



UNITED STATES MARINE CORPS

MARINE CORPS BASE
PSC BOX 20004
CAMP LEJEUNE, NORTH CAROLINA 28542-0004

BO 12713.6G

EEO

20 OCT 2007

BASE ORDER 12713.6G

From: Commanding Officer
To: Distribution List

Subj: EQUAL EMPLOYMENT OPPORTUNITY (EEO)

Ref: (a) DON Complaints Processing Manual
(b) EEO Management Directive 110
(c) MCO 12713.6A
(d) Title VII of the Civil Rights Act of 1964, as amended
(e) Age Discrimination in Employment Act (ADEA) of 1967,
as amended
(f) Equal Pay Act of 1963, as amended
(g) Rehabilitation Act of 1973, as amended
(h) Titles I and V of The Americans with Disabilities Act
of 1990, as amended
(i) No Fear Act of 2002
(j) 29 CFR 1614

Encl: (1) Affirmative Employment Program

1. Purpose. To provide basic information regarding the processing of EEO Complaints under the traditional 29 CFR Part 1614 process and Department of Navy (DON) EEO Complaint Resolution Process, as required by the references.

2. Cancellation. BO 12713.6F.

3. Mission

a. These procedures apply to current and former civilian employees paid with appropriated and non-appropriated funds, reemployed annuitants, and applicants for employment who believe they have been discriminated against on the basis of race, color, religion, sex, national origin, age (40 and over), physical and mental disability or reprisal for prior EEO activity.

b. Summary of Revision. This Order has been revised it should be reviewed in its entirety.

DISTRIBUTION STATEMENT A: Approved for public release;
distribution is unlimited.

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4. Execution

a. Activity Head. The Secretary of the Navy (SecNav) is the head of the activity. All formal EEO complaints are against the Secretary of the Navy.

b. Equal Employment Opportunity Officer (EEOO). The Commanding Officer of each activity is the EEOO for that activity and is personally responsible for implementing a results-oriented EEO Program.

c. Equal Employment Opportunity (EEO) Manager. Services MCB, Camp Lejeune, Naval Hospital and Naval Dental Center, Camp Lejeune, and MCAS, New River, Jacksonville, civilian employees and serves as the principal consultant to the EEOO on all matters related to EEO. The Manager has lead staff responsibility for all formal EEO Program components, which includes the complaints process, the Affirmative Employment Program (Enclosure (1)), the Federal Equal Opportunity Recruitment Plan (FEORP), and the EEO Advisory Committee.

d. Military and Civilian Managers and Supervisors. Responsible for cooperating with EEO program officials, Specialists/Dispute Resolution Specialists (DRS), Investigators, and management representatives at every step of the complaint process, communicating discrimination complaint procedures to employees and supervisors, and seeking resolution of informal and formal complaints.

e. Civilian Human Resources Office - East (CHRO-E). The Human Resources Director (HRD) shall provide civilian EEO/HR functions for serviced activities. This includes training HR specialists in the principles and requirements of EEO and identifying qualified individuals to perform specific EEO Program initiatives. The HRD shall:

(1) Designate a DEEOO who will advise EEOOs in the effective management and implementation of the EEO Program at the activity level;

(2) Ensure HR/EEO staff provides advice and guidance to managers and supervisors regarding EEO initiatives and the implementation of the DON Model EEO Program;

(3) Provide HR program advice and guidance to managers, employees, and EEO officials.

