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**“NSF Becoming a Model EEO Agency:  
The Role of Managers and Supervisors”**

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**Participant Activity Workbook**

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**Sponsored by:**

Office of Diversity and Inclusion  
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*“Fostering an Environment of Diversity and Inclusion”*

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## Activity 1.0 Discrimination (Protected Bases)

### Objective:

- To illustrate the protected bases involved in a discrimination complaint.

### Case Studies

#### 1.1 Case 1—Discrimination

An African American supervisor at a federal facility supervised 10 employees, in which six were African American. One of the African American employees filed a complaint of discrimination in which he alleged that he and other high performing African Americans were treated less favorably than their white counterparts. He alleges his white counterparts were given preferential assignments and that the supervisor, in general, held African Americans to a higher standard in terms of performance. The African American employee filed a discrimination complaint.

What is the basis of his complaint? **Race**

An employee can be subjected to race discrimination by an individual of the same race. In *Hall v. Dept. of Navy*, EEOC No. 01832817 (1985), the EEOC found that a supervisor who was black harassed black employees and held them to higher standards. It further found that the supervisor's bias resulted in him giving the complainant a low evaluation and discharging him before he had an opportunity to improve his performance.

#### 1.2 Case 2—Discrimination

A female employee was a general laborer. For two years she performed her duties and was considered a high performer. After two years, the female employee was reassigned to another unit and given what she considers a less favorable assignment. The employer stated the reassignment was based on operational needs. A male employee was given the female employee's prior duties. The female employee filed a discrimination complaint.

What is the basis of this complaint? **Sex**

The EEOC found the complainant was a victim of sex discrimination based on the agency's failure to articulate a specific reason for transferring the employee and replacing her with a male employee. In making this decision, the EEOC found the agency's reference to "operational needs" was too vague and unsubstantiated to justify its action. *Cooper v. U.S. Postal Service*, EEOC No. 01943785 (1996)

#### 1.3 Case 3—Discrimination

A 65-year old federal employee applied for a supervisory position within his current division. He was deemed qualified, was interviewed, but was not selected for the position. A 45-year old male was selected. The 65-year-old employee filed a discrimination complaint.

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What is the basis of his complaint? **Age**

A person can file a viable claim of age-based discrimination when the individual allegedly treated more favorably is also over 40. In *Vasquez v. Dept. of Army*, EEOC No. 01933459, the EEOC found the comparative employee does not have to be under 40. There must simply be a significant difference in age. In this case, the age difference was 15 years.

#### **1.4 Case 4—Discrimination**

An Asian employee at a federal agency raised allegations of a hostile work environment after her co-workers continued to mock her accent and the manner in which she spoke English. This pattern continued for a six month period. She filed a discrimination complaint.

What is the basis of her complaint? **National Origin**

The EEOC, in *Rester v. Dept. of Transportation*, EEOC No. 01950139 (1998), held that the complainant was subjected to discrimination on the bases of her race and national origin when she was exposed to a hostile work environment that included intimidation by her supervisor and employees mocking her accent and English.

#### **1.5 Case 5—Discrimination**

A female employee at a federal agency worked as a writer. After both her mother and sister were diagnosed with breast cancer, she underwent genetic testing, and was positive for a gene that causes a greater risk for breast and ovarian cancer. Following the advice of her physician, she underwent several medical procedures in which she was off for six weeks. During this time, she participated in the agency's leave program because she did not have enough leave to cover her time off. When she returned to work, she applied for a position in her division that would have been a promotion and was not selected. She filed a discrimination complaint.

What is the basis of her complaint? **Protected Genetic Information**

Protected genetic information includes family medical history, results of genetic tests, or the request or receipt of genetic services.

#### **1.6 Case 6—Discrimination**

An employee worked as a Licensed Practical Nurse (LPN) at a hospital. She could only be promoted if she demonstrated the required knowledge and skills to perform at the next level. Every three years a board met to evaluate LPN eligibility for promotion, which is based primarily on narrative written by the LPN's supervisor. The LPN was not promoted to the next level on two occasions. On each occasion, the LPN's supervisor submitted written comments to the board regarding her performance. When the LPN questioned her supervisor, she alleges the supervisor stated "you do not need to be promoted since Jews already control the banks in the country." The employee filed a discrimination complaint.

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What is the basis of her complaint? **Religion**

In *Winters v. Dept. of Veterans Affairs*, EEOC No. 01966459, testimony concerning derogatory statements by the complainant's supervisor provided direct evidence that she was denied a promotion because of her religion.

