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**DISCRIMINATION ON THE BASIS OF  
STATUS AS A PARENT,  
MARITAL STATUS, OR POLITICAL AFFILIATION**

- 1) **PURPOSE.** This Order provides information regarding the avenues of redress for those who believe they have suffered harassment or otherwise been discriminated against based on statuses that are not otherwise covered by federal employment nondiscrimination statutes. This Order is applicable to current U.S. Environmental Protection Agency (EPA or Agency) employees and applicants for employment who believe they have suffered harassment or otherwise been discriminated against based on status as a parent, marital status, or political affiliation, or retaliated against for opposing such discrimination and/or filing or participating in the investigation of a complaint of such discrimination. Persons who believe they have suffered a type of discrimination addressed in this Order should seek private legal counsel to determine the best course of action to seek redress, based on the particular facts of their claims and the current state of the law.
- 2) **APPLICABILITY.** This Order applies to all EPA employees and applicants for employment, as described below.
- 3) **DEFINITIONS.** For purposes of this Order:
  - a. "Applicants for employment" shall include individuals who have submitted applications for employment with EPA.
  - b. "Employees" shall include individuals who are currently employed by the Agency and former employees who allege discrimination by EPA that arises from their former employment relationship with the Agency. Senior Environmental Employment Program (SEE) enrollees and contract workers are not employees of EPA.
  - c. "Marital Status" refers to whether an individual is married, single, or divorced.
  - d. "Political affiliation" refers to affiliation with a political party or candidate.

- e. "Status as a parent," as defined by Executive Order ("EO") 13152, refers to the status of an individual who, with respect to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of physical or mental disability, is: a) a biological parent; b) an adoptive parent; c) a foster parent; d) a stepparent; e) a custodian of a legal ward; f) in locos parentis over such an individual; or g) actively seeking legal custody or adoption of such an individual.

#### 4) BACKGROUND.

The Executive Branch has had a longstanding policy of prohibiting these types of discrimination within the Federal civilian workforce. On May 2, 2000, EO 13152 was issued, prohibiting discrimination based on status as a parent. This EO amended EO 11478, addressing "Equal Employment Opportunity in the Federal Government."

However, the EO does not create any new rights nor establish a right to proceed in all circumstance with status as a parent discrimination complaints<sup>1</sup>, before the Equal Employment Opportunity Commission (EEOC) or under the Agency's formal employment discrimination complaint system established pursuant to EEOC regulations at 29 C.F.R. Part 1614. The EO also does not create any right to proceed with a marital status or political affiliation discrimination complaint before the EEOC or under the Agency formal employment discrimination complaint system established pursuant to EEOC regulations at 29 C.F.R. Part 1614.

Because EPA wishes to comprehensively promote equal opportunity and eliminate discriminatory practices and policies, ensuring a workplace free of unlawful discrimination, it has established a separate complaint investigation and resolution procedure for these types of claims. EPA's objective is to process complaints of discrimination on these bases to the maximum extent possible and consistent with existing authorities, in a manner consistent with 29 C.F.R. Part 1614 and relevant EPA policies and practices generally used in processing complaints of discrimination under Part 1614, as modified, clarified, and/or supplemented below. This may include, but is not limited to, granting employees a reasonable amount of official time; computation and calculation of dates for resolving timeliness issues; confidentiality of records; and the methodology for analyzing allegations of discrimination.

#### 5) RESPONSIBILITIES.

- a. The Assistant Administrator for the Office of Mission Support shall provide information about the rights and remedies available to employees and applicants for employment who believe they have been discriminated against based on their status as a parent, marital status, or political affiliation. (This information is set forth in Section 6, "Avenues of Redress," below.)
  
  - b. The Director for the Office of Civil Rights (OCR) shall:
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- (1) Advise employees and applicants for employment of their rights and remedies under this order and related Federal statutes.
- (2) As set forth in Section 6, provide an informal resolution process consisting of counseling and alternative dispute resolution (ADR) to employees and applicants for employment who believe they have been discriminated against based on status as a parent, marital status, or political affiliation.
- (3) As set forth in Section 6, provide a formal complaint procedure separate from that under Part 1614 (a “parallel formal complaint process”) for employees and applicants for employment who believe they have been discriminated against based on status as a parent, marital status, or political affiliation. The procedure shall include counseling, alternative dispute resolution, investigation of accepted complaints, and a Final Agency Decision from OCR on whether discrimination occurred.

