

# ***Equal Employment Opportunity and Nondiscrimination Policy***

## ***Purpose***

The United States Sentencing Commission is committed to providing equal employment opportunity to all of its employees and candidates for employment as well as providing a workplace free of discrimination. The Commission will investigate and resolve charges of discrimination as outlined in this policy.

## ***Authority***

The Commission adopts this policy and incorporates it under the staff director's statutory authority to "supervise the activities of persons employed by the Commission" (28, U.S.C. §996(a)). This policy supercedes all prior EEO and Sexual Harassment policies from the date of adoption. However, the "Personnel Practices" attached to the prior EEO policy and listed as Attachment 5 herein, shall continue in full force and effect. Enforcement of those personnel practices that do not constitute discrimination as defined herein, shall be enforced under the Commission's Grievance Procedures.

While the Commission is not subject to Title VII of the Civil Rights Act of 1964 (as amended), the Age Discrimination in Employment Act of 1967, the Equal Pay Act of 1962 (as amended), and the Vocational Rehabilitation Act of 1973 (as amended), the Commission fully supports the goals and spirit of these laws.

## ***Scope of Coverage***

All Commission employees are covered by this policy. Intermittent and temporary appointees and visiting staff serving a temporary detail are considered Commission employees and are also covered by this policy.

This policy applies to all aspects of the Commission's personnel policies, program practices and operations, working conditions and relationships with employees, as well as candidates for employment.

## ***Definitions***

### **Job Discrimination**

Includes discrimination based on a personal characteristic not related to job performance, such as race, sex, sexual orientation, religion, color, national origin, age,<sup>1</sup> disability,<sup>2</sup> marital status, or political affiliation and is forbidden by the Commission. Sexual harassment is a form of job discrimination based on sex and is likewise prohibited.

### **Sexual Harassment**

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<sup>1</sup>At least forty (40) years of age at the time of the alleged discrimination.

<sup>2</sup>The Commission may decline to hire an applicant or to assign duties to an employee on the basis of disability if the Commission cannot make "reasonable accommodation" for the disability.

Sexual harassment means unwelcome or unwanted conduct of a sexual nature, either verbal or physical, when: (1) submission to or rejection of this conduct is used, explicitly or implicitly, as a factor in any employment decision, including hiring, evaluation or promotion; or (2) this conduct unreasonably interferes with an individual's employment or creates an intimidating, hostile or offensive work environment, whether or not the conduct is specifically directed against a particular individual. Unwelcome sexual behavior is sexual harassment regardless of whether the harasser has authority over the victim.

### ***Rights of Commission Employees***

Any Commission employee may seek timely redress of discrimination complaints through the procedures identified in this policy.

#### **Representation**

Every complainant and every person against whom a complaint has been filed has the right to be represented by a person of his/her choice if such person is available and consents to be a representative. A Commission employee may accept the responsibility of representation if it will not unduly interfere with his/her duties or constitute a conflict of interest.

#### **Protection from Retaliation**

Every complainant has the right to be free from retaliation, coercion, or interference because of filing a discrimination complaint. A representative of a complainant, who is a Commission employee, shall be free from restraint, interference, coercion, discrimination, and reprisal, and shall have a reasonable amount of official time to accompany, represent, and advise the complainant or the person complained against at any stage in the complaint procedures.

#### **Notice**

Every person against whom a complaint has been filed has the right to have notice of the charges filed against him or her. A designated EEO counselor will inform a person against whom a complaint has been filed.

#### **Preparation**

Any Commission employee involved in a complaint procedure may use a reasonable amount of official time to prepare his/her case, so long as it does not unduly interfere with the performance of official duties.

### ***The EEO Manager and EEO Counselor***

The EEO manager is responsible for the overall administration of the Commission's EEO program and policies which include: performing the duties of an EEO counselor, coordinating and overseeing the EEO program, ensuring that EEO procedures are being followed, ensuring that EEO counselors are receiving proper training, offering guidance to EEO counselors, assisting in the education of staff about EEO matters, and, submitting an annual report to the **staff director**.

The EEO counselor attempts resolution of a complaint informally before a formal complaint is filed. The EEO counselor will investigate and process informal

complaints as outlined, and assist the complainant in the formal complaint process if no satisfactory resolution of the informal complaint is reached.

If an EEO counselor is named in a complaint, works in the same unit as the complainant or the person against whom the complaint is filed, or is otherwise directly involved, the complaint must be directed to another EEO counselor. If all of the EEO counselors are named in the complaint or otherwise directly involved, the complaint will be directed to the staff director, who will designate another person to carry out the EEO process. If the staff director and all of the EEO counselors are named in the complaint, or otherwise directly involved, the complaint must be directed to the Chair. The Chair is the final authority, and will appoint another designee to carry out the EEO process.