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## Activity 2.0 EEO Complaints Process

### Objective:

- To illustrate the various stages involved in the EEO complaints process and the role of managers and supervisors in the various processes.

### Case Studies

#### 2.1 Case 1— Basic Requirements

Linda works as an analyst for a federal agency. She receives her performance evaluation in which she was rated “very good.” After receiving her evaluation, Linda contacts the agency’s EEO office and indicates her desire to file an EEO complaint. While completing the forms, Linda names her supervisor as the responsible management official and indicates she received a “very good” rather than an “outstanding” because her supervisor does not like her.

Has Linda met the basic elements of an EEO complaint? **No.**

There are two components to an EEO complaint: (1) the issue and (2) the bases. The protected bases are those defined by federal law, i.e., race, color, religion, etc. The issue is the action that took place. In this instance, the action was the employee receiving a “very good” performance evaluation.

#### 2.2 Case 2—Beginning of an EEO Complaint

Bob is a Contract Specialist in Organization A. On April 15<sup>th</sup>, Bob met with his supervisor, Jane, who provided his performance evaluation. Bob receives an overall rating of “fully successful.” He becomes upset and cannot understand why he was not rated higher. That afternoon, he learns that his colleague, Mary, also a Contract Specialist under the supervision of Jane, received a much higher rating. This further upsets Bob since he alleges Jane has asked him to assist Mary in completing her work.

On May 30<sup>th</sup>, Bob contacts the agency’s EEO office and alleges he was discriminated against by his manager and wants to file an EEO complaint.

- (a) Has Bob met procedural requirements for initiating an EEO complaint?

Yes. The complaint was filed within the requisite 45 days.

- (b) If so, what do you think he will allege as the protected EEO basis and issue for the action?

Basis is gender and issue is the “fully successful” performance rating.

#### 2.3 Case 3—The Counseling Process

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Jane receives a phone call from a person identifying himself as an EEO Counselor assigned to conduct an inquiry into Bob's allegations. The counselor tries to schedule an appointment to interview Jane, who is reluctant to participate in the interview process. She contacts the EEO office and requests additional information about the counselor. She also contacts the agency's General Counsel to seek information about the complaints process.

(a) Is Jane obligated to participate in the counseling process?

Yes. See page 13 of your training booklet, which discusses Manager's Rights and Responsibilities. Under responsibilities, managers must cooperate fully throughout the EEO complaint's process, inclusive of the EEO counseling process.

(b) What information, if any, should Jane be made aware of prior to contact by the EEO Counselor?

See page 11 of your training booklet, which illustrates the primary role of ODI during the complaints process, which includes providing to managers notice regarding basic information in the complaint. This is also one of the manager's rights, to know what the allegations are on page 13.

(c) Was it appropriate for Jane to contact the agency's General Counsel?

Yes. See page 12 of your training booklet, which illustrates the primary role of OGC during the Complaints Process.

(d) Does Jane have a right to legal representation during the interview?

Yes. This is one of the primary roles of OGC during the Complaints process.

During the interview with the counselor, Jane describes the differences between the performance of Mary and Bob. She also provides notes showing that Bob was counseled on numerous occasions, including his mid-year performance evaluation, regarding areas in which he needed to improve but failed to do so. Jane also tells the counselor that Bob is a slacker and is not well liked by other staff members.

(e) Is this appropriate information for Jane to provide to the counselor?

Yes regarding the first part and no regarding her personal comments of Bob.

While interviewing Bob, he informs the counselor he is open to alternative dispute resolution (mediation). The counselor contacts Jane, who agrees to the mediation. During the mediation, Jane appoints a subordinate manager under her supervision to attend the mediation on her behalf.

(f) Is the appointment of the subordinate manager a proper action for Jane to take?

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No. The manager must be a person with the authority to make a decision on behalf of the agency.

## **2.4 Case 4—Alternative Dispute Resolution (ADR) (Mediation)**

The mediation attempt was unsuccessful. Jane is then interviewed by the EEO Counselor. During the interview, she recommends that the counselor also speak to John, the Team Leader who manages the day to day activities of Bob and other employees. After the counselor interviews all parties with knowledge of the allegation, he relays the information to Bob to see if there is any additional interest in resolution. Bob states the only resolution was for Jane to raise his rating to that received by Mary. Jane states Bob's performance does not support a higher rating.

(a) Was it appropriate for the EEO Counselor to attempt to settle the complaint?

Yes. One of the primary roles of the EEO Counselor is to attempt to resolve the complaint at the lowest level.

