



## **Department of the Navy**

### **Notification and Federal Employee Antidiscrimination and Retaliation Act (NoFEAR) Fiscal Year 2016 Report**

Prepared by the Office of Equal Employment Opportunity



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## I. INTRODUCTION

This Department of 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 16, the DON continued to improve our corporate database, iComplaints, and deployed extensive training to our EEO practitioners 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 2016, the DON conducted 1614 total counselings, of which 1572 (97 percent) were completed in a timely manner, which was higher compared to previous years.

## 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 FY16 | Cases Resolved in FY16 |       | Cases Pending at Close of FY16 |
|--|----------------------|------------------------|-------|--------------------------------|
|  |                      | Settled                | Other |                                |
| <b>Title VII, Civil Rights Act of 1964</b><br>42 U.S.C. 2000e-16   | 14                   | 13                     | 27    | 46                             |
| <b>Age Discrimination in Employment Act</b><br>29 U.S.C. 631, 633a | 8                    | 3                      | 5     | 18                             |
| <b>Fair Labor Standards Act of 1938</b><br>29 U.S.C. 206(d)        | 1                    | 1                      | 4     | 2                              |
| <b>Section 501 of Rehabilitation Act</b><br>29 U.S.C. 791          | 7                    | 6                      | 5     | 19                             |
| <b>Equal Pay Act</b><br>29 U.S.C. 206(d)                           | 2                    | 0                      | 3     | 1                              |
| <b>Whistleblower Protection Act</b><br>5 U.S.C. 2302(b)(1)         | 2                    | 0                      | 3     | 1                              |
| <b>Restricted Cases / Unknown</b>                                  | 0                    | 0                      | 7     | 0                              |

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   |
|--------------------------------|----------------------------------|---------------------|
| \$902,000.00                   | \$200,000.00                     | \$1,102,000.00 / 13 |

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.) |
|--|----------------------------|--|
| <b>Title VII, Civil Rights Act of 1964</b><br>42 U.S.C. 2000e-16 | 1                          | Suspension   |

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 – input link if available on web-site.**

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 1614 informal/pre-complaints in FY 2016. Of those cases, 815 (50 percent) resulted in formal complaints

filed. This is a trend over the last five fiscal years, with about half of pre-complaints resulting in formal complaints. A review of complaints data from FY 2010 through FY 2016 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 complainant withdrawing their complaint.

- There has been a sizable increase in money distributed from the Judgment Fund from \$454,500 in 2014, \$965,500 in 2015, to \$1,102,000.00 in 2016.
- Reprisal continues to be the most prevalent basis being cited in 48% of all cases. It continued to rise from 360 in FY2015 cases to 404 in FY 2016.
- Race continues to drop slightly as a claimed basis. Dropping from a three year high, being claimed in 2014 of 44% to 36% in 2016.
- Disability continues in a slight upward trend for type of reported basis. This basis is claimed in 31% of cases (up from 26% in 2013).
- Non-sexual harassment continues to be the most prevalent claim within the DON for the last four fiscal years. Being alleged 375 times this year which is significantly higher than the next most alleged issue of promotion, 146 times.
- Total number of complaints withdrawn by complainant is at a 6 year low with the highest year being 91 and this year at 56.

#### **b. Causal Analysis**

- The increased judgment amounts reflects that more cases are being processed, rising from six in 2014, eight in 2015, and thirteen in 2016.
- The recent initiative by the OEEEO to ensure timely updates in iComplaints reflects the lower number of cases pending investigation.
- The increase in the aging workforce and push for self-identification of disabilities could be the cause for the increase in disability claims.
- The wide variation for complaints pending investigation could be due to the high levels of overturn causing the data to be inaccurate.

