

Office of *Human Resources*



EEO and Diversity Management Training

Presented by OHR's EEO Compliance and Diversity Management Division

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EEO Compliance & Diversity Management Division



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Today's Topics

- ▶ **Types of Discrimination**
- ▶ **How to Perform an Intake**
- ▶ **How to Conduct an Investigation**
- ▶ **Practice Scenarios**



Types of Discrimination

What Constitutes Discrimination?

- ▶ **Employees are in a protected class (based on race, gender, and so on).**
- ▶ **They receive different treatment because they are in a protected class.**
- ▶ **There must be an adverse action that is related to the specified protected class.**
- ▶ **Employees outside of the specified protected class receive different or favorable treatment.**

Adverse Impact

- ▶ **Adverse impact is a seemingly neutral policy or practice that results in an adverse impact on members of a protected class.**
- ▶ **Discrimination can result from neutral employment policies and practices which are applied evenhandedly to all employees and applicants, but which have the effect of disproportionately excluding women and/or minorities.**

Adverse Impact Example

- ▶ **Gina applies to become a police officer.**
- ▶ **One of the requirements is to be 5'8' and weight at least 180 pounds.**
- ▶ **Gina is concerned that she is 5' 7" and weights only 140 pounds.**
- ▶ **She voices her concern to hiring personnel, and they state that this requirement is required of all applicants. She replies that she thinks this is gender-based discrimination.**

Disparate Treatment

- ▶ **Disparate treatment:**

- ▶ Intentional or unintentional to exclude individuals from employment, opportunities, or any terms or conditions of employment, or
- ▶ Different treatment related to a protected class.

- ▶ **To establish disparate treatment, employees must be “similarly situated.”**

- ▶ “Who are you comparing yourself to?”

Disparate Treatment Example

- ▶ Joy is the only female in her division.
- ▶ Joy complains that she is treated differently because she is female.
- ▶ She states that her supervisor writes her up for being late but does not do so for her male coworkers, who are often late as well.

Accommodation

- ▶ **This is a failure to accommodate employees':**
 - ▶ Religious observances or practices.
 - ▶ ADA-related accommodation requests, unless the request would create undue hardship to the employer.

Accommodation Example

- ▶ **Julio says that at his depot, during snowstorms, co-workers keep prayer cards at the dinner table and at each meal, someone reads one of the prayers aloud.**
- ▶ **He says he feels uncomfortable because he is agnostic.**
- ▶ **Julio requests that the practice be discontinued as a religious accommodation to him.**

Retaliation

- ▶ **This is when an employer takes an adverse action against employees because they:**
 - ▶ File a discrimination complaint.
 - ▶ Verbally complain of discrimination.
 - ▶ Assist another employee in filing a discrimination complaint.
 - ▶ Act as a witness in a discrimination complaint.
 - ▶ Otherwise participate in EEO-protected activities.

Retaliation Example

- ▶ **Jeff complains to his manager that his supervisor and co-workers refer to him as “old timer.” He has asked them to stop but they continue.**
- ▶ **Management addresses this by sending out a memo to his supervisor and coworkers, reminding them of the EEO policy and the inappropriateness of referring to a person’s age.**
- ▶ **During a staff meeting, Jeff’s supervisor reviews the memo with staff and says, “Some of us know how to take a joke” and looks directly at Jeff. He follows it up with, “Jeff, you’re on bathroom cleanup duty for the next two weeks.”**



How to Perform an Intake

Intake Guidelines | Best Practices

Intake Guidelines

- 1. Be prepared, as the complainant may request to:**
 - ▶ Obtain information on leave issues as well as the overall process, such as next steps.
 - ▶ Meet outside of normal work hours and work location.
 - ▶ Request to have an attorney present.
- 2. Set a time to privately interview the complainant and draft your questions beforehand.**
 - ▶ Note: If an individual shares that a discriminatory act occurred, you must investigate. You cannot keep it confidential at the complainant's request.

