



Department of Navy Notification and Federal Employee Anti-Discrimination & Retaliation Act of 2002 FY 2011 Report

This Department of Navy (DON) report covers all activities of the U.S. Navy and U.S. Marine Corps. The primary office in DON responsible for the policy and reporting requirements of the No Fear Act is the DON Office of EEO and Diversity Management, Naval Office of EEO Complaints Management and Adjudication Division (NAVOECMA). This report is provided in accordance with 5 C.F.R. § 724.302.

(1) Department of Navy Federal District Court cases:

At the present time DON does not have a separate central database which accurately captures all current cases pending in Federal court arising under each of the respective provisions of the Federal Antidiscrimination Laws and the Whistleblower Protection Laws.

We are working with the various offices involved (Office of General Counsel, Litigation, and Employee/Labor Relations Division) to ensure we capture the cases under the Antidiscrimination Laws in our iComplaints tracking system, where we input all data on discrimination complaints in the administrative process.

Through educating our EEO practitioners, we have improved the capture of information in the iComplaints tool and use this source exclusively for all reporting and complaints trend analyses.

Data provided below is from the DON Office of General Counsel Database.

District Court Filings/Closures

	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Filed	73	62	51	47	50
Closed	62	58	40	31	52
Pending*	11	4	11	16	55**

(* Cases still open at District Court; ** Total employment cases pending in District Court)

(2) Status/Disposition of cases pending in District Court and Judgment Fund Reimbursement

	FY 2007 (Number/Dollar)	FY 2008 (Number/Dollar)	FY 2009 (Number/Dollar)	FY 2010 (Number/Dollar)	FY 2011 (Number/Dollar)
Findings	0 / 0	0/0	0/0	0/0	0/0
Settlements	7/\$395,909	3/\$186,000	2/\$124,997	1/\$37,500	7/\$134,750

All of the cases, where the judgment fund was reimbursed, were settlements at District Court. There were no findings of discrimination at the District Court level found against DON since the implementation of the reimbursement requirement. Reimbursements listed above did not identify specific Attorney's fees as all were lump sum payments.

Notification of judgment fund repayment is provided to the DON Office of Financial Management and Budget (FMB) directly from the Department of Justice. The FMB Office contacts NAVOECMA for specific case information to ensure the bill is forwarded to the correct Command.

(3) Disciplinary Actions Issued:

The OPM requirement related to discipline is to report on formal disciplinary actions (letters of reprimand and above) taken for conduct that is inconsistent with antidiscrimination and/or whistleblower protections.

In FY 2011, the DON had eleven (11) disciplinary cases that involved conduct inconsistent with the antidiscrimination protections. In one of these instances, formal disciplinary action did not occur due to a settlement agreement reached by management and the employee engaging in the conduct inconsistent with antidiscrimination protections.

In two of these instances, the employee was terminated. Management decided that the improper conduct in four of these instances warranted a Letter of Reprimand. The behavior in these six (6) instances included: inappropriate conduct and failure to address and correct obscene, abusive and insulting language in the workplace; viewing/storing, and/or transmitting pornographic material while using government IT assets; inappropriate conduct and unprofessional behavior as it relates to the use of sexual innuendos, commentary and sexually-suggestive gestures in the workplace; and, use of derogatory racial language.

In the remaining four (4) instances, the employees received suspensions ranging from 5 to 21 days. The improper behavior in these instances ranged from: conduct unbecoming a supervisor, improper touching of female employee and use of derogatory racial epithet.

While we currently do not have a centralized repository to retrieve this type information, we expect to eliminate this gap with the new DoD Case Management and Tracking System (CMTS). CMTS is an enterprise-wide, web-based application that provides a single point of access to all LER cases for case handling, search, and reporting in an

effective and efficient way. The CMTS implementation plan is expected to begin mid-April, 2012. The phased roll-out approach for the DON is a work in progress. The data collecting elements in CMTS are: Administration Grievance Procedure, Arbitration, CPMS Review Request, Information Request, MSPB Appeal, Management / Employee Relations, Negotiability Appeal, Negotiated Grievance, Performance Based Actions, Representation, Suitability Adjudication, Unfair Labor Practice.