#### **c. Practical Knowledge Gained Through Experience**

In FY 2016, the DON OEEEO Compliance Manager compiled quarterly scorecard data for the Command Deputy Equal Employment Opportunity Officers (CDEEOO) to assist commands in reaching 100 percent compliance by immediately identifying and addressing quality of processing issues. The scorecards were also used to monitor compliance with regulatory processing requirements and to hold servicing offices accountable for timely processing.

However, evaluation of major command compliance through 2016 indicated that the scorecards were not being utilized effectively by the major commands and not providing a return on investment for the time required by the DON to produce them. As a result, beginning in September 2016, the new DON Complaints Manager ceased production and dissemination of the quarterly scorecards, and instead instituted a new, more effective oversight mechanism that placed the onus of development and reporting on the CDEEOOs, and increased the frequency to monthly (versus quarterly) reporting. Recognizing that untimely updating of data in the iComplaints system of record was an ongoing and systemic issue, the new requirement centers on iComplaints

data, and now requires the major commands to submit on the first of every month and explanation for any pending complaint that is past due, using seven different timeliness assessment criteria.

For example, the major commands must address the circumstances for every case where an EEO servicing office did not issue an Acknowledgement Letter within five days of receipt, or an Accept/Dismiss Letter was not issued within 30 days of receipt, or for cases where the investigation is over 180 days old. Due to the new oversight reporting requirements, the DON was able to close out several very old cases and correct iComplaints data on dozens of cases to accurately reflect the current status of the complaint.

The DON OEEEO continued to utilize the established monthly Complaints Working Group throughout FY 2016, 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 are 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 OEEEO has reinforced at almost every meeting 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 OEEEO conducted multiple training sessions on complaint processing in FY 2016 during the Working Group meetings. Training topics included entering events in iComplaints, drafting Accept/Dismiss Letters and processing Mixed Case Complaints.

The DON OEEEO continued collaborating with the Department of Defense (DoD) Investigations and Resolution Division (IRD) to improve the quality of the ROIs. For instance, the DON, along with other DoD agencies, participated in IRD's Investigative Training held in August 2016. During the session, DoD agencies discussed shared concerns regarding the manner in which investigations are being conducted, as well as the lack of supporting documentation provided in the report. And more specifically to the DON, we have received ROIs where the investigator did not include the additional basis that was added during investigation. Another topic discussed was the need for IRD to better market their mediation services so that DoD agencies would increase the utilization of Alternative Dispute Resolution (ADR).

The agency began using the Army Aviation and Missile Research Development and Engineering Center (AMRDEC) file exchange system, which allows commands/activities to send case files electronically to DON OEEEO. This new electronic file sharing process significantly decreased case processing time, especially reducing the time previously associated with receiving case files sent by standard and certified mail.

The DON OEEEO entered into an inter-agency agreement with the United States Postal Service (USPS) to draft FADs. In addition, the DON OEEEO was also able to assign a portion of its FAD requests to four independent contractors. These mitigation strategies allowed for more timely issuances of FADs, despite the fact that the DON employs only one FAD writer (servicing 260,000 civilians). To further mitigate shortfalls, the DON OEEEO staff started drafting Final Orders (FO), which are processed within one week of receipt of the Administrative Judge's (AJ)

decision, reviewing FADs received from USPS, and signing and issuing FADs and FOs. The DON OEEO has requested that EEOC provide FAD writing training for the entire OEEO staff due to hiring constraints preventing the backfill of vacant FAD writer positions.

