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U. S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
DIRECTIVES SYSTEM

Subject Number:

EEO - 2

Transmittal Number:

266

Date:

07/25/86

Subject: EEO Administrative Remedy System: Pre-Complaint Counseling Function

Approval:

Ed D. Christensen

Title: Director

1. Purpose. This Directive is issued to provide program guidelines for the pre-complaint counseling phase of the Equal Employment Opportunity (EEO) Administrative Remedy System in the Office of Surface Mining Reclamation and Enforcement (OSMRE). It sets forth the responsibilities of operating officials and equal opportunity staff related to the orderly and expeditious counseling of employees, former employees and applicants for employment, who allege discrimination on the basis of race, color, religion, sex, national origin, age or condition of handicap.

2. Definitions. None.

3. Policy/Procedures.

a. Policy.

(1) Equal Employment Opportunity Commission (EEOC) regulations and Interior Department policy call for the prompt, fair and impartial consideration of all allegations of discrimination based on race, color, religion, sex, national origin, age or handicap. This policy requires the OSMRE to provide access to pre-complaint counseling in order to resolve informally allegations of employment discrimination. Pre-complaint counseling is the initial step in the EEO Administrative Remedy System. It takes place before a written formal complaint of discrimination may be filed.

(2) It is OSMRE policy to maintain a cadre of trained EEO Counselors to provide employees, former employees, applicants for employment and managers a means to resolve allegations of discrimination informally and expeditiously.

(3) The Equal Employment Opportunity Act of 1972 (Public Law 92-261) requires the OSMRE to ensure that all employees provide their full cooperation to the EEO Counselor.

b. The Function of EEO Counselors.

(1) EEO Counselors are employees carefully selected and trained to help employees, former employees, or applicants for employment, and the appropriate supervisor or manager, to resolve equal employment opportunity problems on an informal basis. Satisfactory resolutions increase employee confidence in the OSMRE Equal Opportunity Program, and their ability to communicate with management.

(2) EEO Counselors provide important services during their impartial inquiry into the employment issues brought to their attention. They provide a significant channel of communication to employees who believe they have been subjected to discrimination. Through informal discussion of the aggrieved's concerns, the Counselor can provide the employee with validated information, and clarify issues. And, if the Counselor's inquiry indicates the existence of improper practices, intentional or unintentional, he or she communicates this information to the appropriate supervisor or manager, so that remedial action can occur in a timely and satisfactory manner.

c. Program Responsibilities.

(1) The Director will ensure that OSMRE allocates sufficient resources to establish and maintain an effective OSMRE EEO Administrative Remedy System, in accordance with EEOC regulations and Interior Department program guidelines.

(2) The Deputy Directors, Assistant Directors at Headquarters, and the Assistant Directors, Eastern and Western Field Operations will ensure the maintenance of an on-going system to provide access to EEO Counseling for employees, former employees, and applicants for employment at all installations and units under their respective jurisdictions. The above named officials will ensure that the number of EEO Counselings in their areas of jurisdiction remain a matter of continued review, so that responsible action can be taken to adjust the EEO Counselor staff to meet the requirements of the workload. The EEO Counseling staff shall be of sufficient number to ensure that Counselors can meet the target of conducting a final interview within 21 days after initial contact with a person counseled. (Note: This requirement is not intended to relieve the aggrieved individual from the responsibility of providing sufficient and timely information so as to allow the EEO Counselor to initiate and complete the informal resolution process.)

(3) The OSMRE Equal Opportunity (EO) Officer will develop the policies and program guidelines needed to establish the OSMRE EEO Administrative Remedy System. The OSMRE EO Officer will issue the necessary directives and instructions to the Assistant Directors and other key management officials, and will provide functional supervision and program guidance to EEO Counselors and Field EO Officers. The OSMRE EO Officer will ensure that the name, phone number, mailing address and work locations of EEO Counselors are prominently posted on the appropriate bulletin boards throughout OSMRE, and will ensure that EEO Counselors have access to accommodations where conversations can be conducted privately with the person counseled, and his or her representative, without violating entitlement to anonymity.