(b) Is it proper for the EEO Counselor to speak to the Team Leader, John, per Jane's request?

Yes. Managers can give witnesses with knowledge of the alleged issues. (See Manager's Rights at page 13 of your training booklet.)

(c) If no settlement, what are the next steps?

The EEO Counselor issues a Notice of Right to File, in which the person has 15 days to file upon receipt of the notice.

## **2.5 Case 5—Formal Complaint Process**

Bob files a formal EEO complaint within 15 days upon receiving a Notice of Right to File from the counselor. His complaint is reviewed by the EEO office for acceptability. In his formal complaint, Bob alleges he was discriminated against on the basis of his gender when he received a "fully successful" rating while a female colleague with less experience received a higher rating. He also alleged that he was subjected to a hostile work environment based on his gender when Jane yelled at him in front of others for questioning her about his performance evaluation.

(a) Did Bob properly file his EEO complaint?

Yes regarding the 15 day timeline.

No regarding the issues alleged. The issues raised during the counseling stage are the ones that move forward during the formal stage. If new issues are raised, they are sent back for counseling.

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A few weeks later, Jane receives an email from Bob requesting 8 hours to prepare his responses to interview questions received from the EEO investigator. That same day, she receives a request for documents from the EEO office for information related to the complaint.

(b) What should Jane do in response to Bob's request for time to prepare his responses?

Jane should grant reasonable time (not to be confused with reasonable time when dealing with unions.) Guidance from the EEOC defines reasonable time as "whatever is appropriate under the particular circumstances of the complaint to allow a complete presentation of the relevant information associated with the complaint and to respond to agency request for information. (MD-110, Chapter 6, sect. VII.C.)

(c) Should Jane respond to the request for documents?

Yes or provide a justification if documents do not exist or cannot be located. Failure to do so can result in an adverse inference by the Administrative Judge or EEOC that if the information had been produced, it would have been favorable to the complainant.

## **2.6 Case 6—Investigative and Hearing Processes**

Jane receives a call from a person identifying herself as an EEO investigator. She also receives via email interview questions in which to respond. In response to the investigator's questions regarding the differences between the performance of Bob and Mary, Jane stated she rated each employee fairly. She refused to compare the rating of Bob with that of Mary because she did not feel it was appropriate to discuss the rating of another employee.

(a) Has Jane properly articulated management's response to Bob's contention?

During the investigative process, the responding manager must articulate a reasonable answer for the action taken and must state the facts. In this instance, it can be argued that the response may not be sufficient.

After completing her responses, Jane returns the statement to the EEO investigator. However, she did not sign the statement because it stated "I declare/swear/affirm under penalty of perjury that the foregoing is truthful and correct to the best of my knowledge." She also submits some of the requested documents to the EEO office but not all since she felt the information was confidential and she had not gotten the consent of her employees to submit such information.

(b) The EEO investigator returns Jane's statement requesting her signature. What should Jane do?

Sign the statement. Statements at the investigative stage are signed under declaration.

(c) The EEO office contacts Jane to obtain the documents and information that was not submitted. Is Jane obligated to submit such documents/information?

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As discussed above, yes.

(d) Are there any consequences if Jan refuses to submit the requested information?

Yes, as discussed above.

About six months later, Jane receives a call from the General Counsel's office indicating that Bob had requested a hearing before an EEOC Administrative Judge and is seeking to speak to her in preparation for the hearing. Jane no longer wants to participate since she has already been interviewed twice and believes she had sufficiently answered all the questions necessary about Bob's claims.

(e) Is Jane obligated to respond to the General Counsel's request?

Yes. She must participate in the counseling, investigative, and hearing stages. (See Manager's Responsibilities on page 13 of your training booklet)

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## Activity 3.0: Reasonable Accommodation

**Objective:** To describe agency responsibilities in the reasonable accommodation process.

### 3.1 Case 1—Documentation and the Interactive Process

An employee at a federal agency sought a reasonable accommodation on the bases of his disabilities (heart condition and sleep apnea). He requested reduced hours to accommodate his heart condition and a flexible schedule to accommodate his sleep apnea. Before making a decision, the applicable agency representative requested medical documentation from the employee's physician. The employee provided documentation regarding his sleep apnea. After speaking with the employee and the employee's manager, the agency offered him a flexible schedule. The employee accepted a later start time. However, the employee's physician failed to respond to the request for medical documentation regarding the heart condition, and the employee made no attempt to obtain the information.

- (a) Did the agency properly request medical documentation regarding the employee's conditions?

