



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

MEMORANDUM FOR: Treasury Bureau EEO Officers and EEO Staff

FROM: Snider Page
Acting Director, Office of Civil Rights and Diversity

SUBJECT: Requests for Official Time Question and Answer

The Equal Employment Opportunity Commission (EEOC) regulations on "official time" appear at 29 C.F.R. §1614.605(b). Corresponding EEOC guidance is primarily found at EEO Management Directive 110 (MD-110), Ch. 6, Section VII.C. (rev. Aug. 5, 2015). The Department of the Treasury's (Department or Treasury) guidance on processing official time requests can be found in the Office of Civil Rights and Diversity's (OCRD) Issuance System CRD-013, Processing Requests for Official Time in Pre-Complaints and Formal Complaints of Discrimination. The following points emerge from the relevant EEOC regulations, guidance, case law, and the Department's policy guidance.

1. Who is entitled to official time?

Both the complainant and the representative (if the complainant designates one), if they are employees of the bureau where the complaint arose and was filed, are entitled to a reasonable amount official time to prepare the complaint and to respond to agency (either the Department or EEOC) requests for information, if otherwise on duty.¹ 29 C.F.R. § 1614.605(b); MD-110 at pp. 6-16 and 6-17 (6-16/17).

2. What is considered a "reasonable amount" of official time?

"Reasonable" is defined as whatever is appropriate, under the particular circumstances of the complaint, in order to allow a complete presentation of the relevant information associated with the complaint and to respond to agency requests for information. The actual number of hours to which complainant and his/her representative are entitled will vary, depending on (a) the nature and complexity of the complaint and (b) the mission of the bureau and the bureau's need to have its employees available to perform their normal duties on a regular basis. The complainant and the bureau should arrive at a mutual understanding as to the amount of official time to be used prior to the complainant's use of such time. MD-110 at 6-16/17.

¹ See *Del Castillo v. Dep't of Homeland Security*, EEOC Appeal No. 0120130341 (April 4, 2013) request for reconsideration denied, EEOC Request No. 0520130415 (September 20, 2013) (requests for official time may be denied where a complainant requested sick leave for the same period that he requested official time, because sick leave is not considered "on duty" status).

“Reasonable time” does not necessarily equate with all the time required for the successful pursuit of a complaint.² “Reasonable” is defined as whatever is appropriate under the circumstances of the case, but bureaus 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.³ A complainant may be required to justify the amount of official time requested where the request is for a substantial number of hours.⁴

3. Should official time always be granted for time spent in meetings and hearings with agency officials or with EEOC Administrative Judges?

Generally, yes. Whatever time is spent in such meetings and hearings is automatically deemed reasonable. Both the complainant and the representative are to be granted official time for the duration of such meetings or hearings and are in a duty status (meaning it is automatically deemed to be their normal work hours) *regardless of their tour of duty*. If a complainant or representative has already worked a full week and must attend a hearing or meeting on an off day, that complainant or representative is entitled to official time, which may require the bureau to pay overtime. 29 C.F.R. § 1614.605(b); MD-110 at 6-17.

4. Can meetings or hearings be scheduled outside of the complainant's normal working hours?

Yes, but it is expected that the bureau will, to the extent practical, schedule meetings and hearings during the complainant's or representative's normal working hours. If meetings, conferences, and hearings are scheduled outside of the complainant's or the representative's normal work hours, agencies should adjust or rearrange the complainant's or representative's work schedule to coincide with such meetings or hearings or grant compensatory time or official time to allow an approximately equivalent time off during normal hours of work. The selection of the appropriate method for making the complainant or representative available in any individual circumstance shall be within the discretion of the bureau. MD-110 at 6-19.

5. May official time be approved for the Complainant to *prepare* for authorized meetings or hearings, and/or to work on the formal complaint and any appeals?

Yes. Since presentation of a complaint involves preparation for meetings and hearings as well as attendance at such meetings and hearings, complainants and their representatives are afforded a reasonable amount of official time to prepare for meetings and hearings. They are also to be afforded a reasonable

² See *Brandon v. United States Postal Serv.*, EEOC Appeal No. 0120080803 (July 24, 2009) (finding that five hours was reasonable in preparing an appeal even though complainant requested 50 hours).

³ *Matuszeski v. Dep't of Treasury*, EEOC Appeal No. 01956479 (1997), *request for reconsideration denied*, EEOC Appeal No. 05980262 (April 22, 1999).

⁴ See *Brown v. United States Postal Serv.*, EEOC Request No. 04940004, 4335/G2 (1995); *Bodenheimer v. Dep't of Housing and Urban Dev.*, EEOC Appeal No. 01A52776 (July 20, 2006) (agency is entitled to a reasonable explanation of how the employee plans to use the official time requested).

amount of official time to prepare the formal complaint and any appeals that may be filed with the EEOC, even though no meetings or hearings are involved. However, because investigations are conducted by Department or Commission personnel or contractors, the regulation does not envision large amounts of official time for preparation purposes. Consequently, "reasonable," with respect to preparation time (as opposed to time actually spent in meetings and hearings), is generally defined in terms of hours, not in terms of days, weeks, or months. Again, what is reasonable depends on the individual circumstances of each complaint. MD-110 at 6-18.

6. In summary, for what EEO activities may official time be granted?

- A. Preparing and presenting a complaint and perfecting an appeal;
- B. Attending EEO complaint-related meetings and hearings with bureau, OCRD, or EEOC officials; and
- C. Preparing for meetings, conferences, and hearings.

7. Must the bureau change work schedules, incur overtime, or pay travel expenses to enable the complainant to meet with his or her representative?

