

The Digest of Equal Employment Opportunity Law

The Offer of Resolution Settlement Procedure in the Federal Sector

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The Digest of Equal Employment Opportunity Law

Introduction

The U.S. Equal Employment Opportunity Commission (EEOC) has long encouraged federal agencies to engage in settlement discussions to resolve complaints of discrimination during the EEO process.¹ In addition, Title VII of the Civil Rights Act of 1964 expressly encourages the settlement of employment discrimination disputes without litigation.² The “offer of resolution” is an often overlooked tool for agencies to settle EEO complaints.

Under 29 C.F.R. Section 1614.109(c), an agency may make an offer of resolution that specifically provides the remedial relief a complainant would have been entitled to had a finding of discrimination been made.³ If the complainant accepts the offer of resolution, the complaint is settled in full and processing stops. However, if the complainant does not accept the offer of resolution and ultimately obtains lesser relief later on, no attorney’s fees or costs will be payable for work done after the offer was rejected.⁴ Therefore, the offer of resolution is a powerful tool for controlling attorney’s fees and costs.

Still, the EEOC has seen few appeal filings raising the offer of resolution procedure since its inception in November 1999. Given the potential savings on attorney’s fees and costs, consideration of this tool is long overdue.

Policy Reasons for Offers of Resolution

Before the advent of compensatory damages in the federal sector EEO process, the EEOC allowed agencies to make a settlement offer known as an “offer of full relief” to complainants.⁵ The EEOC found that a proposed settlement offer could be regarded as an offer of full relief if the agency offered all of the remedies to which the complainant would have been entitled if the complainant prevailed on the allegations of discrimination.⁶ The regulation in effect at the time, 29 C.F.R. § 1614.107(h), provided that an agency could dismiss a complaint if the complainant rejected an offer of full relief.⁷ This dismissal regulation was based on an understanding that adjudication of a claim was unnecessary if the agency was willing to make a complainant whole.⁸

The EEOC subsequently sought to amend section 1614.107 and remove the offer of full relief procedure from its regulations. The EEOC found that it became virtually impossible to determine when an offer of damages constituted an offer for full relief due to the introduction of compensatory damages in the federal sector EEO process.⁹ The EEOC determined that an offer of full relief needed to specifically address compensatory dam-

1 U.S. Equal Employment Opportunity Comm’n, [Management Directive \(MD\)-110, Ch. 12, Sec. I \(Aug. 5, 2015\)](#).

2 U.S. Equal Employment Opportunity Comm’n, [Management Directive \(MD\)-110, Ch. 12, Sec. II \(Aug. 5, 2015\)](#).

3 [Offer of Resolution, 29 C.F.R. § 1614.109\(c\) \(2021\)](#).

4 [Offer of Resolution, 29 C.F.R. § 1614.109\(c\) \(2021\)](#).

5 [Offer of Resolution, 63 Fed. Reg. 8,596 \(Feb. 20, 1998\)](#).

6 See [Perlingiero v. Navy, EEOC Appeal No. 01941176 \(Feb. 24, 1995\)](#).

7 See [Vess v. Tennessee Valley Authority, EEOC Appeal No. 0120111039 \(Nov. 14, 2011\)](#).

8 [Offer of Resolution, 63 Fed. Reg. 8,596 \(Feb. 20, 1998\)](#).

9 [EEOC Questions and Answers: Final Federal Sector Complaint Processing Regulations 29 C.F.R. Part 1614](#).



The Digest of Equal Employment Opportunity Law

ages where appropriate.¹⁰ However, the EEOC found it difficult to assess whether an agency offered full relief unless the agency offered the full amount of damages allowed under the statute.¹¹ The administrative process also received criticism because it placed complainants in a position of risking the dismissal of their complaints if they did not believe that the agency's offer was an offer of full relief.¹²

Some agencies agreed with the EEOC's position that full relief dismissals had become rare since compensatory damages became available to federal employees.¹³ Others argued that they still used the full relief dismissal procedure in some cases. Agencies recommended that the EEOC revise the procedure to permit an independent review and certification of full relief offers.¹⁴ Agencies argued that this certification by the EEOC would minimize the risk to complainants when determining whether an agency's offer constituted full relief.¹⁵