An EEO counselor may decide that it is inappropriate for him/her to handle a case due to a conflict of interest or personal involvement. In this instance, the EEO counselor will assign the case to another designated EEO counselor who is not working on another complaint. If all of the EEO counselors are processing complaints, the EEO Counselor will notify the staff director who will assign the complaint to a designee. If the staff director is named in the complaint the Chair will assign the complaint to a designee to carry out the EEO process.

### ***Employee Responsibilities***

The EEO process should only be exercised by an employee who believes they have been discriminated against under one or more of the definitions outlined in this policy.

#### **Notifying Appropriate Staff of Sexual Harassment**

Any Commission employee who believes they are being sexually harassed should, provided he or she feels able to confront the person, directly and promptly inform such person that the conduct is unwelcome and must stop. An employee should report the conduct to a supervisor or the EEO manager or EEO counselor. In addition, an employee who believes he or she is being or has been harassed may seek assistance through the Commission's EEO procedures.

#### **Reporting a Complaint**

Any Commission employee who believes they are or have been discriminated against may bring a complaint within thirty (30) calendar days of the alleged discriminatory act using the Complaint of Discrimination form (Attachment 4). If the employee is uncertain whether or not the EEO procedures apply to their circumstance, the employee may consult with the EEO manager for guidance.

### ***Procedures for Filing A Complaint***

#### **Informal Complaints**

Employees alleging a complaint of discrimination must follow the steps outlined in the informal complaint process described in Attachment 1. An employee has thirty (30) calendar days from the date of the alleged conduct to file an informal complaint.

#### **Formal Complaint**

In the event that the complainant is unsatisfied with the resolution and/or synopsis recommended by the EEO counselor, the complainant has five (5) calendar days

from the date of receipt of the resolution and/or synopsis to file a formal complaint. The complainant must follow the steps outlined in the formal complaint process in Attachment 2.

**Time-frame for Processing Complaints**

The established time-frames for investigating and processing informal and formal EEO complaints are identified in Attachment 3.

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**Attachment 1- Informal Complaint Process**

SEQUENCE OF EVENTS AND PROCEDURES FOR INFORMAL COMPLAINT PROCESSING

1. An alleged discriminatory act occurs.
2. The employee or his/her representative may file an informal complaint with an EEO counselor. The complaint must be in writing, using the form identified as Attachment 4 of this policy statement. The employee should check the box for "informal complaint" on this form. The form must be completed fully and legibly. THIS FILING MUST BE DONE WITHIN THIRTY (30) CALENDAR DAYS OF THE ALLEGED DISCRIMINATORY ACT.
3. Upon receipt of an informal complaint, the EEO counselor will determine whether to reject the complaint or accept the complaint for processing.
4. An EEO counselor will reject any complaint that is filed in an untimely manner, not legible, or not fully completed. This rejection of the complaint must be presented to the complainant in writing, explaining the basis for the rejection. THE WRITTEN NOTIFICATION OF REJECTION MUST BE PROVIDED TO THE COMPLAINANT WITHIN FIVE (5) CALENDAR DAYS OF RECEIPT OF THE COMPLAINT.
5. If the EEO counselor accepts the informal complaint for processing, he/she will meet with all parties involved to see if an informal resolution to the complaint can be accomplished. THE EEO COUNSELOR HAS FIFTEEN (15) CALENDAR DAYS TO SCHEDULE AND CONDUCT THESE MEETINGS.
6. Upon completion of the meetings, the EEO counselor will write a synopsis of the meetings' events and document the resolution (if any) resulting from these meetings. Some examples of resolution include change in assignments, training and employee development actions, withdrawal of the complaint, and agreement to provide additional information in a particular area. THE EEO COUNSELOR HAS FIFTEEN (15) CALENDAR DAYS FROM THE DATE OF THESE MEETINGS TO WRITE THE SYNOPSIS AND DELIVER IT TO THE COMPLAINANT.
7. Upon receipt of the synopsis, the complainant must decide whether or not he/she is satisfied with the resolution. If not, the complainant may elect to use the formal discrimination complaint process. At this point in the process, a complainant may switch EEO counselors before proceeding with a formal complaint. THE COMPLAINANT HAS FIVE (5) DAYS FROM THE DATE OF RECEIPT OF THE SYNOPSIS TO FILE A FORMAL DISCRIMINATION COMPLAINT WITH AN EEO COUNSELOR.