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f. Human Resources Service Center - East (HRSC-E). Responsible for processing class action complaints and providing requested data and documentation to Specialists/DRS.

g. Employee. Individuals who believe they have been discriminated against in an employment related matter must contact the EEO Office within 45 calendar days of the date the alleged act occurred, the effective date of the alleged discriminatory personnel action, or the date they knew or reasonably should have known that it occurred. At the initial counseling session, the aggrieved person must elect between having their dispute/complaint about which s/he contacted the EEO Office handled through the traditional EEO counseling procedures, the activity's Alternative Dispute Resolution (ADR) procedure(s) or the DON EEO Complaint Resolution Process.

h. EEO Specialists/Intake Dispute Resolution Specialists. Advise individuals orally and in writing of the EEO complaint processes and their rights and responsibilities; determine the issue(s) and the basis of the potential complaint; gather and analyze information relevant to the dispute; work closely with appropriate management officials and complainant to achieve resolution at the lowest level possible; document resolution efforts; prepare a report sufficient to determine that required counseling actions have been taken and resolve any jurisdictional questions that may arise; advise complainant of their right to file a formal complaint if resolution fails.

i. Command Counsel. The agency representative is responsible for assisting and advising management officials during the informal and formal process of any disputes. Command Counsel may be included on proposed settlement agreements or asked to actively participate during ADR sessions.

j. Pre-complaint Processing under 29 CFR Part 1614

(1) Traditional. Employees electing the traditional process will be assigned a Specialist who will conduct an informal inquiry to be completed within 30 calendar days. The limited inquiry will be based on the claim(s) and basis alleged by the employee. During the informal processing of the complaint, the employee has the right to remain anonymous. Prior to the end of the 30-day period, the aggrieved person may agree in writing to extend the counseling period for up to an additional 60 days. If no satisfactory resolution is reached, a

signed written complaint may be submitted within 15 days to the Commanding Officer or the DEEOO. Once the employee has filed a formal complaint, their anonymity is no longer protected.

(2) Alternative Dispute Resolution (ADR) Option.

Employees may choose ADR in lieu of the counseling procedure. The Activity's current ADR Program allows employees to request to engage in either Mediation or Conciliation. If the employee elects the ADR Option, the Specialist is allowed up to 90 days to complete the pre-complaint phase. Due to the fact that management and the employee engage in face-to-face discussion of the issue(s), the employee cannot elect to remain anonymous and utilize ADR. The ADR core principle of ensuring fairness requires that participation be voluntary, that the process provides both neutrality and confidentiality, and that all terms of any resolution agreement achieved be enforceable.

(a) Mediation is a confidential process. No written record is kept of what transpires during the process. If agreement is reached between the parties, it is reduced to writing. If an agreement is not reached, the only written record will be that the session was held, the date it was held, and who was present.

(b) Round Table Discussion is an open forum used to generate discussion between the parties in an effort to clarify and resolve issue(s) brought forward. This is conducted without formalities or presentation of documents. The role of the third party neutral is only to facilitate, not lead or guide the discussion. The neutral will not normally hold caucus with either party. If resolution is reached, a Negotiated Settlement Agreement will result.

(3) Right to File Formal Complaint. If the dispute/complaint is not resolved, the individual will be informed in writing of his/her right to file a formal discrimination complaint within 15 calendar days of receipt of the final interview notice. The notice will advise the individual of names and addresses of officials designated to receive formal complaints.

(4) Withdrawal. A complainant may withdraw his/her informal or formal complaint at any time by submitting a written statement requesting such.

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k. Formal Complaint Processing under 29 CFR Part 1614

(1) Accept/Dismiss. When the DEEOO accepts or dismisses the complaint, it will be processed in accordance with procedures and time frames established by the Equal Employment Opportunity Commission (EEOC). If the DEEOO dismisses the complaint, the complainant will be advised in writing of their right to file an appeal to EEOC.

(2) Investigators. The Department of Defense, Office of Complaint Investigations (OCI) will assign an EEO Investigator within 10 days of the request. When assigned, s/he will conduct an investigation and activity officials and employees are required to cooperate. Persons deemed to have knowledge of the complaint are required to testify under oath or affirmation without pledge of confidence. The investigator will complete the fact-finding and a written Report of Investigation (ROI) will be submitted to the DEEOO with a copy provided to the complainant, or the designated representative. Upon receipt of the ROI, the DEEOO will forward a notice to the complainant of his/her right to request a final agency decision by the Naval Office of EEO Complaints Management and Adjudication Division (NAVOECMA), with or without a hearing. If complainant does not respond within 30 calendar days of receipt of the notice, the case is still forwarded to NAVOECMA for an agency final order.

