

**Equal Employment Opportunity (EEO) Complaint Processing Policy**

<b>Effective Date:</b> June 22, 2021	<b>Applicability:</b> All Museum Employees, Former Employees, and Applicants for Employment	<b>Issued By:</b> Equal Employment Opportunity Division
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## Equal Employment Opportunity (EEO) Complaint Processing Policy

### I. Policy Statement

As the Director of the United States Holocaust Memorial Museum (Museum) reiterates each year in her [annual policy statement](#), the Museum is committed to supporting a diverse, equitable, accessible and inclusive workforce. And the Museum does so, in part, by ensuring an efficient, fair, and impartial EEO complaint resolution process consistent with EEOC guidance.

### II. Anti-Discrimination Statement

The Museum prohibits and will not tolerate discrimination (including discriminatory harassment) based on:

- race;
- color;
- sex (including pregnancy, sexual orientation, transgender status, gender identity or expression, gender non-conformity, or sex stereotyping);
- religion;
- national origin;
- age (40 years and older);
- disability; or
- genetic information.

The Museum likewise prohibits and will not tolerate retaliation against those who exercise their rights to file an EEO complaint, participate in the EEO process, or otherwise engage in protected EEO activity.

If a Museum employee or other individual working at the Museum is found to have engaged in discrimination (including discriminatory harassment) or retaliation, the Museum will hold that individual accountable and will take prompt action such as discipline up to and including removal from the Museum.

### III. Applicability

This Policy applies to all Donated and Federal Museum employees (including former employees) and applicants (including former applicants) for Museum employment. Both Donated and Federal Museum employees are covered by this Policy. Contractors are generally not covered by this policy.<sup>1</sup>

### IV. Scope

This Policy provides an overview of the process for raising, investigating, and resolving claims by Museum employees or applicants who believe they have been discriminated against or harassed because of their race, color, religion, sex, national origin, age, disability or genetic information or have been retaliated against because they have engaged in protected EEO activity.

This Policy is intended to highlight the major features of the Museum's EEO complaint resolution process but is not all encompassing. For more information about the Museum's EEO complaint resolution process or the Museum's EEO program in general, please contact the

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<sup>1</sup> Contractors should raise complaints of discrimination with their employing agency and may raise concerns or seek information from the Museum's EEO Manager or the Director of Procurement.

Museum's EEO Manager. For more information about the aspects of the EEO complaint resolution process controlled by the Equal Employment Opportunity Commission (EEOC) (including hearings, appeals, and requests for reconsideration of an appeal), please contact the EEOC, as this policy does not govern or attempt to cover in detail EEOC-controlled processes. For more detailed information about EEO laws, regulations, and guidance, please refer to the EEOC or the resources listed in Appendix A.

## V. Types of Discrimination Covered

This section provides an overview of the protected classes/types of discrimination covered under this policy and what is generally meant by each. For more information about any individual type of discrimination or a particular claim, please refer to the EEOC or the resources listed in Appendix A.

- A. Race-Based Discrimination** – Treating an applicant or employee unfavorably or harassing that individual because of their race or because of personal characteristics associated with their race (such as hair texture or certain facial features). Race-based discrimination can also sometimes involve treating an employee or applicant unfavorably because the individual is married to (or associated with) a person of a certain race.
- B. Color-Based Discrimination** – Treating an applicant or employee unfavorably or harassing that individual because of their skin color. Color-based discrimination can also sometimes involve treating an employee or applicant unfavorably because the individual is married to (or associated with) a person with a certain skin color.
- C. Age-Based Discrimination** – Treating an applicant or employee unfavorably or harassing that individual because they are **age 40 or older**.
- D. Religious Discrimination** – Treating an applicant or employee unfavorably or harassing that individual because of their religious beliefs. The prohibition on religious discrimination protects not only people who belong to traditional, organized religions but also to others who have sincerely held religious, ethical or moral beliefs. Religious discrimination can also sometimes involve treating an employee or applicant differently because the individual is married to (or associated with) an individual of a particular religion.
- E. National Origin Discrimination** – Treating an applicant or employee unfavorably or harassing that individual because the individual is from a particular country or part of the world, because of ethnicity or accent, or because the individual appears to be of a certain ethnic background (even if they are not). National origin discrimination also can sometimes involve treating applicants or employees unfavorably because they are married to (or associated with) a person of a certain national origin.
- F. Disability Discrimination** – Treating an applicant or employee unfavorably or harassing that individual because of a disability, a past disability, or a perceived physical or mental impairment that is not transitory and minor. Disability discrimination can also sometimes involve treating an employee or applicant unfavorably because they are married to (or associated with) a person with a disability. While claims of disability discrimination are processed under this policy, more information about the rights of employees with disabilities and the reasonable accommodation process are available in the Museum's Reasonable Accommodation Policy and Procedure.
- G. Sex Discrimination** – Treating an applicant or employee unfavorably or harassing that individual because of that person's sex. Discrimination because of pregnancy, sex stereotypes, sexual orientation, or gender identity, expression or non-conformity (including transgender status), are all discrimination because of sex.
- H. Genetic Discrimination** – Generally includes using genetic information to make an employment decision; treating an applicant or employee unfavorably because of genetic

information; requesting genetic information; or disclosing genetic information. Genetic information includes information about an employee's or applicant's genetic tests or genetic services and the genetic tests or services of the individual's family members; information about the manifestation of disease or disorder in an individual's family members (i.e., family medical history); and, in some circumstances, the genetic information about a fetus carried by or an embryo legally held by the employee, applicant, or family member. This policy covers genetic discrimination in employment prohibited by Title II of the Genetic Non-Discrimination Act (GINA), which is enforced by the EEOC. Genetic discrimination in healthcare, prohibited by Title I of GINA and enforced by the Department of Labor, is not covered by this policy.

I. **Retaliation** – Punishing job applicants or employees for asserting their rights to be free from employment discrimination (including discriminatory harassment). Asserting these EEO rights is called "protected activity," and it can take many forms. For example, it is unlawful to retaliate against applicants or employees for:

- Pursuing informal EEO counseling, filing an EEO complaint, or appealing an EEO decision to the EEOC or District Court;
- Serving as a representative or witness in an EEO investigation;
- communicating with a supervisor or manager about employment discrimination or discriminatory orders;
- resisting sexual advances; or
- requesting accommodation for a disability or religious practice.

Participating in a complaint process is protected from retaliation under all circumstances. Other acts to oppose discrimination are protected as long as the employee was acting on a reasonable belief that something in the workplace may violate EEO laws, even if the Complainant did not use the legal terminology to describe their belief and is ultimately proven wrong.