**d. Actions Planned or Taken for Improvement Measures**

| PLANNED ACTIVITIES TOWARD COMPLETION OF OBJECTIVES:   | TARGET DATE                         |
|---|-------------------------------------|
| Simplification and clarification of iComplaints events which will lead to more accurate data.   | 01/01/2017                          |
| Command and control quality and monitoring: Develop improved oversight mechanisms for monitoring major command complaints timeliness, increasing CDEEOO accountability, and improving CDEEOO awareness of the composition and scope of their respective areas of responsibility.  | 8/26/2016                           |
| Require each major command to submit a report on the first day of each month, beginning 10/1/2016, that lists 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           |
| Review iComplaints database weekly to assess progress and timely process cases that require a FAD. DON Complaints Manager is currently executing this, but will transition primary responsibilities to CDEEOOs in FY2017.   | Weekly through 10/1/2018            |
| 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 will continue administering monthly training on complaints processing and areas of concern specific to the agency (based on recurring monitoring of major command progress). The DON OEEO will utilize the Defense Collaboration Services (DCS) to facilitate the training, which may include:<br>Compliance<br>Preparing Acceptance/Dismissal Letters<br>Processing Harassment Complaints<br>Conducting Informal Inquiries/Framing Claims<br>Acceptance/Dismissal<br>Processing Mixed Case Complaints and Bifurcation<br>Class Complaints | Monthly, from 1/2017 through 8/2017 |
| Utilize the monthly Complaints Working Group forum via teleconference to improve complaints efficiencies. Focus on analysis of complaints processing continuum to identify barriers to timely processing, with emphasis on formal complaints.   | 3/1/2017                            |
| Develop creative ways to potentially obtain additionally resources to assist with the preparation of FADs. Possible methods are:<br>Details<br>Training current DON OEEO staff<br>Employing retired annuitants/contractors  | 6/30/2017                           |
| Update 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 will also create the DON complaints standard operating procedures (SOP)  | 9/1/2017                            |

|   |  |
|---|--|
| to include: Procedures for complaints processing<br>Standard templates<br>Informal Inquiry Checklist<br>Formal Processing Checklist<br>Required iComplaints entries |  |
|---|--|

#### **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 (OEEEO). DON OEEEO is a division who 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 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 |      |      |      |      | 2016Thru09-30 |
|  | 2011                      | 2012 | 2013 | 2014 | 2015 |               |
| Number of Complaints Filed   | 1055                      | 759  | 625  | 799  | 801  | 840           |
| Number of Complainants   | 1022                      | 728  | 612  | 782  | 775  | 784           |
| Repeat Filers  | 31                        | 27   | 13   | 15   | 24   | 26            |
| Complaints by Basis  | Comparative Data          |      |      |      |      |               |
|  | Previous Fiscal Year Data |      |      |      |      | 2016Thru09-30 |
|  | 2011                      | 2012 | 2013 | 2014 | 2015 |               |
| <i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i> |                           |      |      |      |      |               |
| Race   | 612                       | 323  | 257  | 352  | 326  | 306           |
| Color  | 154                       | 123  | 99   | 170  | 148  | 135           |
| Religion   | 38                        | 33   | 18   | 50   | 31   | 32            |
| Reprisal   | 316                       | 357  | 272  | 357  | 360  | 404           |
| Sex  | 263                       | 273  | 220  | 339  | 293  | 271           |
| PDA  | 0                         | 5    | 5    | 2    | 7    | 6             |
| National Origin  | 120                       | 98   | 69   | 119  | 111  | 99            |
| Equal Pay Act  | 7                         | 11   | 2    | 2    | 6    | 9             |
| Age  | 258                       | 236  | 193  | 245  | 253  | 272           |
| Disability   | 220                       | 203  | 162  | 222  | 240  | 261           |
| Genetics   | 0                         | 6    | 1    | 4    | 4    | 4             |
| Non-EEO  | 15                        | 22   | 16   | 14   | 22   | 31            |