**Attachment 2- Formal Complaint Process**

SEQUENCE OF EVENTS AND PROCEDURES FOR FORMAL COMPLAINT PROCESSING

1. The complainant is dissatisfied with the outcome of the informal complaint procedures.
2. The employee or his/her representative may file a formal discrimination complaint with an EEO counselor. The complaint must be in writing, using the form that is included as Attachment 4 of this policy statement. The complainant must check the "formal complaint" box listed on the form. The form must be completed fully and legibly. THIS FILING IS TO BE DONE WITHIN FIVE (5) CALENDAR DAYS OF RECEIPT OF THE MEETING SYNOPSIS RESULTING FROM THE INFORMAL COMPLAINT PROCEDURE.
3. Upon receipt of a formal complaint, the EEO counselor will determine whether to reject the complaint or accept the complaint and begin the investigation.
4. An EEO counselor will reject any formal complaint that is filed in an untimely manner, not legible, or not completed fully. This rejection of the complaint is to be presented to the complainant in writing, explaining the basis for the rejection. THIS WRITTEN NOTIFICATION OF REJECTION IS TO BE PROVIDED TO THE COMPLAINANT WITHIN FIVE (5) CALENDAR DAYS OF RECEIPT OF THE COMPLAINT.
5. If the EEO counselor accepts the complaint, he/she will fully investigate the matter. The counselor will interview all parties involved, gather facts, and suggest corrective action to solve the problem. At the end of the investigation, the counselor will prepare a report of his/her findings. This report will describe the interviews with all parties involved, the findings of the investigation, and the recommendations of corrective action to resolve the complaint. Upon completion of the report, the EEO counselor will contact the complainant in writing, informing him/her of the completion of the report. This notice will inform the complainant that he/she is invited to view the contents of the report and provide written comments in relation to it. THE EEO COUNSELOR HAS TWENTY-ONE (21) CALENDAR DAYS TO INITIATE AND COMPLETE THE INVESTIGATION, WRITE THE REPORT, AND INFORM THE COMPLAINANT OF ITS COMPLETION.
6. Upon receipt of notification that the investigation is complete, the complainant will have the opportunity to view the report and provide written comments, if so desired, in relation to the content of the report. THE COMPLAINANT HAS FIVE (5) CALENDAR DAYS TO RESPOND TO THE NOTIFICATION OF THE COMPLETION OF THE REPORT AND PROVIDE HIS/HER COMMENTS ON ITS CONTENTS TO THE EEO COUNSELOR.

7. After the complainant responds to the report, the EEO counselor will forward the entire case file, including the complainant's written comments, to the staff director. If the complainant chooses not to respond to the report, the EEO counselor will send the file to the staff director upon expiration of the five-day deadline. The staff director will review the contents of the file and inform the complainant, in writing of the corrective action to be taken, if any. (NOTE: If the staff director is named in the complaint or otherwise directly involved in it, the case file will go directly to the Chair, who will make the decision regarding the corrective action. The Chair is the final authority in this matter.) THE DECIDING OFFICIAL HAS TWENTY-ONE (21) CALENDAR DAYS TO REVIEW THE CONTENTS OF THE CASE FILE, MAKE A DECISION, AND FORWARD THE WRITTEN DECISION TO THE COMPLAINANT.
8. Upon receipt of the decision letter from the deciding official, the complainant has the option to accept the decision presented in the correspondence or appeal the decision to the Chair if he/she is not satisfied with the outcome. However, if the Chair is the deciding official in the case, then the decision outlined is final, and the employee has no further recourse. THE COMPLAINANT HAS FIVE (5) CALENDAR DAYS TO APPEAL THE STAFF DIRECTOR'S DECISION TO THE CHAIR, IF THE STAFF DIRECTOR WAS THE DECIDING OFFICIAL.
9. If the staff director's decision is appealed to the Chair, the EEO counselor will forward the entire case file to the Chair. Upon receipt of the case file, the Chair may choose to act on any of the following options:
  - a. Personally conduct any additional investigation deemed necessary to assist in a final decision;
  - b. Appoint a neutral party to perform further investigation deemed necessary to assist in the final decision;
  - c. Personally conduct formal meetings with the parties involved in the complaint to assist in the final decision; or
  - d. Issue a final decision letter on the matter without using any of the above options.
10. A final decision letter on the complaint will be issued by the Chair to the complainant. This letter will constitute a final Commission decision, and the employee has no further recourse. THE CHAIR HAS TWENTY-ONE (21) CALENDAR DAYS TO MAKE THE DECISION ON ANY APPEAL AND ISSUE THE DECISION LETTER.