Engaging in protected EEO activity, however, does not shield (i.e., protect) an employee from discipline or discharge if the decisionmaker is motivated by non-retaliatory and non-discriminatory reasons that would otherwise result in the same consequence.

However, an employer is not allowed to do anything in response to or motivated by protected EEO activity that would discourage someone from resisting or complaining about future discrimination.

## VI. Definitions

- **Administrative Judge:** An individual who presides at an EEOC administrative hearing and has the power to administer oaths, take testimony, rule on questions of evidence, regulate the course of proceedings, and make determinations of fact.
- **Aggrieved Individual:** A Museum employee or applicant for employment who contacts the EEO Manager to participate in EEO counseling who believes they have been subjected to discrimination (including discriminatory harassment) or retaliation for participating in protected EEO activity.
- **Alternative Dispute Resolution (ADR):** A term used to describe a variety of approaches to resolving conflict that differ from traditional adjudicatory or adversarial methods. Pre-Complaint ADR provides a means of improving the efficiency of the EEO complaint process by attempting early and informal resolution of EEO disputes without the filing of a formal complaint. The Museum may also offer ADR and the Complainant may request ADR at various points throughout the formal complaint process. The

Museum generally uses mediation as its form of ADR when attempting to resolve EEO matters.

- **Amendment to a Complaint:** After a formal complaint has been filed, a Complainant may amend the complaint to include issues or claims like or related to those raised in the original complaint. If an amendment is filed and accepted prior to the conclusion of the investigation of the original complaint, the time period for completing the investigation will be extended.
- **Anonymity (anonymous):** Providing no name; of unknown source. This is a right an aggrieved individual has in the informal process unless they choose to have their name disclosed to certain officials (e.g., when pursuing mediation or otherwise negotiating a resolution). The right to remain anonymous does not exist once a Complainant has filed a formal complaint.
- **Claim:** The statement of the alleged issue and basis of discrimination, discriminatory harassment, or retaliation raised by the Complainant. A complaint may contain one or several claims.
- **Complainant:** The term used to refer to an aggrieved individual once that individual has filed a formal EEO complaint.
- **Contractor:** An independent contractor or consultant engaged by the Museum who under applicable law is correctly classified. To pursue an EEO complaint under this policy, a Complainant must generally be either an employee or an applicant for employment of the entity against which the allegations of discrimination are raised. A contractor is not a Museum employee and the Museum is not the contractor's employer. Contractors should raise complaints of discrimination with their employing agency and may raise concerns or seek information from the Museum's EEO Manager or the Director of Procurement. If a contractor contacts the Director of Procurement regarding an allegation of discrimination, the Director should advise the contractor to raise the complaint to the contractor's employer and should contact the Museum's EEO Manager to obtain further guidance.
- **Class:** In class actions this term means a group of people who have common characteristics and meet other requirements showing the group to have a common legal position vis a vis the opposing party so an adjudicative body (e.g., the EEOC or a district court) can efficiently and fairly resolve all the claims in a single proceeding. In the EEO process, a class is generally a group of employees or applicants who allege having been adversely affected by an agency policy or practice that discriminates against the group on the basis of their race, color, religion, sex, national origin, age, disability, or genetic information.
- **Class Action:** An action brought on behalf of the Complainant and other persons having a common interest in subject matter of action (the "class"). The rules, deadlines, and processes for class actions are often different from those described in this policy for individual complaints. Timelines and procedures for pursuing a class action differ from individual complaints and most are controlled by the EEOC. More information about the general federal sector rules for filing and prosecuting class actions can be found in EEOC regulations and class action guidance. Complainants may also seek guidance and additional resources from the Museum's EEO Manager.
- **Days:** In this policy, "days" always means calendar days. When calculating a deadline or time period stated in days (e.g., contacting the EEO Manager within 45 days), the following rules apply: (a) the day of the event triggering the period is excluded; (b) every day after the day triggering the event should be counted including intermediate Saturdays, Sundays, and federal holidays; and (c) the last day of the time period is included unless the last day is a Saturday, Sunday, or federal holiday, in which case the period continues to run (i.e., is extended) until the end of the next day that is not a

Saturday, Sunday, or federal holiday. Note that while the Museum recognizes Yom Kippur as a Museum holiday, it is not a federal holiday. Complainant should contact the EEOC directly if any timeframe controlled by the EEOC (e.g., time for requesting a hearing, time for appeal, etc.) ends on Yom Kippur and the Complainant will not be able to take the step necessary prior to the expiration of the timeframe.

- **Discrimination:** As used in this policy and in federal sector anti-discrimination law, an adverse action toward, or harassment of, an applicant or employee that is influenced by the individual's membership in a group protected under Title VII, the Rehabilitation Act, the Equal Pay Act or the Age Discrimination in Employment Act. More information about each of these laws may be found in the Reference Section below.
- **Discriminatory Harassment:** A form of employment discrimination based on one of the covered types of discrimination. Specifically, discriminatory harassment is unwelcome conduct that is based on race, color, religion, sex, national origin, age, disability, genetic information, or participation in protected activity. Harassment becomes unlawful when (1) enduring the offensive conduct becomes a condition of continued employment or (2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Petty slights, annoyances, and isolated incidents (unless extremely serious) will generally not constitute discriminatory harassment. This policy covers the processing of complaints of discriminatory harassment, as it is a form of discrimination, and throughout this policy, references to "discrimination" include "discriminatory harassment." For more information about investigating claims of discriminatory harassment and/or making and investigating claims of administrative harassment (i.e., a broader category of harassment protected by Museum policy), please refer to the Museum's Anti-Harassment Policy.
- **Dismissal:** A decision by the Museum or the EEOC Administrative Judge that dismisses a complaint or certain claims contained in a complaint for procedural reasons.
- **EEO Counseling (or the Informal Process):** The required first step in the EEO complaint process in which the EEO Counselor or EEO Manager provides information regarding the Museum's EEO process and other processes that may be available to an aggrieved individual, gathers basic information regarding the matter, and attempts to informally resolve the matter if the matter does not go to ADR.
- **EEO Counselor's Report:** The written report an EEO Counselor submits to the EEO Manager and the Complainant after the EEO Counselor has been advised that a formal complaint has been filed. The EEO Counselor's report contains relevant information about the aggrieved individual such as timeliness, jurisdiction, claims, basis, requested remedy, and whether ADR or traditional EEO counseling was selected.
- **Equal Employment Opportunity Commission (EEOC):** The Federal agency responsible for enforcing employment discrimination laws and overseeing the EEO discrimination complaint process for most of the federal government. The Museum relies on EEOC's federal sector guidance as a key resource for creating and maintaining the procedures set forth in the policy regardless of whether such guidance applies to the Museum in full or in part. Complainants should refer to the EEOC's Website for information about those processes within the EEOC's control (e.g., EEOC Administrative Judge hearings, appeals to the EEOC's Office of Federal Operations (OFO), requests for reconsideration made to the full commission, etc.).
- **Final Agency Decision (FAD):** Upon the completion of an investigation of a formal EEO complaint, the Complainant has two options: either request a hearing before an EEOC Administrative Judge or request a FAD. The FAD either dismisses the complaint, in whole or in part, or analyzes the merits of each claim of the complaint, making findings and conclusions, and, if appropriate, ordering corrective action and relief to the Complainant.