| Complaints by Issue  | Comparative Data          |      |      |      |      |               |
|--|---------------------------|------|------|------|------|---------------|
|  | Previous Fiscal Year Data |      |      |      |      | 2016Thru09-30 |
| <i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i> | 2011                      | 2012 | 2013 | 2014 | 2015 |               |
| Appointment/Hire   | 53                        | 50   | 47   | 81   | 94   | 82            |
| Assignment of Duties   | 73                        | 77   | 68   | 67   | 62   | 98            |
| Awards   | 15                        | 15   | 13   | 65   | 19   | 10            |
| Conversion to Full Time/Perm Status  | 1                         | 1    | 0    | 1    | 0    | 1             |
| <b>Disciplinary Action</b>   |                           |      |      |      |      |               |
| Demotion   | 5                         | 8    | 0    | 2    | 3    | 5             |
| Reprimand  | 60                        | 76   | 43   | 66   | 74   | 59            |
| Suspension   | 29                        | 36   | 36   | 41   | 32   | 34            |
| Removal  | 10                        | 13   | 5    | 15   | 18   | 38            |
| Duty Hours   | 12                        | 15   | 12   | 17   | 9    | 17            |
| Perf. Eval./ Appraisal   | 29                        | 46   | 30   | 29   | 44   | 38            |
| Examination/Test   | 0                         | 0    | 0    | 0    | 0    | 0             |
| <b>Harassment</b>  |                           |      |      |      |      |               |
| Non-Sexual   | 325                       | 294  | 253  | 329  | 384  | 375           |
| Sexual   | 30                        | 34   | 26   | 49   | 38   | 39            |
| Medical Examination  | 4                         | 2    | 0    | 2    | 4    | 6             |
| Pay including overtime   | 14                        | 29   | 20   | 30   | 25   | 21            |
| Promotion/Non-Selection  | 464                       | 130  | 91   | 140  | 134  | 146           |
| <b>Reassignment</b>  |                           |      |      |      |      |               |
| Denied   | 10                        | 7    | 4    | 10   | 9    | 14            |

| Directed   | 13                               | 12          | 30          | 24          | 27          | 22                   |
|--|----------------------------------|-------------|-------------|-------------|-------------|----------------------|
| Reasonable Accommodation Disability                              | 48                               | 36          | 31          | 44          | 57          | 68                   |
| Reinstatement  | 1                                | 0           | 0           | 1           | 1           | 0                    |
| Religious Accommodation  | 0                                | 0           | 0           | 0           | 0           | 1                    |
| Retirement   | 7                                | 5           | 2           | 2           | 4           | 3                    |
| Sex-Stereotyping   | 0                                | 0           | 0           | 0           | 0           | 1                    |
| Telework   | 0                                | 0           | 0           | 0           | 0           | 8                    |
| Termination  | 80                               | 85          | 53          | 62          | 51          | 54                   |
| Terms/Conditions of Employment                                   | 56                               | 88          | 59          | 72          | 82          | 104                  |
| Time and Attendance  | 26                               | 22          | 18          | 27          | 20          | 37                   |
| Training   | 18                               | 24          | 11          | 25          | 22          | 27                   |
| <b>Processing Time</b>   | <b>Comparative Data</b>          |             |             |             |             |                      |
|  | <b>Previous Fiscal Year Data</b> |             |             |             |             | <b>2016Thru09-30</b> |
|  | <b>2011</b>                      | <b>2012</b> | <b>2013</b> | <b>2014</b> | <b>2015</b> |                      |
| Complaints pending during fiscal year                            |                                  |             |             |             |             |                      |
| Average number of days in investigation                          | 263.57                           | 297.39      | 300.48      | 232.26      | 201.88      | 204.34               |
| Average number of days in final action                           | 62.72                            | 63.42       | 75.36       | 148.20      | 188.17      | 158.77               |
| Complaint pending during fiscal year where hearing was requested |                                  |             |             |             |             |                      |
| Average number of days in  | 266.44                           | 283.98      | 291.95      | 239.03      | 208.75      | 204.20               |

|  |        |        |        |        |        |        |
|--|--------|--------|--------|--------|--------|--------|
| investigation  |        |        |        |        |        |        |
| Average number of days in final action                               | 39.74  | 35.45  | 40.84  | 94.08  | 68.01  | 82.43  |
| Complaint pending during fiscal year where hearing was not requested |        |        |        |        |        |        |
| Average number of days in investigation                              | 257.69 | 321.33 | 313.12 | 220.83 | 192.29 | 206.22 |
| Average number of days in final action                               | 83.62  | 85.06  | 97.42  | 235.45 | 253.60 | 197.11 |