The EEOC determined, however, that it did not wish to use its limited resources to create a limited review and certification procedure of offers of full relief.¹⁶ And without such a review and certification procedure, the EEOC believed that complainants were left "in the unfortunate position of trying to evaluate whether the agencies that they believed discriminated against them had truly offered them all the relief they would be entitled to in a federal court, and jeopardizing their whole case if they decided in error."¹⁷

The EEOC proposed the offer of resolution procedure in response to comments from agencies requesting that the offer of full relief dismissal be retained or modified.¹⁸ The EEOC believed that the new procedure would provide an incentive for agencies and complainants to resolve complaints, in part, because a consequence of not accepting an offer of resolution could result in the limitation of attorney's fees.¹⁹ The EEOC found it necessary to conserve agency resources going forward and believed that the offer of resolution procedure would help in doing so by conserving time and expense in the EEO process.²⁰

Therefore, in response to widespread perceptions that the EEO administrative process was not impartial and in an effort to improve the effectiveness of its operations, the EEOC revised its regulations governing the federal sector EEO complaint administrative process on November 9, 1999.²¹ These revisions eliminated section 1614.107(h),²² so agencies were no longer allowed to dismiss complaints for a complainant's failure to accept

10 See [Jackson v. U.S. Postal Serv., EEOC Appeal No. 01923399 \(Nov. 12, 1992\)](#), req. for recon. den' d, EEOC Request No. 05930306 (Feb. 1, 1993).

11 [Offer of Resolution, 63 Fed. Reg. 8,597 \(Feb. 20, 1998\)](#).

12 [Dismissals, 63 Fed. Reg. 8,596 \(Feb. 20, 1998\)](#).

13 [Dismissals, 63 Fed. Reg. 8,596 \(Feb. 20, 1998\)](#).

14 [Dismissals, 63 Fed. Reg. 8,596 \(Feb. 20, 1998\)](#).

15 [Dismissals, 63 Fed. Reg. 8,596 \(Feb. 20, 1998\)](#).

16 [Dismissals, 63 Fed. Reg. 8,596 \(Feb. 20, 1998\)](#).

17 [Dismissals, 63 Fed. Reg. 8,596 \(Feb. 20, 1998\)](#).

18 [Offer of Resolution, 63 Fed. Reg. 8,597 \(Feb. 20, 1998\)](#).

19 [Offer of Resolution, 63 Fed. Reg. 8,597 \(Feb. 20, 1998\)](#).

20 U.S. Equal Employment Opportunity Comm'n, [Management Directive \(MD\)-110, Ch. 6, Sec. XIII \(Aug. 5, 2015\)](#).

21 [EEOC Questions and Answers: Final Federal Sector Complaint Processing Regulations 29 C.F.R. Part 1614](#).

22 See [Vess v. Tennessee Valley Authority, EEOC Appeal No. 0120111039 \(Nov. 14, 2011\)](#).



The Digest of Equal Employment Opportunity Law

an offer of full relief. In its place, the EEOC introduced the new offer of resolution procedure to continue to encourage settlement in the administrative process.²³ The EEOC intended that non-monetary and monetary relief be considered when comparing the relief in an offer of resolution with that actually obtained.²⁴

The EEOC modeled the offer of resolution after the offer of judgement rule under Rule 68 of the Federal Rules of Civil Procedure.²⁵ The EEOC did this in an effort to make parties weigh the consequences of not settling an EEO complaint. As the U.S. Supreme Court said in *Marek v. Chesney*,²⁶ Rule 68 “prompts both parties to a suit to evaluate the risks and costs of litigation, and to balance them against the likelihood of success upon trial on the merits.” The Supreme Court further noted:

Rule 68’s policy of encouraging settlements is neutral, favoring neither plaintiffs nor defendants; it expresses a clear policy of favoring settlement of all lawsuits. Civil rights plaintiffs—along with other plaintiffs—who reject an offer more favorable than what is thereafter recovered at trial will not recover attorney’s fees for services performed after the offer is rejected.²⁷

The Supreme Court also noted that Rule 68 requires plaintiffs to “think very hard” about whether continued litigation is worthwhile.²⁸ Accordingly, the intention of Section 1614.109(c), modeled after Rule 68, is to encourage agencies to avoid costly EEO administrative litigation and to make complainants consider whether continuing with the EEO process would be in their best interests.