(4) The Assistant Directors, Eastern and Western Field Operations will prominently post the name, phone number, mailing address and work locations of EEO Counselors on bulletin boards within the installations for which they are responsible. The Assistant Directors, Eastern and Western Field Operations will provide EEO Counselors accommodations where conversations can be conducted in private with the person counseled, and his or her representative, without violating entitlement to anonymity.

(5) The Field EO Officers, in conjunction with guidance and direction received from the OSMRE EO Officer, will monitor the day to day activity of field collateral-duty EEO Counselors within their area of jurisdiction.

(6) When notified by an EEO Counselor arriving on-site that the Counselor is on-official EEO duties, the Installation Head will ensure that the Counselor is furnished all necessary assistance; including, availability of relevant employees, access to appropriate records, a place for the Counselor to meet with the employee suitable to maintain anonymity; and, if requested, clerical and support services.

(7) OSMRE Managers will ensure that their subordinate managers and supervisors are familiar with the EEO Pre-Complaint Counseling Function and process; it is of vital importance that all managers and supervisors be able to advise employees on how to contact an EEO Counselor, and to explain to employees the role of the Counselor. Managers will ensure that their subordinates are aware of the availability of EEO Counseling. Managers are expected to be able to advise employees of the proper procedures to be followed in seeking counseling; including, notices on facility bulletin boards, inclusion as a topic in new employee orientation sessions, periodic mention of EEO Program matters during supervisors' discussions with employees, etc. Managers and supervisors are to be sensitive to the costs inherent in processing formal complaints of discrimination, and are encouraged to take effective action to resolve EEO problems in the Pre-Complaint Counseling stage.

(8) EEO Counselors.

(a) The EEO Counselor establishes and maintains an open and objective communication channel through which employees may raise questions, discuss problems, obtain answers, and on an informal basis, arrive at resolutions of problems related to equal employment opportunity. In all instances, the EEO Counselor is required to advise the OSMRE EO Staff of the occurrence of counseling within two working days of the date of the initial contact by the person counseled.

(b) The EEO Counselor serves as a bridge between employees and their immediate supervisors, and attempts to redress allegations of discrimination which are presented by employees, former employees, or applicants for employment with OSMRE. The Counselor informs the person counseled of the importance of identifying specific incidents, dates, and issues relating to the allegation, and makes certain that the person counseled identifies specific relief to be sought.

(c) The EEO Counselor discusses the aggrieved's problem with him or her, with co-workers and supervisors as appropriate, maintaining the anonymity of the aggrieved unless the latter expressly waives this right. It is the responsibility of the Counselor to advise each aggrieved person of the right to anonymity as soon after the initial contact as practical, in order to allow the employee retention or waiver of this right. (This right applies only to the counseling process: it ends when a formal EEO complaint is filed).

(d) The EEO Counselor makes whatever inquiry into the matter he or she believes necessary in order to advise the aggrieved and management of the related issues. When a resolution agreement is not reached between the aggrieved and the appropriate management official, the Counselor is required to bring the matter to the attention of the next level of management.

(e) The EEO Counselor seeks solutions to problems on an informal basis. When this is not achieved, the Counselor informs the aggrieved regarding the right to file a formal complaint of discrimination. The Counselor shall neither express a personal opinion or judgment regarding the merit of the matter, nor attempt in any way to restrain the aggrieved person from filing a formal EEO complaint.

(f) The EEO Counselor is responsible for protecting the rights of any individual(s) named or otherwise identified by the aggrieved as being responsible for an alleged act of discrimination. While protecting the rights of the "alleged discriminating official" (ADO), the EEO Counselor will ensure that the aggrieved remains anonymous, unless the latter has elected to waive this right. The EEO Counselor shall solicit the views of the ADO through interview, unless the Counselor otherwise obtains and provides information which exonerates the official to the clear satisfaction of the aggrieved.

(g) Prior to the interview, the EEO Counselor shall advise the ADO that he or she has been identified by a complainant. The Counselor shall state the nature of the accusations and inform the official of the right to have a representative present during the interview. The representative may provide the official with advice on how to respond to any question which the Counselor asks.