Intake Guidelines

3. Interview the complainant and record the facts:

- ▶ When and where did this occur? Who was present? What happened?
- ▶ Do you have and can you share proof of your allegation? What type of records would support what you are alleging?
- ▶ Maintain a file and log of all contacts, meetings, and communications (e.g., email, forms, etc.).
- ▶ Instruct the Complainant to go online and file a complaint at www.montgomerycountymd.gov/EEO.

Intake Guidelines

4. Report the case.

- ▶ Send an email with the basic facts to OHR's EEO Compliance & Diversity Management Division at Patricia.Miller@montgomerycountymd.gov

5. Once EEO determines that a discrimination case has been established:

- ▶ EEO will establish who will handle the complaint (the Department or OHR's EEO Division).

Intake Guidelines

- 6. If the Department will be handling the investigation, notify all parties of the complaint, the specific allegations, your intention to investigate, and confidentiality requirements (Notice of Complaint or NOC):**
 - ▶ Department Director, Complainant, and Respondent
- 7. Immediately commence an investigation into the allegations.**

Intake Best Practices

- ▶ **Maintain confidentiality at all times.**
 - ▶ You can be disciplined for not doing so.
 - ▶ No tape recorders allowed.
- ▶ **It is okay to have a second person to assist you during the interview with the complainant (tag team).**
- ▶ **You are “on” as an investigator.**
 - ▶ Be aware of your verbal and non-verbal communication.
 - ▶ You may need to change your professional “persona,” conduct and relationship.

Intake Best Practices (continued)

- ▶ **Just the facts:**
 - ▶ Remain neutral and remember that you are fact finding.
- ▶ **Offer support and guidance...**
 - ▶ But remember that you do not “represent” them.
- ▶ **Open and close an Intake even if there is no EEO basis.**
 - ▶ Be sure to justify why it is not an EEO complaint and address it as a Labor issue (if applicable).



How to Conduct an Investigation

Preparing | Interviewing
Analyzing Evidence & Reporting

Preparation

Prepare an investigative plan, and reach out to EEO if you need help:

- 1. Make a list of witnesses to interview.**
- 2. Prepare your interview questions for the witnesses and respondent.**
- 3. Decide which documents are pertinent to the case and review them.**
- 4. Set up the respondent interview first, followed by witness interviews, and let all interviewees know that attorneys cannot be present because this is a personnel matter.**
- 5. After the interviews, you may need to re-visit your investigative plan.**

Interviewing Respondent & Witnesses

- ▶ **Important questions to ask:**

- ▶ What is your relationship to the complainant?
- ▶ Were you present and did you witness the allegation in question?
- ▶ If you were not present, when and how did you hear of the allegation?
- ▶ Prepare any other questions that you think may apply and send them to EEO for review.

- ▶ **Respondents should be told what the specific allegations are against them.**

- ▶ **Best practices:**

- ▶ Witnesses (except the respondent) should not be advised of the specific allegations.
- ▶ Always interview witnesses privately.
- ▶ Establish the veracity of the witness.
- ▶ No tape recorders allowed.

Analyzing Evidence & Reporting

▶ **Analyzing the evidence:**

- ▶ Department should work with OHR's EEO Division to discuss evidence and determine findings.
- ▶ If there is evidence to support the allegation, discuss remedial or disciplinary action.

▶ **Reporting:**

- ▶ Send OHR's EEO Division copies of all statements obtained, the notice to all parties that a complaint was received, and any other pertinent documentation or evidence.
- ▶ Write a brief follow up report to summarize key findings that address each of the complainant's allegations.
- ▶ If disciplinary action is decided upon, it must be reviewed and approved by both EEO and Labor.
- ▶ A copy of the final disciplinary action should be submitted to EEO.



Practice Scenarios:

What Would You Do?