Yes. An agency may request medical documentation in response to an employee's request for accommodation.

- (b) Did the agency have an obligation to continue discussion regarding the reasonable accommodation request for the employee's heart condition once the information was not submitted?

The reasonable accommodation process involves an interactive process between the parties involved. However, there was no duty once the employee no longer participates.

### 3.2 Case 2—Discovering a Potential Need for Reasonable Accommodation

An employee at a federal agency received her mid-year performance evaluation, which showed her performance had decreased from the previous year. During the discussion with her supervisor, the manager pointed to specific areas in which the employee needed to improve. The manager also informed the employee that management had contacted the agency's Employee Relations Branch and that if her performance did not improve, she may be placed on a Performance Improvement Plan. During this discussion, the employee indicated that she had been having difficulty adjusting to a new prescription that made it difficult to function in the mornings and that she also felt the impact of the medication throughout most of the work day.

- (a) What advice, if any, should the manager offer to the employee?

To contact ODI or the agency's EAP office. Remember, there are no magic words when requesting an accommodation.

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- (b) Should the manager request any information from the employee regarding the referenced medication?

No. Managers should not ask employees for medical documentation or provide accommodations on his or her own volition. All accommodations are processed through ODI and are centrally funded through the Office of the Director, which means they do not come from your office's budget.

### **3.3 Case 3—Confidentiality**

An employee suffers from a psychiatric disability which requires certain medications to keep him stable. When the employee does not take his medication, he becomes depressed and irritable. One day at work, the employee forgets to take his medication and becomes abrasive with a few co-workers. One of the co-workers complains to the manager about the employee's behavior. The manager tells the co-worker about the employee's psychiatric disability and tells the co-worker to be patient with the employee.

- (a) Did the employer violate federal law by informing the co-worker of the employee's disability?

Yes. Information is confidential and should not be shared with staff.

- (b) How should the manager have responded to the co-worker's complaint?

Any response from management should not address a specific employee's particular reasonable accommodation.

- (c) Are there any resources available to assist the manager in properly responding to the co-worker's complaint?

Yes. Guidelines from the EEOC as well as ODI new guidelines, which are posted on ODI's website.

### **3.4 Case 4—Determining a reasonable and appropriate alternative.**

An employee suffers from a disease that requires the thermostat in the workplace be lowered to a certain level. The employee worked in an open cubicle and decreasing the temperature made it uncomfortably cold for other employees or customers.

- (a) Does the agency have to provide this accommodation?

Not if it is an undue hardship on the agency. EEOC defines such hardship as changes that are unduly costly, extensive, substantial, disruptive, or that would fundamentally alter the nature or operation of the organization. If not deemed an undue hardship, an agency may grant such an accommodation.

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(b) Is the agency obligated to provide an alternative accommodation?  
Yes, the agency must consider if there are alternative accommodations that would not impose undue hardship.

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## **Activity 4.0: Religious Accommodation**

**Objective:** To describe agency responsibilities in response to requests for religious accommodation.

### **4.1 Case 1—Religious Accommodations**

Jane manages a unit of 10 employees in the agency's IT division. All of the technicians under her supervision work in cubicles while Jane and other managers work from private offices that surround the cubicles. One of Jane's employees approaches her and indicates that his religion requires daily prayers. Because the employee works in a cubicle, he asks if there is a private area within the building in which he can practice his religion. Jane temporarily offers the employee the use of a private office situated between her and Jim, another manager, to practice his religion.

(a) Is this a proper action for Jane to take?

Yes. The employee requested an accommodation and Jane has appropriately accommodated the employee's religion practices in this instance.

A week later, Jim approaches Jane and states he is unable to work whenever the employee uses the vacant office due to loud noises.

(b) Is the agency required to take any further action?

Yes, the agency may have to locate an alternative accommodation for the employee if it does not cause an undue hardship on the agency. If the request does impose an undue hardship, the agency must consider if there are alternative accommodations that would not impose undue hardship.

### **4.2 Case 2—Parameters of Religious Accommodations**

Lucy is very active in her church and serves as the choir director. On average, she attends daily church-related activity after work. Lucy's church is preparing for a revival that involves churches from various regions and involves a joint choir, in which she will direct. In preparation for the revival, Lucy has scheduled several choir rehearsals during working hours to accommodate members of the joint choir. Lucy requests a total of six hours to attend the choir rehearsals. She further requests that she be allowed to make up the six hours over the weekend once the revival is over.

How should the agency respond?

The agency should deny the request. Religious practice does not include activities such as religious study or choir practice.