Chapter 6 Discrimination Complaint Procedure

This chapter is designed to provide guidelines for the filing and processing of discrimination complaints. Applicable parties include all employees, contractors, vendors, and customers of the Washington State Department of Transportation (WSDOT).

WSDOT is committed to providing a work place and services in a manner which is free of discrimination. In order to assist in maintaining a discrimination-free environment, the department has established an internal investigation process that is respectful to all parties involved, and that identifies and promptly corrects identified problems.

Any department employee or individual who believes they have been discriminated against on the basis of national origin, race, color, religion, age, sex, marital status, sexual orientation, status as a disabled or Vietnam-era veteran, or physical, mental, emotional, or sensory disability may file an internal discrimination complaint. Additionally, any person who believes (s)he has been retaliated against for having filed a discrimination complaint or participated in the complaint process also has the right to file a complaint.

This procedure is an option employees may use in lieu of other available employee grievance and complaint procedures provided by Merit System Rules (MSR), the Washington Administrative Code (WAC), Collective Bargaining Agreements, the Marine Employees Commission (MEC), the Washington State Human Rights Commission (HRC), and the Equal Employment Opportunity Commission (EEOC).

Employee rights are also protected through remedies available under the Washington State Laws Against Discrimination, RCW 49.60, and U.S. Civil Rights Act of 1964. In order to secure rights under RCW 49.60 and Titles VI and VII of the Civil Rights Act, a complaint must be filed directly with the Washington State Human Rights Commission within 180 days, the U.S. Office of Civil Rights, or the U.S. Equal Employment Opportunity Commission generally within 300 calendar days of the alleged discriminatory act. Private lawsuits also may be filed, and consultation with an attorney may be advisable.

Procedures

Action By ***Action***

Employee/Complainant

1. Contacts one of the following: supervisor, appointing authority, Personnel Office, and/or Affirmative Action Officer with allegations of discrimination.

Appointing Authority/Personnel Officer/Supervisor

1. Contacts Regional Affirmative Action Unit or Office of Equal Opportunity (OEO) for advice and assistance.
2. Provide complainant with Title VII Complaint Form (Appendix 1).

Employee/Complainant

1. Completes Title VII Complaint Form.
2. Returns Title VII Complaint Form to OEO.

Clerk Typist 3

1. Receives written complaint, stamps date, logs receipt, sends copy to attorney general, and prepares case file.
2. Maintains a log of complaints filed and status of investigations and reports.
3. Provides case file to Diversity Programs Administrator, or designee, for review.

Diversity Programs Administrator

1. Analyzes Title VII Complaint Form to determine jurisdiction.
2. Assigns investigator to case for action.

Investigator

1. Sets meeting or conference call with complaining party for intake assessment. This meeting will generally occur within ten days.
2. Advises complainant of her/his rights. Has complainant sign and date, "Your Rights and Responsibilities" form (Appendix 2).

   Note: In cases where complainant hesitates to proceed with a formal complaint, but all indicators show there is a problem, OEO may initiate an investigation.

Diversity Programs Administrator or His/Her Designee

1. Notifies complainant in writing that the complaint has been received by OEO (Appendix 3).
2. Notifies Regional Administrator/Assistant Secretary and the appropriate Personnel Officer in writing that the complaint has been received by OEO. This letter will generally be sent within 15 days.
3. Notifies respondent in writing that a complaint has been received by OEO and provides a copy of the complaint. This will generally be accomplished within 15 days (Appendix 4).

   A copy of the formal complaint may not be forwarded to the respondent if extenuating circumstances exist (e.g., where there are serious allegations against respondent or threatening behavior. Each exception shall be noted).
4. Determines priority of case based on seriousness of allegations.

Investigator

1. Schedules interview with respondent. This will generally be accomplished within 15 days.
2. Consults with appointing authority to resolve issues complained of and assure a discrimination-free workplace (generally within 30 days).
3. Schedules a resolution conference when appropriate.
4. Prepares written report based on the resolutions of the issues.
5. If resolution is not an option, proceeds with investigation. Informs all parties in writing of projected time frames.
6. Prepares investigative plan for review by the Diversity Programs Administrator.

