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DEPARTMENT OF DEFENSE  
MISSILE DEFENSE AGENCY  
7100 DEFENSE PENTAGON  
WASHINGTON, DC 20301-7100

MAR 09 2011


MEMORANDUM FOR DEPARTMENT OF DEFENSE, OFFICE OF DIVERSITY  
MANAGEMENT AND EQUAL OPPORTUNITY

SUBJECT: Notification and Federal Employee Antidiscrimination and Retaliation Act of  
2002 Report Requirements (No FEAR)

To comply with the Missile Defense Agency's reporting requirements to the Department of Defense Office of Diversity Management and Equal Opportunity, attached is our No FEAR report for Fiscal Year 2010.

This report specifies matters relating to the enforcement of certain anti-discrimination and whistleblower laws.

My point of contact for this report is Ms. Victoria C. Gilner, Director, Equal Opportunity and Diversity Management. Ms. Gilner can be reached at 703-693-9155 or e-mail: [Victoria.gilner@mda.mil](mailto:Victoria.gilner@mda.mil).

  
PATRICK J. O'REILLY  
Lieutenant General, USA  
Director

Attachment:  
As stated

MISSILE DEFENSE AGENCY

Fiscal Year 2010

Annual Report to Congress  
on the  
Notification and Federal Employee  
Antidiscrimination and Retaliation  
Act of 2002

## **A. Introduction**

The Missile Defense Agency (MDA) is a research, development, and acquisition agency within the U.S. Department of Defense (DoD). The MDA is responsible for managing, directing, and executing the Ballistic Missile Defense (BMD) program. The MDA's mission is to develop, test and field an integrated, layered, BMD system to defend the United States, its deployed forces, allies and friends against all ranges of enemy ballistic missiles, in all phases of flight. It also coordinates with the Combatant Commanders, other DoD components and federal agencies, foreign governments, international organizations, and others as authorized.

The Office of Equal Opportunity and Diversity Management (EO) was established in November 2008 with the appointment of the MDA Director of EO. Prior to November 2008, all EO services were provided by the Washington Headquarters Services' (WHS) Equal Employment Opportunity Program Division (EEOPD). The period between November 2008 and July 2009 was a transitional period. In July 2009, MDA became solely responsible for all EO services.

This report is prepared in accordance with the requirements of Title II, Section 203, of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002. The Act requires federal agencies to submit an annual report to the Speaker of the House of Representatives; the President Pro Tempore of the Senate; Senate Committee on Homeland Security and Governmental Affairs; House Committee on Oversight and Government Reform; the Senate Health, Education, Labor, and Pensions Committee; the House Education and Labor Committee; the U.S. Equal Employment Opportunity Commission; and the Department of Justice.

The Act holds federal agencies accountable for violations of antidiscrimination and whistleblower protection laws relating to federal employment. The report contains data and analysis concerning equal employment opportunity complaints filed with MDA during Fiscal Year 2010.

It is the law of this nation and the policy of MDA to prohibit unlawful discrimination in the workplace. MDA is committed to maintaining an environment that provides equal employment opportunity for its approximately 2300 employees (military and civilian), as well as applicants for employment.

## **B. Federal Court Cases Arising Under the Federal Antidiscrimination or Whistleblower Laws**

MDA has no cases in Federal Court. There were no Federal court cases pending during the 4<sup>th</sup> quarter of 2010 (July – September 2010).

**C. Employees Disciplined for Conduct Inconsistent with Federal Antidiscrimination or Whistleblower Laws**

1. Employees Disciplined in Connection with Federal Court Cases
2. Employees Disciplined in Administrative Cases

There were no disciplinary actions taken against agency employees related to having unlawfully discriminated against another individual during the 4<sup>th</sup> quarter of 2010 (July – September 2010).

**D. Final Year-End No FEAR Act Data for Fiscal Year 2010**

Attached.

**E. MDA's Discipline Policy for Conduct Inconsistent with Federal Antidiscrimination or Whistleblower Laws**

MDA is committed to maintaining a workplace that promotes productivity and professionalism and an environment that protects the dignity of all of its workers. MDA has issued anti-harassment, equal opportunity and diversity policy statements, which are periodically sent to all of its employees and contractors, which provide that any harassment of MDA employees, sexual or non-sexual, is expressly prohibited and will not be tolerated. These statements provide that employees who engage in discriminatory or harassing behavior will be subject to appropriate corrective action if allegations are substantiated. See the attached policy statements (Appendix 2-5).

