



Department of the Navy

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

Fiscal Year 2017 Report

Prepared by the Office of Equal Employment Opportunity



Table of Contents

I.	Introduction.....	1
II.	Reporting Requirements	1
III.	Analysis.....	3
	a. Examination of Trends.....	3
	b. Causal Analysis.....	4
	c. Practical Knowledge Gained Through Experience	4
	d. Actions Planned or Taken for Improvement Measures	5
IV.	Conclusion	6
	Appendix A.....	7
	Appendix B	16
	Appendix C	17

I. INTRODUCTION

This Department of the Navy (DON) report covers all activities of the U.S. Navy and U.S. Marine Corps (USMC) and is provided in accordance with 5 C.F.R. § 724.302. The DON Office of Equal Opportunity (OEEO) works closely with the DON Office of General Counsel and the DON Employee and Labor Relations Division to ensure we capture and report the cases that fall under the Antidiscrimination Laws in compliance with the No FEAR Act reporting requirements.

In FY 2017, the DON continued to improve our corporate database, iComplaints, and deployed ongoing training and communication to our EEO practitioners by utilizing monthly working group sessions to ensure information in iComplaints is accurate. The DON continued aiming towards reaching 100 percent timeliness both in counseling and formal complaint processing. For that reason, the DON OEEO continues to hold major commands and their EEO servicing offices accountable for quality management and timely processing of complaints. In FY 2017, the DON conducted 1621 total counselings, of which 1531 (95 percent) were completed in a timely manner. In addition, 85 percent of investigations were completed in a timely manner, which was an improvement over previous years. The biggest accomplishment for FY 2017 was the continued reduction of overdue Final Agency Actions, which includes Final Agency Decisions (FADs) and Final Orders (FOs). In February 2016 there were more than 300 pending final actions and as of December 2017 it is now less than 30. Average lateness has also been reduced from 250 to less than 100 days.

II. REPORTING REQUIREMENTS

a. *The number of cases in federal court pending or resolved in each fiscal year and arising under each of the respective provisions of the federal antidiscrimination laws and whistleblower protection laws applicable to them as defined in 5 C.F.R. §724.102, in which an employee, former federal employee, or application alleged a violation of these laws, separating data by the provision of law involved (5 C.F.R. 724.302(a)(1)) and the status or disposition of such cases (5 C.F.R. 724.302(a)(2)(i)).*

Statute	Cases Opened in FY 2017	Cases Resolved in FY 2017		Cases Pending at Close of FY 2017
		Settled	Other	
Title VII, Civil Rights Act of 1964 42 U.S.C. 2000e-16	22	10	21	51
Age Discrimination in Employment Act 29 U.S.C. 631, 633a	9	2	12	23
Fair Labor Standards Act of 1938 29 U.S.C. 206(d)	3	1	0	10
Section 501 of Rehabilitation Act 29 U.S.C. 791	13	6	15	20
Equal Pay Act	0	1	0	2

29 U.S.C. 206(d)				
Whistleblower Protection Act 5 U.S.C. 2302(b)(1)	3	0	2	3

b. *The amount of money required to be reimbursed to the Judgment Fund by the agency for payments as defined in 5 C.F.R. §724.102 (5 C.F.R. 724.302(a)(2)(ii)), and the amount of reimbursement to the Fund for attorney’s fees where such fees have been separately designated (5 C.F.R. 724.302(a)(2)(iii)), and any adjustment needed or made to the budget of the agency to comply with its Judgment Fund reimbursement obligation(s) incurred (5 C.F.R. 724.302(a)(8)).*

\$ Reimbursed to Judgment Fund	\$ Attributed to Attorneys’ Fees	Adjustment Needed
\$1,687, 342.42	\$175,366.63	\$1,862,709.05

c. *In connection with the cases identified above, the total number of employees in each fiscal year disciplined (reprimand, suspension without pay, reduction in grade or pay, or removal) and the specific nature of the disciplinary actions taken, separated by the provision(s) of law involved (5 C.F.R. 724.302(a)(3)) and the number of employees in each fiscal year disciplined in accordance with any agency policy, regardless of whether or not the matters are in connection to a federal court case (5 C.F.R. 724.302(a)(5)).*

