



EEO Compliance Training for Managers and Supervisors

Presented by

**Ray Wilson
EEO Specialist**

Learning Objectives

- Briefly review and discuss major anti-discrimination laws.
- Increase awareness of workplace harassment, including types not always obvious.
- Learn techniques for identifying and preventing workplace discrimination, harassment, and retaliation.
- Review and understand the significant aspects of the agency's reasonable accommodation procedures.
- Understand the significant stages in the federal sector EEO complaint process, including the option of ADR.

Rationale for EEO Compliance Training

- EEO is the law. As agents for the DA, supervisors bear legal responsibilities.
- EEO training for federal managers and supervisors is required.
- EEO case law is constantly changing.
- Economic and moral imperative: ignorance results in costly complaints, loss of productivity, and poor morale.
- We are here to help!



The Vision

EEO and Diversity are separate but symbiotic functions essential to the success of the DA as a high-performing organization

EEO

- Set of laws and policies that mandate all individuals' rights to equal employment opportunity, irrespective of race, color, sex, sexual orientation, national origin, religion, age, disability, or participation in protected EEO activity.

Diversity

- Proactive efforts to promote inclusiveness and respect differences in the workforce, which reflect the changing profile of our world.

Anti-Discrimination Laws

- **Equal Pay Act of 1963 (EPA):**

Protects men and women who perform substantially equal work from sex-based wage discrimination.

- **Title VII of the Civil Rights Act of 1964:**

Prohibits discrimination based on race, color, sex, religion, national origin, and retaliation.

- **The Age Discrimination In Employment Act of 1967 (ADEA):**

Protects employees and job applicants who are 40 years of age or older from employment discrimination based on age.

Anti-Discrimination Laws

- **The Rehabilitation Act of 1973:**

- Applicable sections prohibit discrimination in federal employment against qualified individuals with disabilities.
- Also, requires employers to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment.

- **The Civil Rights Act of 1991:**

- Provides right to a jury trial and monetary damages in cases of employment discrimination.

- **The NO FEAR ACT (Effective Oct. 1, 2003):**

- Prohibits discrimination and retaliation against federal workers for participating in EEO process or whistle-blower activities.

Anti-Discrimination Laws

- **The Genetic Information Nondiscrimination Act of 2008:**
 - Prohibits use of genetic information in health insurance and employment.
- **The Lilly Ledbetter Fair Pay Act of 2009:**
 - The 180-day statute of limitations for filing an equal-pay lawsuit resets with each new discriminatory pay check.

Theories of Discrimination

The courts and the U.S. Equal Employment Opportunity Commission (EEOC) have identified a number of discrimination theories in adjudicating EEO complaints:

- Disparate Treatment
- Adverse Impact
- Harassment/Hostile Environment
- Retaliation

Workplace Harassment

- Harassment is any **unwelcome verbal** or **physical conduct** based on race, color, sex (regardless of whether it is sexual in nature), sexual orientation, national origin, age, disability, or retaliation that is so offensive as to alter the condition of the victim's employment.

- This standard is met when:
 - The conduct culminates in a **tangible employment action**, or
 - The conduct is sufficiently severe or pervasive as to create a **hostile work environment**.

Hostile Work Environment

- A hostile work environment is created by unwelcome conduct that is severe or pervasive.
 - The key issues are frequency and severity. The more severe the conduct, the less frequent it must be to rise to the level of a hostile environment. The less severe the conduct, the more frequently it must occur to constitute a hostile environment.
- The conduct must be viewed as objectionable not only from the standpoint of the victim/target but also from the perspective of a “reasonable person” in similar circumstances.
- Anyone in the workplace can commit this type of harassment: a supervisor or manager, co-worker, or even a non-employee.

Agency Liability

For Harassment by Management Official

- An agency is automatically liable for harassment by a management official that **results in a tangible employment action** regardless of whether upper management had knowledge of it.

Agency Liability

For Harassment by Co-workers

- If harassment by a co-worker creates a hostile environment, the agency is liable if it **knew or should have known** of the conduct and failed to take **immediate and appropriate corrective action**.
- Example of co-worker harassment: When a female complains about the vulgar language and jokes that routinely fill the break room, her male co-workers tell her to, “lighten up and get use to it, because that’s how the boys behave.”
 - Do you think that management should have known of the objectionable conduct that occurred in the break room?
 - Discuss the potential agency liability.
 - How would you as the manager handle this situation?

