



GILBERT
TRAINING GROUP
course catalog

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TRAINING FOR MANAGERS
AND SUPERVISORS

WHY USE US FOR TRAINING?

- **Experienced Faculty:** Our instructors are practicing attorneys, former judges, and HR, EEO and LR professionals who can deliver real-world instruction grounded in both the latest case law as well as knowledge of the current climates of the EEOC, MSPB, FLRA and other federal agencies. All our instructors have a reputation for training excellence and have received high ratings in previous training venues, including FDR Training events.
- **Interactive Sessions:** We've developed engaging in-person interactive sessions including proven components of an effective and lasting training experience: multi-media, real-life case law examples, factual storyboards, live O&As and mock trials/arbitrations.
- **Powerhouse Provider:** We offer hundreds of years of combined expertise serving the federal HR & EEO workspace with print and online publications, tools, resources and training including cyberFEDS®, Manager Advantage, Webinars and FDR Training.

All Trainings are customizable. Contact us at <https://gilberttraininggroup.com> for more information.

Meet Some of Our Instructors:

Gary Gilbert has presented more than a thousand seminars, training, speeches, and other presentations on various aspects of employment discrimination law and workplace rights and responsibility. He has authored numerous texts on discrimination law, including treatises on compensatory damages, disability discrimination law, and an annual EEO update which summarizes recently published decisions of the EEOC. He served 16 years with the EEOC as an Administrative Judge, 15 of which as the Chief Administrative Judge of the Baltimore Field Office. He has represented the USDA Forest Service as an agency representative for more than 15 years.

Renn Fowler specializes in federal government employment law, MSPB, and EEOC. He writes extensively on employment law and has co-authored numerous books including *MSPB Charges and Penalties, A Charging Manual* (now in 16th edition); *The Art of Advocacy: What To Do and How To Do It Before the Board and Arbitrators*; *Litigating Federal Sector Employment and Labor Law Disputes*; and many more.

Barbara Haga has made a variety of presentations at professional conferences on a variety of employee relations topics. She is the author of *Federal Sector FMLA: Answers to Frequently Asked Questions* published in 2007 by LRP Publications and she also writes the monthly "Leave Advisor Column" for CyberFEDS. She is a past National President of the Society of Federal Labor and Employee Relations Professionals (SFLERP) and in 2007 was awarded the Lifetime Achievement Award for Outstanding Contributions to the Federal Labor-Management Relations Program and Dedicated Service to SFLERP.

Grace Carter spent 21 years in Federal service, engaged in various aspects of federal employment law. She has trained management, labor relations and human resource personnel as well as advocates, students, and representatives on diverse employment law topics including charging and penalties, Whistleblower protection, and MSPB best practices. She has presented at the EEOC's EXCEL conference, the FDR conference, and in numerous agency and union sponsored training events. For 15 years, she served as an Administrative Judge in the Western Regional Office of the MSPB. Carter is a certified mediator and has conducted more than 200 mediations. She engages in researching, writing, and coaching in the area of workplace conflict management.

Deryn Sumner focuses on representing federal employees and agencies before the EEOC and has worked on hundreds of cases involving claims of employment discrimination on the basis of disability, race, age, religion, retaliation, and more. She is the co-author of several books on federal sector employment law including *Representing Agencies and Complainants Before the EEOC*; *Federal Sector Disability Discrimination Law Deskbook*; *EEO Counselors' and Investigators' Manual*; and an annual *Consolidated Federal Sector EEO Update*.

Shannon Leary specializes in representing victims of sexual harassment and assault in the workplace before various judicial and administrative bodies as well as LGBTQ and other gender issues. She represents complainants, agencies, and plaintiffs before administrative bodies and in federal courts in claims under Title VII, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Rehabilitation Act, and the Equal Pay Act.

Kevin Owen litigates all phases of complaints of employment discrimination and appeals of disciplinary action involving federal employees in administrative forums, primarily the MSPB, EEOC, the U.S. Office of Special Counsel, and the Federal Circuit Court of Appeals. He has prevailed on many appeals before the MSPB, including appeals involving due process issues violations, complex appeals involving a denial of a security clearance, and constructive suspension appeals related to disability discrimination claims. He provides training on employee discipline and has provided commentary at national conferences and to the media regarding the implementation of federal employee COVID-19 vaccine mandates.

