



Department of Navy Notification and Federal Employee Anti-Discrimination & Retaliation Act of 2002 FY 2010 Report

This Department of Navy (DON) report covers all activities of the U.S. Navy and U.S. Marine Corps. The primary office in DON responsible for the policy and reporting requirements of the No Fear Act is the DON Office of EEO and Diversity Management, Naval Office of EEO Complaints Management and Adjudication Division (NAVOECMA). This report is provided in accordance with 5 C.F.R. § 724.302.

(1) Department of Navy Federal District Court cases:

At the present time DON does not have a separate central database which accurately captures all current cases pending in Federal court arising under each of the respective provisions of the Federal Antidiscrimination Laws and the Whistleblower Protection Laws.

We are working with the various offices involved (Office of General Counsel, Litigation, and Employee/Labor Relations Division) to ensure we capture the cases under the Antidiscrimination Laws in our iComplaints tracking system, where we input all data on discrimination complaints in the administrative process.

Through educating our EEO practitioners we have improved the capture of information in the iComplaints tool and use this source exclusively for all reporting and complaints trend analyses.

Data provided below is from the DON Office of General Counsel Database.

District Court Filings/Closures

	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Filed	46	73	62	51	47
Closed	44	62	58	40	31
Pending*	2	11	4	11	16

(* Cases still open at District Court)

(2) Status/Disposition of cases pending in District Court and Judgment Fund Reimbursement

	FY 2006 (Number/Dollar)	FY 2007 (Number/Dollar)	FY 2008 (Number/Dollar)	FY 2009 (Number/Dollar)	FY 2010 (Number/Dollar)
Findings	0 / 0	0/0	0/0	0/0	0/0
Settlements	19/\$859,022	7/\$395,909	3/\$186,000	2/\$124,997	1/\$37,500

All of the cases, where the judgment fund was reimbursed, were settlements at District Court. There were no findings of discrimination at the District Court level found against DON since the implementation of the reimbursement requirement. Reimbursements listed above did not identify specific Attorney's fees as all were lump sum payments.

Notification of judgment fund repayment is provided to the DON Office of Financial Management and Budget (FMB) directly from the Department of Justice. The FMB Office contacts NAVOECMA for specific case information to ensure the bill is forwarded to the correct Command.

(3) Disciplinary Actions Issued:

The OPM requirement related to discipline is to report on formal disciplinary actions (letters of reprimand and above) taken for conduct that is inconsistent with antidiscrimination and/or whistleblower protections.

In FY 2010, the DON had eight disciplinary cases that involved conduct inconsistent with the antidiscrimination protections. In three of these instances, formal disciplinary action did not occur due to a settlement agreement reached by management and the employee engaging in the conduct inconsistent with antidiscrimination protections.

In one situation, the improper conduct was such that management felt it warranted a 10-day suspension. Under the terms of a settlement agreement, the suspension was held in abeyance for a period of two years. During this two-year period, the employee is required to successfully complete a counseling and rehabilitation program to address the behavior that led to the improper conduct and the employee must also refrain from further improper conduct. If the employee fails to successfully complete the counseling and rehabilitation program, or if there is another such incident during this two-year period, the employee agrees to a 10-day suspension for "Conduct unbecoming a Federal employee" and the employee waives their right to grieve or otherwise appeal the suspension.

The other two cases involving a settlement agreement resulted in both individuals leaving the activity. Under the terms of a settlement agreement, a removal action was expunged from the record and the individuals agreed to resign from the activity. The remaining four actions taken for conduct inconsistent with the antidiscrimination protections were four letters of reprimand and one three day suspension. Two of these letters of reprimand and the three-day suspension were for 'inappropriate remarks,' one

letter of reprimand was for 'inappropriate conduct' and the other letter of reprimand was for 'unprofessional behavior.'