(h) The EEO Counselor shall conduct a final interview with the person counseled no later than twenty-one (21) calendar days after the date on which the person counseled first contacted the EEO Counselor (See Attachment I). At the final interview, the Counselor will inform the person counseled that at his or her request, the Counselor will assist in completing the formal complaint form. The assistance will be limited to ensuring that the person counseled understands the scope and level of detail of the documentation called for on the written formal complaint of discrimination.

(i) An EEO Counselor visiting an OSMRE installation other than the Counselor's domiciled office will advise the installation head upon arrival that the visit is for the purpose of official EEO duties.

(9) The Aggrieved. When an employee, former employee, or applicant believes he or she has been discriminated against because of race, color, religion, sex, national origin, age or condition of handicap, and wishes to have the matter resolved, he or she shall consult an Equal Opportunity Counselor within thirty (30) calendar days of the incident or of the effective date of the personnel action involved, or of the date upon which the person first learned about the alleged discrimination. An allegation of continuing discriminatory employment practices must be filed with the Equal Opportunity Counselor within thirty (30) calendar days of the date of the last incident. This must be done before an individual may file a written formal complaint of discrimination.

d. Administrative Procedures.

(1) Notices describing procedures for contacting an EEO Counselor will make clear that the employee and his or her representative, if they so desire, are allowed official time to consult with the EEO Counselor during their regularly scheduled work hours. A reasonable amount of official time will be allowed for the presentation of the problem and necessary follow-up sessions. If the employee does not wish to disclose the desire to visit the EEO Counselor, he or she may arrange to meet with the Counselor during a non-duty period (ie, -lunch, scheduled break, annual leave, etc).

(2) Notices describing procedures for contacting an EEO Counselor should make clear that the EEO Counselor will not reveal the identity of any person counseled, unless authorized to do so by the person requesting counseling; or, until the Department has received a formal complaint of discrimination from the individual after EEO Counseling has occurred.

(3) An employee who provides EEO Counseling services shall be selected and trained in accordance with existing OSMRE procedures prior to officially providing counseling services.

(4) To ensure the responsiveness of EEO counseling services, especially in instances when a Counselor must travel to consult an individual at an office different than the Counselor's official duty station, Counselors will be provided authorization for travel as needed.

(5) The customary duties of an employee serving as a collateral duty EEO Counselor occasionally will be interrupted because of the need to provide counseling during hours normally scheduled as the Counselor's basic work week. Consequently, collateral duty EEO Counselors will provide reasonable advance notice of their counseling schedule to the appropriate supervisors or managers.

(6) An EEO Counselor who provided counseling to an employee, applicant or former employee will not take part in the informal resolution or processing of a formal EEO complaint filed subsequently by said employee, applicant or former employee.

(7) Authority to informally resolve allegations of discrimination in the precomplaint counseling stage rests with second level supervisors. The supervisor must specify the proposed terms of the resolution (Attachment II), which will be submitted by the EEO Counselor for the review of the OSMRE EO Officer. This action will be completed before the Withdrawal Statement signed by the person counseled is accepted by OSMRE (See Attachment III).

(8) All managers, supervisors and counselors will be periodically provided guidance, as appropriate, regarding the administrative procedures in operation to support the pre-complaint counseling function, by the EO Officer or the appropriate EO staff person.

4. Reporting Requirements.

a. The OSMRE EO Officer will initiate and maintain reporting systems designed to satisfy the EEO Counseling reporting requirements established by the EEOC and the Department. The OSMRE EO Officer will provide instructions and guidance to Assistant Directors, Field EO Officers, EEO Counselors, and other officials involved in the collection, analysis and submission of indicators relating to the EEO Pre-Complaint Counseling Process.

b. When a formal complaint of discrimination has been received, the OSMRE EO Officer shall submit a copy of the Counselor's Report under confidential cover to the complainant, and the appropriate Assistant or Deputy Director; and, notify the Deputy Director, Administration and Finance.

c. Field EO Officers will collect, analyze and submit periodic and special reports relating to EEO Counselings at installations and units under their respective jurisdictions, at the direction of the OSMRE EO Officer.

c. EEO Counselors.

