



**U.S. Department of
Transportation**

Office of the Secretary
Of Transportation

Departmental Office of Civil Rights
1200 New Jersey Avenue, S.E., W76-401
Washington, DC 20590

Memorandum

To: Civil Rights Directors
U.S. Department of Transportation

From: Charles James, Director *Charles E. James Sr.*
Departmental Office of Civil Rights
U.S. Department of Transportation

Re: Departmental Office of Civil Rights EEO Complaint Processing Changes
During National Emergency and Mandatory Agency Telework

Date: April 28, 2020

The Departmental Office of Civil Rights (DOCR) has implemented the following processing changes regarding the Department of Transportation (DOT) Equal Employment Opportunity (EEO) complaints processed during the National Emergency. These changes will be adhered to until the National Emergency is lifted or further guidance is received from the U.S. Equal Employment Opportunity Commission (EEOC) or U. S. Merit Systems Protections Board (MSPB). The changes articulated below are also in conjunction, and in compliance, with EEOC Memo on Processing Information for All Parties in Federal EEO Processing under 29 CFR Part 1614, dated April 6, 2020 (hereinafter “EEOC Memo”). This processing notice also conforms with the MSPB Notice regarding Processing Mixed Cases During COVID-19 National Emergency, issued April 23, 2020.

I. Informal EEO Process

DOCR provides the following recommendations regarding EEO Counseling performed by the AOs.

- EEO Counselors should provide a copy of the EEOC Memo to all Aggrieved Parties at the initiation of the counseling session. For those cases already in counseling, EEO Counselors should issue a copy of the EEOC Memo before the close of counseling. The issuance of the EEOC Memo should be included as a part of the Counseling Reports subsequently submitted to DOCR for further processing.
- All documents should be signed electronically by EEO Counselors and to the

extent possible by Counselees until further notice.

- Website pages, internal and external, should be updated accordingly with new instructions for requesting EEO Counseling (if your process has changed due to current limited access to Federal buildings).
- Forms should include the assigned EEO Counselor's email for all document submissions. Counselors should obtain the Complainant's work and personal email (as some employees may not have continued access to their work email through the entire EEO process).
- Rights & Responsibilities documents should be updated with the specifications issued in this notice.
- Counseling Interviews may be conducted telephonically or use other DOT approved IT systems (such as Microsoft Teams) until further notice.

DOCR requires the following of all OA OCRs with respect to EEO Counseling having direct impact on DOCR and the processing of Formal complaints.

- Counselors must update forms, correspondence documents, and provide instructions to Aggrieved Parties that Formal Complaints are to be submitted through DOCR's web portal <https://secure.dot.gov/form/eec>. Formal complaints submitted by regular U.S. mail may be delayed in processing as DOCR's ability to retrieve and process mail has been limited.
- The Notice of Right to File (NRTF) generated by IComplaints has been updated to instruct the Aggrieved Party to file his or her Formal complaint electronically through the DOCR portal. <https://secure.dot.gov/form/eec>
- Counseling Reports should be completed and signed electronically and issued via electronic mail only until further notice. All hard copy Counselor Report attachments should be scanned where possible and submitted electronically. Where the EEO Counselor does not have access to a scanner, the attachments should be enumerated and include a statement identifying who provided the document (i.e. Aggrieved Party, RMO, HRD etc.) and signify which attachments are being retained by the Counselor. The Counselor should also describe the contents of the attachments so that DOCR is aware of the contents of the document(s) despite not having access to attachments in the evaluation of claims. Thus, EEO Counselor Reports should not be delayed due to the Counselor's inability to include attachments.
- Written correspondence to the Counselee/Aggrieved Party providing instruction about the Formal complaint process should include the following footnote:

Due to limited Federal building access, all notices and correspondence concerning your EEO Counseling and/or Complaint will be sent via electronic transmission until further notice. We ask that you or your representative notify DOCR if your work or personal email address(es) change at any time during the course of processing your EEO complaint. Please send notification of email address changes to patricia.fields@dot.gov or your EEO Counselor as applicable.

OAs should also inform Aggrieved Parties and representatives to notify DOCR of any work or personal email address(es) changes via email to patricia.fields@dot.gov.

- Email issuance of all documents and forms will be tracked using Read Receipts and Delivery Receipts via Outlook. Said receipts/messages for each case will be uploaded into iComplaints for tracking and service of process documentation. Counselors may also request email reply responses acknowledging receipt of information, but should also include delivery/read receipts in case the recipient fails to provide an electronic acknowledgment.
- All correspondence and processing of the EEO complaints must remain in a need to know only basis. Documents with PII should be password protected when emailed between parties. Sender should use a separate email transmission for the password.
- Conflict Counseling and OST Counseling Requests should be made electronically to Matthew Lewis, Compliance Branch Chief, matthew.lewis@dot.gov.

