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Legal Sidebar

EEOC's Proposed Changes to the Federal-Sector Equal Employment Opportunity Complaint Process

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Congress has taken an active interest in the operation of equal employment opportunity (EEO) laws in the executive branch, periodically legislating to manage and gather information about how those laws apply in the federal sector. On August 28, 2026, the Equal Employment Opportunity Commission (EEOC) published a Notice of Proposed Rulemaking (NPRM) to overhaul the process governing federal employee discrimination complaints. EEOC proposes to "streamline" the federal-sector EEO process by eliminating the pre-complaint counseling process (which is mandatory as of the time of this writing), administrative hearings at the agency level, and administrative class actions. EEOC instead proposes that federal employees with discrimination claims begin the administrative process by filing a complaint with their agency. Agencies would compile the record and resolve all complaints, without the option for a hearing before an EEOC-appointed administrative judge. Complainants would be able to appeal agency decisions to EEOC, as they can now. Under the proposed rule, EEOC could opt for an administrative judge to further develop a case on appeal. EEOC would decide whether to adopt the administrative judge's conclusions, and in any case it would review the record without deference to resolve appeals. Parties would retain their statutory rights to file civil actions in court. Rather than process class complaints, the EEOC would accept such complaints only so that putative class representatives can exhaust administrative remedies on behalf of the class, and it would direct federal agencies to otherwise process complaints only for named individuals.

The NPRM also proposes measures that appear designed to reduce attorney's fee awards. Other proposed changes include limitations on monetary sanctions against agencies, more guidance on offers of resolution, and new complaint resolution timelines. EEOC also proposes measures to implement the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020 (Cummings Act).

The proposed revisions would not affect how EEOC processes discrimination charges against private employers. This Legal Sidebar summarizes the current procedures, in relevant part, and the primary changes proposed by EEOC.

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Current Federal EEO Procedures

Statutory Requirements

EEOC enforces the federal employment discrimination laws as they apply to the executive branch. These laws prohibit discrimination on the basis of race, color, religion, sex, national origin, age, disability, genetic information, and pregnancy. Generally, these statutes cross reference or follow the model set by Section 717 of Title VII of the Civil Rights Act of 1964 when it comes to enforcement against the executive branch. In that context, Congress has invested EEOC with broad "authority to enforce" the statutes "through appropriate remedies" and directed EEOC to "issue such rules, regulations, orders and instructions as it deems necessary and appropriate." EEOC is to require agencies to maintain an EEO plan with certain features and must "review and evaluat[e]" agencies' EEO programs.

Federal statutes sketch out the general lifecycle of a federal-sector employment discrimination complaint. The statutes anticipate that federal agencies will take final action on internal complaints; that complainants may appeal to EEOC; and that complainants may file suit in federal court after exhausting their administrative remedies. (Plaintiffs with age discrimination claims must only give notice of their claims to EEOC before filing suit.) Complainants can file suit within 90 days of final action by their agency or by EEOC. If they decide not to wait for the administrative process to play out, they may sue 180 days from the time they filed a charge with their agency or an appeal with EEOC. Available remedies can include reinstatement, hiring, back pay, compensatory damages, and attorney's fees and costs. Statutory requirements also govern claims that can be pursued under either the EEO process or with the Merit Systems Protection Board. Beyond these broad outlines, federal statutes generally allow EEOC to fill in the details of the federal-sector EEO process.

Administrative Procedures

EEOC has substantially revised the administrative procedures for federal employment discrimination claims a number of times since 1978, when it first assumed responsibility for overseeing the federal-sector EEO program. Currently, the regulations governing federal-sector employment discrimination claims are at 29 C.F.R. part 1614 (2026). The process for pursuing an administrative complaint is complex. The key components are as follows:

First, complainants must engage in pre-complaint counseling by contacting their agency's EEO office within 45 days of an allegedly discriminatory action. The complainant may then file a complaint with their agency. Agencies may dismiss complaints for various reasons, such as failure to state a claim or because the complaint is untimely. Otherwise, the agency is to complete an investigation within 180 days. After 180 days, the complainant may request a hearing before an EEOC-appointed administrative judge. The complainant may alternatively request an "immediate final decision" from the agency upon conclusion of the investigation. In all cases, the agency makes the final decision; in cases where a complainant opts for a hearing, the agency can choose whether to accept the administrative judge's ruling.

In some respects, the current regulations provide for court-like procedures if the complainant requests a hearing. Both parties are "entitled" to "reasonable" discovery. Evidence is to be produced under oath. Parties may also seek summary judgment, i.e., a ruling from the administrative judge based on the undisputed facts presented in briefs, without a hearing. However, administrative judges have "wide latitude" to set the rules for their hearings. Among other things, administrative judges may direct how the parties will conduct discovery and what evidence shall be presented, and the rules of evidence do not "strictly" apply.

