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Implementing an Impartial Panel as a Cost
Avoidance Mechanism in Equal Employment Opportunity
Complaint Resolution

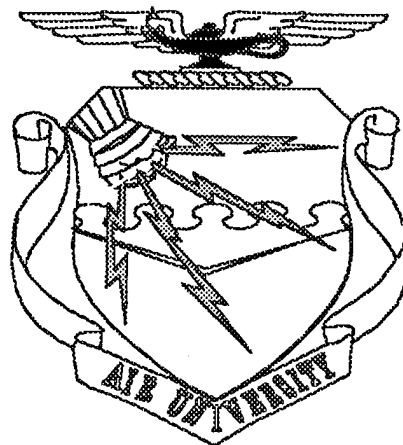
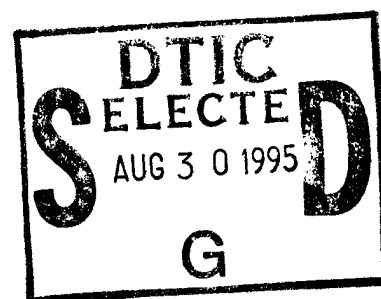
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PMCS IDEA Paper

Title: Implementing an Impartial Panel as a Cost Avoidance
Mechanism in Equal Employment Opportunity (EEO)
Complaint Resolution

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EXECUTIVE SUMMARY

The EEO complaint process currently implemented by the Defense Logistics Agency, hereinafter referred to as Agency, uses outside investigators as a part of the formal EEO complaint resolution process, as required by regulatory statute. Prior to this stage volunteer EEO counselors within the Agency attempt to facilitate informal resolution of a dispute. When this process fails, the complainant can file a formal EEO complaint. The choice of an Agency or outside investigator is made by the complainant only after attempts to facilitate an informal resolution have failed. This impacts the volume of formal EEO complaints filed and associated administrative costs.

There is an estimated backlog of approximately one hundred and fifty cases awaiting assignment of an outside investigator. The cost of outside investigation services averages two thousand and five hundred dollars per case. What is needed is some mechanism to reduce these administrative costs, increase the number of cases resolved informally, and obtain an accurate assessment of the informal complaint workload.

I maintain the use of a five-member Impartial Grievance Panel at the precomplaint EEO processing stage and improved data maintenance of the informal complaint activity would do just that.

I propose the implementation of a five member panel comprised of one representative from the Agency's EEO committee or pool of EEO Counselors, one union representative, one labor relations representative, one legal representative, and a rotational representative from the American Arbitration Association or some other Mediation Service (to serve as Chair). With the exception of the rotational chair, Panel members would serve on the Panel for a one to two year period. Payment for the mediation chairperson representative would come from the budget of the source location of the complaint. However, the EEO complaint function should be recommended to OSD for testing under the unit cost resourcing program under the Defense Business Operations Fund (DBOF).

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INTRODUCTION

"Federal agencies covered by 29 C.F.R. Part 1614 are responsible for developing and implementing their own equal employment opportunity programs and complaint processing procedures." (1:1) As a DoD component, the Defense Logistics Agency, hereinafter referred to as "Agency," is required to adhere to this statute. As such it has developed its own local regulation "to provide equal opportunity in employment for all persons to prohibit discrimination in employment because of race, color, religion, sex, national origin, age, or handicap," (2:1). The Agency's EEO program which includes EEO complaint procedures, is administered in compliance with:

1. Title VII, Civil Rights Act of 1964 (as amended)
2. Vocational Rehabilitation Act of 1973 (as amended)
3. Civil Service Reform Act of 1978
4. Title 29, Code of Federal Regulations (CFR), Part 1613
5. DoD Directive 1100.15, "The DoD Equal Opportunity Program," June 3, 1976
6. DoD Directive 1450.1, "Federal Women's Program," July 25, 1985
7. Applicable public laws and executive orders, directives of the U.S. Office of Personnel Management (OMB) and the Equal Employment Opportunity Commission (EEOC), and the Agency DLAR 1446.1, dated 18 April 1984.