- **Final Action (or Final Order):** The Museum’s written final action issued after the Museum receives the decision of the EEOC Administrative Judge who conducted the hearing. The Final Action or Order either implements the Administrative Judge’s decision in full or appeals the Administrative Judge’s decision to the EEOC.
- **Final Interview:** The last step of the EEO pre-complaint counseling/the Informal Process whereby the EEO Counselor or EEO Manager meets with the aggrieved individual where feasible, provides written notification that the process is over as well as written notification of the Complainant's rights.
- **Formal Complaint (or Complaint):** If the dispute raised in EEO counseling is not resolved, a Complainant may file a formal complaint. A formal complaint is a written, signed document which outlines the claim(s) of employment discrimination specifically raised in EEO counseling or issues that are like or related to the issues raised in EEO counseling.
- **Hearing (or EEOC Hearing):** Upon the completion of an investigation of a formal EEO complaint, the Complainant has two options: either request a hearing before an EEOC Administrative Judge or request a FAD. The Hearing is an adjudicatory proceeding conducted by the Administrative Judge that completes the process of developing a full and accurate record of the events a Complainant raised in their complaint, which the Administrative Judge will then use to decide whether discrimination occurred.
- **Mediation:** The form of ADR the Museum generally uses to resolve EEO disputes. Mediation is a voluntary and confidential process where a neutral third-party, who is not a decision maker, facilitates discussion between the parties to help them reach a mutually acceptable resolution. Mediation may be offered during the informal process, the formal process, or at any other point where the Museum and the Complainant believe it could be useful in resolving the matter.
- **Mixed-case Complaint:** A complaint that contains claims that the Complainant believes are also appealable to the Merit Systems Protection Board (MSPB).
- **Report of Investigation (ROI):** An impartial and appropriate factual record compiled by the EEO Investigator which includes, for example, an investigation summary, witness statements, and other documents collected during the investigation. An appropriate factual record is one that allows a reasonable fact finder (whether the Museum or the EEOC) to make findings on the claims raised by the complaint and draw conclusions as to whether discrimination occurred.
- **Settlement Agreement:** A written and signed agreement between the Complainant and the Museum that identifies the agreed upon terms for resolving a complaint.

## **VII. Initiating the Process: Pre-Complaint EEO Counseling (the Informal Process)**

Pre-Complaint EEO Counseling (also referred to as the “Informal Process”) is the first step of the EEO complaint resolution process. The primary purpose of Pre-Complaint EEO Counseling is to seek opportunities for resolution of conflict either through traditional EEO counseling or alternative dispute resolution (ADR). In addition to being a useful first step, it is also a required one. It is important to review this section to ensure understanding of the process and the associated timeframes.

### **A. Contacting the EEO Manager for Referral to EEO Counselor**

If a Museum employee or applicant for Museum employment believes they have been subjected to discrimination, discriminatory harassment, or retaliation, their first step is to contact the EEO Manager who may refer the aggrieved individual to a separate EEO Counselor or serve as the EEO Counselor.

**B. Timeframe for Contacting the EEO Manager (45 Days)**

An aggrieved individual is generally required to contact the EEO Manager within **forty-five (45) days** from the day they knew, or should have known, of the alleged discriminatory event. If the aggrieved individual's claim involves an allegedly discriminatory personnel action (for example, a demotion or a hiring), the aggrieved individual is generally required to contact the EEO Manager within forty-five (45) days of the effective date of that personnel action.

**C. EEO Counselor's Role and a Limited Inquiry**

The EEO Counselor is a neutral party who does not represent the aggrieved, the responsible management official, or the Museum. The EEO Counselor represents the process. The EEO Counselor provides information to aggrieved individuals about their rights and responsibilities under the EEO Process, attempts to facilitate resolution, and obtains some basic information.

The EEO Counselor conducts a limited inquiry intended to assess jurisdiction and clarify the aggrieved individual's claim(s) and the basis or bases of the claim(s). While the scope of this inquiry will vary based on the complexity of the claims, the inquiry at the pre-complaint/informal stage is limited, determined by the EEO Counselor, and not intended to substitute for the fact-finding conducted during the formal stage.

In most cases, the EEO Counselor will give the individual the choice of participating either in traditional EEO counseling or in mediation, the Museum's ADR program.

**D. Mediation**

Mediation is an informal meeting between the parties that is conducted by a neutral mediator. A mediator is trained to help parties who have disagreements to work through their concerns. The mediator does not decide who is right or wrong or issue a decision. Instead, the mediator helps the parties work out their own solutions to their dispute.

While mediation is voluntary, there are real advantages to participating in mediation. Mediation offers both the aggrieved individual and the Museum the opportunity for a timely and informal settlement of a dispute. Rather than leaving the decision to a third party, such as an EEOC Administrative Judge (AJ), mediation gives the parties the opportunity to reach an agreement that works for both. More information about the Museum's EEO Mediation Program is available [here](#).

If mediation is selected, the EEO Counseling period is automatically extended from **thirty (30) to ninety (90) days**.

**E. Traditional EEO Counseling**

The Museum endeavors to use mediation whenever appropriate. However, the EEO Manager may determine, on a case-by-case basis, that a claim is not appropriate for mediation and will notify the aggrieved individual accordingly. If mediation is not available or if the aggrieved individual chooses not to participate in mediation, then the EEO Counselor will use traditional EEO counseling to try to seek informal resolution.

If traditional EEO counseling is elected, the EEO Counselor **has thirty (30) days** to informally resolve the matter brought to the EEO Counselor's attention unless the aggrieved individual agrees to extend the counseling period for up to an **additional sixty (60) days** to provide more time to facilitate pre-complaint resolution of the claim.

**F. Matter Resolved: Settlement Agreement**

If the matter is resolved in the Pre-Complaint stage through Mediation or traditional EEO Counseling, the EEO Manager will obtain a settlement agreement signed by both parties. If both parties agree to settle the matter, it will be dismissed and no further action will be taken. Both parties will be required to do what they promised to do in the agreement. Settlement authority for the Museum will depend on the matters at hand. The EEO Manager and the Office of General Counsel should be consulted to determine who has authority to sign a settlement agreement for the Museum.