| Complaints Dismissed by Agency          | Comparative Data          |      |      |      |      |               |
|---|---------------------------|------|------|------|------|---------------|
|   | Previous Fiscal Year Data |      |      |      |      | 2016Thru09-30 |
|   | 2011                      | 2012 | 2013 | 2014 | 2015 |               |
| Total Complaints Dismissed by Agency    | 4                         | 65   | 5    | 114  | 169  | 135           |
| Average days pending prior to dismissal | 417                       | 119  | 441  | 66   | 64   | 134           |

| Complaints Withdrawn by Complainants       |    |    |    |    |    |    |
|--|----|----|----|----|----|----|
| Total Complaints Withdrawn by Complainants | 75 | 76 | 68 | 63 | 91 | 56 |

| Total Final Agency Actions Finding Discrimination | Comparative Data          |    |      |   |      |   |      |   |      |   |               |    |
|---|---------------------------|----|------|---|------|---|------|---|------|---|---------------|----|
|   | Previous Fiscal Year Data |    |      |   |      |   |      |   |      |   | 2016Thru09-30 |    |
|   | 2011                      |    | 2012 |   | 2013 |   | 2014 |   | 2015 |   |               |    |
|   | #                         | %  | #    | % | #    | % | #    | % | #    | % | #             | %  |
| Total Number Findings                             | 5                         |    | 8    |   | 1    |   | 8    |   | 6    |   | 51            |    |
| Without   | 2                         | 40 | 0    | 0 | 0    | 0 | 0    | 0 | 0    | 0 | 43            | 84 |

| Hearing   |                           |    |      |     |      |     |      |     |      |     |               |    |  |
|---|---------------------------|----|------|-----|------|-----|------|-----|------|-----|---------------|----|--|
| With Hearing  | 3                         | 60 | 8    | 100 | 1    | 100 | 8    | 100 | 6    | 100 | 8             | 16 |  |
| Findings of Discrimination Rendered by Basis  | Comparative Data          |    |      |     |      |     |      |     |      |     |               |    |  |
|   | Previous Fiscal Year Data |    |      |     |      |     |      |     |      |     | 2016Thru09-30 |    |  |
| <i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i> | 2011                      |    | 2012 |     | 2013 |     | 2014 |     | 2015 |     |               |    |  |
|   | #                         | %  | #    | %   | #    | %   | #    | %   | #    | %   | #             | %  |  |
| <b>Total Number Findings</b>  | 5                         |    | 8    |     | 1    |     | 4    |     | 0    |     | 10            |    |  |
| Race  | 1                         | 20 | 2    | 25  | 1    | 100 | 2    | 50  | 0    | 0   | 2             | 20 |  |
| Color   | 0                         | 0  | 2    | 25  | 1    | 100 | 0    | 0   | 0    | 0   | 0             | 0  |  |
| Religion  | 0                         | 0  | 0    | 0   | 1    | 100 | 1    | 25  | 0    | 0   | 0             | 0  |  |
| Reprisal  | 3                         | 60 | 6    | 75  | 0    | 0   | 1    | 25  | 0    | 0   | 7             | 70 |  |
| Sex   | 0                         | 0  | 3    | 38  | 0    | 0   | 3    | 75  | 0    | 0   | 7             | 70 |  |
| Equal Pay Act   | 0                         | 0  | 0    | 0   | 0    | 0   | 0    | 0   | 0    | 0   | 1             | 10 |  |
| Age   | 1                         | 20 | 3    | 38  | 1    | 100 | 0    | 0   | 0    | 0   | 0             | 0  |  |
| Disability  | 2                         | 40 | 1    | 13  | 1    | 100 | 0    | 0   | 0    | 0   | 2             | 20 |  |
|   |                           |    |      |     |      |     |      |     |      |     |               |    |  |
| <b>Findings After Hearing</b>   | 3                         |    | 8    |     | 1    |     | 4    |     | 0    |     | 8             |    |  |
| Race  | 1                         | 33 | 2    | 25  | 1    | 100 | 2    | 50  | 0    | 0   | 2             | 25 |  |
| Color   | 0                         | 0  | 2    | 25  | 1    | 100 | 0    | 0   | 0    | 0   | 0             | 0  |  |
| Religion  | 0                         | 0  | 0    | 0   | 1    | 100 | 1    | 25  | 0    | 0   | 0             | 0  |  |
| Reprisal  | 2                         | 67 | 6    | 75  | 0    | 0   | 1    | 25  | 0    | 0   | 7             | 88 |  |
| Sex   | 0                         | 0  | 3    | 38  | 0    | 0   | 3    | 75  | 0    | 0   | 5             | 63 |  |
| Equal Pay Act   | 0                         | 0  | 0    | 0   | 0    | 0   | 0    | 0   | 0    | 0   | 1             | 13 |  |
| Age   | 1                         | 33 | 3    | 38  | 1    | 100 | 0    | 0   | 0    | 0   | 0             | 0  |  |