**F. Data Analysis**

MDA had only two formal complaints filed against it in FY 2010. One complaint was dismissed for failure to state a claim (contractor) and is currently on appeal before the EEOC Office of Federal Operations. The contractor in question alleged a hostile work environment based on race (white) and sex (female) and discrimination based on race (white), sex (female) and reprisal when she was removed from the Technical Security Contract staff at one of MDA's facilities. The second complaint is being investigated by the Civilian Personnel Management Services (CPMS) Investigations and Resolution Division (IRD). That complaint alleges discrimination based on sex (female) and reprisal (prior opposition) during the reorganization of complainant's functional unit.

Actions Planned to Improve MDA's Equal Opportunity and Diversity Management Program.

MDA continues to work to improve its EO Program. The following actions are planned in FY 2011:

- continue basic EO and diversity management training for new employees and managers,
- select a Management Program Analyst Intern to assist in coordinating compliance with EEO reporting obligations,
- conduct one-on-one meetings with senior management,
- continue diversity outreach,
- continue working with Diversity, Wellness and Morale Advisory Council formed in March of 2010, and
- continue the exchange of ideas among and benchmarking with other small agencies on EEO issues.

### **G. Judgment Fund Reimbursement**

MDA had no judgments against it with respect to unlawful discrimination or retaliation in FY 2010. Therefore, there is no adjustment needed or made to the budget of MDA to comply with its Judgment Fund reimbursement obligations incurred under 5 CFR § 724.103.

### **H. No FEAR Act Training Plan**

In addition to the initial No FEAR training provided to all MDA employees, all new employees are informed of the No FEAR Act training requirement on their first day at MDA. Each employee is required to complete their initial No Fear Act training within sixty days of their arrival at MDA. And, in accordance with OPM's rules, No FEAR Act training will be conducted every two years.

### **APPENDICES:**

Appendix 1: MDA No FEAR 2010 Fiscal Year (4<sup>th</sup> Quarter) Data

Appendix 2: Equal Employment Opportunity Policy Statement

Appendix 3: Anti-Harassment Policy Statement

Appendix 4: Diversity Policy Statement

Appendix 5: Annual 2010 Statement

**Equal Employment Opportunity Data Posted Pursuant to Title III of  
The Notification and Federal Employee Antidiscrimination and Retaliation  
Act of 2002 (No FEAR ACT), Pub.L. 107-174**

Complaint Activity Sec. 1614.704 (a), (b), and (c)	FY 2010 thru 9/30
Number of Complaints Filed	2
Number of Complainants	2
Repeat Filers	0
Complaints by Basis Sec. 1614.704 (d)	FY 2010 thru 9/30
Race	1
Color	0
Religion	0
Reprisal	2
Sex	2
National Origin	0
Equal Pay Act	0
Age	0
Disability	0
Non-EEO basis	0
Complaints by Issue Sec. 1614.704 (e)	FY 2010 thru 9/30
Appointment/Hire	0
Assignment of Duties	1
Awards	0
Conversion to Full Time	0
Disciplinary Action	0
(1) Demotion	0
(2) Reprimand	0
(3) Suspension	0
(4) Removal	0
(5) Other	0
Duty Hours	0
Evaluation/Appraisal	0

Complaints by Issue (Cont.)	FY 2010 thru 9/30
Examination/Test	0
Harassment	0
(1) Non-Sexual	0
(2) Sexual	1
Medical Examination	0
Pay ( <i>Including Overtime</i> )	0
Promotion/Non-Selection	1
Reassignment	0
Denied	0
Directed	1
Reasonable Accommodation	0
Reinstatement	0
Retirement	0
Termination	0
Terms/Conditions of Employment	0
Time and Attendance	0
Training	0
Other	0
Processing Time Sec 1614.704 (f)	FY 2010 thru 9/30
Complaints pending ( <i>for any length of time</i> ) during fiscal year	2
Average number of days in investigation stage	0
Average number of days in final action stage	NA
Complaints pending ( <i>for any length of time</i> ) during fiscal year where hearing was requested	0
Average number of days in investigation stage	0
Average number of days in final action stage ( <i>average days processing time</i> )	
Complaints pending ( <i>for any length of time</i> ) during fiscal year where hearing was not requested.	0
Average number of days in investigation stage	0
Average number of days in final action stage	0

