

Management Instruction

Administering Equal Employment Opportunity Official Time

Background


Regulations of the Equal Employment Opportunity Commission (EEOC) entitle employees and their representatives to prepare and present EEO complaints and requests for pre-complaint counseling while in a pay status with certain limitations. The entitlement is referred to as “official time” and supervisors and managers must be aware of the proper way to administer this entitlement to adhere to the EEOC’s regulations while, at the same time, not unduly disrupting their operations or wasting work hours. This policy provides guidance on how to determine when and to what extent official time may be granted to complainants, their representatives, and witnesses.

Regulations

Title 29, Code of Federal Regulations (CFR), §1614.605 provides, in pertinent part:

- (a) At any stage in the processing of a complaint, including the counseling stage under §1614.105, the complainant shall have the right to be accompanied by, represented, and advised by a representative of complainant’s choice.
- (b) If the complainant is an employee of the agency, he or she shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and respond to agency and EEOC requests for information. If the complainant is an employee of the agency and designates another employee of the agency as his or her representative, the representative shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and respond to agency and EEOC requests for information. The agency is not obligated to change work schedules, incur overtime wages, or pay travel expenses to facilitate the choice of a specific representative or to allow the complainant and representative to confer. The complainant and representative, if employed by the agency and otherwise in a pay status, shall be on official time, regardless of their tour of duty, when their

Date	March 2013
Effective	Immediately
Number	EL-110-2013-4
Obsoletes	N/A
Unit	EEO Compliance and Appeals


Doug Tulino
 Vice President,
 Labor Relations

CONTENTS

- Background** 1
- Regulations** 1
- Exceptions** 2
 - A. Merit Systems Protection Board 2
 - B. United States District Court 2
- Duty Status** 2
 - A. Definition 2
 - B. Changes of Schedule 3
 - C. Overtime 4
 - D. Witnesses 4
- Travel Time and Mileage** 5
 - A. General 5
 - B. Representatives 5
 - C. Witnesses 6
- Requests for Official Time** 6
 - A. PS Form 1110 6
 - B. In Advance 6
 - C. In Detail 6
 - D. Management’s Response 6
- Timing and Release** 7
- Reasonable Amount of Official Time** 7
 - A. General 7
 - B. Request for Pre-complaint Counseling 7
 - C. Formal Complaint 8
 - D. Completion of the Affidavit 8
 - E. Responding to Discovery 8
 - F. Pre-hearing Conferences and the EEOC Hearing 8
 - G. Appeals 8

presence is authorized or required by the agency or the Commission during the investigation ... or hearing on the complaint.

* * * * *

- (e) The complainant shall at all times be responsible for proceeding with the complaint whether or not he or she has designated a representative.
- (f) Witnesses who are Federal employees, regardless of their tour of duty and regardless of whether they are employed by the respondent agency or some other Federal agency, shall be in a duty status when their presence is authorized or required by Commission or agency officials in connection with a complaint.

The EEOC’s official time regulations are further explained in the Commission’s Management Directive 110, *Federal Sector Complaint Processing Manual*. This policy will identify helpful references to this EEOC guidance.

CONTENTS (Continued)

Representatives9

- A. Limitation on the Amount of Official Time.....9
- B. Denial for Exceeding the 10 Percent Cap9
- C. No Advances of Official Time ...9
- D. Alternatives9
- E. Technical Advisor10

Tracking and Record Keeping.....10

Retention10

Appeals of Denials of Official Time11

Attachment A12

- PS Form 1110, Request for Official EEO Time for EEO Processing . . . 12

Exceptions

A. Merit Systems Protection Board

This policy does not apply to appellants, representatives, or witnesses in proceedings before the Merit Systems Protection Board (MSPB). Seek guidance from the appropriate Field Law Office concerning the circumstances under which appellants, representatives, and witnesses participate in and are compensated in connection with MSPB proceedings.