**G. Matter Not Resolved: Notice of Right to File a Formal Complaint**

If the matter is not resolved, the EEO Counselor will provide the aggrieved individual with a written Notice of a Right to File a formal complaint prior to the end of the EEO Counseling period and conduct a final interview. The Notice will explain that EEO counseling is complete and the aggrieved individual rights including the right to file a formal complaint within **fifteen (15) days** of receipt of the Notice, the requirements for a formal complaint, the procedures for filing, and the Complainant's responsibilities (such as the duty to inform the Museum immediately if the Complainant retains counsel or another representative and the duty to inform the Museum of a change of address or other contact information).

**VIII. The Formal Complaint Process**

If the matter remains unresolved after completion of the Pre-Complaint Counseling/Informal stage, the aggrieved individual may file a formal complaint.

**A. Timeframe for Filing a Formal Complaint (15 Days)**

A signed formal complaint must be filed within fifteen (15) days of receipt of the Notice of Right to File a formal complaint described in Section VII.G above.

Generally, a formal complaint may be sent to the EEO Manager by mail or email. The Museum will consider a formal complaint to have been timely filed if it is received or postmarked before the expiration of the 15-day period. In light of delays in receiving mail, email is always the best way to reach the EEO Manager. Wherever possible, communications sent by mail should also be sent by email.

**In light of the current national emergency, however, the Museum is temporarily changing its general practice of accepting complaints by mail, as the physical safety and EEO rights of Museum's workforce and applicants are of the utmost importance. Effective immediately and until further notice, the Museum will ONLY accept written communications or filings sent by email. If you have any questions or any difficulty accessing email, you may also contact the EEO Manager by phone.**

Contact Information for the EEO Manager:

[eeo@ushmm.org](mailto:eeo@ushmm.org)  
 202.488.6131 (Phone)

**B. Contents of Formal Complaint**

The formal complaint should contain:

- The Complainant's name, address, email address, telephone number, and employer;

- The Complainant's signature (or lawyer's signature);
- A description of the events that the Complainant believes were discriminatory;
- Why the Complainant believes they were discriminated against;
- The Complainant's membership in a protected class (for example, for an age discrimination claim the Complainant should include their date-of-birth; for a sex discrimination claim, the Complainant should include their gender);
- A description of any injury the Complainant suffered;
- Remedies sought;
- Whether Complainant has filed a charge on the same or related matter in any other forum such as the MSPB or a U.S. District Court.
- If the Complainant is represented, the name, address, email address, and phone number for Complainant's lawyer or other representative.

**C. EEO Counselor's Report**

When advised that an aggrieved individual has filed a formal complaint, the EEO Counselor should submit a written report to the EEO Manager and the Complainant within **fifteen (15) days**. The EEO Counselor's report contains relevant information about the aggrieved individual, timeliness, jurisdiction, claim(s), basis or bases of the claim(s), requested remedy, and other pertinent information gathered. If the aggrieved individual attempted to resolve the dispute, the report should state that the aggrieved individual chose either traditional EEO counseling or the mediation program and that the dispute was not resolved through either. However, the report should not provide a summary of the resolution attempts, nor any opinion as to whether discrimination occurred.

**D. Accepting or Dismissing the Complaint**

After a formal complaint is filed, the EEO Manager will send the Complainant an acknowledgement letter confirming receipt of the complaint and informing the Complainant of the date on which the formal complaint was filed. The EEO Manager will also review the complaint (and may seek additional information) in order to decide whether the complaint should be accepted or dismissed for procedural reasons.

The EEO Manager may dismiss a complaint in its entirety (or individual claim(s) contained in a complaint) if the EEO Manager determines that one of the following criteria have been met:

1. The complaint fails to state a claim or states a claim that is pending or has already been decided by the Museum;
2. The complaint is untimely (e.g., the EEO Manager was not contacted within 45 days) or raises a matter that was not raised during EEO counseling and is not like or related to a matter brought before the EEO Counselor;
3. The complaint is the subject of a pending civil action in a United States District Court (provided that 180 days have passed since the filing of the formal complaint) or was the subject of a civil action already decided in which Complainant was a party;
4. The Complainant has already elected to pursue the matter in a non-EEO process;
5. The complaint is moot or alleges that a proposal to take an action or a preliminary step to an action is discriminatory (unless the Complainant alleges that the proposal or preliminary step is retaliatory);
6. The complaint alleges dissatisfaction with the processing of a previously filed complaint;
7. The Complainant cannot be located after reasonable effort and has not responded within fifteen (15) days to USHMM notice of proposed dismissal sent to Complainant's last known home and email address;

8. The Complainant fails to comply within fifteen (15) days of the Museum's request for information necessary for a decision provided that the notice requesting the information notified the Complainant of the risk of dismissal;
9. The EEO Manager determines 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 ("abuse of the process"). Abuse of the process is generally found only when:
  - a. There is evidence of multiple complaint filings with allegations that are similar or identical, lack specificity, or involve matters previously resolved; or
  - b. There is evidence of the Complainant circumventing other administrative processes, retaliating against the in-house administrative processes, or overburdening the EEO complaint system.

The EEO Manager will issue a written decision accepting or dismissing the EEO complaint.

***E. Accepting or Dismissing the Complaint***

**Full Dismissal.** If a complaint is dismissed in its entirety, the EEO Manager will issue a written decision outlining the reasons for dismissing the complaint. The Complainant may appeal a dismissal of an entire complaint to the EEOC's Office of Federal Operations (OFO) within **thirty (30) days** of receiving the decision. In lieu of an appeal to OFO, the Complainant may file a civil action in a U.S. District court within **ninety (90) days** of receiving the dismissal.

**Partial Dismissal.** If the EEO Manager determines part of a complaint should be dismissed and part of the complaint should be investigated, the Museum will proceed with processing and investigating the accepted claims. The EEO Manager will also issue a written decision outlining the reasons for dismissing some of the claims and which claims will and will not be investigated. A copy of the partial dismissal will also be placed in the investigative report.

A Complainant must normally wait until after completion of the investigation on the remaining claims before appealing a partial dismissal. If a Final Agency Decision (FAD) is requested after investigation, the Complainant can appeal the partial dismissal but only after receipt of the FAD. If a hearing is requested after the investigation, the dismissed claims are generally reviewable by an EEOC Administrative Judge at the hearing and can be appealed after final action on the rest of the complaint.

***F. Amending or Consolidating a Complaint***

**Complainant's Request to Amend a Complaint.** If events the Complainant believes constitute discrimination, discriminatory harassment, or retaliation take place after the Complainant files a formal complaint, the Complainant may request to add them to the original formal complaint. This is called "amending" a complaint. To amend a complaint, the Complainant should contact the Museum's EEO Manager in writing (including email), describe what has happened, and ask that the new events be added to their original complaint.