The Agency's own DLAR 1446.1 governs the processing of EEO complaints and calls for the resolution of disputes at the lowest

level possible in the least formal fashion. By definition, an informal EEO Complaint is "a concern by an individual or group over a matter perceived as having EEO implications that is taken to an EEO Counselor for resolution within thirty days of the date of the matter."(2:2) A formal EEO complaint represents "a written charge covering a concern which could not be resolved during the EEO counseling stage which must be filed by the complainant with an appropriate official within 15 calendar days after receipt of a notice of final interview from the EEO counselor." (2:2)

The choice of an Agency or outside investigator is made by the complainant only after attempts by the EEO counselor have failed to informally resolve the dispute. The impact of this condition has had a significant effect on the costs incurred in the subsequent processing of a complaint. At DLA, there is an estimated backlog of approximately one hundred and fifty cases awaiting assignment of an outside investigator. On average, the cost paid by the Agency for outside investigation services are as high as two thousand and five hundred dollars per case. These costs do not include additional administrative costs incurred for subsequent Agency hearing/related costs for cases continued beyond the outside investigation stage.

Problems with data maintenance at the informal complaint stage make it difficult to assess informal complaint levels or project potential formal complaint workload and the projected investigative/administrative costs. Although a pilot program to involve outside mediation services either one on one, or in joint

conference with applicable parties has been proposed, implementation has been hindered since no method of payment for the service was prescribed. What is needed is clear. The Agency must reduce the number of formal complaints, increase the number of cases informally resolved, and find a mechanism for payment when mediation services are used during the informal precomplaint stage. I maintain the use of a five-member Impartial Grievance Panel to informally resolve EEO complaints would reduce administrative Agency costs by reducing the number of formal cases in need of outside investigation services. The Panel would be comprised of one EEO counselor or EEO committee representative, one labor relations representative, one legal representative, one union representative, and an American Arbitration Association or other Mediation Service (to act as Panel Chairperson on a rotational basis). With the exception of the Panel Chair, members would participate for a one to two-year period. This would allow an expanded pool of employee and management representatives to gain experience in the process. The outcome of this panel would in no way prevent the complainant's further right to appeal. However, this informal "hearing" would be perceived by employees as an objective examination of the facts of the dispute by impartial parties. This could foster a higher rate of informal resolution. Payment for the Panel chair would come from the budgets of the applicable Corporate Admin/Business Areas determined by the source location of the complaint. This would be an interim measure. I will discuss the feasibility of considering the EEO complaint

function as a candidate for testing under the unit cost resourcing program under DBOF, subsequent to a description of the current EEO complaint process and the problems to be resolved prior to the Panel's implementation.

DISCUSSION

The DLA HQs/Agency Head holds primary responsibility for administering the EEO program. The Agency is serviced by the Defense Administrative Support Center (DASC). The Agency Director has delegated the EEO Complaint processing function for the DLA HQs to the Equal Employment Manager of DASC.

Generally, an employee within the Agency has a forty-five day timeframe to bring a problem to the attention of an EEO counselor to facilitate resolution. This informal counseling stage can last up to ninety days. At the end of that period, if the dispute or problem is not resolved, the EEO counselor informs the employee of his or her option to go forward with the filing of a formal complaint. It is at the formal complaint stage that an outside investigator is procured by the Agency. If the dispute remains unresolved, the employee can ask for a Final Agency Decision or a Final Agency Decision with a Hearing. Cases that have proceeded to the Agency Hearing level have incurred high Agency costs associated with court recorder services, etc.

Problem

EEO counselors are including non precomplaint counseling activities (e.g., verbal informational or telephonic contacts) along with

their tally of full fledged precomplaint EEO counseling activity recordkeeping. This makes it difficult to assess the true informal complaint levels.

