PART VIII

COMPLAINT PROCEDURE

COMPLAINT PROCEDURE

Introduction
Informal and formal procedures have been developed to insure fairness and consistency in the Erie County's employment program with its employees. Any County employee or applicant for employment, who believes that he/she has been wrongfully denied equal benefits or privileges because of race, color, national origin, sex, religion, age, disability, genetic information, sexual orientation, gender identity or reprisal in any employment related matter caused by a County official or employee, may seek equal employment opportunity counseling or file a complaint.
No person seeking informal equal employment opportunity counseling or who files a formal complaint will be adversely affected in any manner because he or she utilizes these procedures.

Purpose
This procedure has been designed to allow the County of Erie the opportunity to resolve complaints internally. It is in no way intended to duplicate or circumvent options available to claimants through (1) employee organizations, (2) the New York State Division of Human Rights, (3) the Equal Employment Opportunity Commission, (4) U.S. Justice Department/Office for Civil Rights, (5) any compliance agency designated under Section 504 of the Rehabilitation Act of 1973, or the American with Disabilities Act, (6) Office of Federal Contract Compliance Programs, (7) other regulating agencies as may be appropriate, and (8) the judicial system. Use of this procedure will not suspend any time limitations for filing complaints otherwise set by law, rule or regulation.

Applicability
Any current employee or applicant for employment with the County of Erie, NY or anyone with an employment relationship is eligible to file an informal complaint.

Basis
If you believe that you have been discriminated against because of race, color, national origin, sex, religion, age (40 and over), disability, genetic information, sexual orientation, gender identity or reprisal (for previous EEO activity), you may file an informal complaint with the Division of Equal Employment Opportunity based on the time limit listed below.

Time Limit
An informal complaint must be filed within 45 calendar days of the alleged discriminatory incident that gave rise to the complaint; or if it is a personnel action, within 45 days of its effective date or the date that you knew or reasonably should have known, of the event or personnel action. If the deadline is missed because of circumstances beyond the complainant's control, the Director of EEO will make the determination as to the reasonableness of requests and may extend the period to file to a maximum of one year.

If you just need advice or help
You may contact the Division of Equal Employment Opportunity for early resolution assistance in addressing your concerns and questions. By working with the management official involved, EEO staff may attempt to address concerns or resolve your disputes at the lowest possible level. The intent is to encourage open communications by working together to help foster innovative and creative ideas in resolving workplace conflicts and disputes without using the EEO complaint process. EEO staff, during the early resolution stage, will identify and recommend early intervention techniques, including the use of EEO counseling which is designed to resolve disputes expeditiously. However if you believe your problem does not involve a basis covered by EEO laws and regulations, you should contact your Employee Relations Office or your Union Representative for assistance.

Steps to officially start the EEO Process:

1. To officially file an EEO pre-complaint, please complete the form on the County of Erie, NY Division of EEO website at http://www.erie.gov/depts/eeo/ . You may complete the required information and submit it on-line or print the form and walk it in to the Division of EEO Rath Building 6th Floor, Room 625, 95 Franklin Street Buffalo, NY 14202 or you may mail it to this address.
2. For walk in or on-site appointments please call EEO at 858 – 7542, regular business hours are from 8:00 a.m. until 4:00 p.m. Monday - Friday.
3. If you have questions regarding the intake form, please contact EEO staff. Once EEO receives your complaint form your complaint will be processed with the following procedures.

Counseling:
At the initial filing of your complaint, you will receive the traditional counseling process. The counseling process is as follows:

1. Counseling: An EEO counselor will be assigned to your pre-complaint to handle your case and attempt to resolve the matters. The EEO counselor will provide advice about the EEO complaint process and of your right to a formal discrimination complaint if attempts to resolve at the counseling stage fail. The EEO counselor will conduct an inquiry and fact finding to obtain enough information concerning the claim(s) and basis(es) so as to enable the agency to properly identify the legal claim raised if you file a formal complaint at the conclusion of the EEO counseling process. The EEO counselor will conduct a final interview within 30 days of the date the matter was brought to his or her attention. At the end of the counseling period and a resolution has not been established, then the EEO counselor will provide you with a Notice of Right to File a Formal Complaint.

The Formal Complaint Process:

1. If after pre-complaint counseling and there is no resolution of your complaint you will have 15 calendar days from the date of receipt of the Notice of Right to File a Formal Complaint to submit your formal complaint to the Division of EEO in writing.
2. Acceptance/Dismissal: Within 15 days of the receipt of the formal complaint, the Division of EEO will acknowledge receipt and issue the EEO Counselors report. If your complaint is accepted for investigation, you will be notified of the investigator assigned to your complaint. If the complaint is dismissed, you will be provided with instructions for appealing the dismissal.

The Formal Complaint Process continued:

3. Investigation: A thorough investigation will be conducted, encompassing all the information relevant to the accepted allegations and may, when appropriate, include comparative data on other individuals who were similarly situated. The investigation may be conducted with verbatim statements, interrogatories, position papers, or by other forms of fact finding. During the investigation, you will have an opportunity to present all the facts that you believe show unlawful discrimination. The County of Erie has 120 calendar days from the date you filed your complaint to notify you of the completion of the investigation. After the investigation is completed a Report of Investigation (ROI) and a summary of the ROI along with recommendations (as reviewed by the County Attorney) will be prepared for the Commissioner or Department Head.
4. The Commissioner or Department Head: The Commissioner or Department Head shall issue an agency decision on the merits and recommendations in writing (within 30 days) to the parties concerned. Note: If the complaint is against the Commissioner or Department Head then the Agency Decision will be issued by the Chief of Staff to the County Executive.
5. Appeal: If the complainant is not satisfied with the attempts to resolve the complaint, the complainant may seek remedy through other sources; (e.g. New York State Division of Human Rights or the Equal Employment Opportunity Commission.)
6. Civil Action: In lieu of an appeal with the New York State Division of Human Rights, you may within 90 calendar days of the date of your receipt of the Agency Decision or final order, file a civil action in an appropriate United States District Court.
7. Complaint withdrawal: At any point in the procedure, the claimant may withdraw the charge by submitting a written statement to the Director, Division of EEO.

Retaliation:
Any employee who participates in the procedure may do so without fear of retaliation. It will be made clear that retaliation against an employee who has filed a discrimination complaint will result in disciplinary action against the person who retaliated.

Follow-up:
The Director of EEO will maintain a log and file of complaints received. Six weeks from the date of a decision by the Commissioner or Department Head (or his/her designee), the Director of EEO will determine whether the Commissioner or Department Head's directives have been carried out, or whether the case needs to be re-opened. The findings will be reported to the Commissioner or Department Head for appropriate action or closure.

Record Keeping:
The County will keep a record of the status and determination of all complaints for at least seven years. Cases that are unresolved, and/or subject to external reviews, will be maintained indefinitely or until they are resolved. The record copy of these complaints, reports of investigation, and decisions rendered, will be kept in the Division of EEO.