At the present time DON doesn't have a centralized database to track disciplinary actions. Data calls to all Major Commands resulted in the information provide. With the anticipated creation of a DoD corporate database for this purpose, we expect information on disciplinary actions will be readily accessible in the near future.

(4) EEO Discrimination Complaint Data (29 C.F.R Subpart G)

In 2003, DON implemented the iComplaints database tool. This tool is used by all EEO practitioners in DON to track all civilian discrimination complaints filed. This tool enables Headquarters DON to view specific cases as well as produce corporate level reports which include the Title III No Fear Act Data Report to EEOC and the Annual EEOC 462 Statistical Report of Discrimination Complaints.

Data is analyzed quarterly by NAVOECMA. This analysis is used to determine program deficiencies, trends and potential areas of liability. Information developed assists in focusing training and briefings presented to senior leadership, managers and supervisors, agency representatives, human resources and EEO professionals.

Summary of Complaints Data (1614.704(a)-(c))

	2006	2007	2008	2009	2010
Total Workforce	192,412	204,751	225,231	230,687	243,017*
Total # Complaints Filed	652	661	690	675	710
Total # Individual Filers	594	551	643	645	697
Total # Repeat Filers	32	46	42	20	9

*Data obtained from DON FY 2010 MD-715 Report.

Basis of Formal Complaints (1614.704(d) & 1614.705)

Basis	2006	2007	2008	2009	2010
Race	290	267	260	249	269
Color	104	101	77	71	90
Religion	33	29	23	21	27
Reprisal	259	290	290	263	267
Sex	215	199	203	208	243
National Origin	111	117	96	80	94
Equal Pay Act	6	10	4	1	2
Age	221	194	193	196	205
Disability	137	129	156	155	171
Non-EEO	1	6	20	9	13

Issues of Formal Complaints (1614.704(e) & 1614.705)

Issues		2006	2007	2008	2009	2010
Appointment/Hire		39	40	35	40	37
Assignment of Duties		66	60	59	51	57
Awards		18	14	29	11	13
Conversion to Full Time		1	3	0	0	2
Disciplinary Action	Demotion	1	2	6	6	1
	Reprimand	19	48	57	41	49
	Suspension	61	39	33	39	33
	Removal	41	11	11	8	13
	Other	8	0	0	0	0
Duty Hours		6	7	8	6	9
Evaluation/Appraisal		35	29	24	23	25
Examination/Test		0	0	0	0	0
Harassment	Non-Sexual	211	200	249	240	271
	Sexual	20	24	21	28	31
Medical Examination		1	5	4	5	6
Pay Including Overtime		18	18	21	19	19
Promotion/Non-Selection		186	147	149	138	143
Reassignment	Denied	11	1	7	8	10
	Directed	24	26	17	11	19
Reasonable Accommodation		21	21	35	31	42
Reinstatement		1	0	1	1	1
Retirement		8	11	28	2	4
Termination		51	63	58	67	64
Terms/Conditions of Employment		45	43	38	45	67
Time and Attendance		18	29	28	18	21
Training		19	19	24	18	27

Processing Time during Fiscal Year (1614.704(f))

Processing Time	2006	2007	2008	2009	2010
Complaints pending during FY					
Average days in investigation	185.16	177.46	168.70	191.62	154.69
Average days in final action	145.29	152.93	146.18	123.59	111.98
Complaint pending during FY where hearing requested					
Average days in investigation	101.58	80.85	75.55	100.13	14.21
Average days in final action	27.19	36.25	28.09	35.03	37.04
Complaint pending during FY with no hearing request					
Average days in investigation	237.76	264.21	250.51	260.42	246.19
Average days in final action	214.18	220.57	202.79	157.61	159.21

Disposition of Discrimination Complaints

	2006	2007	2008	2009	2010
Complaints Dismissed by Agency					
Total Complaints	189	187	169	128	167
Average Days	225	112	60	73	81
Complaints Withdrawn by Complainant					
Total Complaints	68	76	59	82	55
Complaint Investigations					
Pending Complaints Exceeding Time Frame	67	63	104	95	93