(4) EEO Discrimination Complaint Data (29 C.F.R Subpart G)

In 2003, DON implemented use of the iComplaints database tool by all EEO practitioners in DON to track all civilian discrimination complaints filed. This tool enables DON Headquarters to view specific cases as well as to produce corporate level reports which include the Title III No Fear Act Data Report to EEOC and the Annual EEOC 462 Statistical Report of Discrimination Complaints.

Data is analyzed quarterly by NAVOECMA. This analysis is used to determine program deficiencies, trends and potential areas of liability. Information developed assists in focusing training and briefings presented to senior leadership, managers and supervisors, agency representatives, human resources and EEO professionals.

Summary of Complaints Data (1614.704(a)-(c))

	2007	2008	2009	2010	2011
Total Workforce	204,751	225,231	230,687	243,017	245,372*
Total # Complaints Filed	661	690	675	710	1053*
Total # Individual Filers	551	643	645	697	1040*
Total # Repeat Filers	46	42	20	9	13

*Data obtained from DON FY 2011 MD-715 Report.

Basis of Formal Complaints (1614.704(d) & 1614.705)

Basis	2007	2008	2009	2010	2011
Race	267	260	249	269	603*
Color	101	77	71	90	146
Religion	29	23	21	27	37
Reprisal	290	290	263	267	288
Sex	199	203	208	243	257
National Origin	117	96	80	94	111
Equal Pay Act	10	4	1	2	6
Age	194	193	196	205	249
Disability	129	156	155	171	209
Non-EEO	6	20	9	13	15

Issues of Formal Complaints (1614.704(e) & 1614.705)

Issues		2007	2008	2009	2010	2011
Appointment/Hire		40	35	40	37	51
Assignment of Duties		60	59	51	57	64
Awards		14	29	11	13	13
Conversion to Full Time		3	0	0	2	1
Disciplinary Action	Demotion	2	6	6	1	5
	Reprimand	48	57	41	49	54
	Suspension	39	33	39	33	25
	Removal	11	11	8	13	10
	Other	0	0	0	0	0
Duty Hours		7	8	6	9	12
Evaluation/Appraisal		29	24	23	25	25
Examination/Test		0	0	0	0	0
Harassment	Non-Sexual	200	249	240	271	303
	Sexual	24	21	28	31	29
Medical Examination		5	4	5	6	3
Pay Including Overtime		18	21	19	19	10
Promotion/Non-Selection		147	149	138	143	461*
Reassignment	Denied	1	7	8	10	8
	Directed	26	17	11	19	12
Reasonable Accommodation		21	35	31	42	45
Reinstatement		0	1	1	1	1
Retirement		11	28	2	4	5
Termination		63	58	67	64	80
Terms/Conditions of Employment		43	38	45	67	53
Time and Attendance		29	28	18	21	24
Training		19	24	18	27	15

Processing Time during Fiscal Year (1614.704(f))

Processing Time	2007	2008	2009	2010	2011
Complaints pending during FY					
Average days in investigation	177.46	168.70	191.62	154.69	272.48
Average days in final action	152.93	146.18	123.59	111.98	151.34
Complaint pending during FY where hearing requested					
Average days in investigation	80.85	75.55	100.13	14.21	278.74
Average days in final action	36.25	28.09	35.03	37.04	39.64
Complaint pending during FY with no hearing request**					
Average days in investigation	264.21	250.51	260.42	246.19	267.25
Average days in final action	220.57	202.79	157.61	159.21	221.92

** This includes cases where the individual first requested a hearing and then either withdrew or the EEOC dismissed the Hearing.