Processing Time (Cont.)	FY 2010 thru 9/30	
Complaints dismissed by Agency	1	
Total Complaints Dismissed by Agency	1	
Average days pending prior to dismissal	31	
Complaints Withdrawn by Complainants	0	
Total complaints Withdrawn by Complainants	0	
<b>Total Final Actions Finding Discrimination Sec. 1614.704 (i)</b>	FY 2010 thru 9/30	
	#	%
Total Number of findings	0	
a. Without a hearing	0	
b. With a hearing	0	
<b>Findings of Discrimination Rendered by Basis</b>	FY 2010 thru 9/30	
	#	%
Total Number of findings	0	
Race	0	
Color	0	
Religion	0	
Reprisal	0	
Sex	0	
National Origin	0	
Equal Pay Act	0	
Age	0	
Disability	0	
Non-EEO	0	
Findings After Hearing	0	
Race	0	
Color	0	
Religion	0	



Findings of Discrimination Rendered by Basis (Cont.)	FY 2010 thru 9/30	
	#	%
Reprisal	0	
Sex	0	
National Origin	0	
Equal Pay Act	0	
Age	0	
Disability	0	
Non-EEO	0	
Findings Without Hearing	0	
Race	0	
Color	0	
Religion	0	
Reprisal	0	
Sex	0	
National Origin	0	
Equal Pay Act	0	
Age	0	
Disability	0	
Non-EEO	0	
Findings of Discrimination Rendered by Issue	FY 2010 thru 9/30	
	#	%
Total Number of Findings	0	
Appointment/Hire	0	
Assignment of Duties	0	
Awards	0	
Conversion to Full Time	0	
Disciplinary Action	0	

Findings of Discrimination Rendered by Issue (Cont.)	FY 2010 thru 9/30	
	#	%
Demotion	0	
Reprimand	0	
Suspension	0	
Removal	0	
Other	0	
Duty Hours	0	
Evaluation/Appraisal	0	
Examination/Test	0	
Harassment	0	
Non-Sexual	0	
Sexual	0	
Medical Examination	0	
Pay ( <i>Including Overtime</i> )	0	
Promotion/Non-Selection	0	
Reassignment	0	
Denied	0	
Directed	0	
Reasonable Accommodation	0	
Reinstatement	0	
Termination	0	
Terms/Condition of Employment	0	
Time and Attendance	0	
Training	0	
Other	0	
Findings After Hearing	0	

Findings of Discrimination Rendered by Issue (Cont.)	FY 2010 thru 9/30	
	#	%
Appointment/Hire	0	
Assignment of Duties	0	
Awards	0	
Conversion to Full Time	0	
Disciplinary Action	0	
Demotion	0	
Reprimand	0	
Suspension	0	
Removal	0	
Other	0	
Duty Hours	0	
Evaluation/Appraisal	0	
Examination/Test	0	
Harassment	0	
Non-Sexual	0	
Sexual	0	
Medical Examination	0	
Pay ( <i>Including Overtime</i> )	0	
Promotion/Non-Selection	0	
Reassignment	0	
Denied	0	
Directed	0	
Reasonable Accommodation	0	
Reinstatement	0	
Termination	0	
Terms/Condition of Employment	0	

Findings of Discrimination Rendered by Issue (Cont.)	FY 2010 thru 9/30	
	#	%
Time and Attendance	0	
Training	0	
Other	0	
Findings Without Hearing	0	
Appointment/Hire	0	
Assignment of Duties	0	
Awards	0	
Conversion to Full Time	0	
Disciplinary Action	0	
Demotion	0	
Reprimand	0	
Suspension	0	
Removal	0	
Other	0	
Duty Hours	0	
Evaluation/Appraisal	0	
Examination/Test	0	
Harassment	0	
Non-Sexual	0	
Sexual	0	
Medical Examination	0	
Pay ( <i>Including Overtime</i> )	0	
Promotion/Non-Selection	0	
Reassignment	0	
Denied	0	
Directed	0	

Findings of Discrimination Rendered by Issue (Cont.)	FY 2010 thru 9/30	
	#	%
Reasonable Accommodation	0	
Reinstatement	0	
Termination	0	
Terms/Condition of Employment	0	
Time and Attendance	0	
Training	0	
Other	0	
Pending Complaints Filed in Previous Fiscal Years by Status Sec. 1614.704 (k)	FY 2010 thru 9/30	
Total complaints from previous Fiscal years	1	
Total Complainants	1	
Status of complaints pending from previous fiscal years	Remanded by EEOC	
Investigation	1	
Hearing	0	
Final Agency Action	0	
Appeal with EEOC Office of Federal Operations	0	
Complaint Investigations	FY 2010 thru 9/30	
Pending Completion Where Investigation Exceeds Required Time Frames	NA	

\* All citations are contained at 29 CFR Part 1614  
Federal Sector Equal Employment Opportunity.