Charges and Penalties

Proposed Duration: 2 days

Attendees will walk through what they need to know to structure a clear charge that can be sustained if challenged before the MSPB. The course will start with the fundamentals of charging misconduct, and how to select the correct charge and appropriately use specifications, and the elements of proof required to sustain specific charges. The course will cover mastering Chapter 43 versus Chapter 75 performance-based adverse actions, including performance standards, Performance Improvement Plans, and the process and procedures for addressing performance, and proposing disciplinary action based on performance. Attendees will learn how to select the appropriate penalty where an employee has engaged in misconduct. Attendees will also learn about defenses that can be raised to charges, due process pitfalls and how to avoid them, and how to address claims of disparate penalties. The course will include discussion of how to avoid charging errors, with review of relevant cases from the MSPB and the Federal Circuit, and affirmative defenses.

What You Need To Know To Be An Effective ER Professional

Proposed Duration: 2 days

This course will walk-through how ER professionals can provide effective advice to managers without stepping into the role of a decision-maker. The instructors will cover how to prepare a case to withstand scrutiny before the MSPB, how to help managers distinguish between concerns of performance versus conduct, performance improvement plans, charges and penalties, progressive discipline, how to identify similarly situated employees, best practices for providing advice to managers, and negotiating agreements. The course will also cover how to provide ER advice to supervisors on holding employees accountable where the employee has filed an EEO complaint or has a disability.

Nuts and Bolts of EEO Complaints

Proposed Duration: 2 days

This course will provide a general overview of the entire EEO process, from contacting an EEO counselor, through filing a formal complaint, EEO investigations, the process of issuing a FAD or requesting a hearing before the EEOC, and appeals to the EEOC's Office of Federal Operations. The course will cover identification of bases and issues raised by the complainant and how to appropriately frame and investigate the claims. Attendees will discuss what constitutes an adequate and appropriate investigation which meets EEOC requirements under 29 C.F.R. 1614 and Management Directive-HO, as well as the appropriate role of agency counsel in the investigation, in light of recent cases from the Office of Federal Operations. The course will cover the burdens of proof both sides must establish in these cases, which vary depending on the type of claims raised.

Attendees will be provided an overview of remedies the successful complainant can receive if she or he prevails, including those that vary by type of discrimination alleged. Additionally, the course will provide illustrations from recent EEOC cases covering findings of discrimination and awards of sanctions and remedies.

EEOC Employee Rights & Employer Obligations Refresher

Proposed Duration: ½ day

This course serves as a refresher on employee rights and employer obligations under statutes enforced by the EEOC. Attendees will learn whom federal anti-discrimination laws cover, and what policies and adverse actions constitute workplace discrimination. Attendees will walk through the federal sector process for bringing a complaint of discrimination, as well as the remedies a successful complainant can receive. Attendees will also review their protections against several theories of discrimination, including disparate treatment and impact, harassment and hostile work environments, and reprisal and retaliation.

Advanced Issues for the EEO Practitioner

Proposed Duration: 3 days

This training is targeted towards all EEO practitioners, whether they be involved in overseeing civil rights programs at agencies, processing EEO complaints, or representing agencies or employees before the EEOC. This is not a course devoted to the basics. Rather, attendees will touch upon all the hottest issues and areas through a series of modules intended to bring the latest developments and case law to the attendees to give them what they need to know and bring back to their agencies.

The course will include discussion of the latest decisions from the EEOC's Office of Federal Operations that EEO practitioners need to know, and how to appropriately conduct and document joint employer analysis when contractors file EEO complaints. Attendees will learn about the role of agency counsel in EEO investigations, including the requirements set by MD-IIO, and the additional guidance provided by the Office of Federal Operations in the recent Annalee D. case, which was revisited by the Commission in late 2019. The course will also discuss how agencies can avoid being sanctioned for missteps during the EEO investigation, including not timely completing investigations, or not conducting appropriate and complete investigations. The course will also cover best practices for addressing amendments, including those raised late in the investigatory timeframe, when consolidation is appropriate, and how to make sure the record contains sufficient information on newly raised claims.