Amendments are likely to be accepted if they include issues or claims like or related to those raised in the original complaint or if they have grown out of the original complaint or the investigation into the original complaint. If an amendment is accepted prior to the conclusion of the investigation of the original complaint, the time period for completing the investigation will be extended. If an amendment is not accepted, the EEO Manager

will notify the Complainant that the complaint must follow the ordinary EEO processes (i.e., beginning with pre-complaint EEO counseling) to pursue a new issue or claim.

**Consolidation of a Complaint.** Complaints filed by two or more Complainants consisting of substantially similar allegations or relating to the same matter may be consolidated by the Museum or the EEOC after notification to the parties.

**Timeframe Extended.** When a complaint has been amended or consolidated with one or more earlier complaints, the Museum will complete the investigation within the earlier of **180 days** after the filing of the last complaint or **360 days** after the filing of the original complaint.

## **IX. Investigating the Complaint**

If the Museum does not dismiss the complaint for one of the reasons outlined above, the Museum will accept the complaint for formal processing beginning with conducting an appropriate and timely investigation.

### **A. Prompt Processing**

While the Museum may contract out all or part of an investigation or may arrange for another agency to conduct the investigation on the Museum's behalf, the Museum remains responsible for the content and timeliness of the investigation. The Complainant must also continue to prosecute the complaint without undue delay during the investigation. If the Complainant fails to do so (e.g., by not responding in a timely manner to a request from the investigator), the complaint may be dismissed or adjudicated without the Complainant's participation if sufficient information for that purpose is available.

### **B. The Role of the Investigator**

When a formal complaint is accepted, a qualified investigator will be assigned to conduct an impartial and appropriate investigation of the accepted claim of discrimination, discriminatory harassment, and/or retaliation. The role of the investigator is to gather information related to the complaint. An investigator does not decide the case. Instead, the investigator is responsible for obtaining sufficient evidence to allow a fact-finder to render a decision on the merits of the case. Investigators will normally be employees of another agency or a contractor engaged by the EEO Manager to investigate claims on the Museum's behalf. The investigator will not be the EEO Counselor who was assigned to the Complainant's case or the EEO Manager.

### **C. Conducting the Investigation**

The Investigator conducts a thorough and independent review of circumstances surrounding the alleged discrimination and gathers statements by parties involved and documentation relevant to the case to include in the Investigator's Report of Investigation (ROI). The Investigator determines what documents to gather and what witnesses to question. As part of the investigation, the Investigator is authorized to obtain sworn testimony and written or verbal affidavits from witnesses without the promise of confidentiality, as such testimony or affidavits will likely be included in the ROI. All Museum employees are required to cooperate with the investigator and are reminded that they may do so without fear of retaliation for participating in the EEO process, as any such retaliation is strictly prohibited.

### **D. The Report of Investigation (ROI)**

After completing the investigation, the investigator submits the ROI to the Museum's EEO Manager. The ROI is an impartial and appropriate factual record compiled by the investigator which includes, for example, investigation summary, witness statements, and other documents collected during the investigation. An appropriate factual record is

one that allows a reasonable fact finder (whether the Museum's EEO Manager or an EEOC Administrative Judge) to make findings on the claims raised by the complaint and draw conclusions as to whether discrimination occurred. The EEO Manager will furnish a copy of the ROI to the Complainant (as well as Complainant's representative if one has been designated) and to Agency Counsel within the required time frame.

**E. The Timeframe for Completing Investigation**

Investigations normally must be completed and the ROI sent within **180 days** of the date the Complainant filed a formal complaint unless (a) the Complainant has agreed in writing to a voluntary extension of not more than an additional **ninety (90) days** or (b) the complaint has been amended or consolidated with another complaint. When a complaint has been amended or consolidated with another complaint, the timeframe for investigation is extended and must be completed and the ROI sent within the earlier of **180 days** after the filing of the last complaint or within **360 days** after the filing of the original complaint, whichever is earlier.

A Complainant has the right to file a civil action or request a hearing from an EEOC Administrative Judge, even in the case of consolidated or amended complaints, after 180 days have passed since the Complainant filed the original complaint and even if the Museum's investigation has not been completed.

When a Complainant asks for a hearing, the complaint will be handled by an EEOC Administrative Judge and no longer processed by the Museum. If the Complainant files a lawsuit, both the Museum and the EEOC will cease processing the complaint.

**X. Decisions and Appeals<sup>2</sup>**

The Complainant has **thirty (30) days** after receiving the ROI to either (1) request a Final Agency Decision (FAD) from the Museum or (2) request a hearing before an EEOC Administrative Judge.

**A. Final Agency Decision (FAD)**

If Complainant requests a FAD, the EEO Manager will issue a decision based on information in the ROI within **sixty (60) days** of the Complainant's request. If the Complainant does not notify the EEO Manager within **thirty (30) days** of receipt of the ROI of their choice of a hearing or a FAD, the Museum will issue a FAD within **sixty (60) days** of the last day the Complainant had to make their request.

**Appeal of Final Agency Decision.** If the Complainant is not satisfied with the FAD, the Complainant may file an appeal to the EEOC's Office of Federal Operations within **thirty (30) days** with a copy of the appeal sent simultaneously to the EEO Manager.

**B. EEOC Administrative Judge Hearing**

If the Complainant requests a hearing, a request must be sent directly to the EEOC with a copy sent to the EEO Manager. If the Complainant requests a hearing, an Administrative Judge will hold the hearing and issue a decision within **180 days** of receiving the request. Conversely, the Administrative Judge may issue a summary decision based on the record without a hearing.

Once a case is before an Administrative Judge, the judge is fully responsible for processing it.

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<sup>2</sup> For more information about the aspects of the EEO complaint resolution process administered by the EEOC (including hearings, appeals, and requests for reconsideration of an appeal), please see the EEO guidance, as this Policy does govern or attempt to cover in detail EEOC-administered processes.

**Appeal of Administrative Judge’s Decision and Agency’s Final Order.** When the Administrative Judge issues a decision after a hearing, the Museum has **forty (40) days** to state whether it will fully implement the decision in a Final Order. If the Museum decides against full implementation, it will file an appeal with the EEOC’s Office of Federal Operations.

Upon receipt of the Final Order, the Complainant may appeal the Final Order (including a final order dismissing the complaint) to the EEOC’s Office of Federal Operations (OFO) within **thirty (30) days** of their receipt of the Museum’s Final Order.

