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§ 268.103 Complaints of discrimination covered by this part.

(a) Individual and class complaints of employment discrimination and retaliation prohibited by title VII (discrimination on the basis of race, color, religion, sex and national origin), the ADEA (discrimination on the basis of age when the aggrieved person is at least 40 years of age), the Rehabilitation Act (discrimination on the basis of disability), or the Equal Pay Act (sex-based wage discrimination) shall be processed in accordance with this part. Complaints alleging retaliation prohibited by these statutes are considered to be complaints of discrimination for purposes of this part.

(b) This part applies to all Board employees and applicants for employment at the Board, and to all employment policies or practices affecting Board employees or applicants for employment.

(c) This part does not apply to Equal Pay Act complaints of employees whose services are performed within a foreign country or certain United States territories as provided in 29 U.S.C. 213(f).

§ 268.104 Pre-complaint processing.

(a) Aggrieved persons who believe they have been discriminated against on the basis of race, color, religion, sex, national origin, age or disability must consult a Counselor prior to filing a complaint in order to try to informally resolve the matter.

(1) An aggrieved person must initiate contact with a Counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 days of the effective date of the action.

(2) The Board or the Commission shall extend the 45-day time limit in paragraph (a)(1) of this section when the individual shows that he or she was not notified of the time limits and was not otherwise aware of them, that he or she did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence he or she was prevented by circumstances beyond his or her control from contacting the counselor within the time limits, or for other reasons considered sufficient by the Board or the Commission.

(b)(1) At the initial counseling session, Counselors must advise individuals in writing of their rights and responsibilities, including the right to request a hearing or an immediate final decision after an investigation by the Board in accordance with § 268.107(f), election rights pursuant to § 268.302, the right to file a notice of intent to sue pursuant to § 268.201(a) and a lawsuit under the ADEA instead of an administrative complaint of age discrimination under this part, the duty to mitigate damages, administrative and court time frames, and that only the claims raised in precomplaint counseling (or issues or claims like or related to issues or claims raised in precomplaint counseling) may be alleged in a subsequent complaint filed with the Board. Counselors must advise individuals of their duty to keep the Board and the Commission informed of their current address and to serve copies of appeal papers on the Board. The notice required by paragraphs (d) or (e) of this section shall include a notice of the right to file a class complaint. If the aggrieved person informs the Counselor that he or she wishes to file a class complaint, the Counselor shall explain the class complaint procedures and the responsibilities of a class agent.

(2) Counselors shall advise aggrieved persons that, where the Board agrees to offer ADR in the particular case, they may choose between participation in the alternative dispute resolution program and the counseling activities provided for in paragraph (c) of this section.

(c) Counselors shall conduct counseling activities in accordance with instructions contained in Commission Management Directives. When advised that a complaint has been filed by an aggrieved person, the Counselor shall submit a written report within 15 days to the EEO Programs Director and the aggrieved person concerning the issues discussed and actions taken during counseling.

(d) Unless the aggrieved person agrees to a longer counseling period under paragraph (e) of this section, or