

## Resolving Officials at EEO Mediations Training

Description: Some federal agencies, such as the Forest Service, require that the agency representative at the mediation of an EEO dispute (called a “Resolving Official”) be a different supervisor or manager than the Responding Official, the agency official alleged to have discriminated against the complainant, to enhance the possibility of settlement. This course provides the Resolving Officials with knowledge of the EEO laws, the process of mediation and the agency’s specific procedures for EEO mediations. It combines an explanation of EEO and mediation with role play in mediation and interactive classroom discussion. It includes discussions with experienced mediators and advocates at mediation (the partners in VG&G) and a panel discussion with experienced Resolving Officials. This course has been taught for the most senior Forest Service Resolving Officials (the Chief’s Cadre) and for the Pacific Southwest Region (Region 5) and the Intermountain Region (Region 4). As with other VG&G courses, the materials are tailored for specific agencies and regions based upon prior consultations, and we inquire about any sensitive issues. The course sometimes includes an “EEO Update”, a two hour discussion of the latest developments, and trends in EEO, with other supervisors, EEO and HR staff participating. The course manual can be tailored for specific agencies and agency locations.

Length: 1 or 2 days.

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### PART 1: INTRODUCTION & OVERVIEW

Mediation Decisions – What Will You Do?

Bases Of Discrimination

### PART 2: THE EEO LAWS

#### A. The Four EEO Laws

1. Title VII (race, color, sex, religion, national origin)

2. The Rehabilitation Act (disability)
  3. Age Discrimination in Employment Act (age)
  4. Equal Pay Act (equal pay for equal work)
- B. Two Family Leave Laws (and two Executive Orders)
1. The Family and Medical Leave Act
  2. The Federal Employees Family Friendly Leave Act
  3. Executive Order (No Discrimination Against Parents)
  4. Executive Order (No Genetic Testing Discrimination)

### PART 3: THE THEORIES

#### A. Title VII

1. Disparate Treatment
2. Accommodation (religion)
3. Retaliation
4. Disparate Impact
5. National Origin
  - a. Speak English only
  - b. Foreign accent

### PART 4: DISABILITY DISCRIMINATION COMPLAINTS

- I. The Two Obligations: (1) Nondiscrimination and (2) The Affirmative Obligation to Accommodate

II. Prohibited Discrimination

A. The 8 Kinds of Prohibited Discrimination

III. Who is Protected by the Rehabilitation Act?

A. The Definitions of a "Person With a Disability"

- Exclusions - Individuals Not Covered

1. "A physical or mental impairment that substantially limits one or more major life activities"

- a. "Physical or mental impairment"

- AIDS and Infectious Diseases
- b. "Major life activities"
- c. "Substantially limits"
  - Temporary Impairments
  - Substantially Limited in Working
- 2. A Record of a Substantially Limiting Condition
- 3. Regarded as Substantially Limited

#### B. Definition of a Qualified Individual With a Disability

1. Meet the necessary job prerequisites?
2. Perform essential job functions with or without a reasonable accommodation?
  - a. Essential functions of a job
  - b. Identifying the essential functions of a job
  - c. Evidence as to whether a job function is essential
  - d. Changing essential job functions
  - e. Considering reasonable accommodation

#### IV. Reasonable Accommodation

- A. What is Reasonable Accommodation
- B. Basic Principles of Reasonable Accommodation
- C. The Interactive Process
- D. Examples of Reasonable Accommodation
- E. Technical Assistance
  1. The Job Accommodation Network (800-526-7234)
  2. Center for Information Technology Accommodation
  3. The RESNA Technical Assistance Project

F. Job Accommodation Ideas

1. The Cost of Reasonable Accommodation
2. Reasonable Accommodation Problems & Solutions

V. Undue Hardship

VI. Medical Examinations

VII. Drug and Alcohol Disability Discrimination

- A. In General
- B. Individuals Who Are Protected
- C. Alcoholism
- D. Casual Drug and Alcohol Use
- E. Pre-employment Inquiries About Drug/Alcohol Use
- F. Direct Threat

VIII. Risk of Future Injury

- A. Factors in Making a Direct Threat Determination

IX. Severe Hearing Impairments

X. Misconduct and Threat Cases

XI. Pre- and Post- Employment Inquiries

- A. In General
- B. What is Permissible
- C. Mental Disabilities
- D. Applicants
- E. Questions That May Not be Asked
  - Summary - Pre-Employment Inquiries
- F. Post-Employment Inquiries

