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# State Equal Employment Manager

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# EEO Policy



- Equal Employment Opportunity is the right of all military personnel and civilians to be protected from discrimination in employment.
- All applicable federal EEO laws will be vigorously enforced
- Hawaii National Guard policy is to ensure equal employment opportunity, prohibit discrimination and harassment in all its forms, and promote diversity and inclusiveness in the workplace
- **Supervisors and managers** bear a special responsibility to ensure that work environments are free from discrimination and harassment of any kind



# Learning Objectives: Understand...



1. **Elements of a complaint** and protected classes
2. **Role** of a supervisor in providing equal employment opportunity
3. **What is covered** under the HING EEO program and EEO Commission
4. **HING No Fear** requirement and where to find information
5. significant stages in the federal sector **EEO complaint process**, including the **option of ADR**



# Civil Rights Laws



- Title VII, Civil Rights Act of 1964
- Americans with Disabilities Act of 1990
- Equal Pay Act of 1963
- Age Discrimination in Employment Act of 1967
- The Rehabilitation Act of 1973
- The Vietnam Era Veterans Readjustment Assistance Act of 1974
- The Civil Service Reform Act of 1978
- Civil Rights Act of 1991
- No fear Act of 2003



# Elements of a Complaint



# Elements of a Complaint



- Two basic elements required:
  1. Basis: Protected class (race, color, national origin, sex/gender, age, disability, religion, retaliation)
  2. Claim: sexual harassment, hostile work environment, denied benefit/opportunity (leave, promotion, positive evaluation, overtime opportunity, etc.)



# Claims



# Harassment Defined



- Harassment is unwelcome verbal or physical conduct based on race, color, religion, sex (regardless of whether it is of a sexual nature), sexual orientation, national origin, pregnancy, age, disability or retaliation that is sufficiently offensive to alter the conditions of the victim's employment.
- This standard is met when:
  - The conduct culminates in a tangible employment action, or
  - The conduct is sufficiently severe or pervasive as to create a hostile work environment



# Disparate Treatment



- Exists when similarly situated individuals are treated differently because of their membership in a protected class
- Shifting Burden: Once the above conditions are met, burden shifts to employer to articulate a legitimate, non-discriminatory reason for taking the action; and shifts back to complainant to argue pretext
- Complainant must establish that he or she:
  - Is a member of a protected class
  - He/she suffered some adverse action
  - A similarly situated individual outside of his/her class was treated more favorably



# Tangible Employment Action



- Definition: A management official's harassment that results in a significant change in an employee's (usually a subordinate's) employment or job status
- An agency is automatically liable for harassment by a management official that results in a tangible employment action regardless of whether upper management had knowledge of it
- Examples of tangible employment actions include but are not limited to:
  - hiring and firing
  - promotion or failure to promote
  - demotion
  - undesirable reassignment
  - work assignments
  - other actions



# Hostile Work Environment



- Anyone in the workplace can commit this type of harassment:
  - a supervisor or manager
  - co-worker
  - or even a non-employee
- To create a hostile environment, the conduct must rise to the level of being severe or pervasive
- The key issues are frequency and severity
  - The more severe the conduct, the less frequent it must be to rise to the level of a hostile environment
  - The less severe the conduct, the more frequently it must occur to constitute a hostile environment

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Basis

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# Age/Disability/Genetic Information



## Protected Classes (Civilian Only)



- **Age Discrimination in Employment Act of 1967**: Prohibits discrimination on the basis of age against individuals 40 and over.
- **Americans with Disabilities Act of 1990**: Prohibits discrimination against a qualified individual with a disability.
- **Genetic Information Nondiscrimination Act of 2008**: It is illegal to discriminate against employees or applicants because of genetic information. (Ex. Family history of \_\_\_ medical condition)



## Reasonable Accommodation (Title VII)



- Agency is required to make a reasonable accommodation of a **KNOWN** mental or physical limitation of an otherwise **qualified individual with a disability** unless to do so would cause undue hardship.
- Accommodation encompasses:
  - Application process
  - Job performance
  - Benefits and privilege of employment
- Types of accommodation:
  - Making facilities accessible
  - Acquiring assistive devices
  - Modifying work schedules
  - Restructuring job
  - Permitting use of accrued leave and unpaid leave
  - Modifying exam/training material
  - Providing readers or interpreters
  - Reassigning to a vacant position



# National Origin and Race/Color



# Protected Classes (Title VII of the Civil Rights Act of 1964 )



**National Origin**: It is prohibited to discriminate on the basis of National origin; because of:

- Ethnicity
- Accent
- Appearance to be of a certain ethnic background
- Birthplace
- Ancestry
- Linguistic characteristics common to specific ethnic groups

**Race or Color**: It is prohibited to discriminate on the basis of race including color discrimination involves treating someone unfavorably because of:

- Complexion
- Immutable characteristics associated with race:
  - ✓ Skin color (can occur between persons of different or same ethnicity/race)
  - ✓ Hair texture
  - ✓ Facial features



# Examples: Race Discrimination



- Employment conditions which predominately affect one race unless the practice is job related and consistent with business necessity
  - A “no-beard” employment policy may discriminate against African-American men who have a pre-disposition to pseudofolliculitis barbae (severe shaving bumps) unless the policy is job related.
- Be aware of accent discrimination, English fluency requirements and “English Only Rules”. Must be for “safe or efficient” operations sake.