How Offers of Resolution Work (MD-110, Ch. 6, Sec. XIII)

The EEOC’s Management Directive (MD)-110, Chapter 6, Section XIII explains the mechanics of the offer of resolution procedure in accordance with Section 1614.109(c).

The timing of an offer of resolution is dependent on whether complainant is represented by an attorney.²⁹ An agency may make an offer of resolution to “a complainant who is represented by an attorney at any time after the filing of a formal complaint until thirty (30) days before a hearing.”³⁰ If a complainant is not represented by counsel, then an offer of resolution cannot be made before the case is assigned to an administrative judge for a hearing.³¹

An offer of resolution “must be in writing and must explain to the complainant the possible consequences of failing to accept the offer.”³² The agency must include any non-monetary relief offered and attorney’s fees and

23 [EEOC Questions and Answers: Final Federal Sector Complaint Processing Regulations 29 C.F.R. Part 1614.](#)

24 U.S. Equal Employment Opportunity Comm’n, [Management Directive \(MD\)-110, Ch. 6, Sec. XIII \(Aug. 5, 2015\).](#)

25 U.S. Equal Employment Opportunity Comm’n, [Management Directive \(MD\)-110, Ch. 6, Sec. XIII \(Aug. 5, 2015\).](#)

26 [473 U.S. 1, 4 \(1985\).](#)

27 [473 U.S. 1, 10 \(1985\).](#)

28 [473 U.S. 1, 10 \(1985\).](#)

29 U.S. Equal Employment Opportunity Comm’n, [Management Directive \(MD\)-110, Ch. 6, Sec. XIII \(Aug. 5, 2015\).](#)

30 U.S. Equal Employment Opportunity Comm’n, [Management Directive \(MD\)-110, Ch. 6, Sec. XIII \(Aug. 5, 2015\).](#)

31 U.S. Equal Employment Opportunity Comm’n, [Management Directive \(MD\)-110, Ch. 6, Sec. XIII \(Aug. 5, 2015\).](#)

32 U.S. Equal Employment Opportunity Comm’n, [Management Directive \(MD\)-110, Ch. 6, Sec. XIII \(Aug. 5, 2015\).](#)



The Digest of Equal Employment Opportunity Law

costs.³³ Agencies may offer relief in the form of a lump sum payment or an itemized amount.³⁴ Complainant has 30 days from receipt of the offer to accept it in writing.³⁵ Acceptance of the offer of resolution ends the processing of the complaint, and thereafter it is considered settled in full.³⁶

However, if the complainant does not accept the offer of resolution then the EEO complaint process continues.³⁷ Complainant's denial of the offer of resolution is only considered after an administrative judge, the agency, or the EEOC³⁸ makes a finding of discrimination and the relief ordered is lower than the amount in the offer of resolution.³⁹ "The agency may use complainant's decision not to accept its offer of resolution to argue for a reduction in its obligation to pay complainant's attorney's fees."⁴⁰ In general, if a complainant rejects an offer of resolution and the relief later ordered is lower than the offer, then the complainant will not receive payment from the agency for attorney's fees or costs incurred after the expiration of the 30-day acceptance period.⁴¹ However, there is an exception to this rule, when the interest of justice is not served, this rule is not enforced.⁴²

If a complainant rejects the agency's offer of resolution, the agency may make additional offers of resolution. The parties may also attempt to negotiate a settlement of the complaint.⁴³ Both non-monetary and monetary relief should be considered when determining whether or not the relief in the offer of resolution is greater than the amount awarded by the administrative judge, agency, or the EEOC.⁴⁴ However, attorney's fees and costs incurred after the offer of resolution was made, should not be considered when determining whether the relief in the offer of resolution is greater.⁴⁵

The EEOC's MD-110 provides sample language for extending offers of resolution to complainants represented and not represented by counsel.⁴⁶ For example:

33 U.S. Equal Employment Opportunity Comm'n, [Management Directive \(MD\)-110, Ch. 6, Sec. XIII \(Aug. 5, 2015\)](#).

34 U.S. Equal Employment Opportunity Comm'n, [Management Directive \(MD\)-110, Ch. 6, Sec. XIII \(Aug. 5, 2015\)](#).

35 U.S. Equal Employment Opportunity Comm'n, [Management Directive \(MD\)-110, Ch. 6, Sec. XIII \(Aug. 5, 2015\)](#).

36 U.S. Equal Employment Opportunity Comm'n, [Management Directive \(MD\)-110, Ch. 6, Sec. XIII \(Aug. 5, 2015\)](#).

37 U.S. Equal Employment Opportunity Comm'n, [Management Directive \(MD\)-110, Ch. 6, Sec. XIII \(Aug. 5, 2015\)](#).

38 [Offer of Resolution, 29 C.F.R. § 1614.109\(c\)\(3\)\(2021\)](#) notes, in part, "If the complainant fails to accept an offer of resolution and the relief awarded in the administrative judge's decision, the agency's final decision, or the EEOC decision on appeal is not more favorable than the offer, then, except where the interest of justice would not be served, the complainant shall not receive payment from the agency of attorney's fees or costs incurred after the expiration of the 30-day acceptance period" (emphasis added).

39 U.S. Equal Employment Opportunity Comm'n, [Management Directive \(MD\)-110, Ch. 6, Sec. XIII \(Aug. 5, 2015\)](#).

40 U.S. Equal Employment Opportunity Comm'n, [Management Directive \(MD\)-110, Ch. 6, Sec. XIII \(Aug. 5, 2015\)](#).

41 U.S. Equal Employment Opportunity Comm'n, [Management Directive \(MD\)-110, Ch. 6, Sec. XIII \(Aug. 5, 2015\)](#).

42 U.S. Equal Employment Opportunity Comm'n, [Management Directive \(MD\)-110, Ch. 6, Sec. XIII \(Aug. 5, 2015\)](#). For example, if the complainant is told by a responsible agency official that the agency will not comply in good faith with the offer of resolution then the EEOC may find that it should not be enforced due to the interest of justice.

43 U.S. Equal Employment Opportunity Comm'n, [Management Directive \(MD\)-110, Ch. 6, Sec. XIII \(Aug. 5, 2015\)](#).

44 U.S. Equal Employment Opportunity Comm'n, [Management Directive \(MD\)-110, Ch. 6, Sec. XIII \(Aug. 5, 2015\)](#).

45 U.S. Equal Employment Opportunity Comm'n, [Management Directive \(MD\)-110, Ch. 6, Sec. XIII \(Aug. 5, 2015\)](#).

46 U.S. Equal Employment Opportunity Comm'n, [Management Directive \(MD\)-110, Ch. 6, Sec. XIII \(Aug. 5, 2015\)](#).



The Digest of Equal Employment Opportunity Law

This offer of resolution is made in full satisfaction of the claims of employment discrimination that you have made against [name of agency] in [identify the complaint by number or other clear and unambiguous designation]. This offer includes all of the monetary and/or non-monetary relief to which you are entitled, including attorney's fees and costs.

[For complainants who are not represented by counsel include this paragraph:]

Your acceptance of this offer must be made in writing and postmarked or received in this office within thirty (30) days of your receipt of the offer. If you accept this offer, please indicate your acceptance on the enclosed original offer by signing on the line appearing above your name and include the date of your acceptance on the line appearing adjacent to your name. You should send or deliver your acceptance of the offer to the undersigned at the address specified below.

[For complainants represented by counsel, substitute the following paragraph:]

The complainant's acceptance of this offer must be made in writing and postmarked or received in this office within thirty (30) days of your receipt of the offer. If the complainant accepts this offer, please indicate your acceptance on the enclosed original offer by signing on the line appearing above your name and include the date of your acceptance on the line appearing adjacent to your name. Please also obtain the signature of the complainant, which should be placed on the line appearing above [his/her] name and include the date of [his/her] acceptance on the line appearing adjacent to [his/her] name. This offer will not be deemed to have been accepted without the signature of both you and the complainant. You should send or deliver your acceptance of the offer to the undersigned at the address specified below.