Disposition of Discrimination Complaints

	2007	2008	2009	2010	2011
Complaints Dismissed by Agency					
Total Complaints	187	169	128	167	162
Average Days	112	60	73	81	76
Complaints Withdrawn by Complainant					
Total Complaints	76	59	82	55	76
Complaint Investigations					
Pending Complaints Exceeding Time Frame	63	104	95	93	365*

Final Decisions / Final Orders (1614.704(h))

	2007	2008	2009	2010	2011
Total Findings	3	2	10	4	5
Without Hearing					
Discrimination - Number	2	0	7	0	2
Discrimination - Percentage	67%	0	70%	0	40%
With Hearing					
Discrimination - Number	1	2	3	4	3
Discrimination - Percentage	33%	100%	30%	100%	60%

* As part of a settlement agreement of a class complaint before District Court, on or about 10 September 2010 a Notice of Approval of Settlement was sent to each individual (approximately 13,000), excluding the 120 prevailing party members. The remaining individuals received notification from the court of their right to participate in the informal EEO counseling process, as well as file an individual complaint of discrimination. Approximately 1,035 responded to the court notice. A provision of the settlement and dismissal of the class action bars individual complainants from filing a new class action complaint covering the same timeframe in the original class action against the USMC's MCLB and Blount Island Command. Individuals retained their federal EEO right to file an individual lawsuit, however. Approximately 477 individuals received EEO Counseling and 328 filed formal complaints during FY 2011, hence the significant increase in the overall DON case numbers and specifically the US Marine Corps. The basis of these complaints was Race-African American and the claim was Non-Selection

Findings of Discrimination by Basis (1614.704(i) & (j))

Basis***	2007	2008	2009	2010	2011
Total Number of Findings	3	2	10	4	5
Race	1	1	0	0	1
Color	0	0	0	0	0
Religion	0	0	0	0	0
Reprisal	1	0	4	3	3
Sex	1	0	0	2	0
National Origin	1	0	0	1	0
Equal Pay Act	0	0	0	1	0
Age	0	0	0	1	1
Disability	1	1	7	0	2
Findings After Hearing					
Total	1	2	3	4	3
Race	1	1	0	0	1
Color	0	0	0	0	0
Religion	0	0	0	0	0
Reprisal	0	0	2	3	2
Sex	0	0	0	2	0
National Origin	0	0	0	1	0
Equal Pay Act	0	0	0	1	0
Age	0	0	0	1	1
Disability	0	1	1	0	1
Findings Without Hearing					
Total	2	0	3	0	2
Race	0	0	0	0	0
Color	0	0	0	0	0
Religion	0	0	0	0	0
Reprisal	1	0	0	0	1
Sex	1	0	0	0	0
National Origin	1	0	0	0	0
Equal Pay Act	0	0	0	0	0
Age	0	0	0	0	0
Disability	1	0	3	0	1

Findings of Discrimination by Issue (1614.704(i) & (j))

Issues ****		2007	2008	2009	2010	2011
Total Number of Findings		3	2	10	4	5
Appointment/Hire		0	0	3	2	0
Assignment of Duties		0	0	0	0	1
Awards		0	0	0	0	1
Conversion to Full Time		0	0	0	0	0
Disciplinary Action		0	0	1	0	0
Duty Hours		0	0	0	0	0
Evaluation/Appraisal		0	0	0	0	0
Examination/Test		0	0	0	0	0
Harassment	Non-Sexual	1	1	3	1	1
	Sexual	0	0	0	0	0
Medical Examination		0	0	2	0	0
Pay Including Overtime		0	0	0	0	0
Promotion/Non-Selection		0	0	0	0	0
Reassignment	Denied	0	0	0	0	0
	Directed	0	0	1	0	0
Reasonable Accommodation		0	1	0	0	2
Reinstatement		0	0	0	0	0
Retirement		0	0	0	0	0
Termination		2	0	1	1	0
Terms/Conditions of Employment		0	0	0	0	1
Time and Attendance		0	0	0	0	1
Training		0	0	0	0	0

*** Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.

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Pending Complaints Filed in Previous Fiscal Years by Status

	2007	2008	2009	2010	2011
Total complaints from previous FY	582	636	697	708	820
Total Complainants	517	551	601	623	796
Number complaints pending					
Investigation	9	11	13	21	83
ROI issued, pending Complainant's action	5	4	3	4	7
Hearing	138	187	202	236	263
Final Agency Action	35	34	29	44	28
Appeal with EEOC OFO	243	236	229	232	230