What Constitutes Sex Based Discrimination: An Overview

Proposed Duration: 1/2 day

This course walks attendees through which laws and statutes protect individuals based on sex, as well as a review of the differences between sex-based, gender-based, and sexual orientation-based discrimination. Attendees will review theories of sex-based discrimination, including disparate treatment and impact, sex-based and sexual harassment, hostile work environments, and protections from reprisal and retaliation for protected EEO activity. This training will feature interactive discussions using hypotheticals and examples from real cases.

What Constitutes Race Based Discrimination: An Overview

Proposed Duration: ½ day

This course walks attendees through which laws and statutes protect individuals based on race, as well as a review of the differences between race, color, ethnicity, and national origin as protected bases for discrimination. Attendees will review theories of race-based discrimination, including disparate treatment and impact, race-based harassment and hostile work environments, and protections from reprisal and retaliation for protected EEO activity. This training will feature interactive discussions using hypotheticals and examples from real cases.

Religious Discrimination and Providing Workplace Accommodations

Proposed Duration: ½ day

This course walks attendees through what constitutes discrimination based on religion. Attendees will learn what steps individuals have to take to establish their "sincerely held" religious beliefs, and to initiate the religious accommodation request process.

This course will also cover what religious accommodations are available to employers. Attendees will also learn what constitutes a "failure to accommodate" claim or a retaliation/reprisal claim in response to a religious accommodation request, and what avenues are available to employees to raise a complaint. Attendees will also discover the differing burden in raising an undue hardship defense as compared to reasonable accommodation requests based on disability.

Proving and Defending Claims for Compensatory Damages

Proposed Duration: 2 days

Compensatory damages have been an employment discrimination remedy for more than 25 years. Although agencies sometimes complain about complainants who want to win the "\$300,000 lottery," unschooled practitioners can fall short in both pursuing and defending against compensatory damages claims. This course will cover all you need to know about this remedy, including the evidence necessary to prove entitlement, methods agencies can use to dispute claims, and how case law can influence the amount of awards. Attendees will learn the burdens of proof that must be met to support an award of compensatory damages, the types of evidence necessary to prove nonpecuniary damages and how agencies can challenge that evidence, and understand the impact of recent EEOC decisions on awards of nonpecuniary damages.

Workplace Harassment: Prevention and Defenses

Proposed Duration: 1 day

The course will include how to appropriately prevent and handle harassment claims in the Post-#metoo Era: This module will discuss how agencies should best handle harassment claims, including discussion of how best to implement the recommendations made by the EEOC's Select Task Force on the Study of Harassment in the Workplace. The course will also cover what steps an agency should take when harassment does occur in the workplace to promptly address it, and prevent its reoccurrence.

Federal Sector Class Actions

Proposed Duration: 2 days

This course will provide federal sector practitioners with everything they need to know about class complaints before the EEOC. This includes a review of the requirements of and process for certification of a class complaint before the EEOC; best practices for conducting discovery in class complaints; and special considerations in approaching settlements in class complaints.

Remedies From A to Z

Proposed Duration: 2 days

The successful complainant can receive various kinds of relief, including equitable and non-equitable damages. This can include non-pecuniary and pecuniary damages, restoration of leave, back pay, front pay, training for responsible management officials and others, and even promotions or placement in a position which requires the agency to bump the current incumbent of a job. This course covers everything federal sector practitioners need to know, from what deductions can and should be made to awards of back pay, what a complainant needs to provide in order to receive awards of damages, to the defenses an agency can raise to a claim for damages.

Attendees will learn about each type of equitable and non-equitable relief available to successful complainants under Title VII, the ADEA, and the Rehabilitation Act. Attendees will explore the burdens of proof associated with establishing claims for these damages, including where an agency can argue for limiting damages, or that the damages are unrelated to the agency's actions. The course will also include practical tips as to how agencies obtain the documents and information from complainants about these claims for damages through discovery. The course will also include discussion of the latest cases from the EEOC awarding remedies, including back pay, front pay, non-pecuniary and pecuniary compensatory damages, and attorneys' fees and costs.

