

## § 588.28

complaint examiner in processing the complaint. In mixed cases covered by § 588.42, the Army decision should be given within 120 days.

(b) If the activity has not issued a decision and has not asked for a complaints examiner within 75 calendar days from the date a formal complaint was filed, the EEOC may require the Army to take steps to make sure the complaint is processed promptly. Alternatively, the EEOC may assume the complaint's processing. This assumption may include an EEOC investigation that will be paid for by the activity.

### § 588.28 Canceling a complaint.

(a) If a complainant fails to prosecute the complaint prior to the issuance of the USACARA ROI, the EEO officer will notify the complainant of the possibility of cancellation if the complainant does not proceed within a specified time period. If the complaint is canceled, the EEO officer will notify the complainant, in writing, of the cancellation, and of his or her right to appeal to the EEOC or to file a civil action. The notice will also give the time limits for filing an appeal or civil action.

(b) If the complainant fails to prosecute the complaint and it has been investigated by USACARA, the EEO officer should send the file to EEOCRA and request that the Secretary of the Army or his or her designee issue a final decision.

### § 588.29 Consolidation of complaints.

(a) Two or more complaints of discrimination filed by different Army employees, former employees, or applicants for employment, making substantially similar allegations of discrimination, may, with written permission of the complainants, be consolidated for processing by any of the following individuals:

- (1) EEO officer.
- (2) Activity Commander.
- (3) USACARA investigator.
- (4) EEOC complaints examiner.

(b) Two or more complaints of discrimination from the same employee or applicant may, at the discretions of the EEO officer, Activity Commander, USACARA investigator, or EEOC com-

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plaints examiner, be joined for processing after notifying the individual that his or her complaints will be processed jointly.

### § 588.30 The complaint file.

The complaint file will be indexed and tabbed in reverse chronological order and will contain legible copies of the documents listed in § 588.76.

## Subpart C—Class Complaints of Discrimination

### § 588.31 General guidance.

(a) An employee or applicant who wishes to be an agent for a class and who believes the class has been discriminated against because of race, color, religion, sex, national origin, physical or mental handicap, age, and/or reprisal in an employment matter controlled by the Army, may file a class complaint of discrimination. An agent must be a member of the class and must allege that he or she has been personally harmed by a personnel policy or practice that the Army has the authority to change or eliminate.

(b) EEO personnel trained in handling class complaints serve as the counselors for class complaints.

(c) Agents of the class should be thoroughly familiar with the criteria in § 588.33 before they file a class complaint.

(d) The summarized step-by-step procedure in appendix B, and the flow chart at appendix J may be reproduced locally and used as a handout.

### § 588.32 Precomplaint processing.

(a) An employee or applicant for employment who wishes to be an agent in a class complaint must consult with the responsible activity's designated EEO counselor for class complaints. Contact must be made within 90 calendar days from one of the following dates:

- (1) The date of the matter giving rise to the allegation of individual discrimination.
- (2) The effective date of a personnel action.
- (3) The date that the aggrieved person became aware, or reasonably should have become aware.

(b) The counselor should advise all aggrieved persons orally and in writing of the following:

(1) The discrimination complaint procedures.

(2) The criteria for the acceptance of class complaints.

(3) The aggrieved person's right to anonymity during the precomplaint process unless disclosure is authorized by the aggrieved person or a formal complaint is filed.

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(c) EEO counselor duties. The EEO counselor will—

(1) Make whatever inquiry is necessary to clarify and define the issues.

(2) Counsel the aggrieved person concerning the issues involved.

(3) Inform the EEO officer and the CPO and other affected officials when corrective action is believed necessary.

(4) Attempt informal resolution through discussions with appropriate officials of the responsible activity. When involved in such discussions, the counselor may seek advice from the servicing legal office.

(5) Keep records of all counseling activities.

(6) Summarize in writing actions and advice given, if any, concerning the issues in the personnel management policy or practice.

(7) Provide sufficient information to the EEO officer so that he or she may notify by electrical transmission the Director of EEOCRA (EEOCRA/SFCR/WASH DC 20310-1813) and OTJAG (DAJA/LTC/WASH DC 20310-2210) within 5 calendar days after the start of precomplaint processing. The information provided must identify precisely all matters raised in the complaint. The right of anonymity during the precomplaint processing will be observed unless disclosure is authorized by the class agent. If possible, the counselor should reach a mutual agreement with the class agent and his or her representative, if any, as to the specific issues to be considered. This agreement will be in writing and signed by the parties concerned with a copy provided to the complainant and his or

her representative. Information provided to the Director, EEOCRA, will identify precisely all matters raised in the complaint, except that anonymity during the precomplaint processing will be observed unless disclosure is authorized by the class agent.

(8) Conduct the final interview and terminate counseling with the class agent not later than 30 calendar days after the date on which the allegation was first called to the counselor's attention. This interview will take place whether or not the matter has been resolved. At this final interview, the counselor informs the aggrieved person in writing that—

(i) Counseling is over.

(ii) The class agent has the right to file a formal class complaint of discrimination within the next 15 days.

(iii) The class agent must immediately inform the EEO officer if he or she hires legal or other representation.

(iv) A formal complaint must specifically describe the acts of alleged discrimination.

(v) Only matters discussed with the EEO counselor will be considered in a formal complaint.

(9) Avoid influencing the class agent in any way regarding the filing of a class complaint.

(10) Not reveal the identity of the class agent during the precomplaint processing stage, except when authorized to do so by the class agent.

(11) Prepare and submit a counselor's report to the activity EEO officer within 5 calendar days after the final interview.

#### **§ 588.33 Filing a formal class complaint.**

(a) The complaint must be filed in writing by the class agent or a representative and be signed by the class agent.

(b) It must be described specifically the policy or practice that gave rise to the complaint and the resultant personnel action or matter that harmed the class agent.

(c) It must be filed no later than 15 calendar days after the class agent has received the notice of final interview from the EEO counselor. For that purpose, the date a complaint is filed is