

Office of Equal Opportunity and Civil Rights

DATE: October 8, 2010

FROM: Arlene E. Austin /s/
Director
Office of Equal Opportunity and Civil Rights (OEOCR)

TO: All CMS Employees

SUBJECT: No FEAR Act Notice

As a CMS employee, you are afforded protection under the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, which is now known as the No FEAR Act. The Act requires that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws. The Act also requires that CMS provide this notice to Federal employees, former Federal employees, and applicants for Federal employment to inform them of the rights and protections available under Federal antidiscrimination and whistleblower protection laws and to provide training.

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, age, disability, or genetic information. Discrimination on these bases is prohibited by one or more statutes.¹ If you believe that you have been the victim of unlawful discrimination, it is important that you contact an Equal Employment Opportunity (EEO) counselor (410) 786-5110 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 this Agency. 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 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 by filing a grievance through this 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 threaten 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 United States Code (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 website - <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 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.

Required Training

All employees must receive initial training of the No FEAR Act within their first 90 days of appointment and biannually thereafter. The training educates employees on their rights and the remedies applicable under the provisions of the No FEAR Act. Employees should register for this training via the Health and Human Services (HHS) Learning Portal at <https://learning.hhs.gov>.

If you have questions regarding the training please contact Suzannah Collins-Brown, OEOCR at (410) 786-3324 or James Minter, OEOCR at (410) 786-8633. If you experience technical difficulties in accessing the HHS Learning Portal, contact the HHS Learning Portal Help Desk at

1-866-967-3095. If you need a reasonable accommodation, please contact Suzannah Collins-Brown at (410) 786-3324 at least two weeks prior to your desired training date.

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 Code of Federal Regulations (C.F.R.) Part 724, as well as the appropriate offices within your agency (e.g., Office of Equal Opportunity and Civil Rights at (410) 786-5110. Additional information regarding Federal antidiscrimination, whistleblower protection, and retaliation laws can be found at the EEOC website - <http://www.eeoc.gov> and the OSC website - <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).

¹ Section 5 U.S.C. 2302(b)(1) Prohibited Personnel Practices
29 U.S.C. 206(d) Equal Pay Act
29 U.S.C. 631, 29 U.S.C. 633a Age Discrimination in Employment Act
29 U.S.C. 791 Rehabilitation Act
42 U.S.C. 2000e-16 Title VII of the Civil Rights Act and the Lilly Ledbetter Fair Pay Act
42 U.S.C. 12101 Americans with Disabilities Act and Amendments
Genetic Information Nondiscrimination Act, Public Law 110-233