

Official EEO Time

CRCMO Summary:

Employees are entitled to:

- Time during working hours for meetings spent with EEO officials
- A reasonable amount of official time in preparation for an EEO complaint, which is generally defined, for the entire complaint process, in terms of hours, not in terms of days, weeks or months.

Employees requesting time away from their regular duties for EEO reasons must:

- Make the request in advance to their supervisor
- Provide the amount requested and the purpose of absence (e.g. meeting in CRCMO, discussion with EEO Investigator or Administrative Judge)
- Receive approval before using

Supervisors are responsible for employees' whereabouts during work hours, and responsible for approving employees' time away from work duties for EEO reasons. If EEO official time is granted, supervisors must:

- Ascertain the need for the time and the amount of time requested
- Seek guidance from CRCMO as needed

EEO official time can be scheduled around workload needs, where possible. It can be denied in rare cases, but written justification for the denial must be made part of the EEO complaint file.

CRCMO is available to:

- Provide guidance on what can be considered a "reasonable" amount of preparation time
- Confirm meetings with EEO officials
- Advise on priorities between workload needs and need for EEO time

Part 29, Code of Federal Regulations, Section 1614.605

(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 to respond to agency and EEOC requests for information. If the complainant is an employee of the agency and he 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 presence is authorized or required by the agency or the Commission during the investigation, informal adjustment, or hearing on the complaint

EEOC Management Directive 110 (2003), Chapter 6, section VIII

C. Official Time

Section 1614.605 provides that complainants are entitled to a representative of their choice during pre-complaint counseling and at all stages of the complaint process. Both the complainant and the representative, if they are employees of the agency where the complaint arose and was filed, are entitled to a reasonable amount of official time to present the complaint and to respond to agency requests for information, if otherwise on duty. § 1614.605(b). Former employees of an agency who initiate the EEO process concerning an adverse action relating to their prior employment with the agency are employees within the meaning of § 1614.605, and their representatives, if they are current employees of the agency, are entitled to official time. Witnesses who are federal employees, 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 the complaint.

1. Reasonable Amount of Official Time

"Reasonable" is defined as whatever is appropriate, under the particular circumstances of the complaint, in order to allow a complete presentation of the relevant information associated with the complaint and to respond to agency requests for information. The actual number of hours to which complainant and his/her representative are entitled will vary, depending on the 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. The complainant and the agency should arrive at a mutual understanding as to the amount of official time to be used prior to the complainant's use of such time. Time spent commuting to and from home should not be included in official time computations because all employees are required to commute to and from their federal employment on their own time.

2. Meeting and Hearing Time

Most of the time spent by complainants and their representatives during the processing of a typical complaint is spent in meetings and hearings with agency officials or with EEOC Administrative Judges. Whatever time is spent in such meetings and hearings is automatically deemed reasonable. Both the complainant and the representative are to be granted official time for the duration of such meetings or hearings and are in a duty status regardless of their tour of duty. If a complainant or representative has already worked a full week and must attend a hearing or meeting on an off day, that complainant or representative is entitled to official time, which may require that the agency pay overtime.

3. Preparation Time

Since presentation of a complaint involves preparation for meetings and hearings, as well as attendance at such meetings, conferences, and hearings, complainants and their representatives are also afforded a reasonable amount of official time, as defined above, to prepare for meetings and hearings. They are also to be afforded a reasonable amount of official time to prepare the formal complaint and any appeals that may be filed with the Commission, even though no meetings or hearings are involved. However, because investigations are conducted by agency or Commission personnel, the regulation does not envision large amounts of official time for preparation purposes. Consequently, "reasonable," with respect to preparation time (as opposed to time actually spent in meetings and hearings), is generally defined in terms of hours, not in terms of days, weeks, or months. Again, what is reasonable depends on the individual circumstances of each complaint.

4. Aggregate Time Spent on EEO Matters [*by Complainant Representatives*]

The Commission considers it reasonable for agencies to expect their employees to spend most of their time doing the work for which they are employed. Therefore, an agency may restrict the overall hours of official time afforded to a representative, for both preparation purposes and for attendance at meetings and hearings, to a certain percentage of that representative's duty hours in any given month, quarter, or year. Such overall restrictions would depend on the nature of the position occupied by the representative, the relationship of that position to the mission of the agency, and the degree of hardship imposed on the mission of the agency by the representative's absence from his/her normal duties. The amount of official time to be afforded to an employee for representational activities will vary with the circumstances.

Moreover, § 1614.605(c) provides that in cases where the representation of a complainant or agency would conflict with the official or collateral duties of the representative, the Commission or the agency may, after giving the representative an opportunity to respond, disqualify the representative. At all times, the complainant is responsible for proceeding with the complaint, regardless of whether s/he has a designated representative.

The Commission does not require agencies to provide official time to employee representatives who are representing complainants in cases against other federal agencies. However, the Commission encourages agencies to provide such official time.

5. Requesting Official Time

The agency must establish a process for deciding how much official time it will provide a complainant. Agencies further must inform complainants, their representatives, and others who may need official time, such as witnesses, of the process and how to claim or request official time.

6. Denial of Official Time

If the agency denies a request for official time, either in whole or in part, the agency must include a written statement in the complaint file noting the reasons for the denial. If the agency's denial of official time is made before the complaint is filed, the agency shall provide the complainant with a written explanation for the denial, which it will include in the complaint file if the complainant's subsequently files a complaint.

A Guide To Federal Sector Equal Employment Law & Practice, 25th Edition, Ernest C. Hadley (2012)

- The grant or denial of official time must be made in consideration of the particular circumstances surrounding the request. An agency may not reject the amount of time as unnecessary where it has failed to make any effort to ascertain why the complainant believes the time is required. Milligan v. Postmaster General, 01924278 (1993).
- In Lewis v. Postmaster General, 01A00484 (2000), the Commission upheld a denial of official time for a complainant to travel to meet with a representative when a telephone discussion would suffice because of the lack of complexity of the complaint.
- The Equal Employment Opportunity Commission (Commission) found that it was not improper for the complainant's supervisor to limit her to two hours of official time per week to pursue her EEO complaints, stating that "Agencies may restrict the overall hours to the extent necessary to ensure that employees spend most of their time doing the work for which they are employed." Matuszecki v. Secretary of Treasury, 01956479 (1997).
- The Commission found that an instruction to the complainant not to spend more than 10% of her time on representational activities was lawful, when the AJ found "that complainant did not establish that her representative was in fact denied any written request for official time, the Commission is not persuaded that the agency's instructions constituted a violation." Deal v. Postmaster General, 01A03760 (2001).
- The Commission determined, in Chavez v. Secretary of Veterans Affairs, 01A60226 (2006), a supervisor's response to a request for official time was permissible when he gave the complainant an opportunity to demonstrate complainant had an imminent EEO deadline and when she did not, informed the complainant that official time would be granted when a co-worker returned from vacation.
- When an EEOC Administrative Judge orders a complainant to attend a settlement conference away from his duty station, the agency must pay for the employee's travel time and expenses. Bang v. Postmaster General, 01A13099 (2002).
- An Administrative Judge found that five hours of official time was reasonable for a complainant to prepare for an appeal, even though the complainant requested 50 hours. Brandon v. Postmaster General, 0120080803 (2009).