Administrative judges must issue their decisions, including orders on appropriate relief, within 180 days of receiving the complaint file from the agency. The agency must issue a "final order" accepting or rejecting the decision within 40 days of receiving the administrative judge's decision. If the agency chooses not to fully implement the administrative judge's order, it must appeal to EEOC at the same time it issues its final order. Complainants who are dissatisfied with an agency's final order may appeal to EEOC within 30 days.

Appeals are handled by EEOC's Office of Federal Operations (OFO). The parties may file briefs, and OFO may supplement the record. OFO reviews agency decisions *de novo*, meaning without deference to the agency. It does, however, defer to some extent to the facts found by administrative judges. OFO issues written decisions based on the preponderance of the evidence. Parties may request reconsideration of OFO's decision within 30 days.

Current regulations also provide an option for employees to file class action complaints. The standards governing class certification mirror the prerequisites to class certification in federal court. Class complaints are largely handled by administrative judges, who issue decisions regarding whether the class should be allowed to proceed in addition to managing the investigation of class claims, overseeing discovery and hearings, and issuing decisions on the merits. Administrative judges resolve the individual claims of class members if class-wide discrimination is found. As with individual complaints, agencies may accept, in whole or in part, the decisions of administrative judges regarding class matters, and agencies and complainants may appeal to EEOC. When class claims are properly exhausted by a class representative, individual members of the class may obtain relief in federal court without themselves going through the administrative process.

Successful complainants can recover attorney's fees in EEO administrative matters, depending on the claim. Attorneys must file a verified fee petition that "itemizes" their charges. The current regulations offer little guidance on the calculation of fee awards, stating only that there is a "strong presumption" that "the number of hours reasonably expended multiplied by a reasonable hourly rate" is a "reasonable fee" and that "[i]n limited circumstances, this amount may be reduced or increased in consideration of the degree of success, quality of representation, and long delay caused by the agency." EEOC expressly makes expert witness fees available.

EEOC has issued a management directive providing more guidance, including that attorneys should not be paid for "excessive, redundant, or otherwise unnecessary hours." The directive instructs decisionmakers to exclude hours on "unsuccessful claims" but "only where the unsuccessful claims are distinct in all respects from the successful claims." The directive makes clear that an attorney's pro bono status, public interest work, or private fee agreements are not reasons to limit fees. The directive provides that fees should be "reasonable in relation to the results obtained," emphasizing that nonmonetary remedies may be significant.

EEOC's Proposed Changes

As EEOC emphasizes in its NPRM, the Supreme Court has described the purpose of the EEO administrative process as "encouraging quicker, less formal, and less expensive resolution of disputes." In the preamble to the NPRM, EEOC asserts that the current process is too trial-like and too lengthy. EEOC proposes the following significant changes.

Proposals to "Streamline" the Federal-Sector EEO Process

EEOC's NPRM proposes eliminating the requirement that employees engage in pre-complaint counseling. EEOC asserts that few cases settle at counseling, rendering the process ineffective. Instead, EEOC would require complainants to file complaints with their agencies within 60 days of the alleged discrimination, instead of initiating pre-complaint counseling within 45 days. EEOC would also require agencies to make available "appropriate and effective pre-complaint technical assistance." The current regulations specify certain information that agencies must convey during pre-complaint counseling. The proposed regulations do not elaborate on what "technical assistance" should look like.

Under EEOC's proposed rule, complainants would no longer have the right to request hearings before administrative judges during agency review. The NPRM identifies the hearing process as a source of significant delay without, it claims, improving the quality of decisionmaking. The NPRM also emphasizes the burdens agencies can impose on unrepresented plaintiffs in the hearing process. Under EEOC's proposal, agencies would conduct an investigation and issue a final decision. Consequently, the proposed rule largely eliminates agency appeals. EEOC would allow agencies to "petition the Commission for permission to adopt an internal hearing process" where the agency has a "compelling need for resolution through a hearing" before the appellate stage. EEOC anticipates that permission will be rarely granted.

As under the current rules, complainants under the NPRM's proposal could seek *de novo* review of agency decisions from the OFO, which EEOC proposes to rename the Office of Federal Sector. At the appellate stage, agencies and complainants could request EEOC to refer a matter, in whole or in part, to an administrative judge for hearing, if they can show a hearing is "necessary or efficient." The Office of Federal Sector could make such a referral on its own, as well. Similarly to the way hearings work now at the agency stage, administrative judge decisions would be advisory, and EEOC would have the final word.

The NPRM also proposes to prohibit the adjudication of administrative class action complaints. EEOC states that the EEO administrative process "has not demonstrated the resources, institutional structure, or specialized capability to adjudicate large classes effectively." Instead, its proposed rule provides that agencies may only resolve the "individual complaints of identified aggrieved persons." EEOC proposes new provisions allowing for "related individual complaints or claims" to be jointly processed. EEOC would allow complainants to assert class claims solely to exhaust them. The NPRM states, however, that "nothing in this section determines whether a court will certify a class, permit a class claim to proceed, apply tolling, or find administrative exhaustion satisfied in a civil class action." EEOC would require agencies to process complaints containing class claims as individual complaints.

