

MEMORANDUM

To: All STB Employees

From: Chairman Nottingham

Re: No FEAR Act Notice

On May 15, 2002, Congress enacted the “Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,” which is now known as the No FEAR Act. One purpose of the Act is to “require that 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 Act also requires agencies, including the Surface Transportation Board (Board) to provide this notice to Board employees, former Board employees and applicants for Board employment to inform you of the rights and protections available to you under Federal antidiscrimination and whistleblower protection laws.

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, 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), 631, 633a and 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 with your agency (*see* contact information below). *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 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 your 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 OCC-11) with the U.S. Office of Special Counsel at 1730 M Street, N.W., 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 and 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 or, if applicable, in 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 OCS 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 appropriate offices within the Board (e.g., EEO or human resources office). 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).

Contact Information

Employees and former employees of the Surface Transportation Board, and applicants for employment with Board, who wish to consult with an EEO counselor should contact:

Lee Kramer Associates
919 18th Street, NW 10th Floor
Washington, D. C. 20006
Telephone: 202-667-3137
FAX: 202-667-0089
E-mail: LKramer@radix.net

cc: Vice Chairman Mulvey
Commissioner Buttrey