

OEOCR Quick Facts: Complaints Involving Discrimination Based on Sexual Orientation

Executive Order 13087 issued in May 1998, prohibits discrimination on the basis of sexual orientation in the Federal civilian workforce. Consistent with this Order, the Department of Health and Human Services (DHHS) has a policy for addressing and processing complaints involving discrimination based on sexual orientation. It is important to note, however, that Equal Employment Opportunity Commission (EEOC) regulations do not cover complaints involving sexual orientation. Therefore, individuals alleging discrimination based on sexual orientation have no right to a hearing before the EEOC and no right to file an appeal with the EEOC.

Q. How are complaints involving sexual orientation processed?

A. The administrative process for addressing claims of employment discrimination based on sexual orientation is modeled after the Equal Employment Opportunity (EEO) Complaint Process. Like the EEO Complaint Process, the Sexual Orientation Discrimination Complaint Process has three parts:

- an informal pre-complaint process;
- a formal complaint process; and
- an appeal process.

In most instances, Alternative Dispute Resolution (ADR), through mediation, is available to employees as an option during the pre-complaint or formal complaint process to resolve the matter.

Q. What types of issues may be raised in the Sexual Orientation Discrimination Complaint Process?

A. Any issue related to discrimination based on sexual orientation in employment may be raised, including discrimination in hiring, assignment, termination, harassment, and any other terms and conditions of employment.

Q. What is employment discrimination based on sexual orientation?

A. Employment discrimination based on sexual orientation is treating employees or applicants for employment differently than similarly-situated coworkers or applicants because of:

- their sexual orientation or perceived sexual orientation;
- their relationship with an individual(s) of a particular sexual orientation; or
- their affiliation with a group that is associated with sexual orientation issues or whose membership is composed mainly of people of a particular sexual orientation(s), including an employee organization.

Q. Who can use the Sexual Orientation Discrimination Complaint Process?

A. The Sexual Orientation Discrimination Complaint Process may be used by all Centers for Medicare & Medicaid Services (CMS) employees and applicants for employment.

Q. How does the pre-complaint process work?

A. If you believe that you have been discriminated against because of sexual orientation, you must raise the issues in the pre-complaint process before filing a formal sexual orientation discrimination complaint. You must initiate the pre-complaint process by contacting CMS's, Office of Equal Opportunity and Civil Rights (OEOCR) within 45 calendar days of the action you believe to be discriminatory, the effective date of the alleged discriminatory action, or the date that you learned or should have suspected that the agency action may be discriminatory. Depending on the issues raised, you can either go through traditional counseling or elect mediation. If you elect mediation, you will have 90 days from your date of initial contact with OEOCR to complete the process. If you elect counseling, you can select or be assigned a counselor who will conduct a limited inquiry of the pre-complaint. If at the end of the pre-complaint process, the matter has not been resolved, you will have 15 days to file a formal complaint.

Q. How does the formal complaint process work?

A. If you file a formal complaint, it will be reviewed to assure that it meets jurisdictional requirements. Accepted complaints will be investigated. At the conclusion of the investigation, you will receive a report of investigation. If no resolution has been reached up to this point, the Director of OEOCR will issue a decision addressing the merits of your complaint and will provide you with appropriate information regarding your appeals rights.

Q. How can I appeal the decision issued by the OEOCR Director in my complaint?

A. You are entitled to appeal the decision to the DHHS, Director of EEO. Upon review of the entire record, the DHHS, Director of EEO will issue a decision based on the merits of your claim. If discrimination is found, the Director will order appropriate remedies and relief.

Q. May I appeal the decision of the DHHS Director of EEO?

A. No. The appellate decision of the DHHS Director of EEO is final and there is no entitlement to further administrative review of the complaint on the basis of sexual orientation.

For more information about this complaint process, See OEOCR's website at <http://cmsnet.cms.hhs.gov/hpages/oecr/EEOComplaintProcess.htm> or call 410-786-5110 to speak with a member of the EEO Complaints Team.

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This document is intended as a general overview and does not hold the force of legal opinion.