



DEFENSE HEALTH AGENCY
7700 ARLINGTON BOULEVARD, SUITE 5101
FALLS CHURCH, VIRGINIA 22042-5101

FEB 07 2019

MEMORANDUM FOR ALL DEFENSE HEALTH AGENCY EMPLOYEES

SUBJECT: Notification and Federal Employee Antidiscrimination and Retaliation
Act Policy

On May 15, 2002, Congress enacted Public Law 107-174, the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," commonly referred to as the No FEAR Act. The act requires Federal agencies to provide annual notice to Federal employees, former Federal employees and applicants for Federal employment of their rights, remedies and protections available under Federal antidiscrimination and whistleblower protection laws. Please refer to the attachment for more information of additional requirements under the No FEAR Act.

The No FEAR Act reaffirms our commitment in ensuring that all Federal employees feel free to come forward with allegations of discrimination, wrong doing, or misconduct, and are aware of their rights. If you require more information regarding the No FEAR Act, please contact the Equal Opportunity and Diversity Management (EODM) Division at dha.eodm@mail.mil. The Chief, EODM Division is Mr. Gregory Byard, who can be reached at (703) 681-4029 or via email at gregory.s.byard.civ@mail.mil.


R. C. BONO
VADM, MC, USN
Director

Attachment:
As stated

Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act Policy

On May 15, 2002, Congress enacted Public Law 107-174, the “Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,” commonly referred to as the No FEAR Act. The act requires Federal agencies to be held accountable for violations of antidiscrimination and whistleblower protection laws, and that each Federal agency:

- Provide annual notice to Federal employees, former Federal employees and applicants for Federal employment of their rights, remedies and protections available under Federal antidiscrimination and whistleblower protection laws;
- Post statistical data quarterly on its public web site, relating to Federal sector equal employment opportunity (EEO) complaints filed with such agency, and for other purposes;
- Train all employees on their rights, responsibilities, and remedies under No FEAR;
- A Federal Agency must reimburse the Judgment Fund for payments made to employees, former employees or applicants for Federal employment because of actual or alleged violations of Federal employment discrimination laws. Federal whistleblower protection laws, and retaliation claims arising from the assertion of rights under those laws; and
- An Agency must submit to Congress, the Equal Employment Opportunity Commission (EEOC), the Department of Justice (DOJ) and the Office of Personnel Management (OPM), an annual report setting forth information about the Agency’s efforts to improve compliance with the employment discrimination and whistleblower protection laws, and detailing the status of complaints brought against the Agency under these laws.

Antidiscrimination Laws

A Federal Agency cannot discriminate against an employee or applicant for employment with respect to terms, conditions, or privileges of employment on the basis of race, color, religion, sex (gender, pregnancy, lesbian, gay, bisexual, transgender (LGBT)), national origin, age (40 years of age or older), disability (physical/mental, including reasonable accommodation) or reprisal for previous participation in EEO protected activity. If you believe you have been discriminated against on one or more of the above bases, you must contact an EODM official within **45 calendar days** of the action, or, in the case of a personnel action, within **45 calendar days** of the effective date of the action, before you can file a complaint of discrimination with your Agency. Also, if you are alleging discrimination based on marital status, parental status or political affiliation, you may file a written complaint with the United States Office of Special Counsel (OSC) using Form OSC-11, at 1730 M Street NW, Suite 218, Washington, DC 20036-4505 or online at <http://www.osc.gov>.

Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend, or approve any personnel action, must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross management; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs. Also, retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 United States Code (U.S.C.) 2302(b) (8). If you believe you have been the victim of whistleblower retaliation, you may file a written complaint with OSC.

Retaliation for Engaging in Protected Activity

A Federal Agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws. If you believe you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination and Whistleblower Protection Laws section, or if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, each Agency retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214(d), according to 5 U.S.C. 1214(f), Agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Further, nothing in the No FEAR Act alters existing laws, or permits an agency to take unfounded disciplinary action against a Federal employee, or to violate the procedural rights of a Federal employee who has been accused of discrimination.

Existing Rights Unchanged

Pursuant to Section 205 of the No FEAR Act, neither the Act nor this notice creates, expands, or reduces any rights otherwise available to any employee, former employee, or applicant under the laws of the United States, including the provisions of the law specified in 5 U.S.C 2302(d). Antidiscrimination laws not only include those under the purview of the Defense Health Agency (DHA) EODM Office, but also include discrimination based on genetic information. In addition, it is the policy of the United States, as reflected in Executive Order that discrimination on the basis of sexual orientation, status as a parent, marital status and political affiliation in Federal employment, is also prohibited.

Training Requirement

According to the No FEAR Act implementing guidance, Federal Agencies must train all employees on their rights, responsibilities, and remedies available under Federal Antidiscrimination and Whistleblower Protection Laws. This training is mandatory for all employees and will be accomplished within **90 calendar days after assignment for newcomers**, and **every 2 years thereafter**. Training may be accessed through the Joint Knowledge Online (JKO) at www.jko.jfcom.mil for course: JS-US012 Joint Staff No FEAR Act Training Course (1hr).