(3) Consolidation of Complaints. If complainant files two or more complaints, the agency must consolidate them after appropriate notice to complainant. When a complaint has been consolidated with one or more earlier complaints, the agency shall complete its investigation within the earlier of 180 days after the filing of the last complaint or 360 days of the filing of the first complaint.

(4) EEOC Administrative Judge. Complainant has 30 calendar days after receipt of the ROI to request a hearing before an Administrative Judge. The request must be submitted in writing directly to the EEOC District Office at the following address:

Director Charlotte District Office
Equal Employment Opportunity Commission
129 West Trade Street Suite 400
Charlotte, North Carolina 28202-5306

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(5) Agency Final Order. The Secretary of the Navy takes final action on the complaint by issuing a Final Order. Should the decision be unacceptable to the complainant, the final order will contain notice of the right to appeal the final action to the EEOC, the right to file a civil action in Federal District Court, and applicable time limits for appeals and lawsuits.

(6) Civil Action. If the Secretary of the Navy has not issued a final decision on the complaint within 180 days of the date it was filed, the complainant may file a civil action in an appropriate U. S. District Court.

(7) Alternate Sexual Harassment Process. Sexual harassment complaints filed under Title VII will be processed by the Deputy EEO Officer in accordance with the 29 CFR Part 1614 process. However, U.S. Code: Title 10, Section 1561, Complaints of Sexual Harassment, initiated through the Station Inspector General(IG) Office, allows the complainant to request an investigation by the Commanding Officer. The Commanding Officer or the Officer in Charge is responsible for ensuring that Sexual Harassment complaints filed are investigated in accordance with U.S. Code: Title 10, Section 1561.

(8) Addressing Sexual Orientation Discrimination in the Federal Civilian Employment. It is the policy of the Federal Government to provide equal opportunity to all of its employees regardless of their race, religion, color, sex, national origin, age, physical/mental disability, or sexual orientation. When applicants or employees believe that a prohibited personnel practice has been committed against them that constitute discrimination based upon sexual orientation, they may seek assistance under certain circumstances from the Merit Systems Protection Board (MSPB), Office of Special Counsel (OSC), a Negotiated Grievance Procedure, or the Agency's Administrative Grievance Procedure. Because sexual orientation is not a protected group under the provisions of Title VII, Civil Rights Act of 1964, an employee or applicant may not seek relief from the EEOC or file a discrimination complaint based upon their sexual orientation.

1. Representation

(1) The complainant has the right to be accompanied, represented, and advised by a representative of their choice at every stage of the complaint process. The DEEOO may deny a particular representative when there is a conflict of interest

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or position such as an EEO Specialist, DEEOO, certain CHRO-E employees, or complainant's supervisor. Denial of a selected representative must be in writing to explain the reason for the denial.

(2) The complainant must provide written notification to the EEO Office or the DEEOO of the representative's name, address, and telephone number, and identify if the individual is an attorney.

(3) Witnesses have the right to be accompanied and advised by a representative of their choice at every stage of the complaint process.

(4) If the complainant is an employee of the agency, he or she shall have a reasonable amount of official time (hours - not days) to prepare the complaint and to respond to agency and EEOC requests for information. If the complainant designates another employee of the agency as his or her representative, the representative shall be allowed a reasonable amount of time. The agency is not obligated to change work schedules, incur overtime wages, or pay travel expenses to facilitate the choice of a specific representative or to allow the complainant and representative to confer. The complainant and representative, if employed by the agency and otherwise in a pay status, shall be on official time, regardless of their tour of duty, when their presence is authorized or required by the agency or the Commission during the informal processing, any ADR session agreed to by the parties, the investigative stage by OCI, or for a hearing on the complaint.

m. Relationship to Other Appellate Processes

(1) If an allegation of discrimination is raised at any stage of administrative grievance process, the employee will be notified in writing that introduction of the allegation will terminate the administrative grievance process.

