Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act Training 2010

Our Mission: ***Our mission is to provide the Army the installation capabilities and services to support expeditionary operations in a time of persistent conflict, and to provide a quality of life for Soldiers and Families commensurate with their service.***

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No FEAR Act

The Notification and Federal Employee Antidiscrimination and Retaliation Act, also known as the No FEAR Act (Public Law 107-174), requires that all Federal employees receive training regarding their rights and remedies under Federal antidiscrimination and whistleblower protection laws.

Objectives

Once you have completed this course, you should:

Understand the purpose of the No FEAR Act

Know what rights and remedies employees have under Federal antidiscrimination and whistleblower protection laws

Understand how employees can exercise their rights under these laws

Purpose

The No FEAR Act was enacted by Congress to ensure that Federal agencies:

Notify all Federal employees of their rights and remedies under Federal antidiscrimination and whistleblower protection laws

Comply with these laws by requiring agencies to report antidiscrimination complaint data to Congress each year, and publicly post that data

Are **accountable** for violations of these laws by requiring agencies to pay back the Department of the Treasury Judgment Fund for awards, judgments and settlements in lawsuits involving discrimination and whistleblower retaliation

Prohibited Personnel Practices

The Civil Service Reform Act of 1978 is a Federal law created to promote overall fairness in Federal personnel actions.

This law states that a Federal employee who is authorized to take, direct others to take, recommend or approve any personnel action may not take certain types of personnel actions, referred to as prohibited personnel practices.

Prohibited Personnel Practices

There are 12 types of prohibited personnel practices listed in the CSRA:

Discriminating against an employee or applicant based on race, color, religion, sex, age, national origin, mental or physical disability, marital status or political affiliation

Asking for or considering employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics

Coercing the political activity of any person

Prohibited Personnel Practices

Deceiving or willfully obstructing anyone from competing for employment

Influencing anyone to withdraw from competing for a job to help or hurt the employment prospects of another person

Giving an unauthorized preference or advantage to anyone that helps or hurts the employment prospects of another employee or applicant

Prohibited Personnel Practices

Hiring, promoting or advocating the hiring or promotion of relatives (nepotism)

Engaging in reprisal or retaliation against an individual for whistleblowing

Taking, failing to take or threatening to take or not take a personnel action against an employee or applicant for:

- Filing an appeal, complaint or grievance
- Testifying for or assisting another in an appeal, complaint or grievance
- Cooperating with or providing information to the Special Counsel or to an Inspector General; or
- Refusing to obey an order that would require the individual to violate the law

Prohibited Personnel Practices

Discriminating based on personal conduct which is not adverse to the on-the-job performance of an employee, applicant or others

Taking or failing to take, recommend or approve a personnel action that would violate a veterans' preference requirement

Taking or failing to take a personnel action that violates any law, rule or regulation implementing or directly concerning merit system principles

Antidiscrimination Laws and EEO

The Equal Employment Opportunity Commission (EEOC) is a Federal agency responsible for enforcing all Federal laws prohibiting employment discrimination on the basis or race, color, national origin, sex, age, religion or disability, and reprisal or retaliation for opposing discrimination or participating in a discrimination complaint or lawsuit.

The EEOC provides oversight and coordination of all Federal equal employment opportunity regulations, practices and policies.

Title 29 Code of Federal Regulations (CFR) 1614 states that complaints of employment discrimination against Federal agencies are filed with each agency's servicing Office of Equal Employment Opportunity.

Antidiscrimination Laws and EEO

Department of the Army EEO processes complaints of employment discrimination in accordance with 29 CFR 1614, EEOC Management Directive 110 and Army Regulation 690-600.

If you believe you have been discriminated against as an employee or applicant for employment and wish to initiate the EEO complaint process, you must contact your servicing EEO office within 45 calendar days of the date you learned of the discrimination or in the case of a personnel action, within 45 calendar days of the effective date of the action.

Contact information for your servicing EEO office is provided at the end of this training.

Antidiscrimination Laws and EEO

The following Federal laws protect employees and applicants from employment discrimination:

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, national origin, sex, or religion, and prohibits reprisal or retaliation for opposing discrimination or participating in Title VII discrimination complaints or lawsuits.