COVID-19 and the Changing Landscape of Reasonable Accommodation and Telework

Proposed Duration: ½ day

The COVID-19 pandemic has altered the landscape of reasonable accommodation, particularly with regards to requests for telework as an accommodation, and this change is likely permanent. This course will cover EEOC guidance and relevant case law and how to apply it to current reasonable accommodation challenges. Discussion will include whether employees who have recovered from COVID-19 are considered individuals with disabilities, how to respond to requests for accommodation from employees who are immunosuppressed, are concerned that their age makes them more susceptible to COVID-19, or who live with others in their household who have these concerns. The instructors will cover consideration of telework as an accommodation, when medical documentation can lawfully be requested, and alternative effective accommodations for agencies to explore.

Nuts and Bolts of Reasonable Accommodation and Disability Discrimination

Proposed Duration: 3 days

This course walks attendees through everything you need to know about disability law. Day 1 starts with the basics: who is covered by disability laws and the different types of claims that can be raised, including harassment, non-selection, disparate treatment, failure to provide reasonable accommodation, and disclosure of confidential medical information. Day 2 will cover how agencies should respond to requests for reasonable accommodations, with a discussion of ways to effectively accommodate mental disabilities in the workplace, and how to address performance and conduct issues where the employee has requested or has a reasonable accommodation. Day 3 of the course will focus on the most often-requested accommodations, leave and telework, and what obligations agencies have and best practices for responding to those requests. Day 3 will also cover when medical documentation is needed to respond to reasonable accommodation requests, fitness-for-duty examinations and direct threat analysis, and confidentiality of medical documentation.

Disability Rights Refresher for Employees

Proposed Duration: ½ Day

This course serves as a refresher on Disability Law and the Reasonable Accommodation process. Attendees will review who is entitled to receive reasonable accommodation for a disability, what accommodations can be put in place for employees with disabilities, and who determines that accommodation an employee with a disability should have. In addition, attendees will review their rights regarding medical documentation - when their employer can request it, who is entitled to see it, and how it should be stored. Finally, attendees will review their protections against reprisal and retaliation related to their disability status.

Accommodating Hidden and Less Obvious Disabilities

Proposed Duration: 1 day

Attendees will learn how to utilize the interactive process to confidently tackle reasonable accommodation issues related to less-obvious disabilities, both mental and physical. This includes effectively using the interactive process, how to approach situations where a need for accommodation is obvious, but hasn't been requested, and when it is appropriate to request medical documentation in these circumstances. The course will also include how to identify the essential functions of a position, providing effective accommodations and thinking outside the box in brainstorming ideas for accommodations, even if different than the accommodation requested, and how to approach circumstances where the medical documentation provided is unclear or insufficient. The course will also cover how to approach requests for situational or full-time telework as an accommodation, how to avoid claims that delays in providing accommodation constitute a denial, and how to respond to requests that may constitute an undue hardship to the agency.

Complex Issues in Reasonable Accommodation

Proposed Duration: 1 day

The ADA Amendments Act broadened the definition of disability, expanding the number of employees who might be entitled to reasonable accommodation. Many accommodations are obvious and relatively simple to implement. However, complicated needs, imperfect communication, and uncertainty about the parameters of accommodation can send the process off track, leaving practitioners and management struggling to stay compliant. The instructors will explore some of the more challenging reasonable accommodation issues, including performance and conduct concerns, medical information, and undue hardship. This includes how any agency should approach reassignment as an accommodation, when an agency can lawfully impose a disability-related qualification standard, and how to make defensible and documented decisions on claims of undue hardship. Discussion will be targeted to the challenges being faced by the audience, from requests to bring service animals or emotional support animals into the workplace, to requests for full-time telework, or any other specific issues.

Best Practices in Requesting, Using, and Storing Federal Employee Medical Information

Proposed Duration: ½ day

Improperly requesting and storing employee medical information is a common way supervisors get into trouble in EEO cases, and the laws apply to all employees, not just those raising disability claims. Employees do not even need to show bad faith or intent by the agency in order to win these types of claims. Compensatory damages and attorneys' fees can be awarded as a remedy, even for just storing a letter from a doctor in the wrong folder! Attendees will learn how to comply with the Genetic Information Nondiscrimination Act and disability laws when requesting medical information at different stages of pre and post-employment and implement procedures for storing confidential medical information of employees in order to avoid liability. The course will also cover when medical information can and cannot be requested from an employee who is requesting accommodation or in connection with employee misconduct, and well as how to properly address an employee who may be creating a threat to him or herself, or other employees in the workplace because of medical issues.

