

**DIRECTIVE 9101      EQUAL EMPLOYMENT OPPORTUNITY**

1. **Purpose:** This document sets forth the Federal Mediation and Conciliation Service (FMCS) policies and procedures related to equal employment opportunity (EEO) in the workplace for FMCS employees and job applicants.

2. **Authority:** Title VII of the Civil Rights Act, 42 USC 2000e; the Equal Pay Act of 1963, 29 UCS 206(d); the Age Discrimination in Employment Act, 29 USC 621; Sections 501 and 505 of the Rehabilitation Act of 1973, 29 USC 791; Title I and V of the Americans with Disabilities Act of 1990, 42 USC 12101; the Civil Rights Act of 1991, 42 USC 1981; the Civil Service Reform Act of 1978, 5 USC 2301.

3. **Applicability:** This Directive applies to all FMCS employees and job applicants.

4. **EEO Policy:**

a. What is the FMCS policy on discrimination in the workplace?

FMCS provides equal employment opportunity to all employees and applicants for employment in accordance with federal law. Specifically, federal law prohibits discrimination against any person on the basis of race, color, national origin, religion, sex, sexual orientation, gender identity, age (40 years or older), genetic information, or disability in regard to applying, interviewing, hiring, advancing, training, promoting, terminating, and any other terms and conditions of employment.

b. What is the FMCS policy on harassment?

FMCS provides a workplace free of any form of harassment. Federal law prohibits harassment based on race, color, national origin, religion, sex, sexual orientation, gender identity, age (40 years or older), genetic information, or disability. Harassment is conduct that has the intent or effect of unreasonably interfering with an employee's work or conduct that creates an offensive, intimidating, or hostile work environment. The conduct must be severe and/or pervasive under a reasonable person standard.

c. What is the FMCS policy on sexual harassment?

Sexual harassment is one of the prohibited forms of harassment that will not be tolerated at FMCS. Sexual harassment is defined as unwelcome advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature.

d. What is the FMCS policy on retaliation?

Any act of retaliation, interference, or coercion against an employee or applicant who raises concerns or files a complaint under any EEO policy or procedure is

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prohibited and will not be tolerated at FMCS.

#### 5. EEO Procedures

- a. What should I do if I think I have been discriminated against in the workplace?

An employee or applicant should discuss any allegations relating to discrimination or harassment in the workplace with the FMCS EEO Program Director or any FMCS EEO counselor. (See FMCS EEO Program Director for a current listing of the individuals holding these positions.) To initiate the EEO process, an aggrieved employee or applicant must initiate contact with an EEO counselor or the EEO Program Director within forty-five (45) calendar days of the alleged discriminatory conduct, incident, or personnel action.

- b. What happens after I contact the EEO counselor or Program Director?

Initially, FMCS will treat the allegation as an informal complaint and will provide counseling. During this process, an EEO counselor will advise the complainant of his/her rights and responsibilities during the administrative process, solicit specific information about the complaint, and seek to resolve it. The complainant may be represented by an individual of his/her choosing during this process. The EEO counselor will also inform the complainant of the FMCS Alternative Dispute Resolution (ADR) process. The ADR process may be available at both the informal and formal stage of the complaint, at the discretion of the FMCS EEO Program Director. The complainant or the agency, however, can decline to pursue ADR.

- c. What does the FMCS ADR process involve?

The FMCS ADR process may include, among other things, fact-finding, mediation, or another facilitative procedure. If FMCS offers and a complainant agrees to use an ADR process, FMCS will provide a written ADR agreement. The complainant must sign and acknowledge receipt of the ADR agreement within seven (7) business days of receipt of the agreement. If the ADR process is not successful, the complaint will be returned to the stage of EEO process it was in before ADR.

- d. What happens if I want to file a formal complaint?

If a matter is not resolved through informal counseling or an ADR process, an FMCS EEO Counselor will provide the complainant with a notice of his/her right to file a formal complaint. A complainant may file a formal complaint, in writing, within fifteen (15) calendar days of receiving the notice of right to file a formal complaint. The EEO Program Director will review the formal complaint and determine whether it should be dismissed or investigated. If the complaint is accepted for investigation, the EEO Program Director will so notify the

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complainant, complete an investigation and issue a report of investigation (ROI) within 180 calendar days from the date the formal complaint is filed, unless the parties agree to an extension or additional time is required by regulations. Upon issuance of an ROI, the complainant will have two choices: (1) request a hearing before an EEOC Administrative Judge; or (2) ask FMCS to issue a final agency decision (FAD) as to whether discrimination has occurred. Complainant must make a request for an EEOC hearing within thirty (30) days of receipt of the ROI. FMCS's final agency decision (FAD) or an EEOC Administrative Judge's decision may be appealed to the EEOC or challenged in federal court.

e. Must employee witnesses participate in an investigation?

Yes, employees are expected to cooperate in an EEO investigation, and they are protected from any form of retaliation in the same manner as the individual bringing the complaint.

f. Where can I find additional information about the EEO process?

6. Regulations regarding the federal government EEO process can be found at 29 CFR Part 1614. The U.S. Equal Employment Opportunity Commission website is also a valuable resource for all matters concerning equal employment opportunity. The EEOC website can be accessed at <http://www.eeoc.gov/federal/index.html>.