



U.S. ARMY CORPS OF ENGINEERS MOBILE DISTRICT

THE NOTIFICATION AND FEDERAL EMPLOYEE ANTI-DISCRIMINATION AND RETALIATION ACT –

THE NO FEAR ACT

The Notification and Federal Employee Anti-discrimination and Retaliation (No Fear) Act of 2002, was signed on May 15, 2002, by President George W. Bush. It is Public Law 107-174 and its intent is to make Federal agencies more accountable for violations of anti-discrimination and whistleblower protection laws.

Under the No Fear Act Federal agencies are accountable to (a) ensure all employees understand their rights under anti-discrimination and whistleblower laws; (b) post statistical data related to equal employment opportunity (EEO) complaints; (c) ensure managers and supervisors are adequately trained in managing a diverse workforce, conflict resolution, and communication skills, and (d) reimburse the Judgment Fund for any discrimination or whistleblower settlements or judgments reached in Federal court. Annual reports to Congress, the Attorney General, and the Equal Employment Opportunity Commission (EEOC) are also required.

Prohibited Personnel Practices

Title 5 of the U.S. Code (5 USC) Part 2302(b) lists twelve (12) illegal or prohibited personnel practices which include, but are not limited to, appointments, promotions, disciplinary actions, transfers/reassignments, reemployment, and performance evaluations. It also states that those in positions to take or direct others to take favorable or unfavorable personnel actions or recommend or approve personnel actions may not illegally discriminate on the basis of gender, race, color, religion, national origin, age, disability, marital status, or political affiliation; they may not take adverse actions against employees who participate in whistle blowing activities, and it also provides protection to employees participating in complaint, grievance, or appeal processes.

Illegal Discrimination

Discrimination based on an individual's gender, race, color, religion, national origin, age, disability, marital status, or political affiliation is prohibited by laws, which include, but are not limited to, the following:

Title VII of the Civil Rights Act of 1964: Prohibits employment discrimination based on race, color, religion, sex, or national origin.

Age Discrimination in Employment Act of 1967 (ADEA): Protects individuals who are 40 years of age or older from discriminatory employment practices.

Rehabilitation Act of 1973 (Rehab Act): Prohibits employment discrimination against qualified individuals with disabilities who work in the Federal government.

Equal Pay Act of 1963 (EPA): Prohibits gender discrimination in payment of wages for equal work requiring equal skill, effort, and responsibility.

Executive Order 13087 provides protection against discrimination and/or harassment based on sexual orientation. Protection for those alleging claims related to prohibited personnel practices, fraudulent use of government funds, and other types of fraud and abuse related to Federal activities are also protected by law.

Likewise, the right of an employee, a former employee, or an applicant for employment to file a discrimination complaint is established by law, and that individual has the right to pursue resolution through a complaint process. For example, if someone is not selected for a position, is not promoted, or is not chosen for a training program and believes the reason is one or more of the basis listed above (gender, race, color, religion, national origin, age, disability, marital status, or political affiliation), that person may seek resolution through one of several administrative procedures – the EEO complaint process, the union grievance process, or in some instances through the Office of Special Counsel.

The EEO Process

The Federal EEO complaint process covers alleged claims or issues based on gender, race, color, religion, national origin, age, or disability. In accordance with Army Regulation (AR) 690-600, within 45 days of becoming aware of the adverse employment action or receipt of the notice of personnel action, the aggrieved person must contact an EEO Counselor to begin the informal complaint process. An initial interview with the counselor is conducted and resolution is attempted either by the EEO counselor or by a certified mediator, if that is requested. Employees may have a representative present at any time during the complaint process. Within 30 days a final interview is conducted by the counselor with the aggrieved employee. If the complaint was resolved, there is a written/signed settlement agreement, and if it is not resolved, the aggrieved party has 15 days to decide whether or not he/she wishes to pursue the formal complaint process.

If a formal complaint is filed, an investigation and sometimes a hearing is conducted. (Resolution is still an option throughout the process.) A final agency decision is issued on the formal complaint; if it is not acceptable to the employee, it may be

appealed to EEOC or filed as a civil action in U.S. District Court. Both an appeal to EEOC or filing in court must be done within specified time limits.

Claims based on age (over 40 years old) are slightly different in that the aggrieved party may go directly to Federal court instead of using the EEO complaint process. However, if the administrative complaint process is begun, it must be followed through before filing a civil action.

Negotiated Grievance Procedures

Another option available for alleged discriminatory actions for union members to pursue, if they choose and if the union agreement permits, is the negotiated grievance procedure. An employee must elect one process; i.e., he/she cannot seek resolution of the same claim in both the EEO arena and under the organization's bargaining agreement. The election must be made prior to filing a formal EEO complaint.

Negotiated agreements also have definite time frames in which to file grievances. If an employee is interested in the grievance process, he should contact a union steward/official immediately upon becoming aware of what he believes to be a discriminatory employment action or receipt of an adverse notification of personnel action to determine the required time frames stated in the union-labor contract in which to file a grievance.

Often in negotiated grievance procedures, the aggrieved party and a union official meet with managers/supervisors to discuss the grievance and reach an agreeable resolution. Sometimes the services of a third party - an impartial, confidential mediator - are useful in these meetings, and settlement agreements are also written.

The Office of Special Counsel

The U. S. Office of Special Counsel (OSC) is contacted in the instance of alleged discrimination complaints based on a person's marital status or political affiliation. Complaints must be written. If additional information is needed, OSC will contact the individual. Claims are closely reviewed and valid claims are investigated. The OSC web site (<https://www.ocs.gov>) provides detailed information about the OSC as well as the necessary information to file a complaint online.

The No Fear Act protects employees under Whistleblower laws and provides protection from retaliation for their participation in protected activity. Complaints alleging retaliation, for example, in disclosing information to OSC or to an Inspector General are filed in writing. After investigation and sufficient evidence to prove violation, OSC will seek corrective or disciplinary action.

Protected whistle blowing includes such activities as reporting the misuse of funds; gross mismanagement or negligence; abuse of authority; danger to public safety, or violation of laws/regulations. It is important to remember that information that is

prohibited by law in the interest of national security does not come under the whistle blower protection law.

Finally, the No Fear Act requires Federal agencies to post statistical data related to the number of EEO complaints filed, the number of dismissed complaints, the number of individuals who filed complaints, the various basis and claims, and data related to the number of findings. The U. S. Army Corps of Engineers, Headquarters, Equal Employment Office is responsible for these reports on a quarterly and annual basis.

The No Fear Act in its entirety is located on the EE Office website on the District's intranet (<https://samintra.sam.usace.army.mil>). If you require additional information, you may contact Pamela Mittlesteadt, Chief, EE Office or an EE staff member.

MOBILE DISTRICT EE STAFF –

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