Statute	# of Employees Disciplined	Nature of Disciplinary Action (e.g., reprimand, dismissal, etc.)
Title VII, Civil Rights Act of 1964 42 U.S.C. 2000e-16	*	
Age Discrimination in Employment Act 29 U.S.C. 631, 633a	0	
Fair Labor Standards Act of 1938 29 U.S.C. 206(d)	0	
Section 501 of Rehabilitation Act 29 U.S.C. 791	0	
Equal Pay Act 29 U.S.C. 206(d)	0	
Whistleblower Protection Act 5 U.S.C. 2302(b)(1)	0	
Matters that did <u>NOT</u> result in a federal court case	5*	Removals (3), Letter of Caution (1), Indefinite Suspension (1)

**Total number of disciplinary actions taken based on substantiated sexual harassment. Could not verify if the actions were connected with any of the federal court cases in section II.b.*

d. *The final year-end data about discrimination complaints for each fiscal year that was posted in accordance with Equal Employment Opportunity Regulations 29 C.F.R. §§1614.701, et seq. (5 C.F.R. 724.302(a)(4)).*

See Appendix A

e. *A detailed description of the agency’s policy for taking disciplinary action against Federal employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes another prohibited personnel practice revealed in connection with agency investigations of alleged violations of these laws (5 C.F.R. 724.302(a)(6)).*

See Appendix B

f. *The agency’s written plan to train its employees (5 C.F.R. 724.302(a)(9)).*

See Appendix C

III. ANALYSIS

An analysis of the information provided in paragraphs (a)(1) through (6) of this section in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with 29 CFR part 1614 subpart F of the Code of Federal Regulations. Such analysis must include:(i) An examination of trends;(ii) Causal analysis;(iii) Practical knowledge gained through experience; and (iv) Any actions planned or taken to improve complaint or civil rights programs of the agency with the goal of eliminating discrimination and retaliation in the workplace (5 C.F.R. 724.302(a)(7)).

a. Examination of Trends

- **Counselings and Formal Complaints Filed:** The DON counseled 1619 informal/pre-complaints in FY 2017. Of those cases, 776 (48 percent) resulted in formal complaints filed. This is a trend over the last six fiscal years, with about half of pre-complaints resulting in formal complaints. A review of complaints data from FY 2010 through FY 2017 shows that, for those cases where no formal complaint was filed, on average, 13 percent were due to settlement and 36 percent were due to the complainants withdrawing their complaints.
- There has been a sizable increase in money distributed from the Judgment Fund from \$454,400 in 2014, \$965,500 in 2015, \$1,102,000 in 2016 to \$1,687, 342.42 in 2017.
- Reprisal has been the most named basis for at least the last six fiscal years and is at 46% for 2017.
- Disability continues in a slight upward trend for type of reported basis. This basis is claimed in 37.5% of cases (up from 26% in 2013).
- Non-sexual harassment continues to be the most prevalent claim within the DON for the last five fiscal years. Non-sexual harassment was alleged 376 times this year, which is significantly higher than the next most alleged issue of disciplinary action which was named 151 times.
- After several years with the number of complaints withdrawn by complainant decreased, it is back up to a total of 69 for 2017, with the highest year in the last 8 years being 91.

b. Causal Analysis

- The increased judgment amounts reflect that more cases are falling in to the reimbursable category, rising from six in 2014, eight in 2015, thirteen in 2016 and seventeen in 2017.
- The recent initiative by the OEEO to ensure timely updates in iComplaints and required monthly reporting on untimeliness reflects the lower number of cases pending investigation.

c. Practical Knowledge Gained Through Experience

In FY 2017, The DON OEEO Complaints Manager implemented an oversight mechanism that placed the onus of development and reporting on the Command Deputy EEO Officers (CDEEOOs). The CDEEOOs were required to report monthly on all past due cases with an explanation regarding the cause of untimeliness, actions to correct the untimeliness and measures to prevent the recurrence of related untimeliness issues. The requirement for the reports began on 10/1/2016 and continued throughout the year.

