

[Federal Register: November 17, 2006 (Volume 71, Number 222)]
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[DOCID:fr17no06-31]

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DEPARTMENT OF COMMERCE

[Docket Number: 061113299-6299-01]

Notification and Federal Employee Antidiscrimination and
Retaliation Act of 2002 (No FEAR Act) Notice

AGENCY: Office of Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce publishes this notice to inform current employees, former employees and applicants for Commerce employment of the rights and protections available to these individuals under Federal antidiscrimination, whistleblower protection and retaliation laws. The Department takes this action pursuant to the notification requirements contained in the Office of Personnel Management regulations. The intent of this action is to ensure that Federal agencies are accountable for violations of antidiscrimination and whistleblower protections laws.

Additional Information: For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724. Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site at <http://www.eeoc.gov> and the OSC Web site at <http://www.osc.gov>.

SUPPLEMENTARY INFORMATION: On May 15, 2002, Congress enacted the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, which is known as the No FEAR Act. One purpose of the Act is to ``require Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws''. Public Law 107-174, Summary. In support of this purpose, Congress found that ``agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' Public Law 107-174, Title I, General Provisions, section 101 (1). The No FEAR Act requires the President, or

his designee, to promulgate regulations implementing the Act. The President delegated these responsibilities to the Office of Personnel Management, who issued a final rule on notification and training (71 FR 41095, July 20, 2006). Pursuant to the Office of Personnel Management's regulations, the Department of Commerce provides this No Fear Act Notice to current employees, former employees and applicants for Commerce employment to inform you of the rights and protections available to you under Federal antidiscrimination, whistleblower protection and retaliation laws. For purposes of the Act, an applicant for Federal employment means an individual applying for employment in or under a Federal agency; a Federal employee means an individual employed in or under a Federal agency; and a former Federal employee means an individual formerly employed in or under a Federal agency.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin,

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age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b) (1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e-16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. See, e.g., 29 CFR 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give the Equal Employment Opportunity Commission (EEOC) notice of intent to sue within 180 days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC).

In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through the agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a

personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC-11) with the U.S. Office of Special Counsel at 1730 M Street, NW., Suite 218, Washington, DC 20036-4505 or online through the OSC Web site-<http://www.osc.gov>.

Retaliation for Engaging in Protected Activity

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

Disciplinary Actions

Under existing laws, each agency retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with federal antidiscrimination and whistleblower protection laws, up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, 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.

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, the Act and this notice does not create, expand or reduce 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).

Dated: November 14, 2006.

Suzan J. Aramaki,

Director, Office of Civil Rights, U.S. Department of Commerce.
[FR Doc. E6-19490 Filed 11-16-06; 8:45 am]

BILLING CODE 3510-22-P