B. United States District Court

This policy also does not apply to proceedings in connection with civil actions filed in United States District Courts, including civil actions raising employment discrimination claims. “Official time” under the EEOC’s regulations does not extend to District Court litigation which is covered by the Federal Rules of Civil Procedure and local rules promulgated by the courts. Refer to Part 516 of the *Employee and Labor Relations Manual* and seek guidance from the appropriate Field Law Office concerning how to treat plaintiffs and witnesses involved in District Court litigation.

Duty Status

A. Definition

The EEOC defines “duty status” (or “otherwise on duty”) as “... the complainant’s or representative’s normal work hours.” See Management Directive 110, Chapter 6, Section VIII.D. This means that a complainant has no right to official time if he or she wants to prepare an EEO complaint or meet with a representative outside his or her regular schedule since he or she would not be in a “duty status.” Also, a

representative has no right to paid official time to meet with a complainant who has a different schedule than the representative since the representative would not be “otherwise on duty” at the same time as the complainant.

Note: Representatives who are current employees may be entitled to official time to represent former employees who have challenged a matter which arose during their former employment. However, representatives who are current employees are not entitled to official time to represent applicants for employment or employees of other government agencies.

B. Changes of Schedule

1. Preparation Time

EEOC regulations make it clear that, “The agency is not obligated to change work schedules, incur overtime wages, or pay travel expenses to facilitate the choice of a specific representative or to allow the complainant and representative to confer. See 29 CFR §1614.605(b). The **complainant** is entitled to official time to prepare the complaint, prepare his/her affidavit, and respond to agency discovery, prepare for a hearing, and process an appeal. If the complainant’s **representative** is also otherwise in a duty status, he or she is entitled to official time to assist in those tasks. The complainant’s representative is not entitled to a change of schedule to assist the complainant in preparation activities. See 29 CFR. §1614.605(b).

2. Meetings

EEOC regulations state, “[t]he complainant and representative, if employed by the agency and otherwise in a pay status, shall be on official time regardless of their tour of duty, when their presence is authorized or required by the agency or the Commission during the Investigation ... or hearing on the complaint.” See 29 CFR §1614.605(b). Therefore, necessary meetings called by management or an EEOC Administrative Judge, REDRESS mediations, EEOC pre-hearing conferences, and EEOC hearings should, to the extent possible, be scheduled to coincide with the complainant’s schedule. Such meetings do not include the preparation activities between the complainant and his or her representative discussed in B.1 above.

When a necessary meeting called by management or an EEOC Administrative Judge, a REDRESS mediation, an EEOC pre-hearing conference, or an EEOC hearing do not coincide with the complainant’s or the representative’s work schedule, to avoid having to pay out-of-schedule premium, management must offer them the opportunity to request a change of their schedules for their own convenience. The Commission’s complaint processing guidance implies that agencies must pay premium wages only where it is unavoidable as in the case of a complainant or representative who has already worked a full work schedule and must attend a necessary meeting or hearing which happens to extend beyond their regular schedule. See Management Directive 110, Chapter 6, Section VIII.C.2. If the complainant or representative refuses to cooperate and requests a change of

schedule for his/her own convenience, the complainant must attend the meeting or hearing on his or her own time; *i.e.* will not be on official time.

C. Overtime

Overtime will only be appropriate where: (1) a complainant and/or representative are authorized or required to attend a meeting called by management or an EEOC Administrative Judge, a REDRESS mediation, an EEOC pre-hearing conference, or an EEOC hearing; (2) the employees have been offered the opportunity to change their schedules for their own convenience; and (3) the length of the required meeting, mediation, conference, *etc.* causes the need to pay overtime in accordance with the Fair Labor Standards Act or the provisions of the applicable collective bargaining agreement. See Management Directive 110, Chapter 6, Section VIII.C.2. To the extent possible, meetings should be scheduled at the beginning of the complainant's tour to minimize the chance that the complainant would be entitled to overtime. In certain circumstances, planning for the meeting to end at a time certain and reconvening at another time might be an appropriate alternative to paying overtime.