The DON OEEO continued to utilize the established monthly Complaints Working Group throughout FY 2017, in which each major command was required to send a representative. The working group meeting agenda routinely included activities such as reviewing regulatory requirement events in iComplaints (the official DON EEO case management system) to ensure that events were in compliance with EEOC regulatory requirements. Working group members also discussed common errors in processing complaints. There were discussions on remanded cases, specifically to identify the cause and how to prevent remands from reoccurring. Furthermore, the DON OEEO has routinely reinforced to the Working Group members the importance of ensuring that commands are documenting formal receipts, issuance of the Reports of Investigation (ROI) and dismissals. Finally, the DON OEEO conducted multiple training sessions on complaint processing in FY 2017. This included individual training for specific Major Commands and extensive training during the Annual DON EEO Training held over 3 days in April 2017, which was attended by 135 DON EEO practitioners.

The DON OEEO continued collaborating with the Department of Defense (DoD) Investigations and Resolution Division (IRD) to improve the quality and timeliness of the investigations. An IRD representative presented training to the DON EEO workforce during the April 2017 training event.

The DON issued a total of 555 final agency actions in FY 2017. This included 474 Final Agency Decisions (FADs) and 81 Final Orders (FOs). A major focus in FY 2017 was increasing the timeliness of FAD/FO issuance. The DON continued to use the Army Aviation and Missile Research Development and Engineering Center (AMRDEC) file exchange system, which allows subordinate commands to send case files electronically to DON OEEO. This new electronic file sharing process significantly decreased case processing time associated with transferring case files by mail.

The DON OEEO continued an inter-agency agreement with the United States Postal Service (USPS) to draft FADs. In addition, the DON OEEO was also able to hire an additional full-time FAD writer in August 2017, as well as utilize several Workforce Recruitment Program (WRP) interns with law degrees to draft and review FADs. These mitigation strategies allowed for more timely issuances of FADs. To further mitigate shortfalls, additional DON OEEO staff started drafting FOs within one week of receipt of an Administrative Judge’s (AJ) decision, reviewing FADs received from USPS, and signing and issuing FADs and FOs. Several DON OEEO staff members attended EEOC FAD writing training in FY 2017, which will further mitigate the effects of hiring constraints that prevent the backfill of vacant FAD writer positions.

Due to the mitigation strategies put in place, DON was able to reduce overdue FADs from 104 in April 2017 down to 30 by the end of September 2017. Average FAD lateness has been reduced from 250 to less than 100 days in 6 months and is continuing to improve.

d. Actions Planned or Taken for Improvement Measures

PLANNED ACTIVITIES IN FY 2017 TOWARD COMPLETION OF OBJECTIVES:	ORIGINAL TARGET DATE
Developed improved oversight mechanisms for monitoring major command complaints processing timeliness, increased CDEEOO accountability, and improved DEEOO awareness of the composition and scope of their respective areas of responsibility.	8/26/2016
Required each major command to submit a report on the first day of each month, beginning 10/1/2016, that listed all past due cases, with an explanation regarding the cause of the untimeliness, actions to correct the untimeliness and measures to prevent the recurrence of related untimeliness issues.	Monthly through 10/1/2018
Reviewed iComplaints database weekly to assess progress and timely process cases that require a FAD. DON Complaints Manager is currently executing this, but began transitioning primary responsibilities to CDEEOOs.	Weekly through 10/1/2018
<p>Critical to progress in the overall DON complaints program is bridging related competency gaps within the 0260 community. For this reason, in FY 2017, the DON continued to utilize the monthly Complaints Working Group forum via teleconference to improve complaints efficiencies. The working group focused on analysis of the complaints processing continuum to identify barriers to timely processing, with emphasis on formal complaints. Monthly training during these working groups included topics such as</p> <ul style="list-style-type: none"> • Compliance • Preparing Acceptance/Dismissal Letters • Processing Harassment Complaints • Conducting Informal Inquiries/Framing Claims • Acceptance/Dismissal • Processing Mixed Case Complaints and Bifurcation • Class Complaints 	Monthly from 1/2017 through 8/2017

Developed creative ways to obtain additional resources to assist with the preparation of FADs. This included training current DON OEEO staff and utilizing law school graduate internships.	6/30/2017
Updated the DON Complaints Manual to ensure that DON guidance to EEO practitioners is appropriate and that it responds to current and new requirements set forth by the most recent changes to the Management Directive 110 (MD-110). Updates included the creation of DON complaints standard operating procedures (SOP) to include: <ul style="list-style-type: none">○ Procedures for complaints processing○ Standard templates○ Required iComplaints entries In FY 2018, the DON will pursue creating additional templates that practitioners can pull directly from the iComplaints database.	9/1/2017

IV. CONCLUSION

The primary office responsible for the policy and reporting requirements of the No FEAR Act is the DON Office of Equal Employment Opportunity (OEEO). DON OEEO is a division which is delegated with the responsibility and authority to manage the Department of the Navy's Discrimination Complaints Program, as well as issue Final Agency Decisions (FADs) and Final Orders (FOs) on behalf of the Secretary of the Navy.