II. Formal EEO Complaints Process

Until further notice all DOCR processing documents and instructions will be provided electronically to all parties. This will include the following:

- Acknowledgement Letters. Along with DOCR's acknowledgement of the Complainant's Formal complaint, Complainants and representatives will be issued copies of the EEOC Memo, dated April 6, 2020.
- Acceptance and Dismissal Letters. These letters will be issued to Complainants and Representatives electronically only. The letters will include notice of the EEOC Memo by hyperlink. Copies of the decision of acceptance or dismissal will continue to be distributed to Agency POCs by Share File folders.

Other correspondence (amendments, articulation decisions, extension agreements, revisions etc.) will also be issued electronically only. All

correspondence issued during the investigation stage will also include notice of the EEOC Memo by hyperlink. Distribution to Agency POCs will continue through the Share File folders.

- Reports of Investigations will be issued electronically only. Along with the Reports of Investigations, notice of the EEOC Memo, by hyperlink, will be included in the notice of election (i.e., transmittal letter).
- Complainants will be advised to submit final agency decision requests and hearing requests to the following email:
DOCRFADandHearingRequests@dot.gov, only, until further notice.
- Complainants will be advised to submit copies of appeals of complaint dismissal decisions to the following email
DOCR-EEOC-HearingandAppealCorrespondence@dot.gov, only, until further notice.

III. Compliance Process

- Email addresses to be used as appropriate in various correspondence:
 1. DOCR-FADandHearingRequests@dot.gov

The above email address should be used *solely* for the initial request from a Complainant or Representative for either a FAD or a Hearing. It is also used for any initial supporting documentation that the Complainant wants to file in support of his or her complaint. This box also receives appropriate correspondence from the EEOC Portal with regard to initial FADs and Hearings Requests.

2. DOCR-EEOC-HearingandAppealCorrespondence@dot.gov

The above general mailbox should be used after the initial request for a FAD or Hearing for ongoing correspondence, document submissions or other inquiries from Complainants or Representatives. This box also receives appropriate correspondence from the EEOC Portal with regard to supplemental updates after filing, etc.

3. MSPB Appeal Portal
<https://e-appeal.mspb.gov/>
4. EEOC Hearing and Appeal Portal
<https://publicportal.eeoc.gov/Portal/Login.aspx>

- All correspondence should be revised to include the stated preference for electronic submission of appeals, elections, etc. until further notice and also include appropriate email addresses for submission.

IV. Current EEOC Guidance During the National Emergency

- Tolling. The regulatory timeframes set forth in *29 C.F.R. Part 1614* will be subject to the equitable tolling provisions set forth in *29 C.F.R. §1614.604(c)*. Absent mutual agreement, Agencies and Complainants will be required to document in the record the reason(s) why tolling any of the time limits set forth in 29 CFR Part 1614 is necessary. Such justification will fully be considered by the Commission in any appeal raised in the matter.
- Extension of Timeframes. Per current EEOC guidance, Agencies and Complainants are encouraged to seek mutual agreement with respect to the extension of any timeframes. Where such agreements are reached, they should be reduced to writing and made part of the record. OFO will honor such agreements on appeal, unless they are clearly onerous to one party or otherwise violate the standards for equitable tolling, waiver or estoppel.
- Hearings. EEOC Administrative Judges (AJs) will continue to manage the hearings program. AJs will continue to hold conferences, manage discovery, refer cases to ADR and settlement, issue summary judgment decisions and, where appropriate, hold hearings and issue decisions. In light of the national emergency, the EEOC says that either party can seek an extension or other relief from any deadline for good cause shown to the AJ.

DOCR does not have jurisdiction over complaints at hearing or on appeal; therefore, DOCR will not provide copies of the EEOC Memo to Complainants currently at hearing or on appeal. If counsel for the OA chooses to provide notice, counsel should provide copies of the same correspondence to the EEOC AJ (if assigned), EEOC regional/district office or Office of Federal Operations (for appeals).

- Final Actions: The following applies to Final Agency Decisions (FADs) and Final Orders (FO). The EEOC has asked that Agencies not to issue final actions on any EEO complaint, unless the investigation is complete and the Complainant has requested that the final action be issued.

