

**U.S. DEPARTMENT OF HOMELAND SECURITY**

**No FEAR Act**

**AGENCY: Office of the Secretary; DHS.**

**ACTION: Notice.**

**SUMMARY:** The Department of Homeland Security (DHS) is providing notice to all of its employees, former employees, and applicants for employment about the rights and remedies that are available to them under Federal antidiscrimination laws and whistleblower protection laws.

This notice satisfies the Department's notification requirements under section 202 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 and Office of Personnel Management regulations.

**FOR FURTHER INFORMATION CONTACT:** Stephen Shih, Deputy Officer for Equal Employment Opportunity (EEO) Programs, U.S. Department of Homeland Security, 245 Murray Lane, SW, Building 410, Washington DC, 20528, by telephone at 1-888-644-8360 or by e-mail at [civil.liberties@dhs.gov](mailto:civil.liberties@dhs.gov).

**SUPPLEMENTAL INFORMATION:**

The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, ("No FEAR Act"), Public Law 107-174 (May 15, 2002) was enacted, in part, to ensure that federal agencies are accountable for violations of antidiscrimination and whistleblower protection laws. Congress expressly found that "agencies cannot be run effectively if those agencies practice or tolerate discrimination." *Id.*, Title I, General Provisions, section 101(1).

In furtherance of this purpose, section 202 of the No FEAR Act requires all Federal agencies to provide written notification to Federal employees, former Federal employees and applicants for Federal employment to inform them of the rights and protections available under applicable Federal antidiscrimination and whistleblower protection laws. The Act also requires federal agencies to post the notice on each agency's website.

Pursuant to section 202 of the No FEAR Act, DHS is notifying all of its employees, former employees, and applicants for employment about the rights and remedies that are available to them under applicable Federal antidiscrimination laws and whistleblower protection laws. This notice will also be posted on DHS's website <https://www.dhs.gov>.

#### *Antidiscrimination Laws*

A Federal agency, including DHS, may not discriminate against an employee or applicant for Federal employment with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, 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 a DHS 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 part 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 notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of

the alleged discriminatory action. If you are alleging discrimination based on sexual orientation, marital status, protected genetic information or political affiliation, you may (a) file a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below) or (b) pursue a discrimination complaint by contacting a DHS Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action or (c) file a grievance through the DHS administrative or negotiated grievance procedures, if such procedures apply and are available.

#### *Whistleblower Protection Laws*

A Federal employee – including a DHS 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 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 employee, including a DHS employee, may not retaliate against an employee or applicant for employment because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection 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*

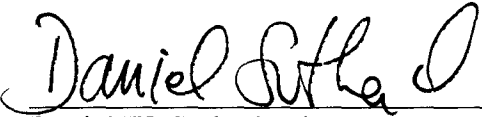
Under the existing laws, DHS retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws, up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), DHS 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 DHS 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.

### *Additional Information*

For further information regarding the No FEAR Act regulations, refer to 5 CFR Part 724, as well as the DHS Office for Civil Rights and Civil Liberties. Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site – <http://www.eeoc.gov> and the OSC Web site – <http://www.osc.gov>.

*Existing Rights Unchanged*

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

  
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Daniel W. Sutherland  
Officer for Civil Rights and Civil Liberties