

Presidio of Monterey (POM) Alternative Dispute Resolution (ADR) Equal Employment Opportunity (EEO) Process Guide

Reference:

Army Regulation (AR) 690-600; Equal Employment Opportunity Discrimination Complaints

Title 29 of the Code of Federal Regulations (CFR); Part 1614 – Federal Sector Equal Employment Opportunity (EEO)

The Equal Employment Opportunity Commission (EEOC) requires (reference) making an Alternate Dispute Resolution (ADR) program available during – both - the EEO pre-complaint process – and - the EEO formal complaint process. The ADR process offers the parties the opportunity for an early, informal resolution of disputes - in a mutually satisfactory fashion. The reasons for this are that litigation or further administrative adjudication generally costs more than ADR and is usually less flexible. Also - in most instances, ADR costs less and uses fewer resources than traditional administrative/adjudicative processes – particularly - processes that include a hearing/litigation. By making use of ADR - the agency can also avoid administrative costs - such as court reporters. In addition, employee morale can be enhanced when agency management is viewed as open-minded and cooperative in seeking to resolve disputes through ADR. Once a complaint goes to other forums, the outcome is decided by a third person, not by the involved parties, while in the ADR process, the parties maintain considerable control over the process and decide their own outcome.

There are a number of different ADR techniques, such as, mediation, facilitation, fact-finding, early neutral evaluation, ombudsmen, settlement conferences, or mini-trials.

The preferred technique for Department of Army is mediation at the earliest stage possible.

The ADR Process

During the informal stage of the EEO process - an *aggrieved is offered ADR when she/he is first interviewed by an EEO official. Should the aggrieved invoke her/his right to the ADR process, the agency has 90 days to attempt resolution. If the dispute is not resolved in 90 days, the aggrieved has the right to file an EEO formal complaint.

Aggrieved individuals have the right to representation throughout the complaint process. While the purpose of ADR is to allow the parties to fashion their own resolution to a dispute, it is important that any agency dispute resolution procedure provide all parties the opportunity to bring a representative to the ADR forum - if they desire to do so. An agency representative (labor counselor) represents the agency. She/he cannot serve as a representative of the responsible agency official. If legal counsel represents an aggrieved during ADR proceedings, then the agency representative will be there to represent the agency.

The Department of Army mandates that management participates in the ADR process (AR-690-600, 2-2.c (1)). However, the EEO office has the discretion to determine whether ADR is the appropriate venue (AR 690-600, 2-1.c). Mediation is applicable in most cases. However, in extenuating circumstances, such as, severe sexual harassment claims, violation of law/regulation, insurmountable power imbalance, and assault/abuse situations - **mediation is not used**. The ADR team - comprised of SJAG, CPAC and EEO - confer on all requests made for mediation to further determine the appropriateness. The ultimate decision rests with the EEO Manager.

Successful Resolution

All terms of an agreement must be in writing and signed by the aggrieved (and her/his attorney – if applicable), the responsible agency official and the legal representative (labor counselor). Coordination will also be made with the Civilian Personnel Advisory Center (CPAC) – as needed. Copies of the Negotiated Settlement Agreement (NSA) are made and provided to the parties. The original NSA is filed with the EEO office. Resolutions are binding to all parties.

Unsuccessful Resolution

If not resolved within 90 days, the EEO Manager/Complaints Program Manager will provide the aggrieved person with a final interview and the right to file a formal complaint. The counselor's report completed by EEO staff will indicate that ADR failed. No other information regarding the ADR session is provided.

Certified Mediators

A certified mediator is defined as an objective, impartial third-party who has received training in ADR techniques. The mediator has no power to decide the dispute. The mediator has no official, financial, or personal conflict of interest with respect to the issues in controversy and may come from other DOD agencies. The EEO office provides annual refresher training to all POM certified mediators.

A mediator's duty to the parties is to be neutral, honest and to act in good faith to:

1. Ensure that ADR proceedings are conducted consistent with EEO law and regulatory requirements;
2. Ensure that proceedings are fair and consistent with the core principles of the program (fairness, voluntariness, neutrality, confidentiality, enforceability);
3. Ensure that the responsible management official participating in the ADR proceeding has the responsibility to negotiate in good faith and is a person with authority to approve or enter into a settlement agreement;
4. Ensure preparation of the written settlement agreement if the parties reach resolution and ensure the agreement includes the signatures of all the appropriate parties;
5. Ensure confidentiality, including destroying all written notes taken during the ADR proceeding or in preparation for the proceedings;

6. Ensure neutrality, including having no conflict of interest with respect to the proceeding (e.g., material or financial interest in the outcome, personal friend or coworker of a party, supervisory official over a party) - unless such interest is fully disclosed to all parties in writing.

ADR Realities

- Much lower transaction costs
- Open communication between parties
- Resolve differences and improve workplace relationships
- Greater simplicity
- Fewer delays
- Build productive relationships
- More control over the process and outcome
- Promote mission accomplishment

**“I have been ruined only twice in my life: once when I lost a lawsuit:
and once when I won.”**
Voltaire (1694/1778)

Additional Information

USAG Presidio of Monterey (POM) Equal Employment Opportunity (EEO) – Phone (831) 242-6513/5105 (DSN 768); more ADR-related information (POM ADR Policy, ADR Flyer – and other related links are located on the POM EEO website at: <http://www.monterey.army.mil/eo/index.html>.

***aggrieved** – the employee filing a pre-complaint (informal complaint) is referred to as the aggrieved.