

BURDEN OF PROOF IN THE EEO COMPLAINT PROCESS

Who Has to Prove Discrimination Occurred?

The burden of proof ultimately rests with the aggrieved person at all times; however, there is a three-step process utilized by the EEOC and the courts when deciding if discrimination occurred or not.

1. The Burden rests with the aggrieved person to provide evidence that will sustain a reasonable inference of race, color, religion, sex, national origin, age, disability, genetic information, or reprisal discrimination.
2. Then the burden shifts to management, who must articulate a legitimate, non-discriminatory reason for the act or actions giving rise to the complaint.
3. The burden then shifts back to the aggrieved person to prove, by a preponderance of evidence, that management's explanation (articulated reason) was merely a pretext (a mask or cover up for discrimination).

NNSA OFFICE OF CIVIL RIGHTS NA-1.2
ALBUQUERQUE COMPLEX
PO BOX 5400
ALBUQUERQUE, NM 87185
Bldg 384, 2nd floor, North end

(505) 845-5517
Toll Free: (800) 825-5256
(enter 845-5517 at voice prompt)
TTY: (866) 872-1011
Fax: (505) 845-4963

NNSA Enterprise Portal:
<http://nnsaportal.energy.gov/Pages/default.aspx>

OCR Internet:
<http://nnsa.energy.gov/aboutus/our-operations/managementandbudget/civrights>

Equal Employment Opportunity:
Collaborating for Mission Success

JUNE 2016



US DEPARTMENT OF ENERGY
NATIONAL NUCLEAR SECURITY
ADMINISTRATION

OFFICE OF CIVIL RIGHTS NA-1.2

EEO COMPLAINT THINGS TO CONSIDER BEFORE YOU DECIDE TO FILE



Discrimination **ALONE** is not against the law; however, when discrimination is based on your status in a protected group regarding an employment matter, it is against the law.



WHY Do You Think You Were Treated Differently Than Others?

Ask yourself, was the action taken against me because of my (list one or more basis below) and only because of my Race, for example:

The issue (the employment action(s) in question) and the basis (your status in a protected group).

TITLE VII Protected Group (Bases)

- AGE (the law protects those 40+ yrs)
- COLOR (White, Black, Brown, etc.)
- RELIGION (or lack of religion)
- SEX (Male/Female)
- DISABILITY (Physical or Mental)
- GENETIC INFORMATION
- NATIONAL ORIGIN (Hispanic, Arabian, Italian, German, Irish, Iranian, etc.)
- STATUS AS A PARENT
- PREGNANCY
- RACE (Black, White, Indian, Asian, etc.)
- REPRISAL (for previous EEO Activity)
- SEXUAL ORIENTATION
- SEXUAL HARASSMENT

Reprisal means you previously engaged in EEO activity, or opposed discriminatory practices, and have now suffered an adverse action.

WHAT is the Issue?

Is the problem related to a matter dealing with my employment in which the DOE NNSA has control, for instance:

- | | |
|--------------------------|--------------|
| Appointment | Promotion |
| Separation/Termination | Reprimand |
| Appraisal /Evaluation | Retirement |
| Time and Attendance | Harassment |
| Assignment of Duties | Reassignment |
| Pay (including overtime) | Exam/Test |
| Sexual Harassment | Reprisal |
| Work Conditions | Training |
| Reasonable Accommodation | Award |

WHEN did the Incident or Action Occur?

Is it within the last **45 calendar days**?

Time limits imposed by law means contact must be made with an EEO Official within 45 calendar days from the date of the incident or from the date you became aware of the incident.

WHO is involved?

Obviously YOU are, if you are:

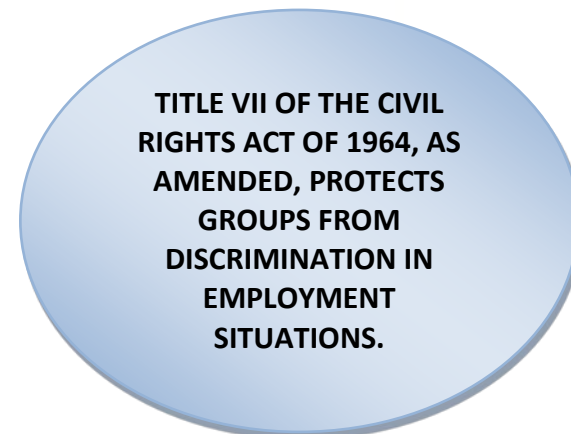
- 1) A current DOE NNSA employee
- 2) A former DOE NNSA employee
- 3) An applicant for DOE NNSA employment

Who took, or failed to take, the action giving rise to the complaint?

Was it your supervisor, a co-worker, a visitor, a contract worker, etc.

HOW were you treated differently?

- What harm have you suffered?
- Were you denied a job benefit?
- Did the terms and/or conditions of your employment change? If yes, how?



FINALLY....

Now that you have considered all the facts and information, ask yourself: If it were not for my race, color, religion, sex, national origin, age, disability, genetic information, sexual orientation, or reprisal (for prior EEO activity) would this action have been taken? If no, the issue does not meet EEO complaint criteria. If yes, you may have an EEO claim.