Essentials of Federal Sector Labor Law

Proposed Duration: 3 days*

Labor law can sometimes seem like a free-for-all. However, this course will cover everything the federal sector practitioner in labor law needs to know, including ULPs, negotiability, arbitrations, exceptions to awards, and access to information, including what each side needs to present its case and how to obtain it. The course will cover how to negotiate a collective bargaining agreement in the federal sector, including how to avoid common pitfalls, the information to request before you start bargaining, and the unique provisions affecting the federal sector regarding discovery procedures, arbitrator selection, and other key matters.

The course will also provide attendees with an introductory understanding of the mandatory, permissive, and prohibited subjects of bargaining and strategies for negotiating these subjects. Attendees will learn about threshold issues at arbitration regarding negotiability, the process for propounding and responding to information requests before arbitration, and filing dispositive motions in arbitration. The course will include a session on practical tips for arbitrating an unfair labor practice charge, including how to prepare for arbitration, including how to rebut testimony of witnesses whose testimony is unknown.

Attendees will learn about the procedures for challenging an arbitrator's decision, including filing exceptions with the FLAA, as well as the bases and standards for reviewing an arbitrator's award. Additionally, the course will cover the relief to which a prevailing party may be entitled at arbitration, and will also discuss the limitations on arbitrators' awards, including those that may be imposed by the CBA. Finally, attendees will learn about the Federal Service Impasses Panel (FSIP), its role in resolving impasses, and how to get the most from it.

***Note: These topics can also be modified for a ½ or full day program on specific Labor Law-related issues, such as Information Requests, CBA negotiations, Filing ULPs, etc.**

Winning Cases Before The EEOC

Proposed Duration: 4 days

This course will cover everything you need to know to practice before the EEOC once a complainant requests a hearing. The instructors will walk through what to do when you are assigned to represent a party on the case, including how to review the case file and prepare a preliminary case assessment, conducting witness interviews, preparing for Initial Status Conferences and processing cases under the EEOC's Pilot programs. Attendees will cover written discovery, including best practices on handling discovery disputes, as well as effective preparation for depositions and cross-examination during depositions. The course will cover motions practice including motions to compel, motions for sanctions, and filing and opposing motions for summary judgment. The course will also cover settlement discussions, including offers of resolution, and how to approach settlement in light of Executive Order 13839. Finally, the course will address effective presentation of your party's case at hearing, including opening and closing arguments, and effective examination and cross-examination of witnesses.

EEOC Case Law Update

Proposed Duration: ½ day

The EEOC's Office of Federal Operations issues thousands of decisions each year. This session will cover the most important decisions you need to know in order to effectively engage in written and oral advocacy before the EEOC. The course will review these key decisions and key takeaways you can incorporate into your practice on cases covering disability and reasonable accommodations, harassment, sanctions, other findings of discrimination, and remedies, including back pay and compensatory damages.

Winning Cases Before The MSPB

Proposed Duration: 4 days

This course will cover everything you need to know to represent an appellant or an agency before the Merit Systems Protection Board. The instructors will walk through what to do when you are assigned to represent a party on the case, including how to prepare and submit the agency file if you represent the agency, and how to prepare a preliminary case assessment, conducting witness interviews, and prepare for fast-paced litigation before the MSPB. Attendees will cover written discovery, including best practices on handling discovery disputes, as well as effective preparation for depositions and cross-examination during depositions. The course will cover motions practice including motions to compel, motions for sanctions, and filing and opposing motions for summary judgment on affirmative defenses, as well as requests for subpoenas. The course will also cover settlement discussions, including offers of resolution, and how to approach settlement in light of Executive Order 13839. Finally, the course will address effective presentation of your party's case at hearing, including opening and closing arguments, and effective examination and cross-examination of witnesses.