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HALFWAY BREAK

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# Religion



# Religion (Title VII of the Civil Rights Act of 1964)



- Title VII prohibits discrimination on the basis of religion.
- Organized religions such as: Buddhism, Christianity, Hinduism along with atheist, agnostic and others who have sincerely held religious, ethical or moral beliefs.
- Employees cannot be forced to participate in religious activity as condition of employment
- Agency has a duty of reasonable accommodation for sincerely held religious beliefs and practices unless to do so would cause an undue hardship.
- Undue hardship can mean significant cost or non-cost factors such as office disruption.



# Religious/Reasonable Accommodation (Title VII)



- Accommodations may include:
  - Granting leave for religious observances
  - Granting time and/or place to pray
  - Ability to wear religious garbs
  - Accommodating hairstyles/grooming habits
  - Honoring dietary requirements during meeting where meals are provided
  - Permitting time off during a mourning period for a deceased relative.



## Example

- Elaine, who is Roman Catholic, requested Good Friday off so that she could go to church. Andrew Also a Roman Catholic, denied her request, telling her that the church does not require Catholics refrain from work on Good Friday.



# Sex and Gender



# Sex/Gender(Title VII of the Civil Rights Act of 1964 )



- **Sex/Gender:** Title VII prohibits discrimination on the basis of a person's sex/gender.
- Discrimination against an individual because of gender identity, including transgender status, or because of sexual orientation is included.
- Sex Discrimination includes:
  - Disparate treatment based on sex
  - Harassment based on sex
  - Sexual harassment
  - Pregnancy discrimination
- Gender Discrimination include “sex stereotypes”
  - “Stop being a sissy”
  - “You should be more lady-like”



# Sexual Harassment



- Title VII prohibits both harassment and sexual harassment through continued interpretation by the EEOC.
- Unwelcome conduct on a protected basis constitutes unlawful harassment if it is sufficiently severe or pervasive to create an intimidating, hostile or offensive work environment.
- An agency is liable for harassment by co-workers if it knew or should have known of the misconduct, unless it can show that it took immediate and appropriate corrective action.



# EEOC.gov



- The Commission has taken the position that existing sex discrimination provisions in Title VII protect lesbian, gay, bisexual, and transgender (LGBT) applicants and employees against employment bias.
- The Commission has obtained approximately \$6.4 million in monetary relief for individuals, as well as numerous employer policy changes, in voluntary resolutions of LGBT discrimination charges under Title VII since data collection began in 2013.
- A growing number of court decisions have endorsed the Commission's interpretation of Title VII.



## Example

- John and Jim are at the department gym working out. They see Frank lifting weights and proceed to call him derogatory words regarding what they perceive as his lack of “manliness” and state that he and “his kind” should have their own locker room. This is not isolated. Frank has complained to the supervisor about other occasions where coworkers questioned his sexuality and state he was “too feminine” in his dress and body language.



# No Fear Act



# No Fear Act

- Prohibits discrimination and retaliation against federal workers for participating in the EEO process or whistle-blower activities
- Requires agencies to train employees and post statistical data on EEO complaints on agency's public website