Preventing Workplace Harassment

- Avoid initiating or participating in any behavior that may be misconstrued as possible harassment, including the following types of behavior:
 - ✓ Verbal: unwelcome comments, yelling, offensive jokes or stories;
 - ✓ Visual: offensive pictures, photos, cartoons, posters calendars, magazines or objects;
 - ✓ Physical: unwelcome touching, hugging, kissing, stroking, ogling or suggestive gestures;
 - ✓ Written: unwelcome letters, notes or e-mails of a personal nature.
- (please note that participation in or acquiescence to objectionable behavior does not necessarily mean that the behavior is welcome)

Preventing Workplace Harassment

- Avoid sexual, racial, ethnic, cultural, age/disability related jokes, epithets, comments, and e-mails.
- Respect a person's indication that conduct or attention is not welcome.
- Do not invade another individual's personal space.
- Clearly inform those engaging in offensive behavior that you find it objectionable.
- Report observed instances of behavior that you believe qualify as harassment.

Religious Harassment

- **Religious harassment is discriminatory treatment based on a person's:**
 - Affiliation with a particular religious group;
 - Display of physical or cultural traits commonly associated with a particular religion;
 - Perception or belief that someone else is a member of a religious group (whether true or not);
 - Dress or other apparel commonly associated with a particular religion; and
 - Association with a religious person, individual or organization.

Religious Accommodation

- Under Title VII, an agency has the duty of reasonable accommodation for sincerely held religious beliefs and practices unless to do so would cause an undue hardship.
 - Examples of religious accommodations:
 - Work schedules - The most likely accommodation to be requested is flexibility in the regular work schedule to participate in some religious practice
 - Allowing employee to make up hours
 - Granting leave for religious observances
 - Granting time or place to pray
 - Allowing religious dress
 - Not scheduling or holding meetings on religious days of observance
 - Honoring dietary requirements at meetings or trainings

Supervisor's Responsibilities For Harassment Prevention

- Treat allegations seriously and confidentially. Do not ignore any allegation.
- Be proactive, monitor workplace behaviors.
- Post/disseminate EEO Policy.
- Respond to allegations immediately.
- Investigate, as appropriate, and document.
 - Be sensitive but impartial.
 - Interview parties and relevant witnesses.
 - Ask open-ended questions.
 - Collect relevant documentation/evidence.
- Take appropriate corrective action, follow-up.
- Report allegations to EEO.
- Ensure no retaliation.
- Document your actions.

Retaliation

- There are three essential elements of any retaliation claim.
 - **Protected activity**: (i.e., participation in the statutory complaint process or opposition to discrimination);
 - **Adverse employment Action**: Demonstrating that the employer’s action in question “well might have dissuaded a reasonable employee from making or supporting a charge of discrimination”; and
 - **A causal connection** between the protected activity and the employer’s action(s).