WSDOT Employees/Contractors

1. Each employee and/or contractor shall cooperate fully with OEO in the investigation of complaints.

Personnel/Administrative Officer

1. May coordinate interviews for investigator, or designee.
2. Provides documents and information which may have bearing on the complaint.

Investigator

1. Conducts a thorough, fair, and impartial investigation.
2. Advises complainant, respondent, and appointing authority of status of investigation no later than every 30 days.
3. Advises the Diversity Programs Administrator of the status of the investigation on a regular basis and/or as requested.
4. Prepares a final investigative report. The finding is a summary of the investigation based on assessment of the facts and the law.

Diversity Programs Administrator

1. Reviews and approves report.

Office of the Attorney General

1. Reviews report and provides feedback to the investigator in a reasonable time period.

Diversity Programs Administrator or His/Her Designee

1. Provides copy of report to appointing authority and OEO Director.
2. In those cases where a probable cause finding or a determination of inappropriate behavior is made, provides a copy of the report to the department's

Personnel Office Labor Relations Manager or WSF Labor Relations Manager.

Investigator

1. Schedules separate outbriefings with complainant, respondent, and appointing authority to discuss the investigative findings. Provides copy of report to the appointing authority. Provides a redacted copy of the investigative report to the complainant and respondent upon request and where appropriate.
2. After outbriefings have been completed, prepares complainant and respondent determination letters (Appendix 5).
3. In cases where probable cause or inappropriate behavior is found, the Investigator will prepare a memorandum to the appointing authority (cc: Office of Human Resources) requesting notification of any and all corrective action/disciplinary action.

Appointing Authority

1. Where probable cause or inappropriate behavior has occurred, develops written plan of action for elimination of discrimination. The Diversity Programs Administrator, or his/her designee, may assist in the the development of this plan. The plan may involve corrective action, and/or disciplinary action up to and including termination.
2. Submits written plan to OEO Director or his/her designee.
3. In cases involving punitive damages or awards over $5,000, submits plan to the Equal Opportunity Committee.

Equal Opportunity Committee

1. Reviews and approves action plans in probable cause cases over $5,000 in damages or with punitive damages.
2. Serves as an appeal body for review of findings upon request (see Equal Opportunity Committee).

Management Initiated Inquiries

At times, although no complaint has been filed, management may become aware of situations which may be violations of civil rights laws. In cases such as these, the following procedures will be followed.

Action By ***Action***

Appointing Authority/Supervisor

1. Notifies the Regional Administrator/Assistant Secretary of the situation and reasons for concern.

Regional Administrator/Assistant Secretary

1. Notifies the Diversity Programs Administrator for advice and assistance.
2. Requests in writing, to the Diversity Programs Administrator, an investigation by the OEO.

Diversity Programs Administrator

1. Reviews available information to determine jurisdiction.
2. Assigns investigator to case for action.
3. Notifies Regional Administration/Assistant Secretary of action.

Investigator

1. Contacts Regional Administrator/Assistant Secretary to review all available information.
2. Conducts informal investigation using procedures described above.
3. Reviews findings with Diversity Programs Administrator and Attorney General's Office (where appropriate).
4. Prepares letter of finding to Regional Administrator/Assistant Secretary outlining results of investigation and determination.

Diversity Programs Administrator

1. Reviews letter of finding with the Affirmative Action Officer.
2. Signs and forwards letter of finding to appropriate management.

Early Resolution

At each stage of the investigative process, an attempt to reach Early Resolution of the complaint will be a potential resolution by OEO. This approach is an attempt to reach settlement of the complaint, prior to completion of a full investigation; so long as the remedy does not appear to violate Title VII, or any other federal or state civil rights laws.

Acceptable terms of the settlement will be agreed upon by all parties involved with advice and counsel by the Investigator, and review by the Diversity Programs Administrator, OEO Director, and Attorney General (or AG) where appropriate.

Participation in the Early Resolution process will not be construed as an admission of any violation of Title VII, or any other federal or state civil rights laws.