The Civil Rights Act of 1991 amended the Civil Rights Act of 1964 to provide additional money damages for Federal employees who successfully prove intentional discrimination, as well as recovery of attorney fees.

Antidiscrimination Laws and EEO

The Pregnancy Discrimination Act of 1978 amended the Civil Rights Act of 1964 to provide that discrimination on the basis of pregnancy, childbirth or related medical conditions constitutes unlawful sex discrimination.

It requires employers to treat women who are pregnant or affected by related conditions the same way as other applicants or employees with similar disabilities or limitations.

Antidiscrimination Laws and EEO

<u>The Age Discrimination in Employment Act of 1967</u> (ADEA) prohibits employment discrimination on the basis of age against individuals who are forty years of age or older.

It also prohibits reprisal or retaliation for opposing age discrimination or for participating in an age discrimination complaint or lawsuit.

Attorney fees and costs are not recoverable in age discrimination EEO complaints, and compensatory damages are not an available form of relief under the ADEA.

Antidiscrimination Laws and EEO

Employees and applicants who believe they have been subjected to unlawful employment discrimination on the basis of age can choose to either:

Contact EEO to initiate the complaint process, or

Give notice of intent to sue to the EEOC within 180 calendar days of the alleged discrimination

Once a timely notice of intent to sue has been submitted to the EEOC, a civil action in the appropriate U.S. District Court may be filed after 30 days from the date the EEOC received the notice has passed.

Visit the EEOC website at http://www.eeoc.gov for the EEOC's fax number and mailing address.

Antidiscrimination Laws and EEO

The Americans with Disabilities Act of 1991 (ADA) prohibits employment discrimination against qualified individuals with mental or physical disabilities in the private sector, and in state and local governments, on the basis of disability.

The Rehabilitation Act of 1973 prohibits employment discrimination in the Federal government against qualified individuals with mental or physical disabilities on the basis of disability. It also requires Federal agencies to provide reasonable accommodations for qualified employees and applicants with disabilities.

The Rehabilitation Act incorporates provisions of the ADA that define disability employment discrimination, and that prohibit reprisal or retaliation for opposing employment practices that discriminate based on disability or for participating in disability discrimination complaints or lawsuits.

Antidiscrimination Laws and EEO

The Genetic Information Antidiscrimination Act of 2008 (GINA) , effective November 21, 2009, prohibits employment discrimination on the basis of genetic information of employees or applicants for employment. It strictly limits employers from requesting genetic information from and disclosing genetic information of employees and applicants. It also prohibits harassment of individuals on the basis of genetic information and retaliation against individuals who have initiated discrimination complaints on the basis of genetics.

"Genetic information" includes information about diseases, conditions and disorders from genetic testing of individuals and their family members, as well as family medical history. The use of genetic information in employment decisions is prohibited because it bears no relation to an individual's current ability to work.

Antidiscrimination Laws and EEO

The Equal Pay Act of 1963 (EPA) prohibits discrimination in wage differences between men and women performing substantially equal work and prohibits reprisal or retaliation for opposing sex-based wage discrimination or participating in EPA complaints or lawsuits.

“Substantially equal work” means that the jobs do not need to be identical, but they must be of equal skill, effort and responsibility, in the same establishment and under similar working conditions.

Antidiscrimination Laws and EEO

Employees and applicants who believe they have been subjected to sex-based wage discrimination under the EPA can choose to either:

Contact EEO to initiate the complaint process, or

File a civil action in the appropriate U.S. District Court.

A civil action must be filed within 2 years of the date of the discrimination, or within 3 years if the discrimination is willful. Attorney fees, costs and compensatory damages are not recoverable in EPA claims filed in the EEO complaint process.

Antidiscrimination Laws and EEO

Antidiscrimination laws protect employees from discrimination in the terms, conditions and benefits of their employment, such as:

hiring	promotion	reassignment
pay	awards	time and attendance
training	classification	performance evaluations

and adverse actions such as reprimands, suspensions and terminations.

These laws also protect employees from unlawful harassment (sexual and non-sexual), hostile work environment and reprisal.