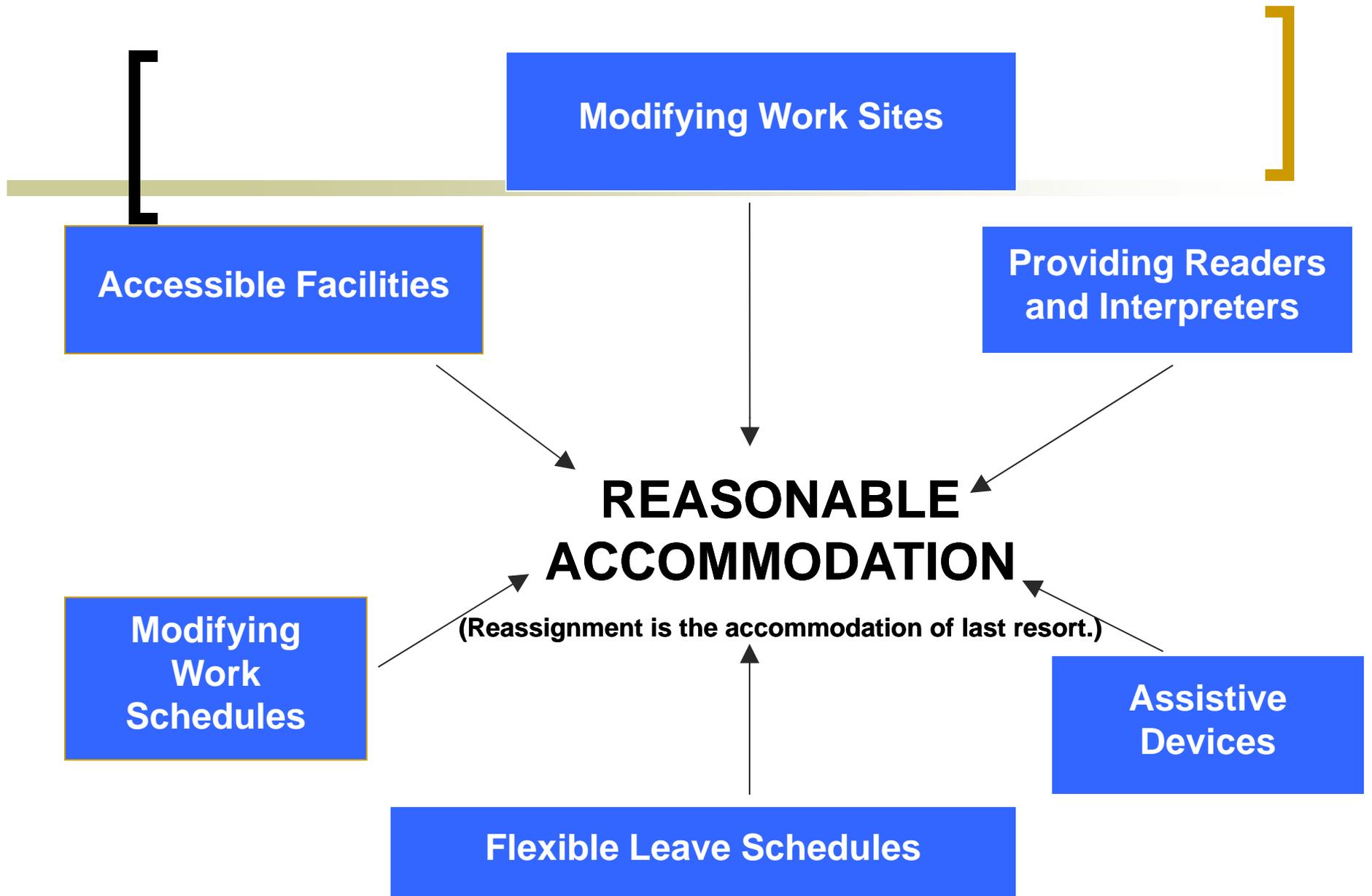
- Typically, the link between a protected activity and the challenged employer action is established if the action follows shortly after the protected activity. And if the individual that undertook the challenged action had prior knowledge of the protected activity.

Policy on Reasonable Accommodation

- It is the policy of the DA to provide equal opportunity to all qualified individuals with disabilities in accordance with the Rehabilitation Act of 1973 and to fully comply with all other legal and regulatory requirements.
- No qualified individual with a disability may be denied the benefits of a program, training, or activity conducted, sponsored, funded, or promoted by the DA, or otherwise be subjected to discrimination.
- To this end, reasonable accommodations will be provided to qualified individuals with disabilities, unless doing so poses an undue hardship on the Agency.

Requests for Accommodation

- An employee can request reasonable accommodation from his/her supervisor; another supervisor or manager in the immediate chain of command.
- An employee's representative, medical provider, or family member may request a reasonable accommodation on behalf of the employee.
- Once the request has been made to a manager or supervisor, that individual should immediately acknowledge the request.
- The supervisor or manager should then review, evaluate and make a decision within the timeframes and in accordance with the US Army procedures for Providing Reasonable Accommodations for Individuals with Disabilities.

