

Official Time: EEO Cases

Overview

A complainant who is an employee of an agency shall have a reasonable amount of official time, if otherwise on duty, to prepare an EEO complaint and to respond to agency and EEOC requests for information. If the complainant has designated another agency employee as a representative, that employee shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and respond to agency and EEOC requests for information. 29 CFR 1614.605 (b).

Key Points

[These key-point summaries cannot reflect every fact or point of law contained within a source document. For the full text, follow the link to the cited source.](#)

An agency is not required to change work schedules, pay overtime wages or pay travel expenses to facilitate the choice of a specific representative or to allow a complainant and representative to confer. 29 CFR 1614.605 (b).

"The complainant and representative, if employed by the agency and otherwise in a pay status, shall be on official time, regardless of their tour of duty, when their presence is authorized or required by the agency or the Commission during the investigation, informal adjustment, or hearing on the complaint." 29 CFR 1614.605 (b).

"Witnesses who are federal employees, regardless of their tour of duty and regardless of whether they are employed by the respondent agency or some other federal agency, shall be in duty status when their presence is authorized or required by the Commission or agency officials in connection with a complaint." 29 CFR 1614.605 (f).

A complainant's right of EEO representation is sufficiently tied to his employment status, so that abridgment of that right by the agency would result in a direct and personal harm to a term, condition, or privilege of the complainant's employment, and thus render him aggrieved. *Story v. Department of the Treasury*, EEOC No. 05970843 (1999), 100 FEOR 3003 .

An agency employee is entitled to official time to represent another employee in non-pay status as long as the employee was an employee at the time of the alleged adverse action. *Kwok v. U.S. Postal Service*, EEOC No. 05940368 (1994), 95 FEOR 3102 .

An EEOC AJ found the agency subjected the complainant to reprisal when it issued him a letter of reprimand for meeting with an EEO client while on official time. The AJ noted that the agency had never defined for the complainant what was meant by "official time," and that the complainant had met with the client while on a scheduled break. The agency agreed with the AJ's decision and issued the complainant \$4,000 in nonpecuniary compensatory damages. The EEOC affirmed on appeal. *Haskins v. Department of Defense*, EEOC No 01A05396 (2001), 101 FEOR 1198 .

An agency employee is not entitled to official time in connection with the representation of a complainant who is not an agency employee. *Skinner v. U.S. Postal Service*, EEOC No. 01870477 (1987), 87 FEOR 23674 .

An agency must grant employees reasonable official time to travel to EEO meetings. *Saunders v. U.S. Postal Service*, EEOC No. 01850205 (1986), 86 FEOR 3300 . What is reasonable depends on the facts and circumstances of each case. *Saunders v. U.S. Postal Service*, EEOC No.

05860155 (1986), 86 FEOR 22625 .

Because complainants are entitled to a reasonable amount of official time for processing their EEO complaints under EEOC regulation 29 CFR 1614.605 (b), when the time is improperly denied, it is not relevant whether the agency was motivated by reprisal against the complainant for prior EEO activity or by any other improper motive. *Lambert v. Social Security Administration*, EEOC No. 05990820 (1999), 100 FEOR 3107 .

"[A] complainant's right to official time [for pursuing EEO complaints] is not an unqualified right. It is restrained by legitimate management considerations, like business necessity... . Thus, what constitutes a reasonable amount of official time must be determined by weighing two factors: the amount of time necessary to process the complaint given the complexity of the complaint; and, the complainant's job responsibilities and the agency's need to utilize the complainant in his job functions." *Hall v. Department of the Army*, EEOC No. 01842335 (1985), 85 FEOR 20174 .

A reasonable amount of official time to work on EEO complaints is defined as whatever is appropriate under the circumstances of the case, but agencies may restrict the overall hours to the extent necessary to ensure that employees spend most of their time doing the work for which they are employed. Noting unrebutted testimony that the complainant was spending more time on her EEO complaints than her work, the EEOC found that the agency permissibly imposed a two hour per week limit on official time the complainant could use for pursuing her EEO complaints. The EEOC noted that the agency did not limit the complainant's time for EEO-related meetings. *Matuszeski v. Department of the Treasury*, EEOC No. 01956479 (1997), 98 FEOR 10809 .

It is not unreasonable for a complainant to request that EEO meetings be scheduled while he is "on the clock." *Zuniga v. U.S. Postal Service*, EEOC No. 01831980 (1983), 83 FEOR 21338 .

The petitioner was appropriately denied 3.5 hours of official time for two meeting with his attorneys concerning EEO matters because the meetings occurred outside his regular duty hours. Further the petitioner was not entitled to any official time for prosecuting administrative EEO claims after he was removed because he was no longer employed by the agency. *Godbout v. Department of Agriculture*, EEOC No. 03990058 (2000), 101 FEOR 3006 .

A complainant who was not allowed to change his schedule so he could attend an EEO hearing in pay status was entitled to overtime pay because he had already worked a full work week. *Edwards v. U.S. Postal Service*, EEOC No. 05950708 (1996), 97 FEOR 3039 .

The agency improperly denied the complainant official time to fill out a form to request EEO counseling. Accordingly, the EEOC directed the agency to credit the complainant with the 1.5 hours of time she spent off the clock filling out the form. *Shepherd v. U.S. Postal Service*, EEOC No. 05960547 (1997), 98 FEOR 3049 .

Sixteen hours of official time to prepare for an EEO hearing was reasonable under the circumstances of the complainant's case. *Segura v. U.S. Postal Service*, EEOC No. 01841339 (1986), 86 FEOR 20167 .

In dismissing all 99 of the complainant's appeals, the EEOC stated that he had little credibility before the EEOC and that the agency can severely limit what official time, if any, he is allowed to pursue complaints that abuse the system. *Kessinger v. U.S. Postal Service*, EEOC No. 01976399 (1999), 99 FEOR 3265 .

The agency was advised that only the complainants, not representatives, have standing to raise EEO official time claims. *Lambert v. Social Security Administration*, EEOC No. 05990820 (1999), 100 FEOR 3107 .

The appropriate remedy for an improper denial of official leave depends on the circumstances of

the case. "If appellant used annual leave to represent the complainants, then the agency shall restore the leave to him. If appellant prepared for the cases on his own time, the agency shall provide him with official time to be used as he deems suitable. As to when and how appellant should be allowed to utilize the official time due him, the Commission notes that reasonableness should be the guide, and that the parties should jointly determine when and under what circumstances the time shall be used. Finally, if appellant was required to take leave without pay in order to prepare the cases, then the agency shall reimburse him with back pay and any appurtenant benefits." *Harrell v. U.S. Postal Service*, EEOC No. 01942166 (1995), 95 FEOR 3213 .

The agency was ordered to restore four hours of annual leave to the complainant after the EEOC determined it improperly required the complainant to take the leave to prepare for a hearing when instead he should have been granted official time. *Brown v. U.S. Postal Service*, EEOC No. 04940004 (1995), 95 FEOR 3123 .

Denying the complainant official time to represent co-workers in connection with petitions for EEOC review of MSPB decisions was "tantamount to reprisal discrimination." *Harrell v. U.S. Postal Service*, EEOC No. 01942166 (1995), 95 FEOR 3213 .