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**APR 08 2009**

**POLICY MEMORANDUM NO. 11**

**MEMORANDUM FOR ALL MDA PERSONNEL**

**SUBJECT: Equal Employment Opportunity**

This revised policy supersedes Policy Memorandum 11, dated June 10, 2005. Equal Employment Opportunity (EEO) in the federal government mandates equal opportunity for all persons and prohibits discrimination based on race, color, religion, sex, national origin, age, disability, political affiliation, sexual orientation, marital status, membership in an employee organization, or reprisal for participating in protected EEO activity. As your new Director, it is my intention to ensure that the MDA workplace continues to be free from all forms of unlawful discrimination so that each employee can reach their full potential and MDA can achieve its mission.

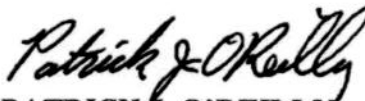
Unlawful discrimination has not and will not be tolerated or condoned at MDA. The teamwork that is integral to our program successes includes providing individuals the opportunity to achieve excellence. Each of us is responsible for eliminating barriers and practices that impede EEO and for conducting ourselves in a manner that promotes an environment of fairness, respect and equality for all personnel. To maintain this environment, we must ensure that:

- a. Persons are recruited, hired and promoted for all jobs without regard to race, color, religion, sex, national origin, age, disability, political affiliation, sexual orientation, marital status, membership in an employee organization or any other non-merit factor.
- b. Placement decisions are based solely on an individual's qualifications for the position being filled.
- c. Other personnel actions such as opportunities for training and career development, awards, benefits, compensation and reassignments or transfers are administered without unlawful discrimination, prejudices or biases.

Individuals who believe they have been discriminated against based on race, color, religion, sex (including sexual harassment), national origin, age (over 40), mental/physical disability, political affiliation, sexual orientation, marital status,

membership in an employee organization, or reprisal for participating in protected EEO activity must contact the Office of Equal Opportunity and Diversity Management within 45 days of the date the alleged discriminatory act occurred or within 45 days of the effective date of the alleged discriminatory personnel action. For more information, please contact Ms. Victoria C. Gilner, Director, Office of Equal Opportunity and Diversity Management at Victoria.Gilner@mda.mil, or (703) 693-9155. Failure to make a timely report may hinder MDA's ability to prevent and/or correct any unlawful behavior. MDA will protect the confidentiality of employee's reporting unlawful harassment to the extent possible.

Living up to the principles of Equal Opportunity is integral to our Agency's vision, guiding principles and personal values and strategic goals and objectives as we chart our course for the future. I expect each of you to share my commitment to the principles of equal employment opportunity. This will ensure MDA upholds and enhances its reputation as a model employer for all throughout the Department of Defense.

  
PATRICK J. O'REILLY  
Lieutenant General, USA  
Director



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**APR 08 2009**

**POLICY MEMORANDUM NO. 20**

**MEMORANDUM FOR ALL MDA PERSONNEL**

**SUBJECT: Anti-Harassment Policy**

This revised policy supersedes Policy Memorandum No. 20, dated June 13, 2005. The Missile Defense Agency (MDA) is and will continue to be a model employer. When our employees experience unlawful discrimination or unlawful harassment, their ability to excel is diminished and their chances to reach their full potential are jeopardized.

Equal Employment Opportunity (EEO) in the federal government mandates equal opportunity for all persons and prohibits discrimination based on race, color, religion, sex, national origin, age, disability, political affiliation, sexual orientation, marital status, membership in an employee organization, or reprisal for participating in protected EEO activity. Unlawful harassment includes creating an intimidating, hostile working environment for another on the prohibited bases noted above. Sexual harassment is unlawful discrimination based upon unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of such conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment. Unlawful harassment by supervisors and managers is especially unacceptable and will not be tolerated.

It is the duty of each manager and supervisor to maintain a workplace free of unlawful discrimination and unlawful harassment. I encourage you to report complaints of unlawful harassment or sexual harassment to your immediate supervisor. If your supervisor is unavailable, or believed to be the offender, you should report the offending conduct to the next official within your supervisory chain of command or any EEO official. Management officials must follow-up on sexual harassment complaints by immediately conducting a prompt, thorough, and impartial investigation. When allegations are substantiated, immediate and appropriate corrective action must be taken to eliminate unlawful harassment activity. Violators will be subject to appropriate corrective action. Additionally, the law prohibits retaliation against employees who report an incident of unlawful or sexual harassment or cooperate with any official inquiry.