Solution

EEO counselors must be trained on what constitutes a precomplaint counseling activity and only record those activities that qualify. This would provide the Agency with a truer measurement of the informal complaint workload. The potential formal EEO complaint workload and associated administrative costs could then be projected.

Problem

The escalation of complaints from the informal stage to the formal stage has been a long-standing problem. Some aspects, such as the decision by an individual to file a formal complaint, are uncontrollable. However, the role of the EEO Counselor, is to facilitate informal resolution. Based on the number of cases proceeding to the formal complaint filing stage, we know this role could be made more effective.

Solution

The concept of outside arbitration is a good one. The implementation of a five-member Impartial Grievance Panel, chaired by an outside Arbitration/Mediation service (as described in the Introduction), would empower employees by making members of the employee workforce, i.e., EEO counselors or EEO committee members, representatives on the Panel as well. The Panel member selection

process should include screening by the EEM/EEO Committee members. Panel members should have a background or training in EEO/related matters, and an understanding of the confidentiality issues associated with acting as a panelist in an informal "hearing" type capacity. Agency Counsel would review all aspects of the proposed Panel for compliance with EEO regulatory statutes, issues of confidentiality, due process, and contractual legalities concerning the Agency's involvement with an Arbitration or Mediation Service, prior to its implementation.

Problem

Currently there is no mechanism for payment of arbitration services, nor is there a mechanism to raise visibility of the problem of costly formal complaint investigative/administrative costs borne by the Agency.

Solution

Costs for the services provided to the Panel by an external arbitration or mediation service should be paid out of the applicable Corporate Admin/Business Area Budget based on the source of the complaint. This, however, would be an interim measure. In the long term, the EEO complaint function should be considered as a candidate for unit cost resourcing under the Defense Business Operations Fund (DBOF). There are six steps that must be completed before an activity or support function can be tested under the unit cost resourcing program. The primary outputs (i.e., all business of the activity) can be readily identified (e.g., number of informal and formal complaint resolutions). OSD would need to

establish a task force that would then determine the total cost of performing EEO complaint resolution functions, by capturing all of the costs related to the EEO complaint processing activity. Since we already know the customers (e.g., Corporate Admin/Business Areas based on source locations of the complainants), one of the remaining steps would be to assign the costs to the support function's output. This could be accomplished in the near future since the Agency maintains records reflecting the number of informal and formal complaints resolved. When a support function or activity meets conditions such as these, and has identified costs to outputs, "OSD will test the support activity in the unit cost resourcing program"(3:4). "Under unit cost resourcing, the funding is still given to the provider, but funding is "earned" based on actual workload produced." (3:4) "Once the system has demonstrated to OSD a measurable output, known customers, and a proven cost accounting system that relates cost to output, it is ready for the DBOF." (3:4)

CONCLUSIONS/RECOMMENDATIONS

Several factors contribute to the two-fold problem of high numbers of formal complaints and high administrative costs. Some factors are outside the Agency's control. By law, each complainant or potential complainant has the right to proceed through the entire administrative process. The number of incoming complaints is also unpredictable and outside the Agency's control. However, factors which are within the Agency's control involve implementing new mechanisms to increase the number of cases informally resolved.

The DASC EEM can recommend the implementation of the proposed Panel on a trial basis. The Panel would:

- empower employees by giving them an active role in selection and participation as Panel members.
- better utilize existing resources (already trained in EEO).
- offer the expertise and impartiality of outside mediators.

Payment for the Panel mediator should be reimbursed from the respective Corporate Admin/Business Area budgets. Since EEO is a critical element and assessed as a performance standard for top management, visibility to the Agency Director would provide valuable feedback and possibly get the attention of more managers and supervisors.

The Agency should recommend OSD review the EEO Complaint function to determine its eligibility for testing under the unit cost resourcing program. Corporate Admin/Business Areas might find more effective ways to deal with potential EEO/related problems before they escalate to the complaint stage if they were more closely tied to the costs of the provision of these services.

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