

# **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 requires the North Dakota National Guard (NDNG) to provide this notice to Federal employees, former Federal employees, and applicants for Federal employment to inform them of the rights and protections available to them under Federal antidiscrimination and whistleblower protection laws.

## **Antidiscrimination Laws**

The NDNG 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), 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 the NDNG Equal Employment Opportunity (EEO) office at 701-333-3236 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. See 29 C.F.R. part 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact the EEO Office 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 (Form OSC-11) with the U.S. Office of Special Counsel (OSC) at 1730 M Street NW, Suite 218, Washington, DC 20036-4505 or online through the OSC website, <http://www.osc.gov>. In the alternative, you may pursue a discrimination complaint by filing a grievance through the NDNG’s administrative or negotiated grievance procedures, if such procedures apply and are available.

## **Whistleblower Protection Laws**

An NDNG 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 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**

The NDNG 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.

### **Disciplinary Actions**

Under the existing laws, the NDNG 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 the OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), the NDNG 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 the NDNG 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 C.F.R. part 724. You may also contact the NDNG Equal Employment Opportunity Office at 701-333-3236. The NDNG's specific antidiscrimination policies relating to equal employment opportunity and prohibited personnel practices have been physically and electronically posted throughout the NDNG. 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.