(1) The EEO Counselor will complete the Equal Opportunity Counselor's Report (See Attachment IV) on the same day that the Notice of Final Interview is issued. The Counselor will retain the original in a locked cabinet or file; and, submit one copy, in a double sealed envelope, to the OSMRE EO Officer.

(a) Address outer envelope to:

Equal Opportunity Officer
Attn: Counseling Report (CONFIDENTIAL)
Headquarters, Office of Surface Mining
Reclamation and Enforcement
1951 Constitution Ave N.W., Room 7119 "L" St.
Washington, D.C. 20240

(b) Mark inner envelope in bold, red letters as follows:

To: Equal Opportunity Officer
CONFIDENTIAL Counseling Report

(c) On the bottom of inner envelope, show:

Counselor's Name
Date of Final Interview:
Base(s) of Discrimination:

(2) The EEO Counselor prepares and submits other reports on a timely basis in accordance with instructions issued by the OSMRE EO Officer, or his or her Field EO Officer. Included is the submission of a Monthly Report of Counseling Activity, which is required primarily for Departmental recordkeeping. The format for this report is attached as Attachment V.

5. References. For additional information relating to the EEO Administrative Remedy System, see 29 CFR 1613.

6. Effect on other Documents. Supersedes directive EEO-2, dated November 17, 1982.

7. Effective Date. Upon Issuance.

8. Contact. Office of Equal Opportunity (202) 343-3471.



United States Department of the Interior
OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

MEMORANDUM

To:

From:

Subject: NOTICE OF FINAL INTERVIEW AND RIGHT TO FILE A
DISCRIMINATION COMPLAINT

This is to inform you that, as of this date, the final counseling interview has been conducted in connection with the matter you presented to the EEO Counselor.

If this matter has not been resolved to your satisfaction and you desire to file a formal complaint of discrimination, you must proceed as indicated below:

1. State your complaint IN WRITING. (You may use the attached FORM DI-1892.) The complaint must be signed by you. If you need guidance with the preparation of your complaint, the EEO Counselor will assist you.
2. Please make certain that the complaint is specific and limited to the matters which you discussed with the EEO Counselor. For each allegation, you must state to the best of your knowledge, information and belief what incident is a personnel matter or action in which you were treated in a discriminatory manner, e.g., a specific non-selection, suspension, training refusal, etc.
3. Submit your written complaint, in person or by mail, WITHIN 15 CALENDAR DAYS AFTER RECEIPT OF THIS NOTICE, to one of the following officials who are authorized to receive discrimination complaints:
 - a) Honorable Donald P. Hodel
Secretary of the Interior
18th and C Streets N.W.
Washington, D.C. 20240
 - b) Director, Office for Equal Opportunity
Department of the Interior
18th and C Streets, N.W. - Room 1324
Washington, D.C. 20240

- c) Federal Women's Program Manager or
Hispanic Employment Program Manager
Department of the Interior
18th and C Streets N.W. - Room 1042
Washington, D.C. 20240
- d) Mr. Jed D. Christensen, Director
Office of Surface Mining Reclamation
and Enforcement
1951 Constitution Avenue N.W.
Washington, D.C. 20240
- e) Mr. Jeffrey A. Sindler
Equal Opportunity Officer
Office of Surface Mining Reclamation
and Enforcement
Room 7119 L
1951 Constitution Avenue N.W.
Washington, D.C. 20240

4. You must notify the OSMRE Equal Opportunity Officer immediately (within 5 days) in writing if you have retained the services of an attorney or any other representative for purposes of pursuing your complaint. The EEO Counselor shall provide you with a form entitled "Designation of Representative" which you may use to fulfill the notification requirement.

I have read and understand all of the above information.