|   |                                  |          |             |          |             |          |             |          |             |          |                      |          |
|---|----------------------------------|----------|-------------|----------|-------------|----------|-------------|----------|-------------|----------|----------------------|----------|
| Disability  | 1                                | 33       | 1           | 13       | 1           | 100      | 0           | 0        | 0           | 0        | 2                    | 25       |
| <b>Findings Without Hearing</b>                     |                                  |          |             |          |             |          |             |          |             |          |                      |          |
| Reprisal  | 1                                | 50       | 0           | 0        | 0           | 0        | 0           | 0        | 0           | 0        | 0                    | 0        |
| Sex   | 0                                | 0        | 0           | 0        | 0           | 0        | 0           | 0        | 0           | 0        | 2                    | 100      |
| PDA   | 0                                | 0        | 0           | 0        | 0           | 0        | 0           | 0        | 0           | 0        | 0                    | 0        |
| Disability  | 1                                | 50       | 0           | 0        | 0           | 0        | 0           | 0        | 0           | 0        | 0                    | 0        |
| <b>Findings of Discrimination Rendered by Issue</b> | <b>Comparative Data</b>          |          |             |          |             |          |             |          |             |          |                      |          |
|   | <b>Previous Fiscal Year Data</b> |          |             |          |             |          |             |          |             |          | <b>2016Thru09-30</b> |          |
|   | <b>2011</b>                      |          | <b>2012</b> |          | <b>2013</b> |          | <b>2014</b> |          | <b>2015</b> |          |                      |          |
|   | <b>#</b>                         | <b>%</b> | <b>#</b>    | <b>%</b> | <b>#</b>    | <b>%</b> | <b>#</b>    | <b>%</b> | <b>#</b>    | <b>%</b> | <b>#</b>             | <b>%</b> |
| <b>Total Number Findings</b>                        | 5                                |          | 8           |          | 1           |          | 4           |          | 0           |          | 10                   |          |
| Assignment of Duties                                | 1                                | 20       | 1           | 13       | 0           | 0        | 0           | 0        | 0           | 0        | 1                    | 10       |
| Awards  | 1                                | 20       | 0           | 0        | 0           | 0        | 0           | 0        | 0           | 0        | 0                    | 0        |
| <b>Disciplinary Action</b>                          |                                  |          |             |          |             |          |             |          |             |          |                      |          |
| Suspension  | 0                                | 0        | 1           | 13       | 0           | 0        | 0           | 0        | 0           | 0        | 0                    | 0        |
| <b>Harassment</b>                                   |                                  |          |             |          |             |          |             |          |             |          |                      |          |
| Non-Sexual  | 1                                | 20       | 3           | 38       | 1           | 100      | 1           | 25       | 0           | 0        | 4                    | 40       |
| Sexual  | 0                                | 0        | 1           | 13       | 0           | 0        | 3           | 75       | 0           | 0        | 3                    | 30       |
| Pay including overtime                              | 0                                | 0        | 0           | 0        | 0           | 0        | 0           | 0        | 0           | 0        | 1                    | 10       |
| Promotion/Non-Selection                             | 0                                | 0        | 2           | 25       | 0           | 0        | 0           | 0        | 0           | 0        | 1                    | 10       |
| <b>Reassignment</b>                                 |                                  |          |             |          |             |          |             |          |             |          |                      |          |
| Denied  | 0                                | 0        | 0           | 0        | 0           | 0        | 0           | 0        | 0           | 0        | 1                    | 10       |
| Directed  | 0                                | 0        | 2           | 25       | 0           | 0        | 0           | 0        | 0           | 0        | 2                    | 20       |
| Reasonable Accommodation Disability                 | 2                                | 40       | 0           | 0        | 0           | 0        | 0           | 0        | 0           | 0        | 1                    | 10       |