APPENDIX A

The final year-end data about discrimination complaints for each fiscal year that was posted in accordance with Equal Employment Opportunity Regulations 29 C.F.R. §§1614.701, et seq. (5 C.F.R. 724.302(a)(4)).

Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					2017 Through 09-30
	2012	2013	2014	2015	2016	
Number of Complaints Filed	759	625	799	801	840	776
Number of Complainants	728	612	782	775	784	741
Repeat Filers	27	13	15	24	26	21
Complaints by Basis	Comparative Data					
	Previous Fiscal Year Data					2017 Through 09-30
	2012	2013	2014	2015	2016	
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>						
Race	323	257	352	326	306	325
Color	123	99	170	148	135	140
Religion	33	18	50	31	32	26
Reprisal	357	272	357	360	404	359
Sex	273	220	339	293	271	263
PDA	5	5	2	7	6	3
National Origin	98	69	119	111	99	102
Equal Pay Act	11	2	2	6	9	0
Age	236	193	245	253	272	192
Disability	203	162	222	240	261	291
Genetics	6	1	4	4	4	1

Non-EEO	22	16	14	22	31	22
Complaints by Issue	Comparative Data					
	Previous Fiscal Year Data					2017 Through 09-30
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	2012	2013	2014	2015	2016	
Appointment/Hire	50	47	81	94	82	56
Assignment of Duties	77	68	67	62	98	69
Awards	15	13	65	19	10	18
Conversion to Full Time/Perm Status	1	0	1	0	1	0
Disciplinary Action						
Demotion	8	0	2	3	5	5
Reprimand	76	43	66	74	59	66
Suspension	36	36	41	32	34	37
Removal	13	5	15	18	38	26
Duty Hours	15	12	17	9	17	15
Perf. Eval./ Appraisal	46	30	29	44	38	41
Examination/Test	0	0	0	0	0	0
Harassment						
Non-Sexual	294	253	329	384	375	376
Sexual	34	26	49	38	39	37
Medical Examination	2	0	2	4	6	1
Pay including overtime	29	20	30	25	21	25
Promotion/Non-Selection	130	91	140	134	146	107
Reassignment						

No FEAR Analysis Report

Denied	7	4	10	9	14	8
Directed	12	30	24	27	22	23
Reasonable Accommodation Disability	36	31	44	57	68	57
Reinstatement	0	0	1	1	0	0
Religious Accommodation	0	0	0	0	1	1
Retirement	5	2	2	4	3	1
Sex-Stereotyping	0	0	0	0	1	0
Telework	0	0	0	0	8	7
Termination	85	53	62	51	54	36
Terms/Conditions of Employment	88	59	72	82	104	72
Time and Attendance	22	18	27	20	37	36
Training	24	11	25	22	27	29
Processing Time	Comparative Data					
	Previous Fiscal Year Data					2017 Through 09-30
	2012	2013	2014	2015	2016	
Complaints pending during fiscal year						
Average number of days in investigation	297.39	300.48	232.26	201.88	204.34	197.26
Average number of days in final action	63.42	75.36	148.20	188.17	158.77	150.38
Complaint pending during fiscal year where hearing was requested						
Average number of	283.98	291.95	239.03	208.75	204.20	202.70

days in investigation						
Average number of days in final action	35.45	40.84	94.08	68.01	82.43	82.95
Complaint pending during fiscal year where hearing was not requested						
Average number of days in investigation	321.33	313.12	220.83	192.29	206.22	193.42
Average number of days in final action	85.06	97.42	235.45	253.60	197.11	179.96

Complaints Dismissed by Agency	Comparative Data											
	Previous Fiscal Year Data										2017 Through 09-30	
	2012		2013		2014		2015		2016			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Complaints Dismissed by Agency	65		5		114		169		135		142	
Average days pending prior to dismissal	119		441		66		64		134		71	
Complaints Withdrawn by Complainants												
Total Complaints Withdrawn by Complainants	76		68		63		91		56		69	
Total Final Agency Actions Finding Discrimination	Comparative Data											
	Previous Fiscal Year Data										2017 Through 09-30	
	2012		2013		2014		2015		2016			
	#	%	#	%	#	%	#	%	#	%	#	%

