

**U.S. Customs and Border Protection
Office of the Commissioner
Privacy and Diversity Office**

SUBJECT: Guidance for Witness Participation During the Processing of a Formal EEO Complaint

1. POLICY

1.1. It is the policy of U.S. Customs and Border Protection's (CBP) to treat all individuals in a non-discriminatory manner, without regard to their protected status under law, regulation or policy. In addition, it is CBP's policy to ensure that claims of unlawful discrimination are processed and addressed in a fair, impartial, thorough, and timely manner.

2. AUTHORITIES

2.1. Title VII of the Civil Rights Act, as amended, (42 U.S.C. 2000e *et Code of Federal Regulations / Title 29 - Labor / Vol. 4 / 2010-07-01270 seq.*), the Age Discrimination in Employment Act (ADEA) (29 U.S.C. 621 *et seq.*), the Equal Pay Act (29 U.S.C. 206(d)), the Rehabilitation Act (29 U.S.C. 791 *et seq.*), or the Genetic Information Nondiscrimination Act (GINA) (42 U.S.C. 2000ff *et seq.*)

2.2. 29 CFR Part 1614 – Federal Sector Equal Employment Opportunity

2.3. U.S. Equal Employment Opportunity Commission (EEOC): Management Directive 110

2.4. CBP Directive NO. 51735-013A, U.S. Customs and Border Protection Standards of Conduct, Section 6.4.2

2.5. 18 USC 1621 & 18 USC 1622 - CBP Table of Offenses and Penalties – H. Inquiries and Investigations.

3. DEFINITIONS

3.1. Affidavit: A written statement of facts, sworn to or affirmed before an individual who has authority to administer an oath or affirmation. U.S. Equal Employment Opportunity Commission (EEOC) regulations authorize investigators to administer oaths and affirmations. Affidavits are generally secured when an Equal Employment Opportunity (EEO) Investigator conducts an onsite investigation.

3.2. Unsworn declaration: A written statement which is not sworn to or affirmed but which is signed by the witness contains language expressly stating that the witness is signing the statement “under penalty of perjury.”

3.3. Interrogatories: Written questions prepared by an EEO Investigator to elicit material and relevant information from the witness.

4. OVERVIEW OF CBP’S EEO INVESTIGATIVE PROCESS

4.1. Individual and class complaints of discrimination are processed in compliance with EEOC regulations as outlined in 29 CFR 1614 and the instructions provided in Management Directive 110.

4.2. Informal EEO complaints are filed with CBP’s Privacy and Diversity Office (PDO).

4.3. If the allegations presented are not resolved during informal counseling, an individual may file a formal complaint with the PDO.

4.4. After an EEO complaint is filed and accepted for investigation, CBP must conduct an impartial, thorough, and complete investigation of the allegations and facts surrounding the claim.

5. ROLE OF THE FACT-FINDER/INVESTIGATOR

5.1. The EEO Investigator is a fact finder and must compile a written record of the facts and evidence sufficient to allow a third party to reach a determination as to whether unlawful discrimination occurred.

5.2. A substantial portion of the investigative record will consist of written statements, in the form of affidavits or declarations, submitted by persons having actual knowledge or relevant evidence.

6. ROLE OF CBP EMPLOYEE (WITNESSES)

6.1. When a CBP employee is identified by an EEO Investigator as a potential witness regarding a discrimination claim, Federal and CBP policy requires that employees fully cooperate with the Investigator by responding to all requests for statements or documents in a timely manner.

- 6.2. Employees, who refuse to cooperate, interferes with an official investigation or inquiry, fail to respond to requests for statements and/or provide false, untruthful or misleading statements, may be subject to penalties pursuant to CBP's Standards of Conduct. This includes refusing to answer work related questions, attempting to influence others involved in an inquiry, and releasing information in an official matter when advised not to do so.
- 6.3. All witnesses are entitled to official time to be interviewed by an Investigator, provide evidence and to prepare and submit a written statement.

7. WITNESS REVIEW OF DOCUMENTS

- 7.1. In providing a statement, a witness may find the need to refresh his or her recollection of the events relevant to an allegation, by reviewing documentation concerning those events, including agency records within the witness' purview¹. Witnesses are encouraged to conduct such a review, if one is needed, prior to participating in an interview or responding to interrogatories.
- 7.2. In some instances, a witness may request that the EEO Investigator provide documentation, for the witness' review. Documents will be disclosed to a witness if the investigator determines that such disclosure is necessary to help the witness respond to specific questions.

8. REPRESENTATION FOR A WITNESS

- 8.1. CBP will follow all statutory and contractual agreement language regarding the right to representation during an investigative interview.

9. PROHIBITION ON DISCLOSURES OF OFFICIAL INFORMATION

- 9.1. CBP employees must comply with the Freedom of Information Act, 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, and pertinent departmental and agency regulations and policies when disclosing records.
- 9.2. If an employee seeks to provide unsolicited DHS/CBP records during a fact-finding or investigation, the employee must obtain permission from the designated CBP official responsible for the record or information before disclosure.

¹ U.S. Customs and Border Protection employees must comply with the Freedom of Information Act, 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, and pertinent departmental and agency regulations when disclosing records. See section 10.1 for further guidance.

10. **BARGAINING UNIT EMPLOYEES:** This policy does not supersede any procedures contained in existing collective bargaining agreements (CBAs) covering bargaining unit employees within CBP. In addition, this policy must be used in conjunction with the negotiated procedures contained in existing CBAs.

11. **NO PRIVATE RIGHTS CREATED:** This document is an internal policy statement of the U.S. Customs and Border Protection and does not create or confer any rights, privileges, or benefits for any person or party.



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