Proposed Changes Regarding Attorney's Fee Calculations

The proposed rule suggests that EEOC may scrutinize and circumscribe attorney's fee awards to a greater extent than under current practice.

The proposed rule would instruct that the "reasonable hourly rate" used to calculate fees "is the prevailing market rate" for attorneys "performing work comparable to the Federal-sector EEO administrative process." Given the significant changes to EEOC's administrative process, if the proposed rule is adopted, this may result in at least an initial period of uncertainty as to what work is "comparable." The proposal also "disfavor[s]" fee matrices, tools commonly used in litigation to help calculate reasonable hourly rates. This may make producing evidence of a reasonable rate more difficult for complainants. Currently, EEOC "generally" relies on a fee matrix, in addition to other evidence. EEOC has also proposed that attorney's private fee arrangements or nonprofit, union, or pro bono work can be "relevant evidence" for the reasonable rate, an apparent change from its existing management directive on attorney's fees.

The proposed rule codifies some of the limitations on fees previously set forth in EEOC's existing attorney's fees management directive and adds new ones. As under existing guidance, EEOC proposes to reject fees for "excessive, redundant, [or] unnecessary" work. It would further add that fees will not be awarded for attorney hours that are "inadequately documented, clerical, secretarial, . . . unrelated to successful claims, . . . or otherwise not properly billable to a paying client in the exercise of billing judgment." The proposed rule would change the standard for determining when to reduce fees for time spent on unsuccessful claims, requiring exclusion when those claims are "materially distinct" from successful claims rather than "distinct in all respects." The proposed rule is more detailed than existing rules about the information that complainants must include in an itemized fee petition. Finally, the proposed rule would instruct attorneys to include expert witness fees in their fee petitions "where authorized," but EEOC does not clarify when it would consider such fees authorized.

Current rules provide that attorney's fees are not available for work completed after a complainant rejects an offer of resolution, if the complainant failed to obtain relief "more favorable" than what was offered. The NPRM states specifically how decisionmakers are to determine whether a complainant obtained "more favorable" relief, as well as factors that make an offer of resolution ineffective. EEOC asserts that these changes would make the rules regarding offers of resolution "more predictable and enforceable."

Selected Other Proposed Changes

Some other changes proposed in the NPRM include new language relating to sanctions. EEOC has historically allowed monetary sanctions to be awarded against federal agencies for misconduct in the course of administrative proceedings. The NPRM would prohibit such sanctions "except to the extent Congress has expressly waived sovereign immunity for that specific monetary remedy." The NPRM does not clarify when EEOC would view Congress as having waived sovereign immunity.

EEOC has also proposed to change some of the timelines attached to the EEO complaint process. For example, it would shorten time periods for agency investigations and decisions. It would also restrict the time period for amending a complaint to assert facts that existed at the time the complaint was filed. (EEOC also proposes guidance to agencies on when to reject attempts to supplement a complaint to address matters arising after the original filing.)

Finally, EEOC has proposed measures to implement the Cummings Act. As required by the Cummings Act, the regulations would, among other things, require agencies to post certain information about findings of discrimination against them and require that the head of agency EEO programs report directly to the head of the agency.

Considerations for Congress

As described above and in the NPRM, EEOC asserts that the rules governing EEO administrative proceedings should be updated to resolve claims more efficiently. EEOC identifies pre-complaint counseling and administrative judge hearings as particularly burdensome and ineffective parts of the current process and contends that agencies and EEOC are ill-equipped to process class complaints.

Not all EEOC members agreed with this assessment. According to media, Commissioner Kotagal, who voted against releasing the NPRM, stated that the proposal, particularly the limitations on class complaints, "will make it harder for federal employees to challenge discrimination and easier for agencies to evade responsibility." Kotagal also suggested that EEOC should extend the time frame for federal employees to file complaints to mirror the greater amount of time allotted to private-sector employees.

Another factor that may warrant consideration is agency capacity. News outlets in 2025 reported widespread cuts in staff at federal EEO offices, and employment law blogs have reported cuts at EEOC, as well. If Congress chooses to weigh in on the federal-sector EEO process, it may consider what resources to allocate and how changes in the process affect burdens on federal agencies.

Congress has granted EEOC a substantial amount of discretion to set the terms of the EEO administrative process. Congress could continue to let EEOC set the rules, or it could set forth its preferred procedures in statute. It could also direct EEOC to engage in rulemaking within certain guidelines, without adopting detailed standards itself. Congressmembers may also submit comments on the current rulemaking. The comment period is open until September 28, 2026.

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