Advanced Litigation Skills

Proposed Duration: 2 days

This program is applicable to all forums of practice and will include advanced skills for preparing for and taking depositions, preparing for and representing your client at hearing, effective written submissions and motions practice, and oral and written advocacy, including closing arguments. The instructors include former administrative judges and counsel who have decades of experience, and will provide you with the advanced litigation skills you can use to advance your practice before the EEOC, MSPB, FLRA, and other forums.

Bringing or Defending Against Whistleblowing Retaliation Claims

Proposed Duration: 3 days

Attendees will learn everything they need to know about federal sector whistleblowing claims, from initial contact with the Office of Special Counsel, to IRA filings before the Merit Systems Protection Board, and practice before the Federal Circuit. The course will cover the varying burdens of proof to establish non-frivolous allegations and successfully prove or defend against claims of whistleblowing retaliation. The course will cover litigation before the MSPB on whistleblower claims and how to effectively advocate for your party's side in written submissions and orally before the Administrative Judge. The course will also discuss remedies available to successful whistleblowers.

What's New in Whistleblower Protection Law & Election of Remedies

Proposed Duration: 1 day

This course will cover the latest developments in federal whistleblower law including election of remedies; the Kirkpatrick Whistleblower Protection Act of 2017, which targets managers for retaliating against federal whistleblowers; and the changes implemented by the Whistleblower Protection Enhancement Act of 2017.

TRAINING FOR MANAGERS AND SUPERVISORS

Essential Tips for Managers: Managing Smartly and Preventing EEO Complaints

Proposed Duration: 1/2 Day

This training covers everything a supervisor or manager needs to know to avoid complaints of discrimination, and advice about how to effectively manage a workforce when employees have filed complaints.

These afternoon sessions are designed to provide an opportunity for managers and supervisors to learn about the EEO complaints process, and how to manage smartly to prevent EEO claims from being filed in the first place. The session will also provide an overview of the EEO complaints process, including EEO counseling, alternative dispute resolution and mediation, investigations of EEO complaints filed by employees, and best practices for submitting an affidavit in an EEO investigation. Topics covered will include what workplace actions can be included in an EEO complaint, what the employee must be able to show to be successful in an EEO complaint, best practices for testifying at a hearing, and a discussion of retaliation and the types of protected activity that is considered under retaliation claims. This course will facilitate a candid conversation and the opportunity to ask questions about challenges supervisors and managers face managing employees in the federal workplace.

Essential EEO Knowledge for Supervisors and Managers

Proposed Duration: 1 day

This program provides supervisors and managers the essential tools they need to make legally sufficient managerial decisions that can withstand scrutiny if challenged in an EEO complaint. The sessions will be fun and interactive and will feature discussion of hypotheticals based on real EEO cases. Attendees will learn who is covered by EEO laws and who can file an EEO complaint; the different types of claims an employee can raise before the EEOC; and how an employee proves discrimination. The course will also cover the roles of the EEO counselor, EEO investigator, and agency representative throughout an EEO complaint, as well as the supervisor's role during that timeframe, including the duty to preserve and provide documents, as well as providing sworn statements and testimony. Attendees will learn about what happens after the investigation, including potential participation in discovery and hearing testimony and practical tips for that process, as well as how to properly respond to requests for official time from employees who have filed EEO complaints. Finally, the course will cover what to know about participating in settlement conferences and mediations as a settlement authority, including an overview of the types of remedies an employee can obtain through the EEO process.

Training For SES and Executive-Level Leaders on Essential EEO Knowledge

Proposed Duration: 1 day

This course covers the topics in Essential EEO Knowledge for Supervisors and Managers but is geared specifically towards leaders in the Senior Executive Service, and the particular challenges they face.

Appropriately Addressing Performance and Conduct Issues With Employees

Proposed Duration: 1 day

This course is geared to supervisors and managers with a focus in their role on how to work with employee relations to appropriately address performance and conduct issues with employees. The course will include a discussion of how to hold employees accountable for their actions; how to pro-actively manage misconduct before it becomes a bigger problem; how to counsel an employee on not making the same mistake twice; and a review of what is viewed as an actionable conduct by MSPB. The course will also cover how to address misconduct from employees, including co-worker harassment, before it rises to the level of an actionable harassment claim.

CONTACT US

301-608-0880

gilberttraininggroup.com

gilberttraininggroup@gelawyer.com

