

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

## EQUAL EMPLOYMENT OPPORTUNITY DISCRIMINATION COMPLAINT PROCESS

The Federal Mine Safety and Health Review Commission (FMSHRC) is committed to ensuring that employees and applicants for employment are given fair and timely consideration of all complaints of unlawful discrimination practices in employment.

As an employee or an applicant for employment with FMSHRC, if you believe that you may have been discriminated against on one or more of the following bases: race, color, religion, sex (including gender identity, pregnancy and sexual orientation based on sex stereotyping), national origin, disability, genetic information, age, or retaliation from participating in a discrimination action, you must discuss the issue with an Equal Employment Opportunity (“EEO”) Counselor **within 45 days** of the matter alleged to be discriminatory. The goal of the EEO Counselor is to facilitate an informal resolution of the matter between the parties when possible. In order to contact an EEO counselor, you must first contact FMSHRC’s EEO Director Kimberly Burch, at (202) 434-9913. The EEO Director will arrange for an EEO Counselor to be provided in a timely manner.

### HOW CAN THE EEO COUNSELOR HELP YOU?

The EEO Counselor will:

- Explain the process to you and advise you of your rights and responsibilities in writing.
- Listen and help you specifically identify your concerns in the area of employment discrimination.
- Study your case impartially and objectively and advise you of your rights.
- Answer your questions.
- Discuss your concerns with those involved and with you.
- Attempt to resolve your concerns informally.

The EEO Counselors will use your name **ONLY** with your **WRITTEN** permission. When appropriate, they will contact FMSHRC’s EEO Director, when her involvement might be necessary to resolve the problem.

## PROCEDURES DURING THE INFORMAL PROCESSING

**You must contact FMSHRC's EEO Director within 45 days of the date of the incident that gave rise to your complaint, the date you became aware of the incident or, if a personnel action, within 45 calendar days of its effective date or your knowledge of the action.**

The EEO Director will arrange the contact between you and the Commission's contract EEO Counselor. The Counselor will advise you of your right to elect between participating in traditional counseling activities or in the Alternative Dispute Resolution (ADR) process. During traditional counseling, **the Counselor has 30 calendar days from the time you report your issue or incident to attempt an informal resolution of the matter.** The 30-day period may be extended an additional days 60 if YOU agree in WRITING to such an extension.

Should you elect to participate in ADR resolution, traditional counseling will not be attempted. Agencies have 90 days to conduct ADR during the pre-complaint process. If, at the end of this time, the issue is not resolved, you will be advised, in writing, of your right to file a formal complaint, as specified below in *the Formal Complaint* section.

You have the right to be represented at any stage of the process of presenting your complaint, including the counseling stage. As a general rule, you may select any person to represent you (although there are certain limitations in terms of conflict of interest and attorney's fees are not available, under certain discrimination statutes).

## THE FORMAL COMPLAINT

If the attempt to informally resolve your issue is unsuccessful, you will be notified by your Counselor, in writing, of your right to file a formal complaint. **If you decide to file a formal complaint, you or your representative have 15 calendar days from the date of receipt of that notice to submit your formal complaint in writing.** Although it is not the duty of the EEO Counselor to file your complaint for you, he or she can answer your questions concerning the filing of your complaint. If you wish, your representative may file your complaint for you. Once your written complaint has been filed with FMSHRC's EEO Director, Kimberly Burch, FMSHRC will determine whether or not to accept the allegation(s) in your complaint for processing. If your allegations are accepted, your complaint will be investigated. If rejected, you will be given your rights to appeal the decision to the EEOC, should you wish to do so.

If FMSHRC dismissed a *portion* of a complaint, that determination is not immediately appealable. FMSHRC will notify the complainant in writing of the rationale for dismissal, which will be included in the file but will not be investigated. However, when a final decision is rendered, a determination will be made as to whether the partial dismissal was appropriate.

## THE INVESTIGATION

If your complaint is accepted, a thorough investigation will be conducted. The investigation will encompass all the information relevant to the accepted allegations and may, when appropriate, include comparative data on other individuals who were similarly situated. The investigation may be conducted by verbatim statements, interrogatories, position papers, or by other forms of fact finding. During the investigation, you will have an opportunity to present all the facts that you believe show unlawful discrimination. **FMSHRC has 180 calendar days from the date you filed your complaint to notify you that the investigation has been completed.**

During this process, the complaint may be amended to include issues or claims that are like, or related to, those raised in the original complaint, at any time prior to the conclusion of the investigation. Amendments must be in writing and be sent to FMSHRC's EEO Director. FMSHRC's EEO Director will review the amendment to determine if it should be added to the original complaint or if it should be referred for EEO counseling. FMSHRC shall complete its investigation of the complaint within 180 days after the last amendment or 360 days after the filing of the original complaint, whichever comes first.

After the investigation is completed, a Report of Investigation (ROI) will be sent to you. This time period can be extended an additional 90 days if agreed to by you and FMSHRC. **You will have 30 days from the date of your receipt of the ROI to exercise your right to either (1) request a hearing before an EEOC Administrative Judge or (2) request a final agency decision, by FMSHRC, without a hearing.**

## THE HEARING

**If you request a hearing, the request must be made directly to the EEOC with a copy to FMSHRC's EEO Director.** The request must be submitted in writing to the EEOC office which covers the geographic area where the complaint arose (contact FMSHRC's EEO Director for the correct EEOC office address). You will be allowed to present witnesses and evidence on your behalf. The EEOC Administrative Judge will have 180 days from the date the EEOC received your request for a hearing to conduct the hearing and issue a decision on your complaint. The hearing is recorded and transcribed verbatim. If your complaint is in the hearing process, and you wish to amend it, you must make a motion for amendment to the EEOC Administrative Judge. **FMSHRC will have 40 days either to implement the judge's decision or appeal the judge's decision to the EEOC Office of Federal Operations.**

## FINAL AGENCY DECISION

FMSHRC can issue an immediate, final decision based upon the evidence in the ROI. FMSHRC will issue you a final decision on your complaint within 60 days from (1) the date of your request for an immediate decision, or (2) if you do not make an election for either a hearing or an agency decision, the end of the 30-day period after you received the notice of election. If dissatisfied with FMSHRC's final decision, you may, within 30 calendar days of the date on which you received the decision or notice of dismissal, appeal the decision to the EEOC Office of Federal Operations.

## CIVIL ACTION

In lieu of an appeal with the EEOC, you may, within 90 calendar days of the date of your receipt of the final decision or dismissal, file a civil action in an appropriate U.S. District court. If you do appeal to the EEOC and are not satisfied with its decision, you may file a civil action in the appropriate U.S. District court within 90 calendar days of receipt of the EEOC final decision or after 180 days from the date you filed the appeal if there has been no final decision by the EEOC. You may also file a civil action after 180 calendar days have elapsed from the date you filed your individual complaint if a final decision has not been issued.

For additional information:

[www.eeoc.gov/federal/fedprocess.html](http://www.eeoc.gov/federal/fedprocess.html) (describes Federal EEO Complaint Processing Procedures).

[www.eeoc.gov/facts/fs-fed.html](http://www.eeoc.gov/facts/fs-fed.html). (Provides facts about federal sector equal employment opportunity complaint processing regulations (29 C.F.R. Part 1614)).