Appendix 1 — Title VII Discrimination Complaint (DOT Form 731-003) (Page 1 of 3)

Washington State Department of Transportation

Office of Equal Opportunity

Washington State and Federal civil rights laws and Gubernatorial Executive Order EO-91-06 prohibit discrimination in state employment practices based on a person's race, color, national origin, sex, disability, creed, religion, age, marital status, sexual orientation, or disabled and Vietnam Era Veteran status.

If you believe that you have been discriminated against on any of the bases listed above, please report that allegation of discrimination to the Equal Opportunity Representative at one of the addresses listed below by filling out the form on the reverse side or call the telephone number appropriate to your area. You must take this step within 180 days of the alleged discriminatory incident. Information will be kept in a file separate from any individual's personnel file.

If you choose to complete the form, the appropriate Equal Opportunity Representative will contact you and arrange for the Olympia Service Center Internal Civil Rights Branch to conduct an investigation of your complaint.

Title VII Discrimination Complaint Process

An Affirmative Action Officer will then make recommendations to resolve the alleged discriminatory issues. If you and/or your appointing authority do not wish to accept the recommendations, the complaint will then be sent to the Equal Opportunity Committee. The committee is comprised of the Deputy Secretary on Policy, the Olympic Service Center Human Resources Manager, the Director, Office of Equal Opportunity, and the Assistant Secretary or Regional Administrator for your work unit. The committee will make further recommendations for resolution of the complaint.

The appointing authority is required to implement the recommendations of the committee. The Internal Civil Rights Branch and the Equal Opportunity Committee will attempt to resolve complaints through conciliation methods. You may also file a discrimination complaint with the Washington State Human Rights Commission, the U.S. Equal Employment Opportunity Commission, or the U.S. Department of Justice.

By law and agency policy, no person who has filed a complaint or assisted in the investigation of a complaint shall be intimidated, threatened, coerced, or in any way retaliated against.

Please forward this discrimination complaint to one of the following offices:

(Please choose either the headquarters or the region office nearest you.)

Department of Transportation
Office of Equal Opportunity
Internal Civil Rights Branch
Transportation Building, Rm. 3C17, MS: 7314
Olympia, WA 98504
(360) 705-7095
Fax (360) 705-6801

Department of Transportation
Northwest Region Affirmative Action Unit
15700 Dayton Avenue, MS: NB-82-101
Seattle, WA 98135
(206) 440-4680

Department of Transportation
North Central Administrative Officer
P.O. Box 98
Wenatchee, WA 98807
(509) 663-9644

Department of Transportation
Olympic Region Administrative Officer
5720 Capitol Boulevard, MS: 7448
P.O. Box 47448
Olympia, WA 98504
(360) 357-2613

Department of Transportation
Southwest Region Administrative Officer
P.O. Box 1709, MS: S-15
Vancouver, WA 98668
(360) 905-2220

Department of Transportation
South Central Region Administrative Officer
P.O. Box 12560
Yakima, WA 98909-2560
(509) 575-2549

Department of Transportation
Eastern Region Administrative Officer
2714 North Mayfair Street
Spokane, WA 99207-3010
(509) 324-6060

Department of Transportation
Office of Equal Opportunity Marine Division
Affirmative Action Unit, MS: TB-32
801 Alaskan Way, 224 Colman Building
Seattle, WA 98104
(206) 464-6625

DOT Form 731-003 EF Instructions
Revised 5/95

Actual form is 8.5″ x 11″

(Page 2 of 3)

Washington State
Department of Transportation

Title VII
Discrimination Complaint

Name (Complainant)	Phone	Name of Person(s) or Division/Region That Discriminated Against You	
Address (Street No., P.O Box, etc.)		Location and Position of Person (If Known)	
City, State, Zip		City, State, Zip	Date of Alleged Incident

Discrimination Because of:

- ☐ Race/Color
- ☐ Age
- ☐ Creed/Religion
- ☐ Disability
- ☐ Sex (Includes Sexual Harassment)
- ☐ Disabled Veteran
- ☐ Vietnam Era Veteran
- ☐ National Origin
- ☐ Marital Status
- ☐ Sexual Orientation
- ☐ Retaliation

Explain as briefly and clearly as possible what happened and how you were discriminated against. Indicate who was involved. Be sure to include how other persons were treated differently that you. Also attach any written material pertaining to your case.