XII. Mental Disability

- A. Definition
  1. Substantial impairment
- B. The Application Process

C. During Employment

1. Inquiry
2. Confidentiality
3. Fitness for duty examinations
4. Reasonable accommodation
5. Misconduct

XIII. Worker's Compensation and Work Related Injury

- A. The Application Process
- B. On-the-job Injury
- C. Confidentiality

XIV. Collective Bargaining Agreements

PART 5: SEXUAL HARASSMENT COMPLAINTS

I. The Definition of Sexual Harassment

II. Responding to a Charge of Sexual Harassment

- A. The Employee's Response
- B. The Supervisor's Response
- C. The Forest Service's Response

III. A Better Understanding of Sexual Harassment

- A. Did the Conduct Occur?
- B. Was the Conduct Sexual?
- C. Was the Conduct Unwelcome?
- D. Was The Work Environment Made Hostile?
- E. Agency Liability For A Supervisor's Actions
  1. In quid pro quo cases
  2. In hostile environment cases
- F. Isolated Instances Of Sexual Favoritism

G. Prompt And Effective Remedial Action

H. Some Questions To Ask

I. Off-Duty Sexual Harassment

J. Harassment by Non-Employees

K. Same-Sex Harassment

IV. Agency Regulations

PART 6: REMEDIES FOR DISCRIMINATION

PART 7: COMPENSATORY DAMAGES

A. Available in the Administrative Process

B. Determining the Amount of Compensatory Damages

PART 8: FEDERAL SECTOR DISCIPLINARY ACTIONS

I. Disciplinary Actions Based on Misconduct

A. Adverse Actions

B. Process for Taking an Adverse Action

C. Determining the Appropriate Penalty

- The *Douglas* Penalty Factors

D. The More Important *Douglas* Factors

E. Threat Cases

F. MSPB Review of Agency Adverse Actions

G. Union Representation

II. Performance Actions

PART 9: DISPUTE RESOLUTION AND SETTLEMENT

- The Settlement Advantages

## I. Alternative Dispute Resolution

A. The Advantages of Using ADR

B. The Various Techniques

## II. Settlements

A. The Settlement Rules (Legal Principles)

B. 77 Settlement Options

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B. The Interview Process

C. Suggested Interview Questions

D. Contact References

E. Suggested Reference Questions

F. Documenting Your Selection

G. Communicating Your Selection Decision

H. Non Selection Claims – Recent Case Update

- The Way It Was Intended
- The Mistakes
- Some Key Points
- Non Selection/Interviewing Exercises

## PART 11: SUPERVISOR'S LIABILITY

## PART 12: RETALIATION COMPLAINTS

## PART 13: AFFIRMATIVE ACTION IN FEDERAL EMPLOYMENT

I. In General

II. Special Emphasis Programs

III. Affirmative Action in the Courts

## IV. The EEOC Addresses Affirmative Action

### PART 14: INVESTIGATIONS AND HEARINGS

- A Supervisor's Role in EEO Complaints, Investigations and Hearings
- Tips for Witnesses in EEOC Hearings

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- II. The Merit Systems Protection Board (MSPB)
- III. Federal Labor Relations Authority (FLRA)
- IV. Grievance Arbitration
- V. The Office of Personnel Management (OPM)
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    3. Proof of Religious Discrimination
    4. "Undue Hardship" & Accommodation Examples
    5. Applicants for Employment
    6. The Importance of Doing it Right
    7. Disparate Treatment Theory also Applies
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  - C. Guidelines on Religious Exercise and Religious Expression in the Federal Workplace



## II. Religious Expression

- A. Key Concepts
- B. Expression in Public Areas
- C. Supervisors and Religious Discrimination
- D. Hostile Work Environment

## III. Accommodation of Religious Exercise

- A. Key Concepts
- B. Establishment of Religion
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### PART 19: SEXUAL ORIENTATION DISCRIMINATION

### PART 20: HOW TO PREVENT AND EFFECTIVELY RESPOND TO EEO COMPLAINTS

- A. Prevention of EEO Complaints
- B. Effective Responses to EEO Complaints

### PART 21: AN OVERVIEW OF MEDIATION

#### I. The Mediation Process

- A. Summary of the Stages of Mediation
- B. How the Mediator Helps the Parties to Settle
- C. Facilitating Communication
- D. Forms of Mediator Influence
- E. The Mediator's Opening Statement
- F. Opening Statements of the Parties
- G. Defining Issues and Setting an Agenda
- H. Brainstorming: Generating Settlement Options

#### II. ADVICE TO ADVOCATES IN MEDIATION

- A. Representing Clients at Mediation
  - 1. Prepare and Plan
  - 2. Devise a Strategy
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## Ten Common Mistakes Made by Counsel in Mediation

### PART 24: NEW AND PROPOSED LEGISLATION

EEO Quiz

Appendix

Steps In Processing An EEO Complaint

Overview Of the EEO Complaint Process