Self-Test

Which of the following is NOT a reason The No FEAR Act was created?

a. Ensure Federal agencies comply with Federal antidiscrimination and whistleblower retaliation laws
b. Ensure all Federal agencies train their employees with respect to their rights and remedies under these laws
c. Ensure all Federal agencies notify their employees of their rights and remedies under these laws
d. Create additional rights and remedies for Federal employees under these laws.

Self-Test

The answer is d. The No FEAR Act does not create additional rights and remedies under Federal antidiscrimination and whistleblower protection laws.

Which of the following is NOT a prohibited personnel practice under the Civil Service Reform Act?

a. Deceiving or willfully obstructing anyone from competing for employment
b. Influencing anyone to withdraw from competing for a job to help or hurt the employment prospects of another person
c. Engaging in reprisal or retaliation against an individual for whistleblowing
d. Asking for or considering employment recommendations based on personal knowledge or records of job-related abilities or characteristics

Self-Test

The answer is d. It is not a prohibited personnel practice for employment decisions to be based on personal knowledge or records of job-related abilities or characteristics. In fact, these are the only legal bases for making employment decisions.

The Equal Employment Opportunity Commission (EEOC) is responsible for enforcement of all laws prohibiting employment discrimination on the basis of:

a. Race, color, national origin or sex
b. Age, religion or disability
c. Reprisal for protected EEO activity
d. Marital status, political activity or whistleblower activity
e. All of the above
f. a, b and c

Self-Test

The answer is f. The EEOC is responsible for enforcement of all laws prohibiting employment discrimination on the basis of race, color, national origin, age, sex, religion, or disability and reprisal for protected EEO activity.

The Age Discrimination in Employment Act (ADEA) prohibits age discrimination in employment against people who are:

a. Over 40 years of age
b. Over 45 years of age
c. 40 years of age and older
d. 30 years of age and older

Self-Test

The answer is c. The ADEA prohibits age discrimination in employment against people age 40 and older.

The Rehabilitation Act requires that Federal agencies provide reasonable accommodations for qualified applicants and employees with mental and physical disabilities.

True

or

False

Self-Test

The answer is true. Federal agencies are required to provide reasonable accommodations individuals with disabilities, when requested, so that applicants have access to the employment application process, and so that employees can perform the essential functions of their jobs.

Office of Special Counsel

The Office of Special Counsel (OSC) is an independent Federal agency that investigates complaints of prohibited personnel practices that do not fall under the authority of the EEOC, including discrimination on the basis of:

Marital status

Political affiliation or activities

Conduct that does not adversely affect employee performance

Whistleblower retaliation

Whistleblower Protection and

OSC

The CSRA defines whistleblowing as the disclosure by an employee or applicant of information that he or she reasonably believes is evidence of:

A violation of a law, rule or regulation

Gross mismanagement

Gross waste of funds

An abuse of authority

A substantial and specific danger to public health or safety

Whistleblower Protection and OSC

If it violates a law or Executive Order to disclose certain information, for example if it is in the interest of national defense or the conduct of foreign affairs, disclosure of the information by a whistleblower is only protected if disclosure is made to the Special Counsel, the Inspector General, or comparable agency official.

It is a violation of the CSRA for a Federal employee authorized to take, direct others to take or recommend or approve any personnel action, to retaliate against an employee for protected whistleblowing.

Merit Systems Protection Board

The Merit Systems Protection Board (MSPB) is an independent Federal agency established to protect Federal merit systems against partisan political and other prohibited personnel practices and to protect Federal employees against abuses by management. The MSPB has the authority, in part, to review and issue rulings on:

Appeals of adverse actions such as removals, suspensions, furloughs and demotions

Appeals of administrative decisions affecting rights or benefits under the Civil Service Retirement System or the Federal Employees' Retirement System

Complaints filed under the Whistleblower Protection Act, the Uniformed Services Employment and Reemployment Rights Act and the Veterans Employment Opportunities Act; and

Cases brought by the Special Counsel

Merit Systems Protection Board

Federal employees and applicants who believe they have been subjected to an adverse personnel action on the basis of race, color, national origin, sex, age or disability, or in reprisal for protected EEO activity, and the adverse personnel action is appealable to the MSPB, may choose to file an EEO complaint OR file an appeal with the MSPB, but not both.