(2) An employee, covered by a collective bargaining agreement with a negotiated grievance process that does not exclude an allegation or complaint of discrimination, may pursue their claim through the negotiated grievance process or the discrimination complaint process, but not both.

(3) An employee who elects to use the negotiated grievance process or the discrimination complaint process to

resolve an EEO matter must indicate their election by filing a written grievance or a formal discrimination complaint. Use of pre-complaint counseling does not constitute a formal discrimination complaint.

(4) An employee covered under a negotiated grievance procedure who files a grievance in writing may not later file a discrimination complaint on the same matter regardless of whether the grievance raised an allegation of discrimination. Any such complaint filed after a grievance has been filed under a negotiated grievance procedure on the same claim shall be dismissed without prejudice to the complainant's right to proceed through the negotiated grievance procedure.

(5) For employees not covered by a collective bargaining agreement or whose collective bargaining agreement excludes allegations of discrimination, 29 CFR Part 1614 is the exclusive process available for addressing allegations of discrimination.

(6) If a discrimination complaint is dismissed based on an employee's prior election to use the negotiated grievance procedure, the letter dismissing the complaint will include rights and procedures concerning appeal of the dismissal.

n. Age discrimination in Employment. You may allege a violation of the Age Discrimination in Employment Act (ADEA) by filing a civil action in a U. S. District Court or you may file an administrative complaint with the activity under Title VII. If you file a civil action in a U.S. District Court under the ADEA against the Secretary of the Navy, you must give EEOC not less than 30 days notice of the intent to file such as action. The notice must be filed in writing with EEOC within 180 days of the occurrence of the alleged unlawful practice. The notice must be submitted to Equal Employment Opportunity Commission, Office of Federal Operations, ATTN: Hearing Programs Division, 1801 L Street, NW, Washington, DC 20507.

o. Sex-Based Wage Discrimination. You may file a complaint of discrimination based on sex in the payment of wages under the administrative discrimination complaint process (Title VII) or you can go directly to U.S. District Court if you are alleging an Equal Pay Act violation, regardless of whether you have pursued any administrative complaint processing.

p. Sexual Harassment. The EEOC defines sexual harassment as unwelcome sexual advances, requests for sexual favors, and

other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. There are two primary types of sexual harassment as defined by the Supreme Court:

(1) *Quid Pro Quo* literally means "this for that". Items (1) and (2) in the previous paragraph encompass *quid pro quo* sexual harassment.

(2) Hostile Work Environment is sometimes more difficult to identify because the deciding factor is not the INTENT of the harasser, but the IMPACT of the harasser's action upon the victim. The behavior must be so severe that a single occurrence can create an offensive, hostile, or intimidating work environment or it must be so pervasive that it creates an offensive, hostile, or intimidating work environment. To determine if the conduct is pervasive and a hostile work environment could exist, the answers to the following questions must be yes:

- (a) Is the conduct unwelcome?
- (b) Is the conduct repeated?
- (c) Is the conduct unsolicited?
- (d) Is the conduct of a sexual nature?

q. Mixed Case Complaint. If the subject of a personnel action is appealable to the Merit Systems Protection Board (MSPB) (i.e., suspension of more than 14 days, removal, termination, or demotion), the Complainant may file a complaint with the activity or an appeal to the MSPB, but not both. Whichever is filed first will be considered an election to continue in that forum. If the employee files a mixed case appeal with the MSPB instead of a mixed case complaint and MSPB dismissed the appeal for jurisdictional reasons, the employee has the right to contact their local EEO Office within 45 calendar days of receipt of the notice and to file an EEO complaint.