[The following paragraphs must be included in offers sent to ALL complainants:]

If you do not accept this offer of resolution and the relief that you are eventually awarded by the Administrative Judge, or the Equal Employment Opportunity EEOC on appeal, is less than the amount offered, you will not receive payment for the attorney's fees or costs that you incur after the expiration of the 30-day acceptance period for this offer. The only exception to this rule is where the Administrative Judge or EEOC rules that the interests of justice require that complainant receive full attorney's fees and costs.

Before making an offer of resolution, agencies should consult the EEOC's MD-110 for a detailed guide on the proper procedures for making an offer of resolution.

Typical Settlement Agreements Versus Offers of Resolution

The EEOC has long encouraged parties to settle complaints as early as possible in the EEO administrative process. The most common settlement vehicle is the settlement agreement. EEOC Regulation 29 C.F.R. § 1614.504(a) states that any settlement agreement knowingly and voluntarily agreed to by the parties, reached at any stage of the complaint process, shall be binding on both parties. The EEOC has long held that a settlement agreement constitutes a contract between the employee and the agency, to which ordinary rules of



The Digest of Equal Employment Opportunity Law

contract construction apply.⁴⁷

Therefore, for a settlement agreement to be valid, there must be an offer, acceptance, and consideration.⁴⁸ The terms of a settlement can include anything agreed to by the parties and does not have to include make whole relief.

The EEOC has also held with respect to settlement agreements that it is the intent of the parties as expressed in the contract, not some unexpressed intention, that controls the contract's construction. In ascertaining the intent of the parties, the EEOC has generally relied on the plain meaning rule.⁴⁹ This rule states that if the writing appears to be plain and unambiguous on its face, its meaning must be determined from the four corners of the instrument without resort to outside evidence of any nature.⁵⁰

There are several key differences between a typical settlement agreement and an offer of resolution. The terms of a settlement agreement are more fluid—the parties can agree to almost anything as long as the terms are agreeable to both parties and the terms follow the rules of contract.⁵¹ A settlement agreement can also be entered into at any time during the administrative process. In contrast, an agency must make an offer of resolution during a specific time frame in the administrative process. The offer of resolution must also include the remedial relief a complainant would have been entitled to had a finding of discrimination been made.⁵²

Another major difference relates to attorney's fees and costs. In a settlement agreement, attorney's fees may or may not be included.⁵³ In an offer of resolution, if a complainant rejects the offer and then receives lesser relief, attorney's fees and costs are capped from the date of the rejection of the offer of resolution.

Similar to settlement agreements, an agency's failure to implement the terms of an offer of resolution is sub-

47 See [Retha W. v. Dep't of Agriculture, EEOC Appeal No. 0120151000 \(Mar. 24, 2017\)](#) [citing *Herrington v. Dep't of Def.*, EEOC Request No. 05960032 (Dec. 9, 1996); *Hyon O v. U.S. Postal Serv.*, EEOC Request No. 05910787 (Dec. 2, 1991); and *Eggleston v. Dep't of Veterans Affairs*, EEOC Request No. 05900795 (Aug. 23, 1990)].

48 See [Karol K. v. U.S. Postal Serv., EEOC Appeal No. 2020005204 \(Mar. 8, 2002\)](#). “Generally, the adequacy or fairness of the consideration in a settlement agreement is not at issue, as long as some legal detriment is incurred as part of the bargain. However, when one of the contracting parties incurs no legal detriment, the provisions of the agreement will be set aside for lack of consideration” (internal citations omitted).

49 See [Retha W. v. Dep't of Agriculture, EEOC Appeal No. 0120151000 \(Mar. 24, 2017\)](#) [citing *Herrington v. Dep't of Def.*, EEOC Request No. 05960032 (Dec. 9, 1996); *Hyon O v. U.S. Postal Serv.*, EEOC Request No. 05910787 (Dec. 2, 1991); and *Eggleston v. Dep't of Veterans Affairs*, EEOC Request No. 05900795 (Aug. 23, 1990)].