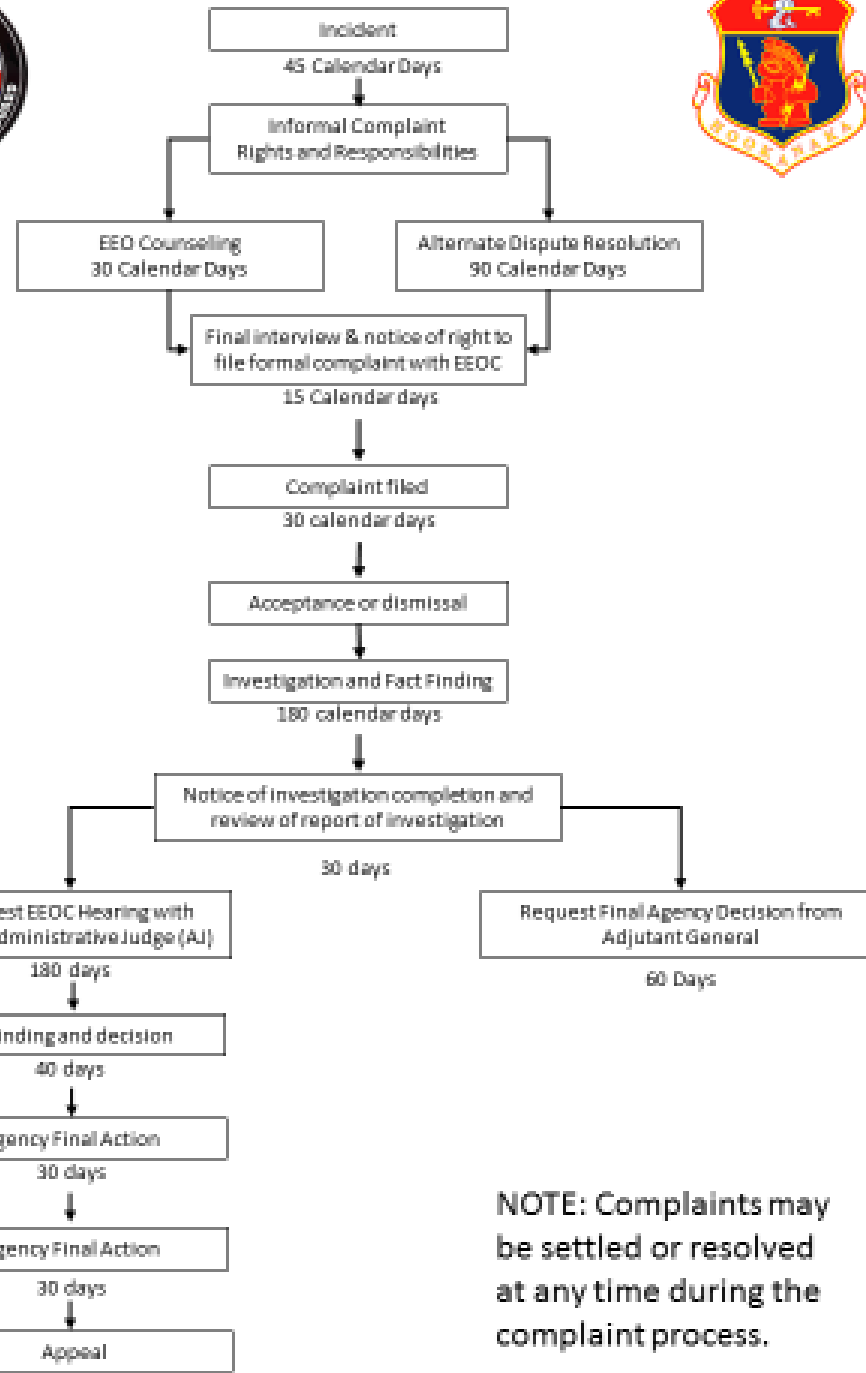
# Retaliation

- Title VII, ADEA, EPA and the Rehab Act prohibit retaliation because an individual has engaged in protected activity
- EEOC looks at whether the agency action is reasonably likely to deter anyone from pursuing the EEO process.



# Complaint Processing

# Hawaii National Guard EEO Complain Process Flow Chart



NOTE: Complaints may be settled or resolved at any time during the complaint process.





# EEO Complaint Process



- The right to pursue a complaint of discrimination is established by law
- The discrimination complaint process consists of:
  - Informal Complaint process (EEO Counselor)
  - Alternate Dispute Resolution (ADR/Mediator)
  - Formal complaint (EEO Investigator)



# EEO Informal Complaint Process



- Acts of discrimination must be reported within 45 days of the incident
- The traditional EEO counseling process allows 30 Days for resolution of allegations.
- If you choose the alternate dispute resolution (ADR) process, it allows 90 days for resolution
- If no resolution is agreed upon after traditional counseling or ADR, the complainant has 15 days to file a complaint with the Equal Employment Opportunity Commission (EEOC)



# EEO Counselor

- The EEO Counselor provides an open channel through which employees or applicants may raise questions, discuss problems, and get answers.
- The counselor acts as a neutral party whose function is to make inquiries to uncover the facts



# EEO Formal Complaint Process



- Filing of formal complaint if matter has not been satisfactorily resolved at pre-complaint stage
- Investigation of complaints that meet procedural requirements
- **OPTION 1:** EEOC Hearing or immediate Final Agency Decision (FAD) from TAG
- Appeal of final Agency Decisions to the Equal Employment Opportunity Commission
- **OPTION 2:** File civil suit in appropriate Federal district court



# Alternate Dispute Resolution (ADR)



- Neutral third party, assists the disputing parties to achieve a mutually acceptable agreement
- The objective of the mediator is to bridge the gap in communication between the disputing parties and assist them in reaching a voluntary agreement of their own
- Resolutions reached during mediations are documented in settlement agreements
- If mediation is not successful, the complaint process would resume from the point it stopped



# Resources



- Equal Employment Opportunity Commission  
<https://www.eeoc.gov/>
- No Fear Act  
<https://www.opm.gov/information-management/no-fear-act/>
- Office of Diversity Management and Equal Opportunity  
<http://diversity.defense.gov/>
- Diversity Management and Equal Opportunity in the DoD  
<http://www.dtic.mil/whs/directives/corres/pdf/102002E.pdf>



# Point of Contact

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Public Website	<a href="http://dod.hawaii.gov/seem/seem-manager/">http://dod.hawaii.gov/seem/seem-manager/</a>
Share Point Website	<a href="https://ngcaportal.ng.army.mil/sites/eeo_eo/default.aspx">https://ngcaportal.ng.army.mil/sites/eeo_eo/default.aspx</a>