Date

signature (Complainant)

Attachment (Form DI-1892)

cc: EEO Counselor



United States Department of the Interior
OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

(date)

Memorandum

To: _____
(name of Equal Employment Opportunity Counselor)

From: _____
(name of Supervisor, Manager)

Subject: Resolution of Allegation of Discrimination:

(name of person counseled)

Reference is made to our discussion on _____, regarding the
(date)
discrimination allegation brought to your attention by Mr/Ms/Mrs
_____. To resolve this matter, I agree to the
(name of person counseled)
following:

1. Effective _____,

_____.

2. Effective _____,

_____.

If OSMRE does not carry out, or rescinds, any action specified above for any reason not attributable to acts or conduct of Mr/Ms/Mrs _____, OSMRE shall, upon Mr/Ms/Mrs _____'s written request, reinstate the allegation for further counseling from the point counseling ceased.

This agreement is voluntary and represents a good faith effort by OSMRE management to resolve an employee issue; it does not constitute an acknowledgement of discrimination against Mr/Ms/Mrs _____.

(Signature of Supervisor, Manager)

Continuation Sheet

(date)

Subject: Resolution of Allegation of Discrimination:

(name of person counseled)

- 3. Effective _____, _____

_____.
- 4. Effective _____, _____

_____.
- 5. Effective _____, _____

_____.
- 6. Effective _____, _____

_____.
- 7. Effective _____, _____

_____.

(Signature of Supervisor, Manager)



United States Department of the Interior
OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

WITHDRAWAL STATEMENT

I, _____, hereby withdraw my allegation of discrimination against the Office of Surface Mining Reclamation and Enforcement (OSMRE), Department of the Interior, which I first discussed with EEO Counselor _____ on _____
(Name of Counselor)

(date)

1. I understand that I shall be free from actions of reprisal in connection with my allegation of discrimination as provided for under 29 CFR 1613.
2. I understand that in withdrawing my allegation I am waiving all rights to further appeal, and that all counseling will cease.
3. I further understand that if OSMRE does not carry out, or rescinds, any action specified by the terms of Mr/Ms/Mrs _____'s agreement, my allegation may be (name of supervisor, manager) reinitiated at my request, as provided for in 29 CFR 1613.
4. I have thoroughly discussed and understand this withdrawal statement, and am voluntarily entering into it.

Person Counseled

Date

EEO Counselor

Date

OSM Equal Opportunity Officer

Date

EQUAL OPPORTUNITY COUNSELOR'S REPORT

Complainant: _____ Title/Grade: _____

Office: _____ Tel. No.: _____

_____ Date of initial contact alleging discrimination
_____ by telephone _____ by correspondence (attached)

_____ Date of initial interview with Counselor

_____ Date of 21-Day Notice _____ copy attached

_____ Date complainant received Notice of Final Interview
_____ copy attached _____ copy signed by complainant or mail
_____ receipt attached

Base(s) of discrimination: (Circle and specify on line below)

Race / Color / Religion / National Origin / Sex / Age / Handicap / Reprisal*

* (If reprisal is alleged, a signed copy of form explaining difference between
reprisal complaint and charge procedures must be attached).

Information Developed by Counselor on Allegation No. 1: Page 2

_____ Additional allegations. Number: _____
Prepare separate page for each allegation, using Page 2 format.

Offer of assistance in preparation of formal complaint:
_____ accepted _____ declined

NOTE: If all applicable dates are not given and boxes are not checked, Equal
Opportunity Counselor has not completed required processing.

Other relevant information (not related to individual allegations):

Name of Equal Opportunity Counselor

Date

Tel. No.

PART IV. CASES CLOSED WITH CORRECTIVE ACTION

A. Total number of cases closed with corrective action in the reporting period _____

Types Of Corrective Actions		No. COUNSELING STAFF
1. Retroactive Hire	with backpay	
	without backpay	
2. Non-Retroactive Hire		
3. Retroactive Promotion	with backpay	
	without backpay	
4. Non-Retroactive Promotion		
5. Priority Consideration		
6. Rescinding Disciplinary action	with backpay	
	without backpay	
7. Modify Disciplinary Action		
8. Cease Practices Complained of		
9. Reinstatement	with backpay	
	without backpay	
10. Reassignment	same duty station	
	another duty station	
11. Performance Re-evaluated to Complainant's Satisfaction		
12. Adverse Material Removed From Personnel File		
13. Agency Improvement	corrections of working conditions	
	correction of personnel practices	
14. Other		