## 6) AVENUES OF REDRESS.

EPA employees and applicants for employment who believe that they have been discriminated against because of their status as a parent, marital status, or political affiliation may seek redress under the following processes. It is important to note that each process has its own deadlines and filing requirements and choosing one process may preclude choosing any of the other processes. In addition, choosing one does not stop the clock with regard to the deadline for selecting another process.

### a. OCR Equal Employment Opportunity (EEO) Pre-Complaint Counseling

1. Aggrieved employees or applicants for employment who believe they have been discriminated against on the basis of status as a parent, marital status, or political affiliation must contact OCR or the servicing EEO Office to obtain EEO counseling prior to filing a formal complaint in order to try to informally resolve the matter.
  - i. An aggrieved person must initiate contact with an EEO Counselor within 45 calendar days of the date of the matter alleged to be discriminatory or, in the case of personnel action, within 45 calendar days of the effective date of the action.
  - ii. OCR shall extend the 45-day time limit in paragraph (1)(i) of this section when the individual shows that they were not notified of the time limits and were not otherwise aware of them, that they did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence they were prevented by circumstances beyond their

control from contacting the Counselor within the time limits, or for other reasons considered sufficient by the Agency.

(2) EEO Counselor responsibilities:

- i. At the initial counseling session, Counselors must advise individuals in writing of their rights and responsibilities, including that only the claims raised in pre-complaint counseling (or issues or claims like or related to issues or claims raised in pre-complaint counseling) may be alleged in a subsequent complaint filed with OCR. Counselors must advise individuals of their duty to keep OCR informed of their current address.
- ii. Counselors shall advise aggrieved persons of other forums for raising employment issues that may or may not address discrimination based on status as a parent, marital status, or political affiliation. Some of these forums include: the Office of Special Counsel, which investigates prohibited personnel practices; the Merit Systems Protection Board (MSPB), which hears appeals of certain agency actions; EPA's internal administrative grievance procedures; and, for those employees in a bargaining unit, the negotiated grievance procedure, as applicable. Counselors must advise individuals that OCR will not process any formal complaints of discrimination under this Order if a complaint or grievance has been filed in any other forum.
- iii. Counselors shall advise aggrieved persons that, where OCR agrees to offer ADR in the particular case, they may choose between participation in the alternative dispute resolution program or the counseling activities provided for in paragraph (3) of this section.

(3) Counselors shall conduct counseling activities in accordance with instructions contained in EEOC Management Directives. When advised that a complaint has been filed by an aggrieved person, the Counselor shall submit a written report within 15 calendar days to OCR and the aggrieved person concerning the issues discussed and actions taken during counseling.

(4) Unless the aggrieved person agrees to a longer counseling period under paragraph (5) of this section, or the aggrieved person chooses an alternative dispute resolution procedure in accordance with paragraph (2) (iii) of this section, the Counselor shall conduct the final interview with the aggrieved person within 30 calendar days of the date the aggrieved person contacted the Agency's EEO office to request counseling. If the matter has not been resolved, the aggrieved person shall be informed in

writing by the Counselor, no later than the thirtieth day after contacting the Counselor, of the right to file a formal discrimination complaint with OCR. The notice shall inform the complainant of the right to file a discrimination complaint within 15 calendar days of receipt of the notice, of the appropriate official with whom to file a complaint and of the complainant's duty to assure that OCR is informed immediately if the complainant retains counsel or a representative.

- (5) Prior to the end of the 30-day period, the aggrieved person may agree in writing with OCR to postpone the final interview and extend the counseling period for an additional period of no more than 60 calendar days. If the matter has not been resolved before the conclusion of the agreed extension, the notice described in paragraph (4) of this section shall be issued.
- (6) Where the aggrieved person chooses to participate in an alternative dispute resolution procedure in accordance with paragraph (2)(iii) of this section, the pre-complaint processing period shall be 90 calendar days. If the claim has not been resolved before the 90th day, the notice described in paragraph (4) of this section shall be issued.
- (7) The Counselor shall not attempt in any way to restrain the aggrieved person from filing a formal complaint. The Counselor shall not reveal the identity of an aggrieved person who consulted the Counselor, except when authorized to do so by the aggrieved person, or until OCR has received a discrimination complaint under this part from that person involving that same matter.

b. OCR Parallel Formal Complaint Process: Filing a Complaint

- (1) A complaint must be filed with OCR.
- (2) A complaint must be filed within 15 calendar days of receipt of the notice required by paragraphs a. (4), a (5), or a. (6) above.
- (3) A complaint must contain a signed statement from the person claiming to be aggrieved or that person's attorney. This statement must be sufficiently precise to identify the aggrieved individual and to describe generally the action(s) or practice(s) that form the basis of the complaint. The complaint must also contain a telephone number and address where the complainant or the representative can be contacted.
- (4) A complainant may amend a complaint at any time prior to the conclusion of the investigation to include issues or claims like or related to those raised in the complaint.