D. Witnesses

Complainants and representatives cannot compel a witness to meet with them. In addition, representatives are not entitled to reinvestigate the complaint in preparation for a hearing, inasmuch as the agency has already compiled an investigative report, and representatives are not authorized official time to contact witnesses directly. If the complainant or his/her representative seeks permission to interview witnesses, he or she must do so through the Postal Service's designated representative. If the representative files a notice of his/her intention to depose a witness or witnesses with the Postal Service's designated representative, the agency is obligated to make those employees available for the deposition on official time. Any arrangements for the deposition must be coordinated by the complainant's representative with the Postal Service's designated representative. To the extent possible, any authorized contacts with witnesses should be scheduled to coincide with the witnesses' normal duty hours and not for the convenience of the complainant or representative.

EEOC regulations state that witnesses whose attendance at a hearing or presence at a meeting is required must be in a duty status to participate in the hearing/meeting regardless of their tour of duty. See 29 CFR §1614.605(f) and Management Directive 110, Chapter 6, Section VIII.D. These individuals should be offered the opportunity to change their schedules if they so desire. In certain circumstances, overtime might be required; *e.g.* a hearing scheduled on the witness' day off.

Travel Time and Mileage

A. General

Under certain circumstances, complainants and representatives who are otherwise in a duty status may be entitled to be paid for the time spent traveling to certain EEO complaint processing events. Generally, complainants and representatives are in a duty status and entitled to be compensated for travel time and mileage when travelling from a postal installation to a meeting called by management or an EEOC Administrative Judge, a REDRESS mediation, an EEOC pre-hearing conference, or an EEOC hearing. However, every effort should be made to minimize the need for such compensable travel time.

To the extent possible, complainants and representatives should not clock in at their work locations and then travel to the meeting/hearing location. This can be accomplished, in part, by scheduling meetings at the beginning of the complainant's tour and instructing the complainant to report directly to the meeting from home. EEOC guidance indicates that travel time is not appropriate for the time spent commuting from the complainant's or the representative's home to an authorized EEO meeting, hearing, *etc.* since this would be a substitute for the employees' normal commute to work. See Management Directive 110, Chapter 6, Section VIII.C.1. However, the employee would be entitled to mileage for any difference between the normal mileage commuting to his/her work location and the mileage to the meeting/hearing location. If the approved meeting/hearing is located outside the commuting area, the complainant would be entitled to travel expenses approved in advance by his/her supervisor in consultation with appropriate officials.

Travel time and mileage are not appropriate to facilitate the complainant's selection of a particular representative or for meetings between the complainant and representative to prepare a complaint. Alternatives, such as telephone consultations, are available.

B. Representatives

A representative is not entitled to official time or mileage for travel to or from a postal installation if the representative's installation is more than 50 miles (outside commuting distance as defined by Postal Service regulations) from the installation in which the complaint arose. If a representative is otherwise in a duty status and is to attend a meeting called by management or an EEOC Administrative Judge, a REDRESS mediation, an EEOC pre-hearing conference, or an EEOC hearing, he or she is entitled to be compensated for the time spent travelling to the approved meeting, and to be paid mileage, if he or she is travelling from a postal installation to the meeting (but not from home to the meeting) and the installation is within commuting distance of the meeting site. If the approved meeting is outside the commuting area of the representative's installation, the representative would not be entitled to travel expenses.

C. Witnesses

Witnesses approved by an Administrative Judge to testify at a hearing are entitled to be compensated for the time spent travelling from a postal installation to the hearing and to be reimbursed for mileage. If the hearing is outside the commuting area, the approved witnesses are entitled to be reimbursed for travel expenses approved in advance by their supervisors.

Requests for Official Time

A. PS Form 1110

All requests for official time by complainants and representatives will be annotated on PS Form 1110, *Request for Official EEO Time for EEO Processing* (see Attachment A). PS Form 1110 has been created to facilitate the processing of requests for official time and to track the amount of time granted to/used by representatives. To complete the form, supervisors and managers must obtain the necessary information from the employees and then sign and date the form.

