

May 1, 2001

MEMORANDUM

TO: IRS Chapter Presidents

RE: EEO Arbitrations

Late last year I issued the attached memo which outlined the new grievance-arbitration procedure we have put in place for EEO claims. You will remember that the cost of an arbitration is free if we win the EEO issue while the chapter only pays \$375 if we lose the EEO issue. (A traditional 50-50 split of all costs applies if we arbitrate other issues with the EEO claim such as contract or statutory claims.) The other feature of this agreement is that IRS will produce a full Report of Investigation (ROI) for a grievant using this process. This agreement was put in place to make it cheaper for chapters to arbitrate these cases and to address the fact that a ROI was only done if you filed a statutory appeal, not a grievance.

Since the agreement became effective on April 1, I wanted to remind you that it exists and to encourage you to take advantage of it, when appropriate. If we do not use this process for low cost arbitrations, we will never be successful in expanding it to other issues, or even to retain it in future contracts. It is important that we try to identify good factual cases to put into this process for the first 15 cases on which we invoke arbitration because, the parties will make a judgment as to whether to continue the agreement based on those 15 cases. I suggest you have your national field representative review EEO precedent and criteria with the stewards so they can recognize the signs of a good case. The courts have outlined "prima facie" criteria for virtually every type of EEO case, and stewards should know them or know where to review them so they can quickly assess a case before advising the employee to pursue it as a grievance or to use the traditional statutory process.

For example, the "prima facie" test for gender and reprisal discrimination are as follows:

GENDER DISCRIMINATION

1. The employee is a member of a protected group, e.g., male or female,
2. The employee was subjected to an adverse employment action, and
3. The employee was treated less favorably than other similarly situated employees of the other gender.

REPRISAL DISCRIMINATION

1. The employee was engaged in a protected EEO activity,
2. The alleged discriminating official was aware of the employee's protected activity,
3. The employee was subsequently subjected to an adverse employment action, and
4. The adverse action followed the protected EEO Activity within such a period of time that retaliatory motivation may be inferred.

Similarly there are "prima facie" tests for specific personnel actions such as promotions, i.e.:

PROMOTION DISCRIMINATION

1. The employee is a member of a group protected by an EEO law,
2. The employee applied for and was qualified for the vacancy,
3. The employer considered and passed over the employee, and
4. The employee continued to pursue applicants after passing over the employee.

Generally, when the steward can see that the employee meets the "prima facie" criteria of one of these cases, it is considering the EEO issue for a grievance.

Cases that fall under this agreement could involve traditional racial and gender discrimination as well as disability issues, sexual harassment, age claims, reprisals, etc.

Colleen M. Kelley
National President

Attachment

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