Total Number Findings	8		1		8		6		10		6	
Without Hearing	0	0	0	0	0	0	0	0	2	20	1	17
With Hearing	8	10	1	100	8	100	6	100	8	80	5	83

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2017 Through 09-30	
	2012		2013		2014		2015		2016		#	%
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	8		1		4		0		10		6	
Race	2	25	1	100	2	50	0	0	2	20	3	50
Color	2	25	1	100	0	0	0	0	0	0	1	17
Religion	0	0	1	100	1	25	0	0	0	0	0	0
Reprisal	6	75	0	0	1	25	0	0	7	70	3	50
Sex	3	38	0	0	3	75	0	0	7	70	3	50
National Origin	0	0	0	0	0	0	0	0	0	0	3	50
Equal Pay Act	0	0	0	0	0	0	0	0	1	10	0	0
Age	3	38	1	100	0	0	0	0	0	0	1	17
Disability	1	13	1	100	0	0	0	0	2	20	3	50
Findings After Hearing	8		1		4		0		8		5	
Race	2	25	1	100	2	50	0	0	2	25	3	60
Color	2	25	1	100	0	0	0	0	0	0	1	20
Religion	0	0	1	100	1	25	0	0	0	0	0	0
Reprisal	6	75	0	0	1	25	0	0	7	88	2	40

No FEAR Analysis Report

Sex	3	38	0	0	3	75	0	0	5	63	3	60
Equal Pay Act	0	0	0	0	0	0	0	0	1	13	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	3	60
Age	3	38	1	100	0	0	0	0	0	0	1	20
Disability	1	13	1	100	0	0	0	0	2	25	2	40
Findings Without Hearing	0		0		0		0		2			1
Reprisal	0	0	0	0	0	0	0	0	0	0	1	100
Sex	0	0	0	0	0	0	0	0	2	100	0	0
Disability											1	100
	0	0	0	0	0	0	0	0	0	0	1	100
Findings of Discrimination Rendered by Issue	Comparative Data											
	Previous Fiscal Year Data										2017 Through 09-30	
	2012		2013		2014		2015		2016			
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	8		1		4		0		10		6	
Assignment of Duties	1	13	0	0	0	0	0	0	1	10	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Suspension	1	13	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	3	38	1	100	1	25	0	0	4	40	5	83
Sexual	1	13	0	0	3	75	0	0	3	30	0	0
Perf. Eval/Appraisal	0	0	0	0	0	0	0	0	0	0	1	17

Pay including overtime	0	0	0	0	0	0	0	0	0	1	10	0	0
Promotion/Non-Selection	2	25	0	0	0	0	0	0	0	1	10	2	33
Reassignment													
Denied	0	0	0	0	0	0	0	0	0	1	10	0	0
Directed	2	25	0	0	0	0	0	0	0	2	20	0	0
Reasonable Accommodation Disability	0	0	0	0	0	0	0	0	0	1	10	1	17
Termination	0	0	0	0	1	25	0	0	0	1	10	0	0
Terms/Conditions of Employment	1	13	0	0	0	0	0	0	0	0	0	0	0
Training	2	25	0	0	0	0	0	0	0	1	10	0	0
Findings After Hearing	8		1		4		0		8		5		
Assignment of Duties	1	13	0	0	0	0	0	0	0	1	13	0	0
Disciplinary Action													
Suspension	1	13	0	0	0	0	0	0	0	0	0	0	0
Harassment													
Non-Sexual	3	38	1	100	1	25	0	0	0	4	50	4	80
Sexual	1	13	0	0	3	75	0	0	0	1	13	0	0
Pay including overtime	0	0	0	0	0	0	0	0	0	1	13	0	0
Perf. Eval/Appraisal	0	0	0	0	0	0	0	0	0	0	0	1	20
Promotion/Non-Selection	2	25	0	0	0	0	0	0	0	1	13	1	20
Reassignment													
Denied	0	0	0	0	0	0	0	0	0	1	13	0	0
Directed	2	25	0	0	0	0	0	0	0	2	25	0	0
Reasonable Accommodation Disability	0	0	0	0	0	0	0	0	0	1	13	0	0