B. In Advance

Requests for official time for complainants and representatives must be made in advance. Most events in the EEO complaint process are scheduled well in advance. Consequently, it is not unreasonable for supervisors and managers to require advance notice of the need for official time so as not to unduly disrupt operations and to enable supervisors and managers to properly provide service to postal customers.

C. In Detail

To complete the PS Form 1110, supervisors and managers will be required to obtain or provide the following information for each employee's request for EEO Official time:

1. Who is requesting the time.
2. The date of the request.
3. The complaint to which the request relates.
4. The amount of time requested and a justification.
5. The stage of the EEO complaint process involved.

D. Management's Response

The lower portion of PS Form 1110 is used to document management's response to the employee's request for official time. If the release of the employee to use official time or the amount of official time requested by the employee are different from what was requested, the supervisor or manager must explain the difference. This is very important. These forms memorializing decisions made concerning requests for official time must be available to EEO Dispute Resolution Specialists; Managers, Dispute Resolution; contract EEO Investigators; Law Department attorneys; and EEOC Administrative Judges. See Management Directive 110, Chapter 6, Section VIII.C.6.

Timing and Release

Most events in the EEO complaint process are scheduled well in advance. Consequently, it is not unreasonable for management to expect advance notice from a complainant or a representative of the need for official time to prepare a complaint, participate in a REDRESS mediation, respond to a request for an affidavit, respond to discovery, participate in an EEOC pre-hearing conference, participate in an EEOC hearing, or file or respond to an appeal. Management is not required to release an employee on official time whenever the complainant or representative requests and may reasonably delay the employees' release if operational considerations such as dispatch schedules, mail volume, short staffing, *etc.* require the employees' attention to their regular duties. If management believes that a delay in the grant of official time is required, the supervisor or manager making that decision must describe the reason for the delay on PS Form 1110. The reasoning for the delay must be such that a neutral third party will understand why the delay was necessary. A complainant's or representative's access to appropriate official time must not be delayed unreasonably and any delay should be only enough to address the legitimate work requirements necessitating the delay.

Reasonable Amount of Official Time

A. General

Supervisors and managers should consult with the field EEO staff concerning the amount of official time which is reasonable given the stage of the EEO complaint process involved and the specific task for which the official time is being requested. Complainants and representatives must request and obtain prior authorization to use official time and are not entitled to use time to work on EEO matters and request reimbursement after the fact. Every effort should be made to reach a mutual understanding concerning the amount of official time warranted in any given situation.

EEOC guidance indicates that the amount of official time warranted will depend upon, "... nature and complexity of the complaint and considering the mission of the agency and the agency's need to have its employees available to perform their normal duties on a regular basis." See Management Directive 110, Chapter 6, Section VIII.C.1. Elsewhere in the Management Directive, the Commission notes that "reasonable" in the context of preparation time is not calculated in terms of days. See Management Directive 110, Chapter 6, Section VIII.C.3.

B. Request for Pre-complaint Counseling

Initial requests for pre-complaint counseling involve calling a toll-free number and answering a few voice prompts. A few minutes would be adequate to accomplish this purpose if an employee requests to make the call while on the clock. Official time for an employee's representative would not be appropriate to assist in this task.

PS Form 2564-A, *Information for Pre-Complaint Counseling*, should take less than thirty (30) minutes to complete, including consultation with the complainant's representative. That consultation need not be in person if the representative is located at another facility or installation, assuming that the complainant and the representative are both in a duty status.

The time necessary for meeting or speaking by telephone with the Dispute Resolution Specialist will vary depending upon the claims involved in the request for pre-complaint counseling. Supervisors and managers should consult with the Dispute Resolution Specialist assigned to the complaint concerning the time he or she believes will be appropriate to discuss the claims.

C. Formal Complaint

A complainant must complete PS Form 2565, *EEO Complaint of Discrimination in the Postal Service*, a one-page form, to file a formal complaint. Some complainants include narratives in addition to completing the form. In either case, thirty (30) minutes or less would appear appropriate at this stage of the process in most cases.

