

**§ 588.50 General allegations of discrimination.**

General allegations of discrimination made by persons and special interest organizations, that are not within the scope of individual or class complaints, will be promptly answered by the Activity Commander or a designee. A copy of the response to the general allegation will be sent to the MACOM EEO officer and the Director of EEOCRA.

**Subpart E—Remedial Actions****§ 588.51 General guidance.**

(a) Upon a finding of discrimination, a complainant is entitled to remedial action that makes him or her whole unless the record establishes by clear and convincing evidence that the action complained of would have occurred even absent the identified discrimination. The aim of remedial action is to “make the complainant whole” or, to place the complainant in the situation he or she would be in if there had been no discrimination. Attorney fees and/or costs may also be awarded as outlined in § 588.54. Remedial action may include—

(1) Retroactive appointment or promotion with back pay.

(2) An opportunity for the complainant to have the benefit that had been denied, such as training, overtime scheduling, detailing, or other employment benefits.

(3) Cancellation of an unwarranted personnel action and expunction from the Army’s records of any reference to, or any record of, an unwarranted disciplinary action that is not a personnel action.

(b) Corrective action may also be taken to change or eliminate personnel policies or practices and to take disciplinary action against ADOs. Disciplinary action against an ADO is not a personal remedy that may be requested by a complainant. It is, therefore, not an issue for decision in a hearing or inquiry and is not to be specified in a decision on the complaint.

(c) The Army may also resolve complaints informally and award back pay and other remedial relief including attorney fees and/or costs without a finding of discrimination. The monetary

award in such settlements, however, may not exceed the maximum backpay or other amount that would be recoverable under this regulation if a finding of discrimination had been made. The requirements of §§ 588.20(d), 588.20(e), 588.55 apply to such settlements.

**§ 588.52 Remedial action involving an applicant.**

Upon a finding of discrimination, the Army will offer the applicant the position denied him or her or employment of the type and grade denied him or her, unless the record contains clear and convincing evidence that the applicant would not have been hired even without discrimination. The remedial relief available to the applicant will conform to the following guidance:

(a) The offer is made in writing, giving the applicant 15 calendar days from receipt to accept or decline the offer. Failure to notify the Army of a decision within the 15-day period will be considered a declination of the offer, unless the applicant can show that circumstances beyond his or her control did not permit responding within the time limit.

(1) If the offer is accepted, the appointment is retroactive to the date the applicant would have been hired, subject to the limitation in b below. Back pay is awarded from the beginning of the retroactive period, subject to the same limitation, until the date the person actually enters on duty. The applicant is deemed to have worked for the Army during the (retroactive) period for all purposes except for meeting service requirements for completion of a probationary or trail period as required.

(2) If the offer is declined, the Army awards the applicant a sum equal to the back pay he or she would have received. Back pay will be computed from the date he or she would have been appointed until the date the offer was made, subject to the limitation of b below. The Army informs the applicant, in its offer, of his or her right to this award if the offer of employment is declined.

(b) Back pay may not accrue from a date earlier than 2 years before the date the complaint was initially filed by the applicant.

(c) If the Army or a Federal Court finds that discrimination existed at the time the applicant was considered for employment, but also finds clear and convincing evidence that the applicant would not have been hired even without discrimination, the Army will consider the applicant for any existing vacancy of the type and grade for which he or she was considered initially and is qualified, before considering other candidates. If the applicant is not selected, the reasons for nonselection are recorded and made a part of the complaint file. If there is no vacancy, the Army gives the applicant priority consideration for the next vacancy for which he or she is qualified. This will take precedence over other priorities.

**§ 588.53 Remedial action involving an employee.**

Upon a finding of discrimination, the Army will take remedial actions that may include one or more of the following:

(a) *Retroactive promotion.* A retroactive promotion or assignment with back pay to the position denied the employee or an equivalent position may be provided as a remedy unless the record contains clear and convincing evidence that the employee would not have been promoted or employed at a higher grade even without discrimination. The back pay liability may not accrue from a date earlier than 2 years before the date the discrimination complaint was filed; however, in no case will the back pay liability accrue from a date before the earliest date the complainant could have been promoted.

(b) *Priority consideration.* A first consideration action (in connection with an initial hire, reassignment, or promotion) before other applicants or candidates are considered.

(c) *Cancellation.* Cancellation of an unwarranted personnel action and restoration of the employee.

(d) *Deletion.* The deletion from Army records of any reference to, or any record of, an unwarranted disciplinary action.

(e) *Participation.* Full opportunity to participate in the benefit denied complainant (for example, training or preferential work assignments).

**§ 588.54 Award of attorney fees and/or costs.**

(a) In complaints of discrimination, the Army or a Federal Court may award the applicant or employee who is represented by an attorney reasonable attorney fees and/or costs as a part of the remedial relief under this regulation. Except as provided in § 588.55, Army decisions will make such awards only when a finding or admission of discrimination is made. The award of attorney fees and/or costs is not available in administrative cases of discrimination based on age.

(b) Attorney fees are paid only for services performed after a formal complaint has been filed under this regulation and after the complainant has notified the Army that he or she is represented by an attorney. However, the attorney may be compensated for a reasonable amount of time spent to make the decision to represent the complainant. Written submissions to the Army that are signed by the attorney shall be deemed to constitute notice of representation. Attorney fees are allowable only for services of members of the bar and law clerks, paralegals, or law students supervised by members of the bar. No award will be made for the services of any employee of the Federal Government. Attorney fees and/or costs are paid by the activity where the discrimination took place. Requests for attorney fees and/or costs will include all of the following:

(1) A statement of the number of hours spent in preparing and presenting the case. This must specify the dates that work was done on the case and detail the work performed. It must also describe the training and experience of each person who worked on the case and the number of hours spent by each.

(2) A sworn statement of the attorney's usual and customary hourly charge, and the usual fee for each person who worked on the case.

(3) A sworn statement explaining all of the following:

(i) Whether the fee for the case was fixed or contingent.

(ii) Whether the handling of the case prevented other employment.

(iii) The nature and length of the professional relationship with the client.