Scenario #1



- ▶ **Amanda has been an Equipment Operator with the department for eight years. She recently returned from maternity leave and approached her supervisor requesting a private place to pump breast milk.**
- ▶ **Her supervisor advised her that she would have to make her own arrangements and submit a leave slip for the time she spent expressing milk.**

Scenario #2



- ▶ **Sarah, who recently transitioned from male to female, reports that when she enters the breakroom many other employees immediately depart the area.**
- ▶ **She alleges that some of the employees give her menacing looks or openly stare at her as they are leaving.**

Scenario #3



- ▶ **David complains to you that employees treat him as if he has the plague.**
- ▶ **He claims employees are saying that he brought a virus into the workplace.**
- ▶ **He believes that they are saying this because he is from China.**

Scenario #4



- ▶ **Maria contacts you and states that she needs to meet with you privately.**
- ▶ **She tells you she has a sexual harassment complaint but does not want to meet at the office.**
- ▶ **She requests that management meet her at her home because she has been sexually assaulted and it's the only place she feels safe.**

Scenario #5



- ▶ **Jenny enters the staff meeting room appearing to be extremely agitated.**
- ▶ **You are handing out assignments and there are five other employees present.**
- ▶ **Jenny yells, “Roger is crazy, he’s going to kill somebody!”**

Scenario #6



- ▶ **Joanna (24 years of age) comes in to complain that she believes that she is being discriminated against because of her age.**
- ▶ **She says her supervisor talks to her as if she is a child.**
- ▶ **Joanna further complains that the supervisor never allows her to operate the heavy equipment.**
- ▶ **Finally, the supervisor is always remarking to her in front of others that she is still “wet behind the ears.”**

Scenario #7



- ▶ **Dawn comes to you upset and crying.**
- ▶ **She tells you that coworkers (male) are constantly making sexual innuendo in her presence. She has asked them to stop but they continue this behavior.**
- ▶ **You ask her who the employees are but Dawn says she does not want to disclose, she just wants an immediate transfer.**

Scenario #8



- ▶ **Bill works 8 am to 4 pm Monday to Friday.**
- ▶ **Because of a recent medication change due to his disability, Bill requests to change his hours to 9:30 am to 5:30 pm, Monday to Friday.**

Scenario #9



- ▶ **Last month, Charles complained of discrimination to upper management regarding his immediate supervisor, John.**
- ▶ **As a result, John received disciplinary action.**
- ▶ **Last week, Charles said that ever since he filed his complaint with management, John has not spoken to him or shared vital information he needs to do his job.**




Questions?

In Our Own Voices: Telling Our Stories



- ▶ **Recurring virtual event series that highlights employees from different cultures and backgrounds**
- ▶ **Panelists share their experiences from their workplaces and communities, followed by an FAQ session**
- ▶ **Look for this special event in the monthly MCG Employee Training & Events email and follow the steps to register!**

**MCG EMPLOYEE
TRAINING & EVENTS**

Montgomery County Government (MCG) offers a wide variety of training opportunities to help increase the knowledge, skills, and abilities of MCG employees. Below are the classes available for February 2022. Classes and events are available on a first come, first served basis.

Latest Training News:

- [2022 MCG LEADS program offerings](#) now available
- [FY22 Family and Medical Leave Act \(FMLA\) and Americans with Disabilities Act \(ADA\) classes](#) just released in Employee Self Service; search "FMLA" or "ADA"

Special Events			
For information contact: OLM.Admin@montgomerycountymd.gov			
Class	Audience	Date	Time
2022 Montgomery County Black History Month Program: Health & Wellness	All	Feb 16	10:30 am – noon
In Our Own Voices: Telling Our Stories	All	Feb 23	10 – 11:30 am

Mandatory Training			
For information contact: OLM.Admin@montgomerycountymd.gov			
Class	Audience	Date	Time
Limited English Proficiency (LEP)	Mandatory for all front-line employees	Feb 8	1 – 3 pm
Preventing Workplace Harassment	All employees, contractors, and vendors	Feb 15	9 am – noon

**Thank you for attending, and for helping to
prevent and address workplace harassment.**

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