|                                     |   |    |   |    |   |     |   |    |   |   |   |    |
|-------------------------------------|---|----|---|----|---|-----|---|----|---|---|---|----|
| Termination                         | 0 | 0  | 0 | 0  | 0 | 0   | 1 | 25 | 0 | 0 | 1 | 10 |
| Terms/Conditions of Employment      | 1 | 20 | 1 | 13 | 0 | 0   | 0 | 0  | 0 | 0 | 0 | 0  |
| Time and Attendance                 | 1 | 20 | 0 | 0  | 0 | 0   | 0 | 0  | 0 | 0 | 0 | 0  |
| Training                            | 0 | 0  | 2 | 25 | 0 | 0   | 0 | 0  | 0 | 0 | 1 | 10 |
|                                     |   |    |   |    |   |     |   |    |   |   |   |    |
| <b>Findings After Hearing</b>       | 3 |    | 8 |    | 1 |     | 4 |    | 0 |   | 8 |    |
| Assignment of Duties                | 1 | 33 | 1 | 13 | 0 | 0   | 0 | 0  | 0 | 0 | 1 | 13 |
| Disciplinary Action                 |   |    |   |    |   |     |   |    |   |   |   |    |
| Suspension                          | 0 | 0  | 1 | 13 | 0 | 0   | 0 | 0  | 0 | 0 | 0 | 0  |
| Harassment                          |   |    |   |    |   |     |   |    |   |   |   |    |
| Non-Sexual                          | 1 | 33 | 3 | 38 | 1 | 100 | 1 | 25 | 0 | 0 | 4 | 50 |
| Sexual                              | 0 | 0  | 1 | 13 | 0 | 0   | 3 | 75 | 0 | 0 | 1 | 13 |
| Pay including overtime              | 0 | 0  | 0 | 0  | 0 | 0   | 0 | 0  | 0 | 0 | 1 | 13 |
| Promotion/Non-Selection             | 0 | 0  | 2 | 25 | 0 | 0   | 0 | 0  | 0 | 0 | 1 | 13 |
| Reassignment                        |   |    |   |    |   |     |   |    |   |   |   |    |
| Denied                              | 0 | 0  | 0 | 0  | 0 | 0   | 0 | 0  | 0 | 0 | 1 | 13 |
| Directed                            | 0 | 0  | 2 | 25 | 0 | 0   | 0 | 0  | 0 | 0 | 2 | 25 |
| Reasonable Accommodation Disability | 1 | 33 | 0 | 0  | 0 | 0   | 0 | 0  | 0 | 0 | 1 | 13 |
| Termination                         | 0 | 0  | 0 | 0  | 0 | 0   | 1 | 25 | 0 | 0 | 1 | 13 |
| Terms/Conditions of Employment      | 1 | 33 | 1 | 13 | 0 | 0   | 0 | 0  | 0 | 0 | 0 | 0  |
| Time and Attendance                 | 1 | 33 | 0 | 0  | 0 | 0   | 0 | 0  | 0 | 0 | 0 | 0  |
| Training                            | 0 | 0  | 2 | 25 | 0 | 0   | 0 | 0  | 0 | 0 | 1 | 13 |
| Other - User Define                 |   |    |   |    |   |     |   |    |   |   |   |    |
| Furlough-related Claim              | 0 | 0  | 0 | 0  | 0 | 0   | 0 | 0  | 0 | 0 | 0 | 0  |