DOCR will hold in abeyance FADs which are not expressly requested by the Complainant. Instead of issuing a FAD on the merits, DOCR will provide written notice to the Complainant and Agency that the FAD will be held in

abeyance until further notice or receipt of express written notification from the Complainant requesting the FAD. These FADs will be prepared but not issued. This procedural change does not include FADs in which the Complainant has withdrawn from the hearing process and a Final Agency Decision is requested or ordered by an EEOC AJ.

DOCR will issue Final Orders in complaints where the AJ does not instruct the Agency to hold the action. This will preserve the right to appeal the decision by either party in accordance 29 C.F.R. Section 1614.110 (a). DOCR takes this position, as EEOC AJ Decisions continue to include Notices to the Parties requiring that the Agency issue Final Orders within forty (40) days of the decision. The notices in these decisions, also instruct that if the Agency fails to issue a final order, the Complainant will have the right to file his or her own appeal within thirty (30) days of the conclusion of the Agency's forty (40) day period for issuing a final order. *See* EEOC Management Directive 110, Chapter 9, § II(A)(1)(c) (Aug. 5, 2015).

DOCR will issue a correspondence to the EEOC AJ and parties noting why the Final Order was issued in these particular incidents.

For AJ Decisions that do not have similar instructions, noted above, DOCR will *not* issue Final Orders and instead, DOCR will issue a letter instructing the Complainant that the Final Order will not be issued per the EEOC Memo. Agency POCs will be provided copies of the correspondence.

- Appeals. The EEOC will continue to prepare appellate decisions but will *not* mail those decisions. A Complainant who provides an e-mail address and waives first class mailing may request the decision via e-mail to ofc.eeoc@eeoc.gov. The Commission is extremely cognizant of preserving a party's right to file a civil action in U.S. District Court. Given the current National Emergency, the Commission is suspending issuance of all appellate decisions via the U. S. mail until further notice in order to best preserve those rights.
- Until further notice, similar to DOCR, OFO does not have access to U.S. Mail; rather, they ask that all submissions and communications from both Agencies and Complainants be digital, via the Public Portal/FEDSEP or email as appropriate. They ask that those who submitted items via U.S. Mail on or after March 6, 2020 to resubmit them via the Public Portal/FEDSEP or email as appropriate.
- Each Agency, including DOT, subject to the regulations at *29 CFR Part 1614* is directed to forward a copy of the EEOC's recent notice or information contained therein, *using the most effective available method*, including providing an EEOC web link in Agency correspondence, to each Complainant with a pending EEO matter and to each person who hereafter contacts an Agency EEO Counselor or otherwise enters into the Agency's EEO process.

DOCR will include a link to the EEOC's website, https://www.eeoc.gov/coronavirus/federal_eeo_processing.cfm, to comply with this instruction as noted above.

V. Current MSPB Guidance During the National Emergency

- MSPB Matters. MSPB Administrative Judges (MSPB AJ) are continuing to process appeals of mixed and non-mixed cases, including cases in which a hearing has been requested. MSPB will *not* delay issuance of mixed case decisions appealable to the Board. MSPB has received no indication that the Federal courts to which they are appealable, even if closed for most purposes, are not accepting appeals filed with them.

In accordance with MSPB, DOCR will continue to issue FADs on mixed complaints which are directly appealable to MSPB. These FADs will be issued within applicable timeframes (45 days). Non-appealable claims, in which the EEOC has jurisdiction, will be held in abeyance as instructed by the EEOC Memo, unless the Complainant provides express notice requesting a FAD. DOCR will provide the Complainant and Agency notice regarding of the abeyance of non-appealable claims per the EEOC Memo.

- MSPB Timelines. MSPB cases will continue to be processed without changes to general timelines. MSPB will apply a good cause standard in judging the reasons for late appeals and pleadings and continue to do so during the present National emergency.
- Electronic Filings. MSPB AJs have waived MSPB's rule disallowing the use of email to transmit pleadings to MSPB under certain circumstances, and have made limited arrangements for sending and receiving Postal mail for those that cannot communicate any other way, although some delays may result from this form of service.
- MSPB urges parties to take advantage of e-Appeal in order to minimize any disruption to the adjudication of their appeals. <https://e-appeal.mspb.gov/>

If you have any questions concerning the changes in EEO complaint processing under the National Emergency, please contact Beverly Onwubere, Associate Director, EEO Complaints and Investigations, Complaints Adjudication and Program Evaluation Divisions, at 202-366-5988 or beverly.onwubere@dot.gov.