Final Decisions / Final Orders (1614.704(h))

	2006	2007	2008	2009	2010
Total Findings	2	3	2	10	4
Without Hearing					
Discrimination - Number	1	2	0	7	0
Discrimination - Percentage	50%	67%	0	70%	0
With Hearing					
Discrimination - Number	1	1	2	3	4
Discrimination - Percentage	50%	33%	100%	30%	100%

Findings of Discrimination by Basis (1614.704(i) & (j))

Disals*	2006	2007	2008	2009	2010
Total Number of Findings	2	3	2	10	4
Race	2	1	1	0	0
Color	0	0	0	0	0
Religion	0	0	0	0	0
Reprisal	2	1	0	4	3
Sex	1	1	0	0	2
National Origin	1	1	0	0	1
Equal Pay Act	0	0	0	0	1
Age	1	0	0	0	1
Disability	1	1	1	7	0
Findings After Hearing					
Total	1	1	2	3	4
Race	1	1	1	0	0
Color	1	0	0	0	0
Religion	0	0	0	0	0
Reprisal	1	0	0	2	3
Sex	1	0	0	0	2
National Origin	1	0	0	0	1
Equal Pay Act	0	0	0	0	1
Age	1	0	0	0	1
Disability	1	0	1	1	0
Findings Without Hearing					
Total	0	2	0	3	0
Race	0	0	0	0	0
Color	0	0	0	0	0
Religion	0	0	0	0	0
Reprisal	0	1	0	0	0
Sex	0	1	0	0	0
National Origin	0	1	0	0	0
Equal Pay Act	0	0	0	0	0
Age	0	0	0	0	0
Disability	0	1	0	3	0

Findings of Discrimination by Issue (1614.704(i) & (j))

Issue **		2006	2007	2008	2009	2010
Total Number of Findings		2	3	2	10	4
Appointment/Hire		0	0	0	3	2
Assignment of Duties		0	0	0	0	0
Awards		1	0	0	0	0
Conversion to Full Time		0	0	0	0	0
Disciplinary Action		0	0	0	1	0
Duty Hours		0	0	0	0	0
Evaluation/Appraisal		0	0	0	0	0
Examination/Test		0	0	0	0	0
Harassment	Non-Sexual	0	1	1	3	1
	Sexual	0	0	0	0	0
Medical Examination		0	0	0	2	0
Pay Including Overtime		0	0	0	0	0
Promotion/Non-Selection		1	0	0	0	0
Reassignment	Denied	0	0	0	0	0
	Directed	0	0	0	1	0
Reasonable Accommodation		0	0	1	0	0
Reinstatement		0	0	0	0	0
Retirement		0	0	0	0	0
Termination		0	2	0	1	1
Terms/Conditions of Employment		0	0	0	0	0
Time and Attendance		0	0	0	0	0
Training		0	0	0	0	0

* Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.

** Complaints can be filed alleging multiple issues. The sum of the issues may not equal total complaints and findings.

Pending Complaints Filed in Previous Fiscal Years by Status

	2006	2007	2008	2009	2010
Total complaints from previous FY	621	582	636	697	708
Total Complainants	513	517	551	601	623
Number complaints pending					
Investigation	14	9	11	13	21
ROI issued, pending Complainant's action	4	5	4	3	4
Hearing	101	138	187	202	236
Final Agency Action	32	35	34	29	44
Appeal with EEOC OFO	248	243	236	229	232

(5) Disciplinary Actions Taken (Not in District Court)

In FY 2010 there were four (4) findings of discrimination rendered after a Hearing before an EEOC Administrative Judge. Although compliance with the corrective actions ordered by the Administrative Judge has not been completed, to date no specific individual disciplinary actions were reported in response to these decisions. Corrective action in these cases required EEO training be provided to the responsible management officials, a posting at the local activity that discrimination had occurred and issuance of clarifying policy with respect to employee's right to seek EEO counseling.