| <b>Findings Without Hearing</b>                                     | 2                                |             | 0           |             | 0           |                      | 0 |   | 0 |   | 2 |     |
|---|----------------------------------|-------------|-------------|-------------|-------------|----------------------|---|---|---|---|---|-----|
| Awards  | 1                                | 50          | 0           | 0           | 0           | 0                    | 0 | 0 | 0 | 0 | 0 | 0   |
| <b>Harassment</b>   |                                  |             |             |             |             |                      |   |   |   |   |   |     |
| Sexual  | 0                                | 0           | 0           | 0           | 0           | 0                    | 0 | 0 | 0 | 0 | 2 | 100 |
| Reasonable Accommodation Disability                                 | 1                                | 50          | 0           | 0           | 0           | 0                    | 0 | 0 | 0 | 0 | 0 | 0   |
| <b>Pending Complaints Filed in Previous Fiscal Years by Status</b>  | <b>Comparative Data</b>          |             |             |             |             |                      |   |   |   |   |   |     |
|   | <b>Previous Fiscal Year Data</b> |             |             |             |             | <b>2016Thru09-30</b> |   |   |   |   |   |     |
|   | <b>2011</b>                      | <b>2012</b> | <b>2013</b> | <b>2014</b> | <b>2015</b> |                      |   |   |   |   |   |     |
| Total complaints from previous Fiscal Years                         | 0                                | 0           | 0           | 629         | 635         | 682                  |   |   |   |   |   |     |
| Total Complainants  | 1216                             | 1699        | 1627        | 579         | 563         | 610                  |   |   |   |   |   |     |
| <b>Number complaints pending</b>                                    |                                  |             |             |             |             |                      |   |   |   |   |   |     |
| Investigation   | 341                              | 388         | 460         | 27          | 21          | 240                  |   |   |   |   |   |     |
| ROI issued, pending Complainant's action                            | 8                                | 20          | 1           | 3           | 2           | 0                    |   |   |   |   |   |     |
| Hearing   | 268                              | 360         | 439         | 454         | 537         | 600                  |   |   |   |   |   |     |
| Final Agency Action   | 27                               | 41          | 76          | 159         | 86          | 74                   |   |   |   |   |   |     |
| Appeal with EEOC Office of Federal Operations                       | 0                                | 0           | 0           | 664         | 188         | 869                  |   |   |   |   |   |     |
| <b>Complaint Investigations</b>                                     | <b>Comparative Data</b>          |             |             |             |             |                      |   |   |   |   |   |     |
|   | <b>Previous Fiscal Year Data</b> |             |             |             |             | <b>2016Thru09-30</b> |   |   |   |   |   |     |
|   | <b>2011</b>                      | <b>2012</b> | <b>2013</b> | <b>2014</b> | <b>2015</b> |                      |   |   |   |   |   |     |
| Pending Complaints Where Investigations Exceed Required Time Frames | 667                              | 837         | 865         | 35          | 41          | 285                  |   |   |   |   |   |     |

**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)).*

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 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. Command Deputy Equal Employment Opportunity Officer (CDEEEO). Each 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 provider 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://wwwa.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.