civilian Personnel Equal Employment Opportunity and Diversity AR 690-12
13. U.S. Office of Special Counsel (OSC) – Who Can File A Prohibited Personnel Practices Complaint?
14. U.S. Office of Special Counsel (OSC) Introduction To Prohibited Personnel Practices
15. U.S. Equal Employment Commission – Harassment
16. U.S. Merit Systems Protection Board



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Congratulations!

You have completed the Army EEO, Anti-Harassment and No FEAR Training for Supervisors.

If you have questions, contact your local EEO representative.

If you have feedback or suggestions about this material, please email them to:

usarmy.pentagon.hqda-asa-mra.mbx.EEOPP-helpdesk@army.mil



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