

Were You Named as a Responsible Management Official in an EO Complaint?

Question: I recently learned that one of my subordinates has filed an EEO complaint against me. I have never had this happen and I have a lot of questions about the administrative process. For example, am I personally liable for what the employee is complaining about? What do I have to show to overcome a complaint?

Answer: If you are named as the Responsible Management Official (RMO) in an EEO complaint, the complaint is considered to be filed against your agency (in particular, the head of your agency in his or her official capacity) and not you personally. Therefore, even if the complaint concerns your actions as a manager towards a subordinate employee, your involvement is as a witness in the case - not as the deep pocket with financial responsibility to the complainant.

The complainant has the burden of proving discrimination occurred. In contrast, the agency's burden of proof in responding to an EEO complaint is relatively low. The agency need only articulate a legitimate, nondiscriminatory explanation for whatever the complainant claims is an act of discrimination. As an RMO responding to allegations of discrimination, this means that you will have to explain why you did what you did and why it was not discriminatory. Therefore, you will be the agency's most important witness in the case since your explanation literally forms the backbone of the agency's defense.

You may be brought into the EEO complaint process at one of several points. The first point is during the informal counseling phase, which occurs when the complainant first brings a complaint to the agency EEO counselor. After the counselor meets with the complainant to learn what the allegations are about, the counselor will meet with the RMO to explain the complainant's allegations and see if resolution is possible. Sometimes, the complainant may elect alternative dispute resolution instead of counseling, in which case the RMO may be asked to participate in a mediation session as the settlement authority.

If the complaint is not resolved during the informal phase, either through traditional counseling or mediation, the complainant has the right to file a formal EEO complaint. If that occurs, the complaint will be investigated, and the RMO will eventually be asked to provide a sworn statement by the EEO investigator. After the investigation is completed, a Report of Investigation (ROI) will be provided to the complainant, who can then opt to have a hearing before an administrative judge from the EEOC or have a final decision issued by the agency based on the ROI produced by the EEO investigator. If the complainant chooses the latter course, the RMO's participation in the administrative EEO process is essentially over.

If a hearing is elected, your role as an RMO will still be as a witness. During the hearing phase, you may be asked to provide information during discovery, be questioned under oath during a deposition and testify on behalf of the agency at the administrative EEOC hearing.

In all of these phases of the administrative complaint process, your role as an RMO is the same: to articulate legitimate, non-discriminatory reasons for your actions. As long as your actions are taken for legitimate reasons and are not tainted by discrimination, you should be able to overcome an EEO complaint.

The federal EEO process is long and drawn out, and has many twists and turns. As with any administrative process, a little bit of knowledge goes a long way towards making it less difficult and scary for managers.

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