(6) Description of DON Discipline Policy

In addition to the information provided in section 3 above, it is DON policy for the EEO Director (Assistant Secretary of the Navy (Manpower & Reserve Affairs) to issue a personal letter to the Commander of the major command when there is a finding of discrimination. This letter instructs the Command to review the facts of the case and determine the level of discipline warranted.

In addition, this letter instructs the local Activity, where the discrimination occurred, to ensure compliance with the ordered corrective actions/relief and report on completed actions to NAVOECMA. At the present time, all compliance actions are completed in less than 120 days of the final agency decision.

The DON policy for disciplinary actions can be found at:
http://www.public.navy.mil/donhr/Documents/Civilian%20Human%20Resources%20Manual/752_SUBCHNEW.pdf .

(7) Analysis:

Basis of Formal Complaints (1614.704(d) & 1614.705)

During this five year period complaints of Reprisal, Race, Sex (male and female), Age and Disability have been the top five bases. We have found the numbers of complaints filed in these categories to be relatively consistent.

Issues of Formal Complaints (1614.704(e) & 1614.705)

In the last few years, complaints of Non-Sexual Harassment have been the most prevalent in DON. We have developed training materials for EEO practitioners on procedures to follow when dealing with harassment claims.

DON has special procedures for immediate action when harassment claims are brought forward. While a complainant may go to the EEO office, a management inquiry is also conducted to identify and verify whether harassment has occurred and recommend actions to management to stop and prevent further harassment. Both procedures may occur concurrently.

The DON Anti-Harassment Policy guidance is currently in draft. Additional review is required.

Processing Time (Average Days)

Significant attention has been placed on the timely processing of complaints. Through training, program evaluation and scorecard performance measures, DON has been addressing activity complaints processing issues. Major Commands are rated annually on the efficiency of their Discrimination Complaints Program with a focus on timely pre-complaint processing and timely completion of investigations. Swift intervention by NAVOECMA, OGC and the DoD Investigations and Resolution Division occurs when activities are slow or fail to process matters timely. The NAVOECMA team has assisted EEO offices with improving internal procedures which may have created obstacles to timely processing. Three training sessions were conducted in FY 2010 with an additional three planned for FY 2011.

Final Agency Decisions / Final Orders (EEOC Administrative Judge) (1614.704(h))

For the last five fiscal years, DON has been in the top five federal agencies to timely process FADS. Consistent attention to timeliness for FADS and FOs has continued despite a decrease in the NAVOECMA staff assigned to this task. In FY 2010, 100% of SECNAV FADS were issued within the 60-day regulatory requirement.

Summary

Over this five year period, DON has seen a relatively consistent number of individuals filing complaints. For FY 2010 only 0.28% of the DON workforce filed a formal complaint.

NAVOECMA has dedicated significant time to oversight of the efficiency of the DON Discrimination Complaint Administrative Process. Over the last eight years, with the implementation of the corporate iComplaints database, we have identified areas of concern and internal barriers to total compliance with the required timeliness of the pre-complaint and formal complaints.

Since FY 2005 the timeliness of pre-complaint process has improved from 51.6% to 85.5% in FY 2010. For the timeliness of Investigations, DON had only 26.1% timely in 2005 and currently has improved to 46.7% in FY2010.

In response to this recurring review, DON has instituted the following initiatives to ensure compliance with anti-discrimination and whistleblower protection laws:

- Improved training for EEO/HR practitioners. Training highlights: employee rights and responsibilities; discrimination complaint policy and procedures; implementing procedures to ensure compliance with regulatory timeframes; and, clear communication with the managers/supervisors/employees involved in the administrative process.