(5) OCR shall acknowledge receipt of a complaint or an amendment to a complaint in writing and inform the complainant of the date on which the complaint or amendment was filed. OCR shall advise the complainant in the acknowledgment that it will conduct an impartial and appropriate investigation of the complaint within 180 calendar days of the filing of the complaint unless the parties agree in writing to extend the time period. When a complaint has been amended, OCR shall complete its investigation within the earlier of 180 calendar days after the last amendment to the complaint or 360 calendar days after the filing of the original complaint.

c. OCR Parallel Formal Complaint Process: Multi-Basis Complaints

In the event a complaint is accepted that contains an allegation of discrimination based on status as a parent, marital status, or political affiliation, and also additional bases covered by EEOC regulations, all allegations will be investigated concurrently. However, following the investigation, those allegations not based on status as a parent, marital status, or political affiliation will be processed in accordance with existing procedures outlined in 29 C.F.R. Part 1614, and the OCR Director will determine whether to proceed with a final decision regarding the allegations under this Order or to defer action on those allegations until the 29 C.F.R. Part 1614 procedures are exhausted.

d. OCR Parallel Formal Complaint Process: Dismissals of Complaints

(1) OCR shall dismiss an entire complaint:

- i. That states the same claim that is pending before or has been decided by the Agency;
- ii. That fails to comply with the applicable time limits contained in 6.a. or 6.b herein, unless the Agency extends the time limits in accordance with the principles of waiver, estoppel, and equitable tolling, or that raises a matter that has not been brought to the attention of a Counselor and is not like or related to a matter that has been brought to the attention of a Counselor;
- iii. Where the complainant has raised the matter in any other forum set forth herein (a negotiated grievance procedure that permits allegations of discrimination, the EPA Administrative Grievance Procedure, the Merit Systems Protection Board, or the Office of Special Counsel) and an application of the principles set forth in 29 C.F.R. § 1614.301 indicates that the complainant has elected to pursue the non-EEO process;

- iv. That is moot or alleges that a proposal to take a personnel action, or other preliminary step to taking a personnel action, is discriminatory;
  - v. Where the complainant cannot be located, provided that reasonable efforts have been made to locate the complainant and the complainant has not responded within 15 calendar days to a notice of proposed dismissal sent to their last known address;
  - vi. Where OCR has provided the complainant with a written request to provide relevant information or otherwise proceed with the complaint, and the complainant has failed to respond to the request within 15 calendar days of its receipt or the complainant's response does not address OCR's request, provided that the request included a notice of the proposed dismissal. Instead of dismissing for failure to cooperate, the complaint may be adjudicated if sufficient information for that purpose is available;
  - vii. That alleges dissatisfaction with the processing of a previously filed complaint; or,
  - viii. Where OCR, strictly applying the criteria set forth in Commission decisions, finds that the complaint is part of a clear pattern of misuse of the EEO process for a purpose other than the prevention and elimination of employment discrimination. A clear pattern of misuse of the EEO process requires:
    - 1. Evidence of multiple complaint filings; and
    - 2. Allegations that are similar or identical, lack specificity or involve matters previously resolved; or
    - 3. Evidence of circumventing other administrative processes, retaliating against the Agency's in-house administrative processes or overburdening the EEO complaint system.
- (2) Where OCR believes that some but not all of the claims in a complaint should be dismissed for the reasons contained in paragraphs (1)(i) through (viii) of this section, OCR shall notify the complainant in writing of its determination, the rationale for that determination and that those claims will not be investigated, and shall place a copy of the notice in the investigative file.

e. OCR Parallel Formal Complaint Process – Investigation of Complaints

(1) In accordance with instructions contained in Commission Management Directives, OCR shall develop an impartial and appropriate factual record upon which to make findings on the claims raised by the written complaint. An appropriate factual record is one that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred. OCR may use an exchange of letters or memoranda, interrogatories, investigations, fact-finding conferences or any other fact-finding methods that efficiently and thoroughly address the matters at issue. OCR will incorporate alternative dispute resolution techniques into its investigative efforts in order to promote early resolution of complaints.