For more information or for those complaints that cannot be resolved at normal supervisory levels, please contact Ms. Victoria C. Gilner, Director, Office of Equal Opportunity and Diversity Management. Ms. Gilner may be reached at Victoria.Gilner@mda.mil, or (703) 693-9155.

All personnel are entitled to perform their duties in an environment that is free from unlawful harassment and sexual harassment. I expect all MDA personnel to work together to ensure that we maintain a professional work environment. This policy has my strongest commitment and your commitment to this policy will ensure we achieve our mission goals and objectives.



PATRICK J. O'REILLY  
Lieutenant General, USA  
Director



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WASHINGTON, DC 20301-7100

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POLICY MEMORANDUM NO. 55

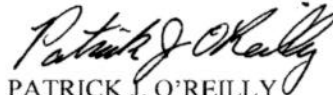
MEMORANDUM FOR ALL MDA PERSONNEL

SUBJECT: Diversity Policy

The Missile Defense Agency values the diversity within its work force. That diversity helps spark the innovation that enables us to provide ballistic missile defenses for the United States, its deployed forces, and our friends and allies and reflects the demography of our great Nation. MDA is firmly committed to developing and sustaining a culture and environment where diversity is valued and leveraged.

MDA will continue to aggressively promote diversity within our workforce. Our continued proactive leadership will empower and enable an environment that values uniqueness, different perspectives and talent. All of our employee recruitment, retention, and development programs and policies will continue to capitalize on our diversity while instilling the professionalism and dedication that are consistent with our Agency's core values.

As we look to the future, we must anticipate and embrace the demographic dynamics of our Nation and strive to build a workforce that reflects these qualities and attributes. I challenge each of you to redouble your efforts through your leadership, mentorship, service, and by personal example to ensure MDA is recognized as providing an environment that values and embraces the contributions and diversity of every member of our workforce.

  
PATRICK J. O'REILLY  
Lieutenant General, USA  
Director



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EO

AUG 20 2010

MEMORANDUM FOR ALL MDA

SUBJECT: Annual Statement Regarding Equal Employment Opportunity and  
Diversity Management

Every employee at the Missile Defense Agency (MDA) has the right to work in an environment free of all forms of unlawful discrimination. MDA is committed to a workplace that promotes equal employment opportunity, embraces diversity, and is free from discriminatory practices, including unlawful harassment.

It is illegal and against Policy Memorandums 11 and 20 for any person to harass, threaten, or intimidate another employee on the basis of their race, color, religion, sex, national origin, age, disability, marital or parental status, sexual orientation or genetic information. Unlawful harassment in violation of these policies includes unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made directly or indirectly a term or condition of a person's employment; or (2) submission to or rejection of such conduct by a person is used as the basis for employment decisions affecting the person. Unlawful harassment also includes creating an intimidating, hostile or offensive working environment for another person. Unlawful harassment can take the form of denigrating or hostile written and/or graphic materials posted in the workplace. Policy Memorandum 55 reinforces the business case for maintaining a workplace in which diversity is valued and embraced.


It is the responsibility of each supervisor and manager to maintain a workplace free of unlawful harassment. This duty includes discussing these policies with all employees and assuring them that they are not to endure insulting, degrading or exploitative sexual or unlawful harassing treatment and to report perceived violations of these policies. This duty also includes maintaining a workplace in which diversity is valued and embraced.

Any employee who exercises his or her right to make a complaint about unlawful harassment will not be subjected to any retaliation. Any supervisor or employee who retaliates against an individual for exercising his or her right to report unlawful harassment or retaliates against an individual for opposing unlawful discrimination or

retaliates against an individual for participation in proceedings covered by anti-discrimination statutes, shall be subject to disciplinary action.

Employees who believe they have been subjected to unlawful discrimination, including harassment must report this within 45 days to the MDA Equal Opportunity office. It is extremely important that any unlawful harassment or retaliation be reported immediately so that the matter can be promptly addressed.

I have trust and confidence in the professionalism and integrity of our MDA workforce and know that each of us will ensure that our actions conform to the spirit and intent of our policies in order to maintain a high performing work environment.

  
PATRICK J. O'REILLY  
Lieutenant General, USA  
Director