50 See [Goodheart Clothing Co., Inc. v. Laura Goodman Enterprises, Inc.](#), 962 F.2d 268, 272 (2d Cir. 1992).

51 See <https://www.eeoc.gov/federal-sector/sample-settlement-agreements> for examples of settlement agreement language.

52 [Dinah L. v. Small Business Admin.](#), EEOC Appeal No. 2019001982 (Jan. 17, 2020).

53 A complainant who prevails through a negotiated settlement is entitled to attorney's fees and costs under the same standards as any other prevailing party. [Maher v. Gagne](#), 448 U.S. 122 (1980); [Copeland v. Marshall](#), 641 F.2d 880 (D.C. Cir. 1980); [EEOC v. Madison Community Unit Sch. Dist. 12](#), 818 F.2d 577 (7th Cir. 1987); [Farrar v. Hobby](#), 506 U.S. 103 (1992); [Cerny v. Dep't. of the Navy](#), EEOC Request No. 05930899 (Oct. 19, 1994). But a settlement agreement that fails to preserve the issue of fees and costs will operate as an implicit waiver of fees and costs. The EEOC strongly encourages parties to resolve fee and cost issues by negotiated settlement, [U.S. Equal Employment Opportunity Comm'n, Management Directive \(MD\)-110, Ch. II, Sec. VI, D \(Aug. 5, 2015\)](#).



The Digest of Equal Employment Opportunity Law

ject to appeal. EEOC Regulation 29 C.F.R. § 1614.504(a) states that the complainant must notify the EEO Director of the agency in writing of the alleged breach within 30 days of when the complainant knew or should have known of the breach. If the agency has not responded to the complainant in writing, the complainant may appeal to the EEOC to determine whether the agency complied with the offer of resolution. Complainant may file such an appeal 35 days after the agency has been served with the allegations of non-compliance.⁵⁴ If a breach is found, the complainant may request that the terms of the settlement agreement be specifically implemented or alternatively that the complaint be reinstated for further processing.⁵⁵

EEOC Case Law on the Validity and Enforcement of Offers of Resolution

The EEOC's limited case law on offers of resolution shows that agencies underutilize the procedure. Nevertheless, agencies should be aware that the EEOC has determined that a valid offer of resolution, accepted by a complainant, is binding upon the agency and requires that the agency implement all items. If the agency does not abide by any of the items listed in the offer, the EEOC has found that a complainant is entitled to file an appeal alleging breach of the resolution agreement in accordance with the procedure under § 1614.504.⁵⁶

For example, in Dinah L v. Small Business Administration,⁵⁷ the EEOC accepted complainant's appeal alleging that the Agency was not in compliance with the terms of the offer of resolution which the parties had entered into. The EEOC observed that complainant submitted a letter to the Agency alleging that the Agency was not in compliance with the offer of resolution and requested that the Agency specifically implement its terms. The EEOC noted that when the Agency did not respond to the complainant's notice of failure to comply with the terms of the resolution, complainant appealed pursuant to § 1614.504(b).⁵⁸ In Dinah L., the EEOC specifically noted:

[T]hat an Offer of Resolution that provides all the remedial relief a complainant would have been entitled to had a finding of discrimination been made, once accepted by the complainant is akin to a final decision that is binding upon an agency. The Agency is required to implement all items listed in the Offer. Failure to do so is subject to appeal to the Commission pursuant to 29 C.F.R. § 1614.504(b).

Therefore, a valid accepted offer of resolution is binding and enforceable, and any allegations of non-compliance must first be raised with the EEO Director of the agency pursuant to § 1614.504(a). If the agency does not respond in writing or if complainant is not satisfied, the complainant may appeal to the EEOC for a decision as to whether the agency has complied with the terms of the offer of resolution.

However, for either party to enforce an offer of resolution, it must be valid under the criteria established in

54 See Ciera B., v. U.S. Postal Serv., EEOC Appeal No. 2021005187 (Jan. 4, 2022).

55 See Levi P. v. Dep't of the Army, EEOC Appeal No. 2021003634 (Dec. 14, 2021), req. for recon. den'd, EEOC Request No. 2022001339 (Apr. 21, 2022).