(2) The following procedures apply to the investigation of complaints:

- i. The complainant, the Agency, and any employee of the Agency shall produce such documentary and testimonial evidence as the investigator deems necessary.
- ii. Investigators are authorized to administer oaths. Statements of witnesses shall be made under oath or affirmation or, alternatively, by written statement under penalty of perjury.
- iii. When the complainant, or the Agency, or its employees fail without good cause shown to respond fully and in timely fashion to requests for documents, records, comparative data, statistics, affidavits, or the attendance of witness(es), the investigator may note in the investigative record that the Director of OCR should, in appropriate circumstances:
  1. Draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party refusing to provide the requested information;
  2. Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;
  3. Exclude other evidence offered by the party failing to produce the requested information or witness;
  4. Issue a decision fully or partially in favor of the opposing party; or
  5. Take such other actions as they deem appropriate.



- (3) Any investigation will be conducted by investigators with appropriate security clearances.
- (4) OCR shall complete its investigation within 180 calendar days of the date of filing of an individual complaint. By written agreement within those time periods, the complainant and OCR may voluntarily extend the time period for not more than an additional 90 calendar days. OCR may unilaterally extend the time period or any period of extension for not more than 30 calendar days where it must sanitize a complaint file that may contain information classified pursuant to Executive Order No. 12356, or successor orders, as secret in the interest of national defense or foreign policy, provided OCR notifies the parties of the extension.
- (5) Within 180 calendar days from the filing of the complaint, or where a complaint was amended, within the earlier of 180 calendar days after the last amendment to the complaint or 360 calendar days after the filing of the original complaint, or within any period of extension provided for in paragraph (4) of this section, OCR shall provide the complainant with a copy of the investigative file.

f. OCR Parallel Formal Complaint Process – Final Agency Decision

- (1) When OCR dismisses an entire complaint under 6.d.(1) or finishes an investigation under 6.e., OCR shall take final action by issuing a final decision. The final decision shall consist of findings by OCR on the merits of each issue in the complaint, or, as appropriate, the rationale for dismissing any claims in the complaint and, when discrimination is found, appropriate remedies and relief. The OCR Director shall issue the final decision within 60 calendar days of sending the complainant a copy of the investigative file.
- (2) When the OCR Director finds that an employee, applicant for employment or former employee was discriminated against on the basis of status as a parent, marital status, or political affiliation, or suffered reprisal for opposing such discrimination and/or filing or participating in the investigation of a complaint of such discrimination, the OCR Director shall provide relief to the fullest extent permitted by existing laws and regulations, including equitable relief and monetary relief, as follows:
  - i. Back pay and benefits, computed pursuant to 5 U.S.C. § 5596 (5 C.F.R. 550 Subpart H).
  - ii. Reasonable attorney's fees, where back pay is at issue, as authorized by 5 U.S.C. § 5596. In all other situations, attorneys'

fees are not authorized.

- iii. Back pay and attorneys' fees may not be awarded to applicants for employment.
- iv. Compensatory damages are not available.

(3) A final agency decision shall be binding on both the Agency and the complainant. The Agency shall report to the OCR Director and submit documentation supporting compliance with the final agency decision.

g. OCR Parallel Formal Complaint Process – Reconsideration of Final Agency Decision

The complainant may request that OCR reconsider its final decision issued under 6.f. by filing a request for reconsideration (RFR) within 30 calendar days of receipt of a decision from OCR. The RFR, with supporting arguments or evidence, must be filed within 30 calendar days of the date the final agency decision is received. A complete copy of the RFR must be served on the OCR Director. Opposition to the RFR must be in writing and must be submitted to the OCR Director and the complainant within 30 calendar days from receipt of the RFR. All RFRs and oppositions to RFRs must be accompanied by a certificate of service containing the date and manner in which service was effected and must be submitted to the Director, OCR, U.S. Environmental Protection Agency, Director, Office of Civil Rights (MC 1201A), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. The OCR Director will issue the decision on the RFR no later than 60 calendar days from receipt of the RFR and the supporting arguments.