Termination	0	0	0	0	1	25	0	0	1	13	0	0
Terms/Conditions of Employment	1	13	0	0	0	0	0	0	0	0	0	0
Training	2	25	0	0	0	0	0	0	1	13	0	0
Findings Without Hearing	0		0		0		0		2		1	
Harassment												
Sexual	0	0	0	0	0	0	0	0	2	100	0	0
Non-Sexual	0	0	0	0	0	0	0	0	0	0	1	100
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	1	100
Reasonable Accommodation Disability	0	0	0	0	0	0	0	0	0	0	1	100
Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data											
	Previous Fiscal Year Data										2017 Through 09-30	
	2012	2013	2014	2015	2016							
Total complaints from previous Fiscal Years	0	0	629	635	682	702						
Total Complainants	1699	1627	579	563	610	606						
Number complaints pending												
Investigation	388	460	27	21	240	286						
ROI issued, pending Complainant's action	20	1	3	2	0	0						
Hearing	360	439	454	537	600	801						
Final Agency Action	41	76	159	86	74	51						
Appeal with EEOC Office of Federal Operations	0	0	664	188	869	994						

Complaint Investigations	Comparative Data					
	Previous Fiscal Year Data					2017 Through 09-30
	2012	2013	2014	2015	2016	
Pending Complaints Where Investigations Exceed Required Time Frames	837	865	35	41	285	200

APPENDIX B

A detailed description of the agency's policy for taking disciplinary action against Federal employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes another prohibited personnel practice revealed in connection with agency investigations of alleged violations of these laws (5 C.F.R. 724.302(a)(6)).

The Department of the Navy's No FEAR report is published electronically at this link:
<http://www.secnav.navy.mil/donhr/Site/Pages/No-Fear-Act.aspx>

Department of the Navy No FEAR Act Notification Statement:

Disciplinary Actions: Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee who has engaged in discriminatory or retaliatory conduct, up to and including removal. If the Office of Special Counsel (OSC) has initiated an investigation under 5 U.S.C. 1214, however, 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. 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.

APPENDIX C

The agency's written plan to train its employees (5 C.F.R. 724.302(a)(9)).

SUBCHAPTER 1613 NOTIFICATION AND FEDERAL EMPLOYEE ANTIDISCRIMINATION AND RETALIATION ACT OF 2002-NOTIFICATION AND TRAINING

References: (a) 5 CFR Part 724

Attachments: (1) Department of the Navy No FEAR Act Notification Statement
(2) No FEAR Act Training Annual Report

1. Purpose. To issue the Department of the Navy's (DON) implementing instruction to carry out the notification and training requirements and assign responsibilities associated with the Notification and Federal Employees Antidiscrimination and Retaliation Act of 2002 (No FEAR Act).

2. Background. Reference (a) established the requirements for notification and training of Federal employees under the No FEAR Act. This instruction sets forth DON's requirements and outlines the training plan to comply with the intent of reference (a).

3. Policy. It is DON policy to provide a workplace free of discrimination and retaliation. As such, it is essential that the rights of employees, former employees and applicants for employment covered by Federal antidiscrimination and whistleblower protection laws be protected. Notifying present and former employees and applicants for employment of their rights under antidiscrimination and whistleblower protection laws, combined with on-going training of current employees, will increase DON's accountability and compliance with pertinent laws.

4. Applicability. This guidance pertains only to Federal employees. Pursuant to section 205 of the No FEAR Act, neither the Act nor this guidance 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 law specified in 5 U.S.C. 2302(d).

5. Responsibilities.

a. The Secretary of the Navy (SECNAV) will ensure that all Agency civilian employees are provided information regarding their rights in accordance with the provisions of the No FEAR Act.

b. The Assistant Secretary of the Navy (ASN) (Manpower and Reserve Affairs (M&RA)), as DON Director of EEO, shall establish policy for implementing the notification and training provisions of reference (a).

c. The Deputy Assistant Secretary of the Navy (DASN) (Civilian Human Resources (CHR)) is hereby delegated the authority to establish policy and procedures for ensuring all Echelon 1 and 2 commands are in compliance with the requirements of reference (a). The DASN(CHR) has authority to further delegate these responsibilities to enforce compliance with this instruction.