**C. Request to the EEOC for Reconsideration**

If the Complainant or the Museum does not agree with the decision of the EEOC on appeal, either party can ask for the EEOC to reconsider the decision within **thirty (30) days** of receipt of the EEOC’s decision on the appeal. Once the EEOC has made a decision on a Complainant’s request for reconsideration, that decision is generally final (i.e., not appealable) unless the decision sends a complaint back to the Museum for further action.

**XI. Civil Actions**

Generally, Complainants must first try to settle their discrimination complaint by going through the administrative complaint process before filing a lawsuit. In other words, Complainants generally cannot go directly to court to sue an agency. Rather, they first need to try and resolve their complaint through the administrative complaint process.

**A. Exceptions: Age Discrimination and Equal Pay Act Claims**

There are two exceptions to this general rule. If a complaint involves **age discrimination**, Complainants can skip the administrative complaint process altogether and go directly to court (as long as they give EEOC at least **thirty (30) days** written notice of their intent to go to court).

A Complainant also does not have to file an administrative complaint before filing a civil action under the **Equal Pay Act (EPA)**, which prohibits discrimination based on sex in the payment of wages. If a Complainant has an EPA claim, they may file a civil action within two years (or three years if the violation is willful) of the date of the alleged violation, regardless of whether they pursue an administrative action against the Museum. However, if the individual also alleges a violation of Title VII’s prohibition against sex discrimination based on the same allegation, they must raise the Title VII allegation in the EEO process even if they file a civil action on the EPA allegation.

**B. Points in the Administrative Process for Filing a Lawsuit**

For all cases other than those brought under the Age Discrimination in Employment Act of 1967, as amended (ADEA) or the EPA, Complainants must go through the administrative complaint process before they can file a lawsuit. There are several different points during the process, however, where Complainants have the opportunity to quit the process and file a lawsuit in court, including:

- After 180 days have passed from the day the Complainant filed a complaint, if the Museum has not issued a decision and no appeal has been filed;
- Within 90 days from the day the Complainant received the Museum’s decision on their complaint, so long as no appeal has been filed;
- After the 180 days from the day the Complainant filed an appeal if the EEOC has not issued a decision, or

- Within 90 days from the day the Complainant received the EEOC's decision on the appeal.

Complainants should keep in mind that once they choose to file a lawsuit, the Museum and the EEOC will close the complaint and take no further action.

## **XII. Roles and Responsibilities**

**Agency (or Defense) Counsel:** The Museum attorney responsible for providing legal representation to the Museum at hearings and in court proceedings arising out of the EEO complaint process; represents the Museum in mediation when the aggrieved individual is also represented; negotiates with opposing counsel; recommends resolution where appropriate; and drafts and reviews proposed settlement agreements.

Agency Counsel also provides legal advice to managers, supervisors, and other employees who are assisting management in personnel matters during the course of their official duties, and who, in their official capacity, request guidance related to their EEO affidavits prior to submission to an EEO investigator for inclusion in the EEO file. (To avoid any appearance of a conflict of interest, there is a firewall between the EEO Counsel and Agency Counsel regarding specific complaints of discrimination).

**Employees:** All employees are responsible for treating fellow employees with basic respect and dignity; for neither engaging in, nor condoning in others, discriminatory behavior, including harassment; for cooperating fully and promptly with EEO Counselors, investigators, the EEO Manager and other EEO officials; for fully and promptly participating in the EEO hearing process; for becoming familiar with this policy and other guidance provided by the EEO Manager; and for completing all required training in a timely fashion.

**EEO Counsel:** The Museum attorney responsible for providing advice and counsel to the EEO Manager, other EEO officials, and Senior management related to implementing the Museum's EEO program including complaint processing and resolution; meeting regularly with the EEO manager to obtain and provide status updates; providing legal guidance, advice, and recommendations regarding any of the Museum's and the EEO Manager's responsibilities as requested; and performing legal sufficiency reviews. (To avoid any appearance of a conflict of interest, there is a firewall between the EEO Counsel and Agency Counsel regarding specific complaints of discrimination).

**EEO Counselor:** An EEO Counselor is a neutral party who provides aggrieved individuals with their rights and obligations under EEO laws, gathers limited data and may attempt an informal resolution if ADR is not offered or accepted during the Pre-Complaint EEO Counseling stage. The EEO Counselor may be a full-time EEO employee, a trained Museum employee performing EEO counseling as a collateral duty, or a contractor or employee of another agency engaged to perform EEO counseling on the Museum's behalf. At the Museum, the EEO Manager may also serve as the EEO Counselor.

**EEO Investigator:** An EEO Investigator is a trained individual authorized by the EEO Manager to conduct an impartial and thorough investigation into the claims raised in a formal EEO complaint to allow a reasonable fact finder to draw conclusions as to whether discrimination, discriminatory harassment, or retaliation occurred. The Museum's EEO Investigators are generally qualified contractors or employees of another agency engaged to perform an independent investigation on the Museum's behalf.

**EEO Manager:** As the Museum’s senior EEO official, the EEO Manager is responsible for administering the Museum’s EEO programs, operations and services; preparing EEO-related reports that may be required annually or periodically (e.g., responses to Technical Assistance) by the EEOC or other oversight bodies; and responding to EEOC requirements or recommendations. The EEO Manager is also responsible for advising the Director of the Museum and other senior officials about the status of EEO at the Museum; best practices and guidance provided by the EEOC or other agencies; the sufficiency of the Museum EEO program; improvements needed to ensure that the Museum is a model EEO employer; the results of barrier analyses conducted by the EEO manager; and trends in EEO complaint activity.

The EEO Manager is also responsible for providing for the prompt, fair and impartial processing of EEO complaints of discrimination in accordance with applicable guidance and this policy. These responsibilities include, for example, disseminating and posting EEO notices, policies, and procedures; appointing and supervising EEO Counselors, investigators, and mediators; providing technical assistance and guidance to Museum employees and officials participating in the complaint process; ensuring thorough and timely processing of complaints at all stages consistent with best practices and applicable guidance and timelines; and ensuring appropriate documentation and communication by, for example, reviewing reports of investigations (ROIs) prior to their issuance and issuing Final Agency Decisions (FADs).

The EEO Manager partners with Human Resources in employment outreach initiatives to continue to recruit diverse applicants; may collaborate with Human Resources to provide or procure required and optional EEO training for new and existing employees and supervisors; and will provide guidance to Human Resources regarding EEO information to provide to applicants.

The EEO Manager also works closely with EEO Counsel; provides EEO Counsel regular updates; and seeks legal guidance, review, and recommendations regarding any of the above responsibilities.

**EEO Officials:** Includes all individuals full-time, part-time, or collateral duty who are designated by the EEO Manager to provide counseling for aggrieved individuals; to receive, process, investigate, or adjudicate complaints of discrimination; or to serve other EEO functions (i.e., the Special Emphasis Program Manager or the Affirmative Action Program Manager). These officials perform their responsibilities under the direction of the EEO Manager.