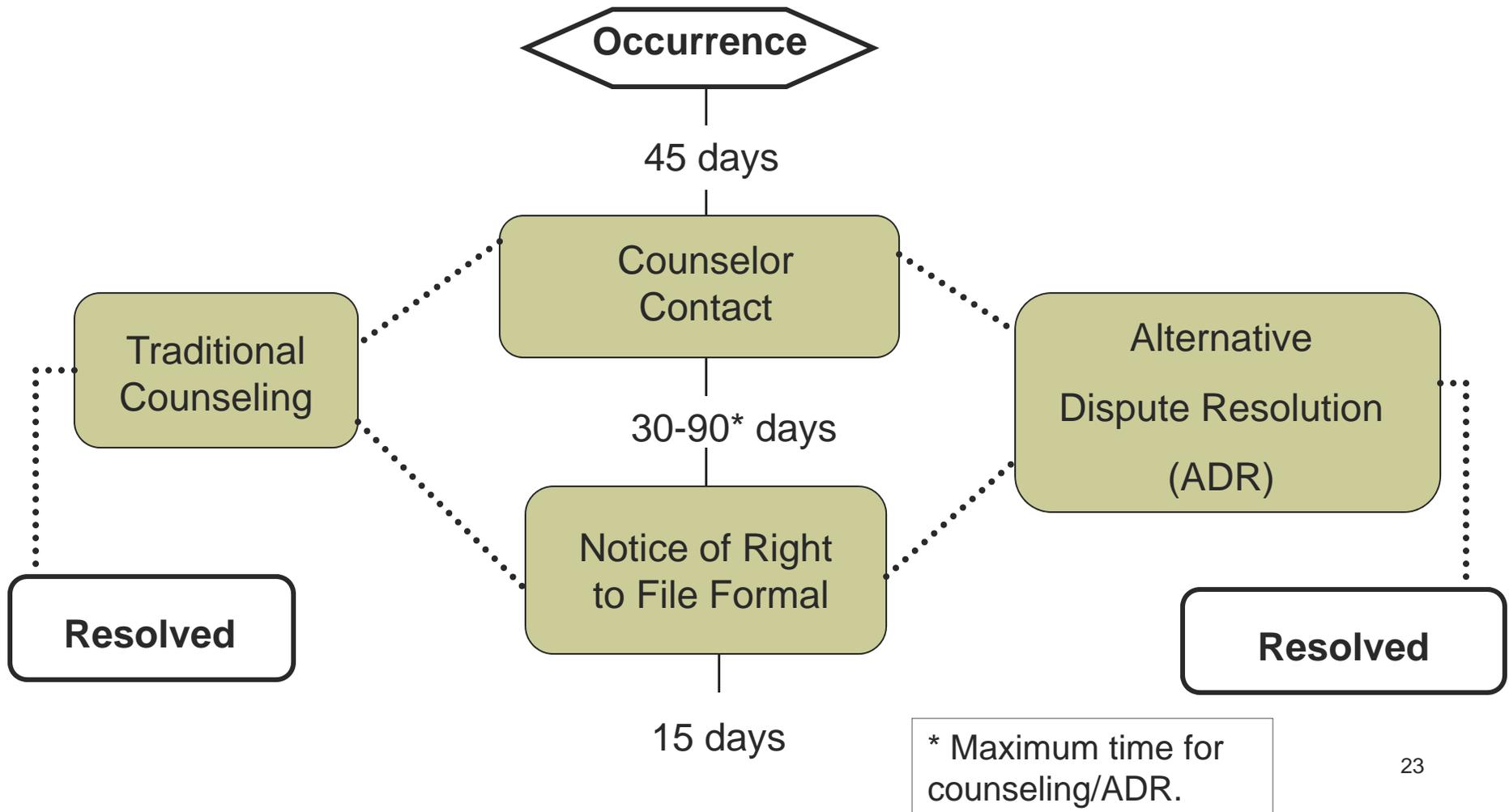


Reasonable Accommodation Supervisor's Responsibilities

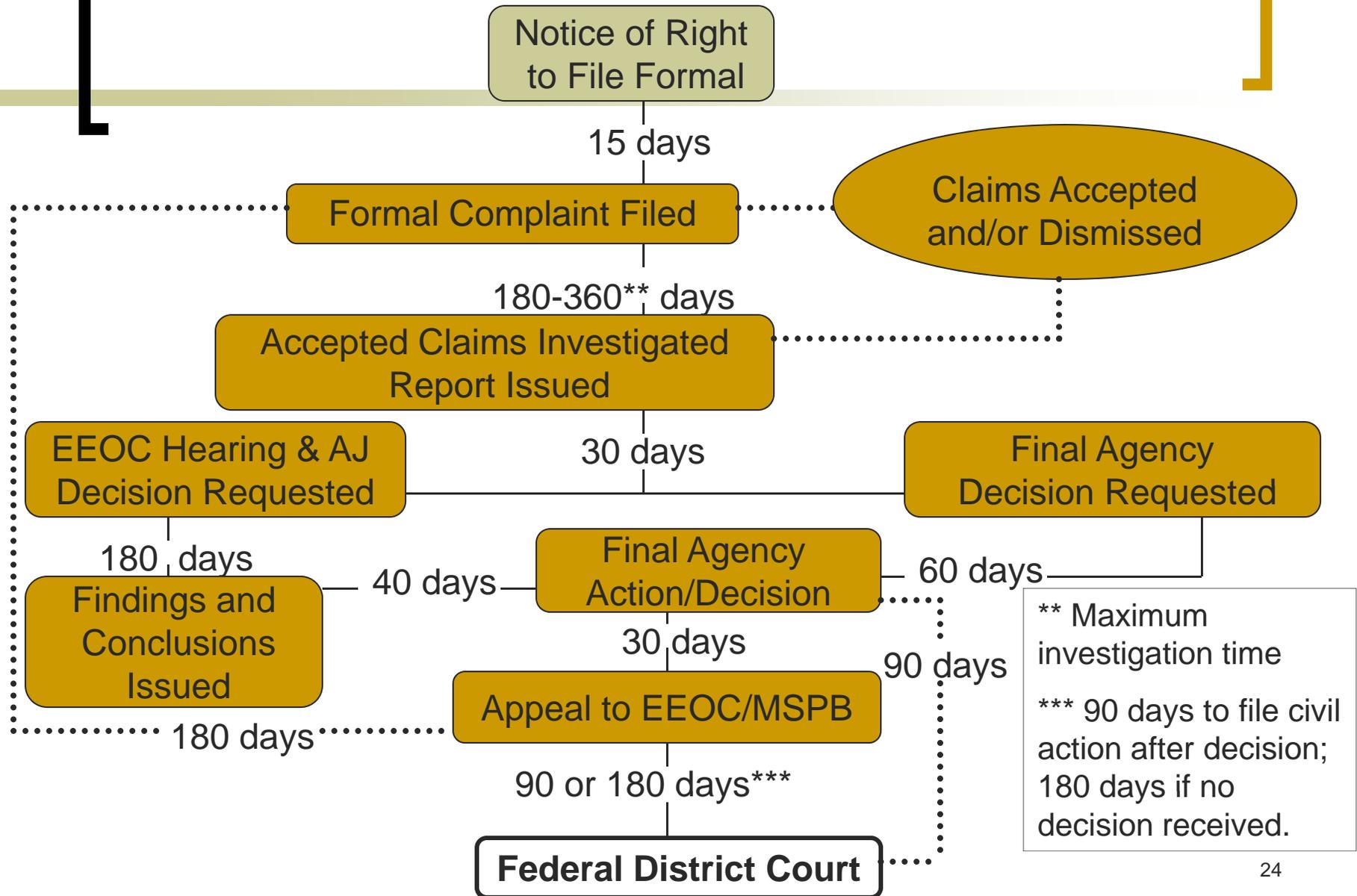
- Engage in interactive process, do not delay.
- When possible, accommodate – consistent with Congressional intent specified in ADAAAA.
- More employees/applicants will now qualify for reasonable accommodations under the new ADAAAA.
- Do not request medical documentation unless necessary.
- Maintain medical documentation separately.
- Consult with EEO, Employee Relations, Labor Relations, or SJA for guidance.

Federal Sector Complaint Process: Informal

(Under 29 CFR 1614)



Federal Sector Complaint Process: Formal



Complaint Process

Supervisor's Responsibilities

- Treat all complaints seriously and confidentially.
- Make sure that notices for the timely filing of a discrimination complaint are prominently posted in the workplace.
- Attempt to resolve complaints at the earliest stage, i.e., the informal stage.
- Participate in mediation at any stage of the complaint process.
- Cooperate with EEO officials and investigators throughout the complaint process.
- Respond to requests for information and documents in a timely and accurate manner.
- Do not engage in behavior that may be viewed as retaliatory or obstructive to the complaint process.

Best Practices

For Supervisors and Managers

- Set example (managers are role models).
- Be accessible (have an “open door policy”).
- Communicate regularly with staff (reiterate EEO policies in meetings).
- Monitor workplace behaviors (enforce respect in the workplace).
- Investigate complaints promptly (consult with EEO).
- Expand recruitment efforts through outreach (not preferences).
- Maintain accurate Position Descriptions (use valid selection criteria).
- Use diverse interview panels in the hiring process.
 - Use standardized questions (no medical/personal).
 - Take notes/quantify responses/use matrix.
 - Review process for equity and consistency.
 - Keep records/document.

Learning Objectives

- Briefly review and discuss major anti-discrimination laws.
- Increase awareness of workplace harassment, including types not always obvious.
- Learn techniques for identifying and preventing workplace discrimination, harassment, and retaliation.
- Review and understand the significant aspects of the agency's reasonable accommodation procedures.
- Understand the significant stages in the federal sector EEO complaint process, including the option of ADR.

Fort Gordon EEO Staff

- Mrs. Barbara Owens – EEO Officer
- Ms. Sheila James – EEO Specialist
- Mrs. Kay Williams – EEO Specialist
- Mr. Ray Wilson – EEO Specialist

EEO Compliance Training for Managers and Supervisors

Promoting equity, diversity and inclusion in the workplace to build a stronger DA.