Signature	Date

DOT Form 731-003 EF
Revised 5/95

Please mail or return this form to the appropriate region office.

Actual form is 8.5″ x 11″

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Additional Information

Why do you believe these events occurred?

What other information do you think is relevant to our investigation?

If this complaint is resolved to your satisfaction, what remedies do you seek?

Please list below any persons (witnesses, fellow employees, supervisors, or others) that we may contact for additional information to support or clarify your complaint.

Name	Classification	Address	Telephone Number

DOT Form 731-003 EF
Revised 5/95

Actual form is 8.5″ x 11″

Appendix 2 — Complainant: Your Rights and Responsibilities

Washington State Department of Transportation
Office of Equal Opportunity
Complainant: Your Rights and Responsibilities

You have the right:

1. To file a complaint with the Washington State Human Rights Commission (if it is within their jurisdiction) within 180 days of the alleged incident(s).

2. To file a complaint with the Equal Employment Opportunity Commission (if it is within their jurisdiction) within 300 days of the alleged incident(s).

3. To file a complaint with the United States Department of Transportation.

4. To sue privately in state or federal court if you meet statutory time and jurisdictional requirements.

5. To file any union action that may be available.

6. To consult with an attorney at any time.

7. To have union representation present if applicable.

You do not have to wait for the WSDOT to complete your case to pursue any of the above adoptions.

8. To appeal a finding by the Office of Equal Opportunity to the Equal Opportunity Committee (EOC) within 15 days of receipt of notification by registered mail.

You have the responsibility:

1. To cooperate fully in the investigation.

2. To provide information requested.

3. To keep the OEO advised of your current address and telephone number and to let the OEO know about any prolonged absences.

Note: You have a duty not to interfere with the investigation including, but not limited to, discussing the matter with possible witnesses, regarding issues affecting the investigation.

I have read or had explained to me the above information.	I have read and explained the above information.
_____	_____
Complainant Signature Date	Affirmative Action Officer or Designee Date

Actual form is 8.5″ x 11″

Appendix 3 — Complaint Notification Letter (Page 1 of 2)

Washington State Department of Transportation

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Month Day, Year

Title / Complainant
Street Address / P.O. Box
City, State Zip

Re: Complainant vs. Washington State Department of Transportation, Case No.

Dear Complainant:

This is to acknowledge receipt of your complaint by the Washington State Department of Transportation (WSDOT), Office of Equal Opportunity (OEO).

The OEO is charged with conducting a fair and impartial investigation, and we also seek to resolve issues by mutual agreement of the parties involved.

A copy of your complaint will be forwarded to the responding party(ies) for a response. Federal and Washington State laws prohibit the respondent from taking any action against you, and witnesses, because you have filed a complaint. If you believe retaliation is occurring, contact the OEO immediately.

Once the OEO has completed its investigation, you will be notified of the findings.

Please note that you also have the right to file a complaint with the Washington State Human Rights Commission within 180 days of the alleged incident(s), or the Equal Employment Opportunity Commission within 300 days of the alleged incident(s).

Actual letter is 8.5″ x 11″

(Page 2 of 2)

Title / Complainant
Month Day, Year
Page 2

If you have further concerns or questions about your complaint or WSDOT procedures, please contact the Olympia Service Center Internal Civil Rights Branch.

Thank you for your assistance.

Sincerely,

PERSON LAST NAME
Diversity Programs Administrator
or Designee
Office of Equal Opportunity

INI:ini
CGS

cf: Investigator
Attorney General

Actual letter is 8.5″ x 11″

Appendix 4 — Respondent Notification Letter (Page 1 of 2)

Washington State Department of Transportation

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Month Day, Year

Title / Respondent
Street Address / P.O. Box
City, State Zip

Re: Washington State Department of Transportation vs. Complainant, Case No.