**Human Resources Officials:** These officials are responsible for ensuring that all personnel management programs are free of discrimination and administered on the basis of merit. They are also responsible for providing timely assistance to EEO officials in carrying out their affirmative action or discrimination complaint processing responsibilities, including for example, the collection of certain data or retention or production of relevant personnel records.

Human Resources Officials are responsible for ensuring that EEO concerns or complaints mistakenly directed to Human Resources are redirected to the EEO Manager; may collaborate with the EEO Manager to provide training to new and existing employees and supervisors; and must ensure that new positions posted include appropriate EEO information as directed by the EEO Manager and that applicants for employment are apprised of the Museum’s EEO program and processes.

**Managers and Supervisors:** These officials are responsible for implementing, within their organizational component, the Museum’s equal opportunity policy in all areas of employment; assuring that day-to-day policies, practices and procedures are free from discrimination; and preventing other practices that tend to give rise to complaints of discrimination by Museum employees or applicants for Museum employment.

Managers and supervisors must cooperate fully and promptly with EEO officials; ensure that their employees are able to fully cooperate including by granting reasonable amounts of official time consistent with applicable guidance; and must emphasize a zero tolerance for retaliation against those who engage in protected activity. Managers and supervisors should also promote EEO initiatives; encourage participation in EEO or Special Emphasis programs; become familiar with this policy and other guidance provided by the EEO Manager; and complete all required training in a timely fashion.

### **XIII. Accountability**

If a Museum employee or other individual working at the Museum is found to have engaged in discrimination, discriminatory harassment, or retaliation, the Museum will hold that individual accountable and will take prompt action such as discipline up to and including removal from the Museum.

### **XIV. Rights of Participants in the EEO Process**

Museum employees (including supervisors and other management officials) have a number of rights connected with their participation in the EEO complaint process including:

#### **A. Representation**

Any employee participating in the EEO complaint process, whether as a Complainant or witness, has the right to be represented and to be accompanied, advised and assisted by an individual of their choosing provided that choice does not present or create a conflict of interest.

#### **B. Official Time**

An employee may use a reasonable amount of official time while in duty status to prepare the complaint, respond to the Museum and/or EEOC requests for information, and confer with their representative. While the Museum will authorize a reasonable amount of official time to facilitate the EEO process, the Museum 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.

#### **C. Anonymity (Informal Stage)**

During pre-complaint counseling, the EEO Manager (or delegated EEO Counselor) may not disclose the aggrieved person’s identity unless specifically authorized to do so by the Complainant. Once a formal EEO complaint is filed, the identity of the Complainant does not remain confidential. The complaint file, or parts of it, may be shared with those who are involved and need access. This includes Museum EEO Officials, Museum representatives, and other Museum officials who have a need to know the content of the files for the purpose of addressing the allegations raised.

#### **D. Freedom from Retaliation**

EEO laws and this policy strictly prohibit retaliation, as retaliation (if permitted) would have a negative impact upon the willingness of employees and applicants to speak out against employment discrimination or to participate in EEO complaint processes.

Museum employees who participate in the EEO complaint process as Complainants, representatives, or witnesses are protected from restraint, interference, coercion, or

other forms of retaliation stemming from their participation in the EEO complaint process or for otherwise opposing unlawful discrimination or retaliation. A claim of retaliation will be processed under this policy.

**E. Right of Review**

Any person providing an affidavit during an investigation has the right to review his or her statement prior to signing it and may make initialed corrections if it is inaccurate or incomplete. Any person providing an affidavit also has the right to receive a copy of such affidavit.

**F. Management Right of Review**

Agency Counsel may provide legal advice to any manager, supervisor, and other employee who is assisting management in personnel matters during the course of their official duties, and who, in their official capacity, requests legal advice regarding their EEO affidavit prior to submitting it to an EEO investigator for inclusion in the EEO file. Agency Counsel, however, will not serve as a personal representative.

**G. Voluntary Resolution of Complaint**

A Complainant may seek to voluntarily resolve their complaint at any time during the administrative process, including the hearing stage. Any resolution reached shall be in a written settlement agreement signed by both parties and shall identify the claims resolved.

**H. Compliance with Settlement Agreements and Final Actions**

If the Complainant believes that the Museum has failed to comply with the terms of a settlement agreement or Final decision/action requiring remedial action, the Complainant shall notify the EEO Manager in writing of the alleged noncompliance within **thirty (30)** days of the day 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 processing ceased.

The EEO Manager shall resolve the matter and respond to the Complainant, in writing. If the EEO Manager has not responded to the Complainant or if the Complainant is not satisfied with the EEO Manager's attempt to resolve the matter, the Complainant may appeal to the EEOC for a determination as to whether the Museum has complied with the terms of the agreement.

The Complainant may file such an appeal **thirty-five (35)** days after the Complainant has provided to the EEO Manager in writing the allegations of noncompliance if a decision has not been issued within that timeframe. In the case where the EEO Manager has issued a decision, the Complainant must file an appeal within **thirty (30)** days of receiving that decision. If the EEOC determines that the Museum is not in compliance and the non-compliance is not attributable to acts or conduct of the Complainant, it may order such compliance or it may order that the complaint be reinstated for further processing. Allegations that subsequent acts of discrimination violate a settlement agreement shall be processed as separate complaints.

**XV. Special Cases**

**A. Class Actions**

In the EEO process, a class action is generally an action brought on behalf of a group of employees or applicants who allege having been adversely affected by an agency policy or practice that discriminates against the group on the basis of their race, color, religion, sex, national origin, age, disability, or genetic information.

The rules, deadlines, and processes for pursuing a class are often different from those described in this policy for individual complaints and many aspects of processing a class action complaint are controlled by the EEOC. More information about the general federal sector rules for filing and prosecuting class actions can be found in [EEOC regulations and class action guidance](#). Complainants may also seek additional resources from the Museum's EEO Manager

**B. Mixed Case Complaints**

A "mixed case" complaint raises allegations of discrimination in connection with an agency action that a federal employee of an executive agency also believes is appealable to the Merit Systems Protection Board (MSPB). A federal employee must decide whether to file a claim of discrimination in a mixed case either with the MSPB or under the agency's complaint process but may not do both.