(5) Disciplinary Actions Taken (Not in District Court)

In FY 2011, five (5) findings of discrimination were rendered: three (3) after a Hearing before an EEOC Administrative Judge, and two (2) SECNAV Decisions. Although compliance with the corrective actions ordered by the Administrative Judge has not been completed, to date no specific individual disciplinary actions were reported in response to these decisions. Corrective action in these cases required EEO training be provided to the responsible management officials, a posting at the local activity and monetary corrective action.

(6) Description of DON Discipline Policy

In addition to the information provided in section 3 above, it is DON policy for the EEO Director (Assistant Secretary of the Navy (Manpower & Reserve Affairs) to issue a personal letter to the Commander of the major command when there is a finding of discrimination. This letter instructs the Command to review the facts of the case and determine the level of discipline warranted.

In addition, this letter instructs the local Activity, where the discrimination occurred, to ensure compliance with the ordered corrective actions/relief and report on completed actions to NAVOECMA. At the present time, all compliance actions are completed in less than 120 days of the final agency decision.

The DON policy for disciplinary actions can be found at:

http://www.public.navy.mil/donhr/Documents/Civilian%20Human%20Resources%20Manual/752_SUBCHNEW.pdf .

(7) Analysis:

Basis of Formal Complaints (1614.704(d) & 1614.705)

During the preceding five year period, reprisal, race, sex (male and female), age and disability have been the top five bases. We have found the numbers of complaints filed in these categories to be relatively consistent.

However, during FY 2011, as part of a settlement agreement of a class complaint before District Court, on or about 10 September 2010 a Notice of Approval of Settlement was sent to each individual (approximately 13,000), excluding the 120 prevailing party members. The remaining individuals received notification from the court of their right to participate in the informal EEO counseling process, as well as file an individual complaint of discrimination. Approximately 1,035 responded to the court notice. A provision of the settlement and dismissal of the class action bars individual complainants from filing a new class action complaint covering the same timeframe in the original class action against the USMC's MCLB and Blount Island Command. Individuals retained their federal EEO right to file an individual lawsuit, however. Approximately 477 individuals received EEO Counseling and 328 filed formal complaints during FY 2011, hence the significant increase in the overall DON case

numbers and specifically the US Marine Corps. The basis of these complaints was Race-African American and the claim was Non-Selection.

Issues of Formal Complaints (1614.704(e) & 1614.705)

In the last few years, complaints of Non-Sexual Harassment have been the most prevalent in DON. However, with the acceptance of 328 formal complaints during FY 2011, there was a significant increase in the overall DON case numbers, specifically the US Marine Corps, where non-selection was the basis.

DON has special procedures for immediate action when harassment claims are brought forward. While a complainant may go to the EEO office, a management inquiry is also conducted to identify and verify whether harassment has occurred and recommend actions to management to stop/prevent further harassment. Both procedures may occur concurrently.

The DON Anti-Harassment Policy guidance is currently in draft. Additional review is required.

Processing Time (Average Days)

Significant attention has been placed on the timely processing of complaints. Through training, program evaluation and scorecard performance measures, DON has been addressing activity complaints processing issues. Major Commands are rated annually on the efficiency of their Discrimination Complaints Program with a focus on timely pre-complaint processing and timely completion of investigations. Swift intervention by NAVOECMA, OGC and the DoD Investigations and Resolution Division occurs when activities are slow or fail to process matters timely. The NAVOECMA team has assisted EEO offices with improving internal procedures which may have created obstacles to timely processing. Six training sessions were conducted in FY 2011. Focus on improving DON complaints procedures will continue in FY 2012.

Final Agency Decisions / Final Orders (EEOC Administrative Judge) (1614.704(h))

For the last five fiscal years, DON has been listed as one of the top five federal agencies to timely process FADS. Consistent attention to timeliness for FADS and FOs has continued despite a decrease in the NAVOECMA staff assigned to this task. In FY 2011, 98.5% of SECNAV FADS were issued within the 60-day regulatory requirement.