Dear Respondent:

The attached complaint has been filed with the Washington State Department of Transportation (WSDOT), Office of Equal Opportunity (OEO).

The OEO is charged with conducting a fair and impartial investigation, and we also seek to resolve issues by mutual agreement of the parties.

If you wish to respond to the attached complaint, the OEO asks that you provide any information, dates, witnesses, and documentation that support your response. We request that you provide this information within _____ days.

After reviewing your response, the OEO may request a conference to see if the issues can be resolved. If you have suggestions for resolutions, please provide them in your written response to the OEO. If there is no chance for resolution, this office will conduct an investigation.

Please be advised that it is a violation to retaliate or interfere, directly or indirectly, with any person who has filed a complaint or is involved in the complaint process.

Actual letter is 8.5″ x 11″

(Page 2 of 2)

Title / Complainant
Month Day, Year
Page 2

If you have further concerns or questions about your complaint or WSDOT procedures, please contact the Olympia Service Center Internal Civil Rights Branch at (360) 705-7095.

Thank you for your assistance.

Sincerely,

PERSON LAST NAME
Diversity Programs Administrator
or Designee
Office of Equal Opportunity

INI:ini
CGS

cf: Investigator
Attorney General

Actual letter is 8.5″ x 11″

Appendix 5 — Complaint/Respondent Findings Letter

Washington State
Department of Transportation

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Month Day, Year

Title / Complainant / Respondent
Street Address / P.O. Box
City, State Zip

Re: Washington State Department of Transportation vs. Complainant, Case No.

Dear Complainant / Respondent:

Dear Complainant / Respondent Last Name:

Enclosed are the findings of the investigation conducted by the Office of Equal Opportunity (OEO).

You may appeal a finding of the OEO to the Equal Opportunity Committee (EOC). Your appeal must be submitted to the Deputy Secretary of Transportation for Policy, within 15 calendar days of receipt of this letter.

Please note that this finding and the appeal process in no way abrogates any other rights you may have under Federal, State, and local law.

The Washington State Department of Transportation (WSDOT) is committed to providing its employees and the public with a discrimination-free environment.

If you have any questions, please do not hesitate to contact me at any time.

Sincerely,

PERSON LAST NAME
Diversity Programs Administrator
or Designee
Office of Equal Opportunity

INI:ini
MQ
Enclosure
cc: Director
Appointing Authority
Attorney General
Investigator

Actual letter is 8.5″ x 11″

Complaint/Respondent Findings Letter Enclosure

Washington State Department of Transportation
Office of Equal Opportunity

Appeal Form

Re: _____

(Please return this form to the Deputy Secretary of Transportation for Policy.)

I wish to appeal the finding in the above-cited case. The reason is:

_____ 1. All information available was not considered.

Please describe what was not considered and why it would affect the outcome:

_____

_____

_____

_____

_____ 2. I do not believe this is an appropriate application of law and/or legal theory.

Please describe why you believe the conclusion was erroneous:

_____

_____

_____

_____

Additional Comments:

_____

_____

_____

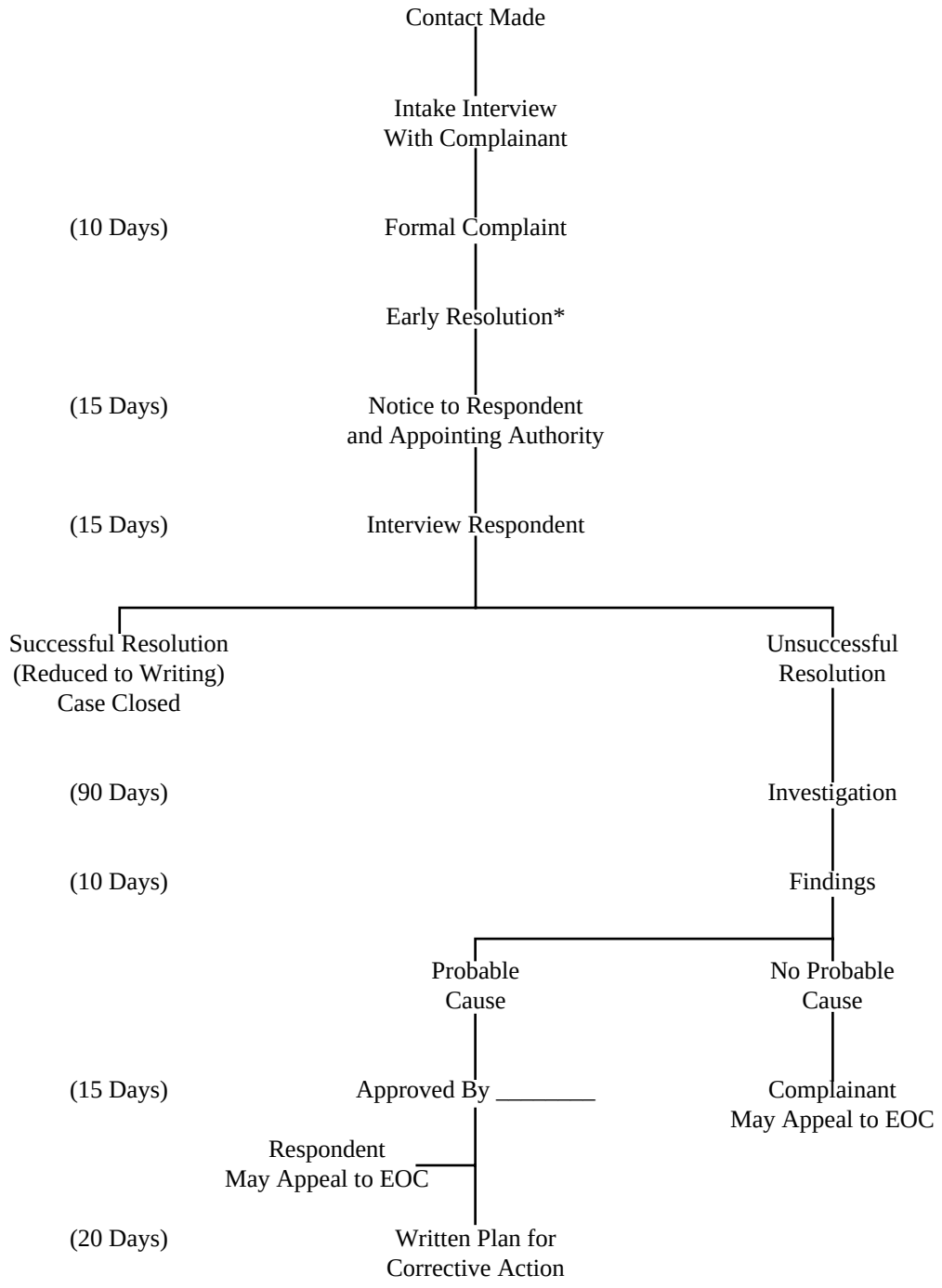
_____

_____ _____
Signature Date

After review of your request, you will be informed if an appeal hearing is scheduled. At the appeal, you may personally present your concerns to the Equal Opportunity Committee.

Actual letter is 8.5″ x 11″

Appendix 6 — Complaint Procedures Time Line



* Any complaint may be resolved at any time.

** Any complaint may be closed at any time for administrative purposes, specifically other pending action or failure to cooperate by the complaining party.

Appendix 7 — Resolution Letter

Washington State Department of Transportation
Office of Equal Opportunity

Terms of Resolution of Complainant

COMPLAINANT: RESPONDENT:

You are requested to state what terms of remedy you feel will settle your complaint. The Office of Equal Opportunity (OEO) will convey these terms to the Respondent and appointing authority, not as demands for resolution, but as an opportunity to determine if Early Settlement is possible. You may also call and discuss this with the OEO investigator.

As settlement of my complaint, I am proposing the following terms of remedy of my complaint:

1. _____
_____
_____

2. _____
_____
_____

3. _____
_____
_____

4. _____
_____
_____

❑ I do not have any proposed terms of remedy at this time.

❑ I do not want OEO to pursue Early Resolution.

_____ _____
Signature Date