This Policy does not cover mixed-case complaints. For more information about mixed cases (including electing where to file, time periods, and processes) refer to the [EEOC's Mixed Case Guidance](#), [MSPB's Mixed Case Guidance](#) or other resources available from these agencies or from the Museum's EEO Manager.<sup>3</sup>

**XVI. Policy Does Not Impact Other Entitlements**

Nothing contained in this Policy (including the list of references provided in Appendix A) should be interpreted to create new enforceable rights under any law, rule or regulation. This Policy is intended only to improve internal management and provide guidance to Museum employees and applicants. It does not create any new right or benefit, substantive or procedural, enforceable at law or equity by any party against the Museum or the United States. This policy also should not be interpreted as abridging existing entitlements, if any, of an individual to present to a third party (e.g., EEOC, MSPB, DOL, or district courts) any matters within their respective jurisdictions.

**XVI. Questions and Contact Information**

For questions or additional information, please contact the Museum's Equal Opportunity Manager at [EEO@ushmm.org](mailto:EEO@ushmm.org) or 202.488.6131.

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This Museum Policy supersedes all prior Equal Employment Opportunity Complaint Processing Policies or Procedures issued by the Museum.

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<sup>3</sup> The Museum takes no position in this policy regarding the jurisdiction of the MSPB over claims filed by Museum employees and will hold any mixed case complaint originally filed with the MSPB in abeyance pending the MSPB's determination of jurisdiction.

## **APPENDIX A -- REFERENCES AND AUTHORITY**

Listed below are major federal EEO anti-discrimination laws, rules, and other guidance generally applicable to executive branch agencies and sometimes applicable to other entities within the federal sector. This Policy is generally based on and consistent with these laws, rules and other guidance regardless of whether such guidance binds the Museum or is complied with voluntarily.

### **A. Federal Anti-Discrimination Laws Enforced by the EEOC**

#### **Equal Pay Act of 1963 (EPA)**

The EPA prohibits sex-based wage discrimination. It prohibits federal agencies from paying employees of one sex lower wages than those of the opposite sex for performing substantially equal work. Substantially equal work means that the jobs require equal skills, effort, and responsibility, and that the jobs are performed under similar working conditions. The EPA also prohibits retaliation for exercising rights under the Act. Sex-based claims of wage discrimination may also be raised under Title VII simultaneously.

#### **Title VII of the Civil Rights Act of 1964, as amended (Title VII)**

Title VII prohibits discrimination (including discriminatory harassment) based on race, color, religion, sex, and national origin. It also prohibits retaliation for participating in the discrimination complaint process or for opposing any employment practice that the individual reasonably and in good faith believes violates Title VII. Title VII's prohibition against sex discrimination includes discrimination on the basis of pregnancy, sexual orientation and gender identity including transgender status, gender expression, gender non-conformity, and sex stereotypes. The **Pregnancy Discrimination Act of 1978** amended Title VII to make it illegal to discriminate against a woman because of pregnancy, childbirth or a medical condition related to pregnancy or childbirth.

#### **Age Discrimination in Employment Act of 1967, as amended (ADEA)**

The ADEA prohibits discrimination in employment on the basis of age (40 years or older). It also prohibits retaliation against individuals exercising their rights under the statute.

#### **Rehabilitation Act of 1973, as amended**

The Rehabilitation Act prohibits discrimination on the basis of mental and physical disabilities, as well as retaliation for exercising rights under the Act. The Rehabilitation Act requires that agencies make reasonable accommodations to the known physical or mental limitations of an applicant or qualified employee with a disability unless the agency can demonstrate that the accommodations would impose an undue hardship on the operation of its program. Congress amended the Rehabilitation Act most recently when it issued the **Americans with Disabilities Act Amendments Act of 2008 (ADAA)**. The ADAA broadly interprets the definition of disability.

**Genetic Information Nondiscrimination Act of 2008 (GINA)**

GINA prohibits discrimination based on an individual's genetic information, which includes the results of genetic tests to determine whether the individual is at increased risk of acquiring a condition in the future, as well as an individual's family medical history. Specifically, the law prohibits the use of genetic information in making employment decisions, restricts the acquisition of genetic information by federal agencies, imposes strict confidentiality requirements, and prohibits retaliation against individuals who oppose actions made unlawful by GINA. The remedies available under GINA are the same as those available under Title VII and the Rehabilitation Act.

**Lilly Ledbetter Fair Pay Act of 2009**

The Lilly Ledbetter Fair Pay Act of 2009 amended Title VII to provide that an individual subjected to compensation discrimination under Title VII, the ADEA, or the ADA/Rehab Act may file a complaint within forty-five (45) days of any of the following:

- When a discriminatory compensation decision or other discriminatory practice affecting compensation is adopted;
- When the individual becomes subject to a discriminatory compensation decision or other discriminatory practice affecting compensation; or
- When the individual's compensation is affected by the application of a discriminatory compensation decision or other discriminatory practice, including each time the individual receives compensation that is based in whole or in part on such compensation decision or other practice.

**B. Anti-Discrimination Regulations Promulgated by EEOC**

Useful guidance can also be found in the EEOC's regulations and directives including

- **29 C.F.R. Part 1614:** Sets forth responsibilities and guidelines for establishing and maintaining a federal sector EEO program
- **EEOC Management Directive 110 (MD-110):** Prescribes the EEOC procedures and guidelines for processing federal sector complaints of discrimination
- **EEOC Management Directive 715 (MD-715):** Prescribes the EEOC's requirements for developing a model EEO program in the federal sector

**C. Antidiscrimination-Related Executive Orders Issued by the President**

The President also sometimes issues anti-discrimination executive orders directing executive agencies, which can also be useful reference. Such orders include:

- **EO 11478 (1969):** Prohibits discrimination based on race, color, religion, sex, national origin, disability, and age. (Also now prohibited by Title VII of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, and the Age Discrimination in Employment Act of 1967.)

- **EO 13152 (2000):** Prohibits discrimination based on parental status.
- **EO 13087 (1998):** Prohibits discrimination based on sexual orientation and gender stereotyping. (Also now prohibited under Title VII of the Civil Rights Act of 1964.)
- **EO 13145 (2000):** Forbids requesting or requiring genetic information from an employee or his/her family members. (Also now prohibited under Title II of the Genetic Information Nondiscrimination Act of 2008.)
- **EO 13672 (2014):** Prohibits discrimination based on gender identity. (Also now prohibited under Title VII of the Civil Rights Act of 1964.)
- **EO 13985 (2021):** Broadens the definition of equity to include "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities, such as Black, Latino, Indigenous and Native American persons, Asian Americans and Pacific Islanders, and other persons of color; people identifying as lesbian, gay, bisexual, transgender and queer (LGBTQ); people with disabilities; religious minorities; persons who live in rural areas; and persons otherwise affected by persistent poverty or inequality" and requires executive agencies to review equity within their agencies.
- **EO 13988 (2021):** Makes clear that the federal government interprets Title VII as prohibiting workplace discrimination on the basis of sexual orientation and gender identity.