OCR in its discretion may grant reconsideration if the complainant demonstrates that:

- (1) The decision involved a clearly erroneous interpretation of material fact or law; or
- (2) New, relevant facts have arisen that could not have been previously discovered by the complainant through due diligence.

h. OCR Parallel Formal Complaint Process – Compliance with Settlement Agreements and Final Agency Decisions

- (1) Any settlement agreement knowingly and voluntarily agreed to by the parties, reached at any stage of the complaint process provided under this Order, shall be binding on all parties. If the complainant believes that the Agency has failed to comply with the terms of a settlement agreement, the complainant shall notify the OCR Director, in writing, of the alleged

noncompliance with the settlement agreement, within 30 calendar days of when the complainant knew or should have known of the alleged noncompliance. The complainant may request that the terms of the settlement agreement be specifically implemented or, alternatively, that the complaint be reinstated for further processing from the point where processing ceased. The OCR Director will issue a final agency decision on the breach claim within 60 calendar days of receipt of the claim. If the OCR Director determines that the settlement agreement has not been complied with and the noncompliance is not attributable to acts or conduct of the complainant, the OCR Director may order such compliance or order that the complaint be reinstated for further processing from the point processing ceased.

- (2) If the complainant believes that the Agency has failed to comply with the final agency decision, the complainant shall notify the OCR Director, in writing, of the alleged noncompliance within 30 calendar days of when the complainant knew or should have known of the alleged noncompliance. The OCR Director will issue a final agency decision on the noncompliance claim within 60 calendar days of receipt of the claim.

i. Union Grievance Procedure

An employee who is covered by a Collective Bargaining Agreement (CBA) that permits the filing of a grievance claiming discrimination on the bases set forth herein may file such a grievance through the grievance procedures set forth in the applicable union's CBA. The grievance must be filed within the timeframes specified in the applicable CBA. The employee should contact their servicing Human Resources Office (HRO) or union representative for further information regarding timeframes and procedures.

j. EPA Administrative Grievance Procedure

An EPA employee who is not covered by a CBA that permits the filing of a grievance that raises discrimination on the bases set forth herein may file such a grievance under EPA's administrative grievance procedure, pursuant to EPA Order 3110.8. The grievance must be filed within 15 calendar days from the date of the alleged discriminatory action. The employee should contact their servicing HRO for further information regarding timeframes and procedures. See paragraph 9, below, for further information regarding EPA Order 3110.8.

k. Personnel Actions Appealable to the MSPB

Discrimination based on status as a parent may constitute a "prohibited personnel practice" under the Civil Service Reform Act (CSRA), 5 U.S.C. § 2302(b)(10). The CSRA lists discrimination based on marital status or political affiliation as a prohibited personnel practice, 5 U.S.C. § 2302(b)(1)(E). Employees should contact

the MSPB about exercising these rights. In addition, probationary supervisors or managers, or employees terminated during a probationary period after initial appointment to a competitive position, have some MSPB appeal rights for discrimination based on marital status or partisan political reasons, as set forth in 5 C.F.R. §§ 315.806 and 315.908.

The period for filing an appeal with MSPB is within 30 calendar days after the effective date of such an action, if any, or 30 calendar days after the date of receipt of the agency's decision, whichever is later. This period may be extended an additional 30 calendar days when the employee or applicant for employment and management agree, in writing, to engage in the Agency's ADR process (5 C.F.R. § 1201.22(b)). See paragraph 9, below, for further information regarding the MSPB.

I. Office of Special Counsel (OSC)

If an employee or applicant for employment believes that a personnel action has been taken against them because of the bases set forth herein, they may file a complaint with the OSC under the CSRA, 5 U.S.C. § 2302(b)(1)(E) or § 2302(b)(10). The OSC receives, investigates, and prosecutes allegations of prohibited personnel practices. The procedures for filing may be obtained by contacting OSC. See paragraph 9, below, for further information regarding the OSC.

- 7) POLICY. It is the policy of EPA to provide equal employment opportunity to all employees and applicants for employment. The Agency is committed to providing a workplace free from all forms of prohibited discrimination, including harassment, on the basis of status as a parent, marital status, or political affiliation.
- 8) REVIEW DATE. This order will be reviewed three (3) years from the date of approval to ensure that it is meeting its stated purpose.
- 9) REFERENCES.
  - MSPB guidance is available online at: <http://www.mspb.gov>.
  - OSC guidance is available online at: <http://www.osc.gov>.
  - EPA's Administrative Grievance Order is available online at: <https://intranet.epa.gov/ohr/rmpolicy/ads/orders/3110-8.pdf>

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