Summary

Over this five-year period, DON has seen a relatively consistent number of individuals filing complaints. For FY 2011, only 0.28% of the DON workforce filed a formal complaint.

NAVOECMA has dedicated significant time to oversight of the efficiency of the DON Discrimination Complaint Administrative Process. Over the last eight years, with the

implementation of the corporate iComplaints database, we have identified areas of concern and internal barriers to total compliance with the required timeliness of the pre-complaint and formal complaints.

Since FY 2005, the timeliness of pre-complaint processing has improved from 51.6% to 88.4% in FY 2011. For the timeliness of investigations, DON had only 26.1% timely in 2005 but has improved to 43.9% in FY2011.

In response to this recurring review, DON has instituted the following initiatives to ensure compliance with anti-discrimination and whistleblower protection laws:

- Improved training for EEO/HR practitioners. Training highlights: employee rights and responsibilities; discrimination complaint policy and procedures; implementing procedures to ensure compliance with regulatory timeframes; and, clear communication with the managers/supervisors/employees involved in the administrative process.
- Alternative Dispute Resolution. DON activities work closely with the DON ADR program and the DoD Office of Investigations and Resolution to ensure all individuals have access to ADR. Expanding access to both sources for mediation support has resulted in an increase of actual ADR occurrences. Continued collaboration is focused on marketing ADR as a management tool to include training for managers/supervisors at all levels on past program successes.
- Program Evaluation and Accountability. NAVOECMA reviews processing timeliness in iComplaints. The DON Office of EEO and Diversity Management issues scorecards annually to each major command on the status of their EEO programs in compliance with EEOC MD-715. As part of this scorecard, commands are rated on the efficiency of discrimination complaints processing. This scorecard approach has alerted the Major Commands to their responsibility to ensure efficiency in their discrimination complaints process, and as a result, we have seen an increase in efforts to ensure accountability at all levels.

(8) Budget Adjustments due to Judgment Fund Reimbursement

The Department has not had to make adjustments to the budget to ensure reimbursement of the Judgment Fund. In fact, DON does not rely on payment of settlement actions through the fund. If settlement is accomplished, the individual activity will normally pay directly from their operating budget.

For other monetary corrective action issued as a result of findings of discrimination or settlements arrived at during the Discrimination Complaints Administrative process, DON remitted funds as follows:

Monetary Corrective Actions	2007	2008	2009	2010	2011
Compensatory Damages	\$54,739(10)	\$207,346(5)	\$401,000(19)	\$633,310(14)	\$411,203(16)
Back Pay/Front Pay	\$237,505(12)	\$99,530(12)	\$284,239(26)	\$137,750(13)	\$82,468 (20)
Lump Sum Payment	\$1,217,212(69)	\$1,687,815(74)	\$1,483,951(106)	\$624,113(70)	\$1,359,141 (107)
Attorneys Fees and Costs*	\$429,928(41)	\$1,059,934(57)	\$837,264(59)	\$1,170,099(48)	\$1,137,415(66)
Total	\$1,939,384	\$2,874,625	\$2,254,328	\$2,565,272	\$2,990,227

Key: \$(# of cases)


- For FY 2011 there were five (5) findings of discrimination. This data does not include all monetary corrective action granted in these cases.
- DON has been looking at lump sum payments more closely to ensure corrective actions are aligned to the harm experienced by the employee.
- Attorneys Fees continues to be highest of all categories.

(9) Training Plan

The No Fear Act Training Plan was issued as part of the DON Civilian Human Resources Manual (CHRM). A copy of this CHRM can be accessed at http://www.public.navy.mil/donhr/Documents/Civilian%20Human%20Resources%20Manual/CHRM_1613.pdf.

Commands are required to provide a written report certifying completion of this training requirement. The bi-annual training requirement is currently on-going for the period of 1 January 2012 – 28 February 2013.

Agency Certification:

Signature: 
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