No. The bureau is not obligated to change work schedules, incur overtime wages, or pay travel expenses to facilitate the choice of a specific representative or to allow the complainant and representative to confer. 29 C.F.R. § 1614.605(b).

8. Should time spent commuting to and from home be included in official time computations?

No. Time spent commuting to and from home should *not* be included in official time computations because all employees are required to commute to and from their federal employment on their own time. MD-110 at 6-17.

9. Can the bureau restrict the overall hours of official time afforded to a representative to a certain percentage of the representative's duty hours?

Yes. The Commission considers it reasonable for agencies to expect their employees to spend most of their time doing the work for which they are employed. Therefore, the bureau may restrict the overall hours of official time afforded to a representative, for both preparation purposes and for attendance at meetings and hearings, to a certain percentage of that representative's duty hours in any given month, quarter, or year. Such overall restrictions would depend on the nature of the position occupied by the representative, the relationship of that position to the mission of the bureau, and the degree of hardship imposed on the mission of the bureau by the representative's absence from his/her normal duties. MD-110 at 6-18.

10. What if the representation of a complainant would conflict with the official or collateral duties of the representative?

In such a case, the EEOC or the Department may, after giving the representative an opportunity to respond, disqualify the representative. 29 C.F.R. § 1614.605(c).

11. What is the process for requesting or approving official time to work on an EEO complaint?

Each bureau is charged with establishing procedures for requesting official time that include the appropriate officials to contact on questions regarding official time and documentation of any denials of official time and reasons for the denials. MD-110 at 6-17.

12. May a bureau establish an internal policy that places a strict cap on the number of official time hours granted to complainants?

No. A bureau's internal policy that places a strict cap on the number of official time hours without considering the complexity of the complaint is invalid.⁵

13. What happens if the bureau denies a request for official time?

If the bureau denies a request for official time during the pre-complaint stage either in whole or in part, the bureau must provide the complainant with a written explanation for the denial and maintain a record on file. If during the formal complaint stage, the bureau denies a request for official time, the bureau must provide a written explanation to the complainant for the denial and provide a copy to OCRD for inclusion in the complaint file. MD-110 at 6-19.

14. Can a complainant file a formal complaint of discrimination based on a claim of a denial of official time?

Yes, however, the EEOC has held that an allegation pertaining to the denial of official time states a separate claim alleging a violation of EEOC's regulations. As such, claims of denial of official time do not require a determination of whether the action was motivated by discrimination. The appropriate analysis is whether a complainant was entitled to official time under 29 C.F.R. §1614.605(b), and the EEOC has the authority to remedy a violation of this regulation without a finding of discrimination.⁶ If relief is not granted, a complainant can then raise the matter at hearing with an EEOC Administrative Judge, or where no hearing is requested, on appeal to the EEOC Office of Federal Operations (OFO). MD-110 at 5-28/29/30.

15. When are witnesses entitled to official time?

Witnesses who are federal employees, regardless of whether they are employed by the respondent bureau or some other federal agency, must be in a duty status

⁵ *Complainant v. Dep't of Defense*, EEOC Appeal No. 0120084008 (June 6, 2014) (advising the agency to analyze all requests for official time on a case-by-case basis).

⁶ *Bryant v. Dep't of Treasury*, EEOC Appeal No. 0120065274 (Feb. 25, 2009)(citing *Edwards v. U.S. Postal SeN.*, EEOC Request No. 05960179 (Dec. 23, 1996)).

when their presence is authorized or required by EEOC or Agency officials in connection with a complaint. MD-110 at 6-20.

16. Are representatives of former employees entitled to official time?

Yes. Former employees of a bureau who initiate the EEO process concerning an adverse action relating to their prior employment with the bureau are employees within the meaning of § 1614.605, and their representatives, if they are current employees of the bureau, are entitled to official time. MD-110 at 6-18/19.

17. Must the bureau provide official time to employee representatives who are representing complainants against other federal agencies?

No, this is not required. MD-110 at 6-18/19.

18. Are bureaus required to grant official time to an employee in preparation for presenting their claims of discrimination in federal court?

No. Although there are instances where a complainant is entitled to official time at this level, such as when he/she is summoned as a witness in a judicial proceeding, there is no general requirement (as there is at the administrative level) to provide official time for preparation/presentation of a complaint in federal court. CRD-013.

19. Can an employee who wishes to request official time remain anonymous during the pre-complaint stage?

No. The EEOC has held that if a complainant requests official time, they must waive anonymity with regard to that request. The bureau manager must know the identity of the individual making the request so they can consider the request and make appropriate arrangements. No other management officials should be informed of the EEO complaint aside from the official(s) needed to make official time determinations.

20. What are the responsibilities of each bureau in carrying out this policy?

In carrying out this policy, each bureau shall:

- A. Establish procedures for requesting official time that include the appropriate officials to contact on questions regarding official time and documentation of any denials of official time and reasons for the denials.
- B. Ensure that managers and supervisors are made aware of their responsibilities for providing reasonable official time to complainants, representatives, and witnesses.
- C. Inform complainants, their representatives, and others who may need official time, such as witnesses, of the procedures for requesting or claiming such time.
- D. Request and consider appropriate information and documentation from the parties involved when making a determination on reasonable time.
- E. Provide the complainant and his/her representative with a written explanation for any denial of official time, which is to be forwarded to the EEO Investigator

and/or OCRD officials if a formal complaint is filed, so that it can be made a part of the official complaint file. CRD-013.

Inquiries: Contact Justin Scheininger, EEO Specialist, at (202) 622-8234 or justin.scheininger@treasury.gov.