- Alternative Dispute Resolution. DON activities work closely with the DON ADR program and the DOD Office of Investigations and Resolution to ensure all individuals have access to ADR. Expanding access to both sources for mediation support has resulted in an increase of actual ADR occurrences. Continued collaboration is focused on marketing ADR as a management tool to include training for managers/supervisors at all levels on past program successes.
- Program Evaluation and Accountability. NAVOECMA reviews processing timeliness in iComplaints. The DON Office of EEO and Diversity Management issues scorecards annually, to each major command, on the status of their EEO Program in compliance with EEOC MD-715. As part of this scorecard, they are rated on their efficiency of discrimination complaints processing. This scorecard approach has alerted the Major Commands to their responsibility to ensure efficiency in their discrimination complaints process. By creating awareness of these issues we have seen an increase in Command's efforts to ensure accountability at all levels.
- "Tiger Team" EEO Office Oversight. As a result of the extensive data reviews, NAVOECMA has been able to identify specific EEO Complaints processing units with inefficient and non-compliant internal processing procedures. We have worked directly with the units leadership to provide guidance and assistance to make their procedures compliant with DON and EEOC requirements. In the last four years we have used the "Tiger Team" concept to improve the procedures for three different units. Oversight continues to ensure sustainability of implemented initiatives.

(8) Budget Adjustments due to Judgment Fund Reimbursement

The Department has not had to make adjustments to the budget to ensure reimbursement of the Judgment Fund. In fact, DON does not rely on payment of settlement actions through the fund. If settlement is accomplished, the individual activity will normally pay directly from their operating budget.

For other monetary corrective action issued as a result of findings of discrimination or settlements arrived at during the Discrimination Complaints Administrative process, DON remitted funds as follows:

Monetary Corrective Actions	2006	2007	2008	2009	2010*
Compensatory Damages	\$204,040(15)	\$54,739(10)	\$207,346(5)	\$401,000(19)	\$633,310(14)
Back Pay/Front Pay	\$115,934(15)	\$237,505(12)	\$99,530(12)	\$284,239(26)	\$137,750(13)
Lump Sum Payment**	\$560,981(53)	\$1,217,212(69)	\$1,687,815(74)	\$1,483,951(106)	\$624,113(70)
Attorneys Fees and Costs***	\$813,586(62)	\$429,928(41)	\$1,059,934(57)	\$837,264(59)	\$1,170,099(48)
Total	\$1,694,541	\$1,939,384	\$2,874,625	\$2,254,328	\$2,565,272

Key: \$(# of cases)

*For FY 2010 there were four (4) findings of discrimination. This data does not include all monetary corrective action granted in these cases.

** DON has been looking at lump sum payments more closely to ensure corrective actions are aligned to the harm experienced by the employee.

***Attorneys Fees continues to be highest of all categories.

(9) Training Plan

The No Fear Act Training Plan was issued as part of the DON Civilian Human Resources Manual (CHRM). A copy of this CHRM can be accessed at http://www.public.navy.mil/donhr/Documents/Civilian%20Human%20Resources%20Manual/CHRM_1613.pdf.

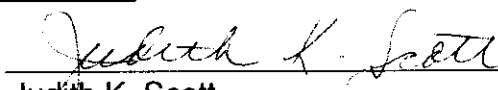
In FY 2010, the No Fear Act computer based training (CBT) module was updated and made available through the DON Navy Knowledge Online website. Commands are required to use this vehicle to ensure completion of this training is accurately recorded. For those commands where employees may not have adequate online access other deployment methods have been used.

Commands were required to provide a written report certifying completion of this training requirement by 10 March 2011.

All Commands certified that new employees receive the DON No FEAR Act employee notice during their initial orientation. In addition, for the reporting period 1 January 2010 – 28 February 2011, 19 of 22 Commands reported prior to the completion of this report. To date 88.7% of the DON workforce completed this training. Efforts continue to ensure all employees are trained and all Commands are expected to update training records to achieve 100% completion.

Agency Certification:

MAR 22 2011

Signature: 
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