

Questions and Answers

New Chapter on Settlement Authority

Management Directive 110

The U.S. Equal Employment Opportunity Commission has issued a new chapter 12, entitled [Settlement Authority](#), as part of its federal sector Management Directive, MD 110. The chapter explains the standards governing the settlement of EEO disputes in the federal sector. By giving both agencies and their employees useful and detailed information about the options they have in settling EEO cases, it will make it more likely that parties in these disputes will be able to resolve their differences on their own. This new chapter helps implement EEOC's long-standing policy of strong support for settlements of EEO cases in appropriate circumstances.

Q: What gives federal agencies the legal authority to settle EEO disputes?

A: All of the statutes enforced by the EEOC -- Title VII (prohibiting employment discrimination on the basis of race, color, sex, national origin, or religion), the Rehabilitation Act (protecting federal employees with disabilities against discrimination), the Age Discrimination in Employment Act (protecting employees age 40 and over from discrimination) and the Equal Pay Act (guaranteeing equal pay to men and women performing substantially equal jobs) authorize agencies to enter into settlements of claims brought under the statutes.

Q: Must an agency admit that it unlawfully discriminated or took an unjustified or unwarranted personnel action to settle an EEO dispute?

A: No. Agencies do not have to admit to wrongdoing in order to settle an EEO claim. Because the legal authority to settle these cases is found within the EEO laws themselves, the Back Pay Act requirement that there must be a finding of an unjustified or unwarranted personnel action to justify a payment of back pay in connection with other personnel claims doesn't apply.

Q: What types of settlements may parties to an EEO dispute agree to?

A: Agencies have significant flexibility in structuring settlement agreements. As long as the parties agree, they can settle for any relief that a court could order if the case were to go to trial. For example, an agency and an employee may agree to a retroactive or prospective personnel action, back pay, attorney's fees, costs, and/or monetary damages. Remedies can also include more creative measures such as the provision of out-placement services to a discharged employee, so long as the costs don't exceed what the employee would be entitled to under the EEO laws.

Q: Can agencies settle EEO cases for cash payments to the employee, but no corresponding personnel actions?

A: Yes. Settlements may involve monetary payments without any personnel action, provided that the monetary payment does not exceed the amount of back pay, attorney's fees, costs and/or damages the employee would be entitled to in the case if discrimination had been found. For example, if the parties agree, they could settle a case involving a claim of a discriminatorily denied promotion with a cash payment to the employee but no promotion.

Q: Could an agency settle a case for a retroactive personnel action but no, or only partial, back pay.

A: Yes, again. For example, an agency and employee might agree to a retroactive personnel action and a lump sum cash payment which does not specify to what extent it includes back pay, damages, and/or attorneys fees. The parties could also agree to a retroactive personnel action, such as a promotion, without any

accompanying back pay or monetary payment. As long as the personnel action and the monetary payments do not exceed the employee's legal entitlements, such a settlement would be acceptable.

Q: Can settlements of EEO disputes contain terms affecting the retirement status of the complainant?

A: Yes. However, if a settlement provides for a retroactive personnel action, all appropriate contributions to the retirement funds must be made before that personnel action can have an effect on the employee's retirement pension or status. In addition, the rates of basic pay or grade and step deemed to be received by the complainant, and the periods during which each rate of pay was received must be specified in the settlement terms.

Q: Did the EEOC consult with the Office of Personnel Management in preparing the new chapter?

A: Yes. EEOC worked with OPM to ensure consistency in approach and guidance.