The date on which the appeal was filed with MSPB will be deemed the date of the initial contact with the EEO Office. If the complainant files a timely appeal with MSPB from the activity's processing of a mixed case complaint, and MSPB dismisses for jurisdictional reasons, the complainant may have the right to a hearing before an EEOC Administrative Judge.

r. Class Complaints

(1) A class constitutes a group of employees, former employees, or applicants for employment who allege they have been or are being adversely affected by an agency personnel management policy or practice that discriminates against the group on the basis of their common race, color, religion, sex, national origin, age (40 and over) or physical/mental disability.

(2) A class complaint is a written complaint of discrimination filed on behalf of a class by the agency of the class alleging the following:

(a) The class is so numerous that a consolidated complaint of members of the class is impractical;

(b) There are questions of fact common to the class;

(c) The claims of the agent of the class are typical of the claims of the class; and/or

(d) The agent of the class, or the class representative, if any, will fairly and adequately protect the interests of the class.

(3) An agent is a class member who acts for the class. Anyone who wishes to act as an agent in pursuing a class complaint and who believes they have been discriminated against shall consult with an EEO Specialist, or Class Complaint Specialist, within 45 calendar days of the matter giving rise to the allegation of individual discrimination, the effective date of a personnel action, or the date they knew or reasonably should have known of the discriminatory event or personnel action.

(4) Upon being notified, the Deputy EEO Officer will contact the EEO Office, HRSC-E located in Portsmouth, Virginia, who will immediately contact the employee or applicant who is

representing the "class" and coordinate all complaint processing. A "Class Complaint Counselor", who has been trained to counsel such complaints, will be assigned to conduct a limited inquiry into the alleged dispute; work closely with management to attempt resolution at the lowest possible level; document the resolution or advise the "agent" or "class representative" of their right to file a formal discrimination complaint if resolution fails; and prepare a report sufficient to determine that required counseling actions have been taken and resolve any jurisdictional questions that may arise.

s. Reasonable Accommodation

(1) Employees or someone acting on their behalf (family member, health professional or other representative) may submit a request for reasonable accommodation either orally or in writing. Also, employees accepted into the Injury Compensation Program should be considered for reasonable accommodation. Requests for reasonable accommodation will be submitted to the employee's supervisor. If submitted orally, the supervisor will document the request, obtain the employee's signature and forward a copy to Human Resources and the EEO Office. Supervisors must immediately engage the individual in an interactive process to clarify any reasonable accommodation need(s), and discuss alternatives when appropriate. Supervisors and managers should seek legal assistance from the Eastern Area Counsel's Office in determining if the employee meets the legal definition of a person with a disability and a qualified employee with a disability.

(2) Requests for reasonable accommodation must contain the following information:

(a) Information on the requested accommodation (e.g. services of interpreter, ergonomic chair, computer equipment);

(b) Appropriate medical documentation when the disability and/or functional impairment are not obvious.

(3) A request for reasonable accommodation requires an expedited review and decision ASAP from the date the request is received by the employee's supervisor. The decision-maker is normally the supervisor's responsibility.

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(4) The requestor shall be notified in writing when there is a denial of reasonable accommodation. The written denial will include the reason(s) for the denial. The denial must also provide the requestor with information on their right to:

(a) Participate in the Alternative Dispute Resolution (ADR) Process;

(b) File a request for reconsideration; or

(c) File an informal Equal Employment Opportunity (EEO) complaint to include the timeframes and point of contact for filing such a claim.

5. Administration and Logistics. Not applicable.

6. Command and Signal

a. Command. This Order is applicable to Marine Corps Base Camp Lejeune and Marine Corps Air Station, New River.

b. Signal. This Order is effective the date signed.


