

AMCCC-G

1 November 1999

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Guidance on Implementation of Revised EEOC Regulations

1. On 9 November 1999, the Equal Employment Opportunity Commission's (EEOC) regulations revising 29 CFR 1614 will go into effect. According to the EEOC, **all EEO matters, new and pending, will be processed under the new procedures on and after that date.** Labor counselors must be prepared to face the new challenges posed by increased power being asserted by the EEOC and EEOC Administrative Judges.
2. Guidance is now available from a number of sources. Labor counselors have already been advised by e-mail and through the AMC Forum on JAGCNet that the EEOC is offering Technical Assistance Program Seminars (TAPS) designed especially for the Federal Sector throughout the country during November, December and January. Information and registration forms are available at <http://www.eeoc.gov/taps/fed.html>. Labor counselors who were not able to attend OTJAG's 29 October 1999 VTC and who submit blank videotapes to this office will receive a taped copy of the VTC as soon as it becomes available.
3. This memorandum transmits interim guidance issued by the EEOC on 15 October 1999. The EEOC's guidance does little more than emphasize EEOC's determination to immediately apply the new procedures to all new and pending cases.
4. On 26 October 1999, the EEO Compliance and Complaints Review Agency (EEOCCRA) faxed detailed implementation guidance to MACOM EEO Offices. A copy of that guidance, with a 22 October cover memo, is also attached. EEOCCRA's guidance was coordinated with OTJAG's Labor and Employment Law Division (DAJA-LE) and with Mr. Ernie Willcher, DA OGC. During the early days of implementation, EEOCCRA's guidance is likely to be of considerable importance as a quick and easy reference. Please note that Section VII emphasizes the role of the labor counselor.
5. EEOCCRA's guidance makes many references to the **draft** version of the new EEOC MD-110, a copy of which is attached. We have been advised that the EEOC views this draft as a "living document" subject to change. There are currently a number of provisions which are totally unacceptable to the Army legal community, including the concept that an attorney who provides advice on pre-complaint processing or settlements

at the informal stage cannot later serve as the agency representative on the same complaint. Even if this provision survives EEOC's next round of revisions, we would expect to resist implementation on the grounds that EEOC MD-110 does not have the force and effect of law, and there is no other legal basis for disqualifying the labor counselor.

6. Over the course of the next few months, my Employment Law Team will keep labor counselors advised of important developments related to the new regulations. At a minimum, we expect more teaming between labor counselors and EEO specialists, an increased emphasis on timely processing at the formal stage, a greater need for early discovery, and a new working relationship between agency representatives and EEOCRA analysts.

7. One of the most important changes to go into effect on 9 November will be that EEOC Administrative Judges will have the authority to issue decisions (including remedies and relief, if any) that will become final and binding if the Army does not issue a final order and file an appeal within 40 (forty) days. Although only EEOCRA will be authorized to file appeals, EEOCRA will work closely with agency representatives, who will prepare draft versions of appeal briefs for review by MACOM legal offices and OTJAG as well as EEOCRA. Due to this need for increased coordination, **I am immediately implementing a requirement that any agency representative who is notified of an adverse decision from an EEOC Administrative Judge will notify my Employment Law Team within 24 hours.** This can be accomplished by telephone or e-mail. Additional instructions will be issued to labor counselors during the coming weeks.

8. My POC for this matter is Linda B. R. Mills, DSN 767-8049. As usual, Linda will be issuing more detailed guidance directly to labor counselors via e-mail and the AMC Forum.

9. AMC -- Your Readiness Command . . . Serving Soldiers Proudly

Encls
as

EDWARD J. KORTE
Command Counsel