



DEPARTMENT OF DEFENSE
WASHINGTON HEADQUARTERS SERVICES

1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

JUL 29 2010



MEMORANDUM FOR ALL WASHINGTON HEADQUARTERS SERVICES (WHS)
PERSONNEL

SUBJECT: No FEAR Act Training and Notification Requirements

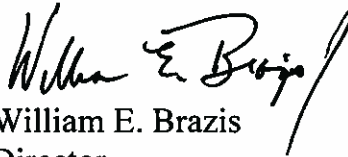
On May 15, 2002, Congress enacted Public Law 107-174, "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," commonly referred to as the No FEAR Act. As the name suggests, the law increases agency accountability for compliance with equal employment opportunity, anti-harassment and retaliation laws.

In accordance with the Act and implementing guidance, all personnel shall receive training in the rights and remedies available under discrimination and whistleblower protection laws (to include harassment of all forms), managing a diverse workforce, dispute resolution, and communication skills. New employees shall receive No FEAR Act training within 90 calendar days after entering on duty. The Act further requires that all employees are trained every two years – the next biennial cycle is December 2010.

No FEAR Act training is available for review at any time on WHS' electronic Learning Management System – <https://lms.whs.mil>. This satisfies equal employment opportunity and sexual harassment training requirements cited in Administrative Instruction No. 40, "Employee Learning and Development." Completion of the training will be recorded in the employee's learning history.

In addition to training, agencies must provide notice on the rights and remedies available under applicable antidiscrimination and whistleblower protection laws. As such, all WHS organizations are responsible for prominently displaying the attached WHS "No FEAR Act Notice" in common areas or on their website. The attached notice is also available online at www.whs.mil/eeop/nofearact/docs/NoFEARActNotice.pdf. Furthermore, senior leaders must ensure that deployed civilian personnel are provided this notice, since the remedies and resources are applicable.

The WHS Equal Employment Opportunity Programs Division (EEOPD) is responsible for implementing the No FEAR Act and is available to provide advice and assistance on this and other EEO-related matters. More information may be obtained by contacting the EEOPD staff at (703) 699-1805 or by visiting the EEOPD website at www.whs.mil/P-E/EEO.


William E. Brazis
Director

Attachment:
As stated



No FEAR Act Notice

On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," which is commonly known as the No FEAR Act. One purpose of the Act is to "require that Federal agencies be accountable for violations of anti-discrimination and whistleblower protection laws." In support of this purpose, Congress found that "agencies cannot run effectively if those agencies practice or tolerate discrimination."

Federal employees, former Federal employees and applicants for Federal employment are encouraged to review the following information on the rights and protections available to them under Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

Directors, managers and supervisors are responsible for ensuring that the work environment is free from discrimination based on the following protected groups: race, color, religion, sex (including sexual harassment), national origin, age (40 and older), disability (mental or physical), or reprisal for participation in previous EEO activity. A Federal agency also cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of 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, age, disability, and/or reprisal, you should contact the Washington Headquarters Services (WHS) Equal Employment Opportunity Programs (EEOP) at 703-699-1805. Contact with EEOP must be made within 45 calendar days of the alleged discriminatory act, or in the case of a personnel action, within 45 calendar days of the effective date of the action. EEOP should be contacted in accordance with 29 Code of Federal Regulations 1614 in order to attempt informal resolution through mediation or counseling prior to filing a formal complaint of discrimination.

If you are alleging equal pay or age discrimination, you have the right to file an administrative complaint under 29 Code of Federal Regulations (C.F.R.) 1614, or to bypass the administrative process and file a civil action in U.S. District Court. In the latter case, you must file a Notice of Intent to Sue, pursuant to 29 C.F.R. Section 1614.201(a), after giving the Equal Employment Opportunity Commission (EEOC) not less than 30 days notice of your intent to file such an action. Such notice must be filed in writing with the EEOC, Federal Sector Programs, 1801 L. Street NW, Washington DC 20507, within 180 days of the occurrence of the alleged unlawful practice.

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) (see contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint.

The Uniformed Services Employment and Re-employment Rights Act (USERRA) protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services. The U.S. Department of Labor, Veterans Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations. For assistance in filing a complaint, or for any other information on USERRA, contact VETS at 1-866-4-USA-DOL or visit its website at <http://www.dol.gov/vets>

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 be evidence of 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 are 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 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.

Collaborative Resolution Program

It is WHS policy to use and offer alternative dispute resolution (ADR) services to its serviced customers as an alternative to litigation or formal administrative procedures to the maximum extent appropriate. In support of Administrative Instruction No. 106, the Collaborative Resolution Program (CRP) offers informal, neutral, voluntary, and confidential methods for early dispute resolution of selected prohibited personnel practice disputes.

When used in appropriate circumstances, the CRP can yield results that are faster, less expensive, and less contentious than formal administrative processes. Mediation is the primary mechanism used to provide parties the opportunity to resolve such disputes without the need for a lengthy investigation or costly litigation. The CRP is an alternative to formal processes, not a replacement. If settlement does not occur, the right to pursue formal processes still exists. You may contact the WHS Collaborative Resolution Program Manager at 703-699-1813 to explore the appropriate use of ADR techniques.

Disciplinary Actions

Under the 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.

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR Part 724, as well as the WHS EEOP. 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).