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Federal Employee Fact Sheet: What Is A FAD?

The Final Agency Decision, or FAD, is one of the unique components of the Equal Employment Opportunity (EEO) complaint process that applies to federal sector employees or applicants.

Overview

The FAD is a decision issued by the agency on a complainant's allegations of discrimination and/or the remedies that the complainant is entitled to if it already has been determined that the agency discriminated against the complainant. The purpose of a FAD is to make a decision on liability (whether the discriminated occurred as the complainant alleged) or, if liability already has been determined by an administrative judge, to approve of or dispute the administrative judge's determination. A FAD also may be issued to award remedies, including the amount of attorneys' fees and costs to which a complainant is entitled.

Why Is A FAD Issued?

A FAD can be issued at different times during the processing of an EEO complaint, including: when an agency dismisses for procedural reasons all of the issues in a complainant's formal complaint; if a complainant does not timely request a hearing before the EEOC following the conclusion of the agency's investigation of the formal complaint; at the complainant's request at any time following the completion of the agency's investigation of the formal complaint (as long as an administrative judge has not yet issued a decision on the merits); after an administrative judge's final order deciding all of the issues pending before him or her, including liability and damages (an agency may refer to this type of FAD as a final order or final decision).

In rare cases, an administrative judge may remand the complainant's complaint for issuance of a FAD as a sanction for a complainant's failure to cooperate or prosecute his or her complaint. Similarly, the agency can be sanctioned in the form of entering default judgment in the complainant's favor, in which case a FAD also would be issued.

When Is A FAD Issued?

Depending on the reason a FAD is being issued, the time period for the agency to issue the FAD varies. For example, when an agency dismisses a complaint for procedural reasons during the formal complaint period, the FAD must be issued prior to a hearing request being made by the complainant, which generally means before the agency's time period for completing the

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investigation concludes. *See* 29 C.F.R. § 1614.107(a). If the complainant requested the FAD, the Agency generally must issue it within 60 days of the request or, if the complaint is already pending before an EEOC administrative judge, within 60 days of when the administrative judge dismisses the hearing request based on the complainant's request for a FAD. 29 C.F.R.

§ 1614.110(b). If a FAD is being issued because the administrative judge has made a decision, the agency must issue the FAD within 40 days after the agency receives the administrative judge's decision. 29 C.F.R. § 1614.110(a).

What Information Is Included In The FAD?

There are no rules or regulations that dictate the information that must be included in a FAD. However, a FAD typically includes an introduction, the list of the accepted issues in the complainant's complaint, a statement of the relevant facts, the applicable law, an analysis of the claims, and a final conclusion as to whether discrimination occurred. If the FAD is addressing the remedies that a complainant should be awarded after a finding that the agency discriminated against him or her, it will discuss the legal standards for awarding different types of damages, as well as whether the facts demonstrate that the complainant is entitled to the requested relief.

Although there is no set format, the FAD must inform the complainant of his or her options going forward in pursuing the complaint, including information about filing an appeal with the EEOC's Office of Federal Operations (OFO) or in federal district court. 29 C.F.R.

§ 1614.110(b).

Should I Request A FAD?

Each situation is different. As such, this is not a question that can be answered without evaluating each case individually. Employment attorneys experienced in representing federal employees, such as those as the Wick Law Office, can provide advice to assist you with this determination.

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