56 Compliance with settlement agreements and final action, 29 C.F.R. § 1614.504 (2021).

57 EEOC Appeal No. 2019001982 (Jan. 17, 2020).

58 Compliance with settlement agreements and final action, 29 C.F.R. § 1614.504(b) (2021).



The Digest of Equal Employment Opportunity Law

§1614.109(c). EEOC decisions have found that a valid offer of resolution must:

1. Be presented to complainant in writing no more than 30 days prior to the hearing;
2. Warn of the possible consequences of failure to accept the offer;
3. Include monetary relief covering attorney's fees and compensatory damages; and
4. Include non-monetary relief, such as a posting order and training.

In Williams v. Department of Veterans Affairs,⁵⁹ Complainant rejected a valid offer of resolution. The EEOC determined that he was not entitled to his full payment of attorney's fees because the relief ordered by the Administrative Judge was less than the relief contained in the Agency's offer. The EEOC noted that the Agency's offer of resolution offered to pay complainant a lump sum total of \$48,000 and to provide training to the responsible employees identified in the complaint. Complainant rejected the offer, instead asking for \$75,000 in compensatory damages and \$16,000 in attorney's fees and costs. The Administrative Judge subsequently awarded complainant only \$6,500 in non-pecuniary compensatory damages and \$16,224.50 in attorney's fees and costs. As such, the EEOC found that the full payment of attorney's fees was not warranted because the relief ordered by the Administrative Judge was less favorable than the Agency's offer of \$48,000.

In Lelah T. v. Department of Housing and Urban Development,⁶⁰ the EEOC found that complainant accepted the Agency's valid offer of resolution before the Agency's less favorable subsequent settlement offer. As such, the EEOC found that complainant was free to reject the separate, subsequent settlement offer because it was not consistent with the accepted offer of resolution. The EEOC observed that the valid offer of resolution contained the following agreed-upon terms:

1. To pay complainant's attorneys \$100,000 toward the fees and costs for their representation of complainant;
2. To pay her a lump sum of \$130,000 in satisfaction of all remaining monetized relief, including, but not limited to any remaining attorney fees and costs; and
3. To remove and expunge from complainant's personnel file the proposed demotion, the decision, any letters of reprimand and counseling, and any documents related thereto.

In exchange for the above relief, the Agency asked complainant to withdraw with prejudice her complaint and any related amendments. The EEOC determined that the terms of the Agency's offer of resolution were binding after complainant accepted and signed the offer of resolution. As such, the EEOC ordered the Agency to comply with the terms of the offer of resolution.

In Pearman v. Department of the Navy,⁶¹ the EEOC found that the Agency did not present complainant with a valid offer of resolution. The Agency argued that, because it presented complainant with an offer of resolution that contained more relief than what complainant eventually was awarded by the Administrative Judge, it

59 [EEOC Appeal No. 0120123334 \(Aug. 15, 2013\)](#).

60 [EEOC Appeal No. 0720150034 \(Dec. 17, 2015\)](#).

61 [EEOC Appeal No. 07A40063 \(Nov. 18, 2004\)](#).



The Digest of Equal Employment Opportunity Law

did not have to pay attorney's fees which accrued after the 30-day expiration period of the offer. The EEOC found, in part, that the offer was presented after the hearing on liability and it did not specify any non-monetary relief, such as training or a posting order. Accordingly, the EEOC determined that the offer of resolution was invalid and awarded complainant attorney's fees without any specific reduction with regard to the offer.

As the above decisions demonstrate, an offer of resolution must provide for the remedial and equitable relief a complainant would have been entitled to had a finding of discrimination been made. Should an agency wish to use the offer of resolution procedure, the specific requirements of § 1614.109(c) must be met to limit attorney's fees.

Conclusion

The EEOC has long encouraged the resolution of complaints through a variety of settlement mechanisms. Agencies should consider using an offer of resolution when a complaint involves a matter that should be settled, a full offer can be made, and the agency wishes to limit attorney's fees. An offer of resolution provides an incentive for agencies to conserve resources and for complainants to conserve time and expense—a win for all parties involved.

This article is a publication of the EEOC's Office of Federal Operations (OFO):

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