d. Director, Office of Civilian Human Resources (OCHR) serves as DON primary point of contact for policy and guidance on implementation of the provisions of the No FEAR Act.

e. Director, Naval Office of EEO Complaints Management and Adjudication (NAVOECMA) monitors compliance with DON policy and prepares agency reports. As such, NAVOECMA will:

(1) Respond to all external reporting requirements of the No FEAR Act for DON commands and activities, and;

(2) Ensure the DON HR website is regularly updated with current, accurate information regarding the provisions of the No FEAR Act.

f. The Chief of Naval Operations, Commandant of the Marine Corps, Assistant for Administration Office of the Under the Secretary of the Navy, and heads of Echelon 2 commands, will ensure subordinate commands comply with the requirements of this instruction.

g. Each Command Deputy Equal Employment Opportunity Officer (CDEEEO) will report annually to NAVOECMA by January 20 the completion of No FEAR Act training in accordance with section 6(c) of this instruction.

h. Human Resources Offices (HRO), as the local providers of Civilian HR/EEO services, will provide assistance for commands/activities to accomplish the requirements of this instruction.

i. Commanders, Commanding Officers, Officers-in-Charge, heads of activities are accountable for securing the notification and training for all assigned civilian personnel, reporting to the major command, and discharging all assigned responsibilities in a timely and economic manner.

6. Procedures.

a. Notification Requirements.

(1) In accordance with reference (a), DON must provide notice to all of its employees, former employees, and applicants for Federal employment, about the rights and remedies available under the Antidiscrimination Laws and Whistleblower Protection Laws applicable to them. The notice under this part must be titled, "No FEAR Act Notice."

(2) The DON No FEAR Act Notice can be found at <https://www.donhr.navy.mil/NoFearAct.asp>. Echelon I and II commands must establish a hyperlink from the Command Web Site to the official notice.

- (3) The No FEAR Act Notice must be initially issued within 60 calendar days of implementation of reference (a). New employees must receive a copy of this notification within 90 calendar days of entering on duty. Thereafter, the notice must be provided by the end of each successive fiscal year, and any posted materials must remain in place until replaced or revised.
- (4) The notification must be provided in paper (e.g., letter, poster or brochure) and/or electronic form (e.g., e-mail, internal agency electronic site, or Internet Web site).
- (5) Hard copies of the notice must be posted in the workplace and made available to employees upon request.
- (6) Applicants will have access to the notice via position vacancy announcements.

b. Training Requirements.

- (1) This instruction serves as DON's written plan to train all employees, including military supervisors and managers of civilian employees, about the applicable rights and remedies available under the Antidiscrimination Laws and Whistleblower Protection Laws.
- (2) Initial training for all employees (including supervisors and managers) must be completed by December 17, 2006. Thereafter, each command will ensure that all employees are trained on a training cycle of no longer than every 2 years.
- (3) All new employees must be trained within 90 calendar days of appointment, on the provisions of the guidance as part of the local employee orientation or other training program. All new employees must receive No FEAR Act training.
- (4) No FEAR Act training may be accomplished as follows:
 - (a) Dissemination and/or presentation of briefing developed by NAVOECMA is available at: <https://www.donhr.navy.mil/NoFearAct.asp>.
 - (b) No FEAR Act computer based training is available at the Navy Knowledge Online Website: <https://www.nko.navy.mil/portal/splash/index.jsp>.
 - (c) Review of all EEO and/or Supervisor and Manager training provided during FY 06 to determine if the full intent of reference (a) was received by each participant. Verification will be documented by each CDEEOO in the Commands annual report to NAVOECMA. Examples of the content may be reviewed by NAVOECMA to substantiate that the training requirement has been met.
 - (d) Ensure that all contractor-provided No FEAR Act training meets the requirements of reference (a). Commands are free to utilize General Services Administration (GSA) approved vendors to ensure timely compliance.

c. Reporting Requirements.

(1) Each Echelon I and II command will track and maintain records of training completed by subordinate commands.

(2) The Command Deputy EEO Officer is responsible for providing the command annual report of completed training to NAVOECMA by 20 January. The report format is included as an attachment to this instruction.

7. Action. The DASN(CHR) will issue and update No FEAR Act directives that conform with this policy. Addressees must adhere to the Civilian Human Resources Manual (CHRM) and related updates.