D. Completion of the Affidavit

The time necessary to complete the complainant's affidavit will depend upon the number of allegations included in the complaint and the number of questions posed by the Investigator to which the complainant must respond. Supervisors and managers are entitled to request this information in order to determine the amount of official time to be approved. Supervisors and managers are encouraged to consult with the field EEO staff to determine the amount of official time appropriate. In general, approximately two hours or less would be adequate to prepare most affidavits.

E. Responding to Discovery

Supervisors and managers must consult with the Postal Service attorney assigned to represent the agency at the hearing concerning the amount of time that would be reasonable to respond to discovery requests sent to the complainant. Once again, a few hours are generally adequate to respond to whatever requests for admissions or interrogatories have been directed to the complainant.

F. Pre-hearing Conferences and the EEOC Hearing

Supervisors and managers must consult with the Postal Service attorney assigned to represent the agency at the hearing concerning the amount of time deemed reasonable for the complainant's and representative's participation in these events. Since these events are scheduled well in advance, supervisors and managers can legitimately expect that they will receive adequate advance notice from the agency's representative.

G. Appeals

Complainants may appeal a final agency decision dismissing a complaint, a final agency decision on the merits of a complaint, or a Notice of Final Action implementing or appealing a decision by an Administrative Judge. The time for preparing an appeal, or responding to the agency's appeal, will vary depending upon the complexity of the case. Supervisors and managers should consult with the appropriate

Field Law Office concerning this subject but less than an hour is generally adequate to appeal a dismissal and a few hours is generally adequate to prepare an appeal of a decision on the merits of a claim.

Representatives

A. Limitation on the Amount of Official Time

The EEOC has indicated that it is reasonable for agencies to expect that employees would spend the majority of their work hours on the job for which they were employed. See Management Directive 110, Chapter 6, Part VIII.C.4.

It is the policy of the Postal Service to limit the amount of official time granted to all representatives to no more than 10 percent of their actual, paid work hours tracked on a monthly basis. This policy does not establish an entitlement to that amount of time; only an allowable cap on the amount of time that might be allowable. This cap is unaffected by a representative's choice to represent a large number of employees in the EEO process and does not affect an employee's desire to have a particular individual represent him or her. The employee can still select anyone he or she wants. However, that individual's eligibility for official time will be governed by the 10 percent cap and any time required for representation activities beyond that will not be on official time. Representatives will have to perform their representational activity on their own time or request leave in accordance with the applicable provisions of the collective bargaining agreement and the local memoranda of understanding.

Official time will be calculated for the current month based on the representative's actual, paid work hours (*i.e.* actual work hours plus allowable official time) for the previous month. For example, if during the previous month a representative actually worked 32 hours and was granted 8 hours of official time, his or her potential, allowable official time for the current month would be 4 hours.

B. Denial for Exceeding the 10 Percent Cap

Management may legitimately deny paid official time to a representative to the extent that the representative will exceed the 10 percent monthly cap if the request is granted. See Section D below for alternative responses.

C. No Advances of Official Time

Representatives may not be permitted to borrow future entitlements to official time to cover current representational activities once the 10 percent cap has been reached.

D. Alternatives

If operational considerations permit, and in accordance with the provisions of the applicable collective bargaining agreement and local memorandum of understanding, a representative who will exceed the 10 percent cap on official time for the month may be granted annual leave or leave without pay to assist the complainant in preparing and presenting a complaint, including attending required meetings such as a

REDRESS mediation, a pre-hearing conference, or the hearing itself. Approval/disapproval of such leave will be consistent with the provisions of the applicable collective bargaining agreement and local memorandum of understanding and will include consideration of legitimate operational considerations.

E. Technical Advisor

A complainant is only entitled to one representative. Official time is not authorized for a technical advisor in addition to the designated representative or for anyone to assist the designated representative. If the complainant has selected an attorney as his or her representative, there is no entitlement to official time for an employee to assist the attorney or to act as a second representative.