*Attachment 3- Time-line for Investigating and Processing Complaints*

	<i>Calendar Days</i>
<b>1. Filing of Informal Complaint</b>	<b>30 days</b>
<b>2. Written notification of rejection of Informal Complaint</b>	<b>5 days</b>
<b>3. Informal resolution meetings</b>	<b>15 days from receipt</b>
<b>4. Presentation of written synopsis of meetings</b>	<b>15 days</b>
<b>5. Filing of Formal Complaint</b>	<b>5 days</b>
<b>6. Written notification of rejection of Formal Complaint</b>	<b>5 days</b>
<b>7. Completion of investigation and written report</b>	<b>21 days</b>
<b>8. Completion of complainant's response to the report</b>	<b>5 days</b>
<b>9. Deciding official's delivery of written decision</b>	<b>21 days</b>
<b>10. Appeal to Chair</b>	<b>5 days</b>
<b>11. Delivery of Commission's written final decision</b>	<b>21 days</b>

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**Attachment 4- Complaint of Discrimination Form**

<b>1. Name of Complainant</b>	
<b>2. Address of Complainant</b>	
<b>3. Phone Numbers</b>	
<b>Home:</b>	<b>Work:</b>
<b>4. Job Title:</b>	
<b>5. Type of Complaint:</b>	
<input type="checkbox"/> <b>Informal</b> <input type="checkbox"/> <b>Formal</b>	
<b>6. Type of Alleged Discrimination: (Check as many as are applicable)</b>	
<input type="checkbox"/> <b>Race</b>	<input type="checkbox"/> <b>Marital Status</b>
<input type="checkbox"/> <b>Sex</b>	<input type="checkbox"/> <b>National Origin</b>
<input type="checkbox"/> <b>Sexual Harassment</b>	<input type="checkbox"/> <b>Color</b>
<input type="checkbox"/> <b>Sexual Orientation</b>	<input type="checkbox"/> <b>Disability</b>
<input type="checkbox"/> <b>Religion</b>	<input type="checkbox"/> <b>Age</b>
<input type="checkbox"/> <b>Political Affiliation</b>	
<b>7. Date(s) of Alleged Discrimination:</b>	
<b>8. Please identify the name and position title of the employee(s) you believe discriminated against you.</b>	



## **Attachment 5- Personnel Practices**

The Commission has adopted the following personnel practices to promote equal opportunities for individuals to develop and perform to their maximum potential:

### **Recruitment**

The Commission will publicize all vacancies and seek the most qualified applicant.

### **Hiring**

The Commission will make its hiring decisions based strictly on an evaluation of a person's qualifications and ability to perform the duties of the position satisfactorily.

### **Promotion**

The Commission will promote employees according to their experience, training, and demonstrated ability to perform duties of a higher level.

### **Advancement**

The Commission, insofar as reasonably practicable, will seek to improve the skills and abilities of its employees through cross-training, job restructuring, assignments, details, and both in-service and outside training.

### **Discrimination Complaints**

The Commission will promptly resolve complaints and adopts the procedures in the EEO Policy and designated attachments for resolving discrimination complaints.

In addition, Title 5, of the United States Code, §2302(b), identifies eleven (11) personnel practices that are specifically prohibited. While this statute does not apply to the United States Sentencing Commission, the Commission, as a matter of internal governing policy, has adopted these prohibitions. Accordingly, Commission employees who can take or direct others to take any personnel action may not:

1. Discriminate based on race, color, religion, sex, age, national origin, disability, sexual orientation, marital status, or political affiliation. Sexual harassment is a form of job discrimination based on sex and is likewise prohibited.
2. Solicit or consider employment recommendations not based on the individual's work performance, ability, aptitude, general qualifications, suitability, character, or loyalty;
3. Coerce the political activity of any person;
4. Deceive or willfully obstruct anyone from competing for employment;
5. Influence anyone to withdraw from competition for any position, whether to help or hurt anyone else's employment prospects;
6. Give unauthorized preferential treatment to any employee or applicant;

7. Practice nepotism (i.e., advocating a relative's appointment, employment, promotion, or advancement anywhere within the official's own agency or in an agency over which the official exercises jurisdiction or control);
8. Take or fail to take a personnel action as a reprisal against a "whistle-blower";
9. Take or fail to take a personnel action as a reprisal for the exercise of an appeal right;
10. Discriminate on the basis of personal conduct that does not adversely affect the performance of any employee or applicant or the performance of others, except in the case of criminal conviction for the conduct; and
11. Take or fail to take any other personnel action that would violate any law, rule, or regulation implementing or directly concerning fair hiring practices.

Conscientious adherence to the equal employment opportunity standards of fairness and equity will ensure that these prohibited personnel practices do not take place at the Commission.