

§ 588.34

the date of the postmark, or, if no postmark, the date the complaint is received by one of the officials listed in d below.

(d) Persons to whom class complaints may be submitted.

(1) A formal class complaint may be filed with any of the following:

(i) The responsible activity EEO officer.

(ii) The director of EEO.

(iii) The Secretary of the Army.

(2) EEO activity publications and the EEO counselor will request the class agent to submit a copy of his or her class complaint to the responsible activity EEO officer in every case. Any of the officials listed above will immediately transmit the complaint by the fastest means possible to the responsible activity EEO officer, indicating the date of receipt of the complaint if it is not postmarked.

(e) At all stages, in the preparation and presentation of a complaint, the class agent will have the right to be represented, accompanied, and advised by a representative of his or her own choosing, provided the choice does not involve a conflict of interest or position. The designation of the representative must be made in writing and made part of the class complaint file.

(f) If the agent is employed by the army, he or she will have a reasonable amount of official time to prepare and present his or her complaint. Employees who represent fellow Army employees in discrimination complaint cases must be permitted to use a reasonable amount of official time to carry out that responsibility, whenever it is not inconsistent with the performance of their duties. (See § 588.71(d).) Army employees who represent non-Army employees in a complaint will be granted, at their request, a reasonable amount of annual leave or leave without pay for this purpose.

(g) Upon receipt of the class complaint, the responsible EEO officer will immediately send a copy of the complaint to EEOCRA (EEOCRA/SFCR/WASH DC 20310-1813) and OTJAG (DAJA/LTC/WASH DC 20310-2210). Receipt of the complaint will be acknowledged, in writing, by EEOCRA. The acknowledgement will contain a docket number assigned to the case which

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will be used in processing the class complaint.

§ 588.34 Designating the Army representative.

The activity labor counselor should be designated by the Activity Commander as the Army representative. At the request of the labor counselor, the Activity Commander may also appoint a personnel specialist or other activity personnel to assist the labor counselor.

§ 588.35 Criteria for acceptance.

A class complaint or any part of it may be accepted unless it contains one or more of the following:

(a) Refers to a situation over which the Army has no jurisdiction.

(b) Is not based on the class or agent's race, color, religion, sex, age, national origin, physical or mental handicap, and/or reprisal. Complaints of discrimination because of age are accepted only if the class agent and the class were at least 40 years of age when the action occurred.

(c) Consists of allegations identical to those made in a previous class complaint, filed for the same class, that is pending or has been resolved by the Army or other proper authority.

(d) Is untimely.

(1) Class complaints must be brought to the attention of an EEO counselor within 90 calendar days after the incident, effective date of a personnel action, or the date that the aggrieved person became aware, of the discriminatory event or personnel action.

(2) Formal class complaints must be filed within 15 calendar days after the date of the final interview with the EEO counselor.

(e) Lacks specificity and detail.

(f) Was not filed in writing or was not signed by the class agent.

(g) Designates a class that is small enough that a consolidated complaint of the members of the class would be practical. (See § 588.29.)

(h) Alleges no questions of fact common to the class.

(i) Asserts claims of the class agent that are not typical of the claims of the class.

(j) Specifies a class agent or representative that will not protect the

interests of the class fairly and adequately.

§ 588.36 Acceptance, rejection, or cancellation of the formal complaint.

(a) The activity EEO officer will review the class complaint, along with the EEO counselor's report and all other available evidence relevant to the acceptance of the class status of the complaint as specified in § 588.35. The EEO officer should coordinate with the servicing legal office and CPO for their comments to the EEOC complaints examiner on accord with b(4) below.

(b) The EEO officer must forward the following items to the EEOC district officer having geographic jurisdiction over the activity (appendix M.) within 10 calendar days after receipt of the class complaint.

(1) The Class complaint.

(2) The EEO counselor's report.

(3) Any other information that may help the EEOC complaints examiner determine whether the complaint meets the criteria for acceptance specified in § 588.35.

(4) Any brief prepared by the labor counselor regarding the acceptability of the class status of the complaint. At the request of the labor counselor, a personnel specialist may be appointed to assist the labor counselor in the preparation of the brief.

(5) A written instruction that the EEOC complaints examiner send the recommended decision on acceptance, rejection, or cancellation of the class complaint directly to EEOCCRA, ATTN: SFCR, WASH DC 20310-1813.

(c) If an allegation is not included in the EEO counselor's report, the EEOC complaints examiner gives the class agent 15 calendar days to explain whether it was discussed and, if not, the reason it was not discussed. If the explanation is not satisfactory, the complaints examiner may recommend that the Army reject the allegation. If the explanation is satisfactory, the complaints examiner may refer the allegation back to the EEO counselor for further counseling of the agent.

(d) If an allegation is not specific and lacks detail, the complaints examiner gives the agent 15 calendar days to correct it. If the agent does not give the

required information within that time, the complaints examiner may recommend that the Army reject the complaint. If the information given makes new allegations outside the scope of the complaint, the examiner advises the agent to file an individual or class complaint based on these allegations.

(e) The complaints examiner may recommend that the Army extend the time limits for filing a complaint and for consulting with an EEO counselor. This may be done when the agent or the representative establishes either of the following:

(1) The class agent was not notified of the prescribed time limits and was not otherwise aware of them.

(2) The class agent was prevented by circumstances beyond his or her control from acting within the time limits.

(f) The complaints examiner may recommend that the Army cancel a complaint if the agent fails to prosecute the complaint. This action may be taken when the agent fails to respond, within 15 calendar days, to a written request from the complaints examiner to give information or proceed with the complaint. No complaint may be canceled unless the class agent is first notified, in writing, that failure to proceed within a specified time may result in cancellation of the class complaint.

(g) When requesting information under d or e above, the complaints examiner informs the class agent that the complaint may be rejected if the information is not provided.

(h) The complaints examiner's written recommendation to accept, reject, or cancel a class complaint is sent to the Director, EEOCCRA, the class agent, and the agent's representative.

(i) Upon receiving the complaint examiner's recommendation, the EEOCCRA reviews the recommendations and the case file. The EEOCCRA recommends to the Secretary of the Army or his or her designee whether to accept, reject, or cancel the class complaint.

(j) The Secretary of the Army or his or her designee will notify the class agent, the agent's representative and the complaints examiner of the Army decision, and will send a copy of the