W. A. MEIER
By direction

DISTRIBUTION: A

AFFIRMATIVE EMPLOYMENT PROGRAM

1. Purpose. To assign accountability and establish procedures for meeting the goals set forth in the enclosure.
2. Applicability. The Affirmative Employment Program (AEP) discussed here is applicable to appropriated fund employees of Marine Corps Base, Camp Lejeune. The success of this program is the sole responsibility of the installation commander and management. To be successful, we must make it happen.
3. Background. The Affirmative Employment Program Plan (AEPP) was developed per the Equal Employment Opportunity Commission Management Directive 714. It is not only mandated by Federal legislation, but Presidential Executive orders and definitive court decisions. Executive Order 11478 (1969), and the 1972 Amendment to the Civil Rights Act of 1964, and the Garcia Amendment to the Civil Service Reform Act of 1978 established requirements for Federal Agency Affirmative Employment. Affirmative action means positive actions taken by management officials and supervisors to improve workforce profiles of underrepresented individuals and the elimination of systemic barriers to equal employment opportunity.

a. Affirmative action is designed to overcome the effects of past and present discriminatory practices, policies, or other barriers to equal employment opportunity. An AEP is a blueprint for improving the employment and advancement opportunities for women, minorities, and individuals with disabilities. Many individuals who suffer effects of discrimination, based on race, color, religion, sex, national origin, age, or disability (mental or physical) are already qualified for better jobs, but covert management decisions deny them equal employment opportunity. The major part of an AEP is recognition and removal of these barriers, identification of persons excluded or held back, and action enabling them to compete for jobs on an equal basis.

b. Overall, an effective AEP not only benefits those who have been denied equal employment opportunity but will also greatly benefit the organization which has sometimes overlooked, screened out, or underutilized the great reservoir of untapped human resources and skills among women, minority groups, and persons with disabilities. Every manager, supervisor, and

employee, both civilian and military, must meet the objective of affirmative employment. The AEP goals set forth yearly are challenging and are to be accomplished by each of us during the established time frame.

c. Selecting officials are entitled to choose any competing candidate certified or to non-select all candidates. Each candidate certified must be given full consideration and the selection made based on who will best fill management's need in terms of productivity and the total objective of the organization, including affirmative action and equal opportunity.

d. Employees who have potential but lack qualifying experience should have the opportunity to participate in programs related to career progression such as;

- (1) Civilian Career and Leadership Development Program,
- (2) Civilian Tuition Assistance,
- (3) Civilian Workforce Development Application.

e. To help management recruit, hire, and accommodate federal appropriated funded job applicants and employees, available resources include:

- (1) Human Resources Director (HRD)
- (2) EEO Manager (Human Resources-EEO)
- (3) Selective Placement Coordinator (Human Resources-Staffing),
- (4) AEP Program Manager (Human Resources-EEO),
- (5) Reasonable Accommodation Coordinator (Human Resources-EEO).

4. Action

a. The Equal Employment Opportunity Manager and AEP Manager will provide overall direction and recommend necessary action to accomplish the objectives of the AEP.

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b. Department heads at Marine Corps Base, Camp Lejeune will:

(1) Review workforce EEO profiles on a quarterly basis.

(2) Ensure that all managers and supervisors are thoroughly familiar with the contents of this order and that this order is made available to employees under our cognizant upon request.

(3) Ensure that AEP achievements are considered in determining final performance appraisals and ratings.

(4) Ensure that minorities, women, and persons with disabilities are given full consideration in all employment-related matters.

c. The AEP Manager will:

(1) Provide advice and assistance in and coordinate the execution of the AEPP among supervisors, managers, and the civilian personnel office on a quarterly basis.

(2) Review all recruitment actions for occupations where imbalances exist and assist staffing specialists with identifying viable recruiting sources. Additionally, provide management with a written reminder of their responsibility to affirmative action goals when the promotion certificate is forwarded to them.

(3) Attend job fairs sponsored by minority colleges and universities or prepare recruitment packages for collateral duty program coordinators to carry to job fairs.

(4) Establish affirmative employment and special emphasis programs for Hispanics, women, disabled veterans and persons with disabilities respectfully.