Tracking and Record Keeping

- A. Supervisors and managers must use PS Form 1110 to keep track of the amount of official time requested by and granted to representatives to ensure that the 10 percent cap is not exceeded. In addition, official time used by representatives must be entered into the Time and Attendance Control System (TACS) and on PS Form 1110 under the applicable code listed below. TACS should be queried each time a representative requests official time to determine where that individual stands in relation to the 10 percent cap.

Official EEO Codes

5110	EEO Complainant
5120	Complainant's Representative
5130	Management Representative
5140	EEO Witnesses (if any)

- B. Supervisors and managers must also track the official time granted to complainants, witnesses, and other participants in the EEO complaint process to enable management to determine the actual costs associated with EEO complaint processing of which official time is a major segment.

Retention

Copies of PS Forms 1110 must be maintained in a separate unit file so that they will be available upon request by EEO Dispute Resolution Specialists, contract EEO Investigators, and/or Law Department attorneys. This is a management control document that will be stored in a secure locked cabinet by supervisors and managers. Records are retained five (5) years after response to inquiry, resolution of complaint, or conclusion of investigation.

Appeals of Denials of Official Time

When a complainant objects to a denial of official time, an unreasonable delay in granting official time, or the amount of official time granted, the Regional Manager, EEO Compliance and Appeals should be contacted since that office is responsible for determining whether or not the employee(s) was granted a reasonable amount of time and issuing a letter of determination on that subject. If an employee raises the objection in a request for pre-complaint counseling or a formal complaint, the National EEO Investigative Services Office will refer the matter to the appropriate Regional Manager, EEO Compliance and Appeals. If the complainant and representative raise the issue at the hearing stage of the EEO process, the Law Department attorney will address the issue with the Administrative Judge assigned to hear the complaint. See Management Directive 110. Chapter 6, Section VIII.C.6.

Attachment A

PS Form 1110, Request for Official EEO Time for EEO Processing (page 1 of 2)



**UNITED STATES
POSTAL SERVICE**

Request for Official EEO Time for EEO Processing

I. Request for EEO Time

Name of Requestor: *(Last, First, Middle Initial)*

Complaint/Case No.:

Work Facility:

Check the appropriate boxes below:

Role:	<input type="checkbox"/> Counselee	<input type="checkbox"/> Complainant	<input type="checkbox"/> Representative	<input type="checkbox"/> Witness
Stage of Complaint:	<input type="checkbox"/> Counseling	<input type="checkbox"/> Formal	<input type="checkbox"/> EEOC Hearing	<input type="checkbox"/> OFO Appeal
EEO Activity:	<input type="checkbox"/> Interview	<input type="checkbox"/> Mediation	<input type="checkbox"/> EEOC Hearing	<input type="checkbox"/> Affidavit Preparation
	<input type="checkbox"/> Pre-hearing Conference		<input type="checkbox"/> Other	

Location of EEO Activity:

Amount of Time Requested:

Proposed Date:

Proposed Starting Time:

II. Travel Request

Travel request must be approved in advance.

Purpose of Activity:

Date:

Starting Time:

Ending Time:

Starting Point for Travel: *(Name and address of facility.)*

Ending Point for Travel: *(Name and address of facility.)*

III. Management Response

Before responding to this request, review the EEO Official Time Policy and Handbook F-15, Travel and Relocation.

A. Approved

Date:

Date Returned to Employee:

The request is granted to be taken on:

Date:

From:

To:

Request is modified/delayed as follows: *(Describe. Continue on page 2 if necessary.)*

Request is modified/delayed because: *(Explain. Continue on page 2 if necessary.)*

B. Disapproved *(If disapproved, a copy of this form must be submitted to the Regional Manager.)*

Date:

Date Returned to Employee

Request is denied because *(Explain. Continue on page 2 if necessary.)*

IV. Official EEO Codes — *(Manager, please check appropriate box.)*

5110 - EEO Complainant

5120 - Complainant's Representative

5130 - Management Representative

5140 - EEO Witnesses (if any)

PS Form 1110, January 2013 (Page 1 of 2)