The MSPB appeal must be filed within 30 days of the effective date of the personnel action in question.

Information regarding procedures for filing MSPB appeals can be found on the MSPB web site at http://www.mspb.gov.

Bargaining Unit Employees

Employees under a bargaining unit agreement may be able to grieve claims of employment discrimination through a union-negotiated grievance procedure instead of through the EEO complaint process, unless the agreement specifically states that employees cannot do so.

These employees may also choose to grieve claims of other prohibited personnel practices through a union-negotiated grievance procedure, or OSC.

If a prohibited personnel practice that is appealable to the MSPB is at issue, these employees may choose to file a grievance through a union-negotiated grievance procedure, with OSC or the MSPB.

Administrative Grievances

Appropriated Funds (AF) employees may be able to file administrative grievances with their servicing Civilian Personnel Advisory Center (CPAC) to resolve employment issues.

Certain employment issues cannot be grieved through this procedure, including any matter covered by a negotiated grievance procedure or subject to a formal review and adjudication by the MSPB or the EEOC (See DoD Directive 1400.25M, Subchapter 771).

For more information with respect to employment issues that can be administratively grieved or to submit a grievance, contact your servicing CPAC.

Reprisal

Reprisal is retaliation against an individual who has engaged in activities protected under Federal antidiscrimination and whistleblower protection laws.

Protected activity includes:

Opposing discrimination

Filing a discrimination complaint

Participating in a discrimination complaint or lawsuit

Reporting waste, fraud and abuse, or other whistleblower activity

Under the CSRA, reprisal against an individual who has engaged in any of these activities is a prohibited personnel practice.

Reprisal

Retaliation does not have to involve an adverse personnel action to fall under the definition of reprisal.

The U.S. Supreme Court has ruled that an individual only has to prove that the **action taken** by management **would have deterred a reasonable employee from filing a charge of discrimination** (*Burlington Northern and Santa Fe Railroad Co. v. White*, 1061 LRP 37559 (U.S. 06/22/06)).

Federal agencies can discipline employees who engage in reprisal, up to and including removal, as provided in the Department of the Army Table of Penalties (AR 690-700, Chapter 751).

Public Disclosure of Complaint Data

The No FEAR Act requires Federal agencies to report annual antidiscrimination complaint data to Congress, and to publicly post the data on agency websites.

The data includes number of complaints filed under each antidiscrimination law and the status, the amount of money paid in settlements and findings of discrimination and disciplinary actions taken against employees for violating these laws.

The Department of the Army posts annual No FEAR Act data on its Office of Equal Employment Opportunity and Civil Rights website at: http://eeoa.army.pentagon.mil/web/index.cfm.

The Judgment Fund

When an administrative complaint is settled or an administrative judge has made a finding of discrimination or reprisal, the activity where the complaint arose has always been responsible for paying settlement money or monetary awards.

Prior to the No FEAR Act, awards and settlements in Federal discrimination and whistleblower retaliation lawsuits were paid by the Department of the Treasury out of its Judgment Fund.

The Judgment Fund

The NO FEAR Act now requires agencies to reimburse the Department of the Treasury Judgment Fund from their own budgets for settlements and monetary damages.

Bottom line: each activity within the Department of the Army is now responsible for paying money for settlements, findings and judgments in both the administrative complaints process and in Federal lawsuits.

The Judgment Fund

Agencies are prohibited from using RIFs, furloughs or reductions in employee compensation or benefits in order to reimburse the Judgment Fund. However, reimbursement may be made over a period of time.

Procedures for reimbursing the Judgment Fund, as well as the consequences for agency noncompliance, can be found on the Department of the Treasury Financial Management Service website at: http://www.fms.treas.gov/tfm/index.html.

Self-Test

Whistleblower retaliation complaints should be filed with:

a. Your servicing EEO Office

b. Your Equal Opportunity Advisor

c. The Office of Special Counsel

d. The EEOC

Self-Test

The answer is c. Complaints of whistleblower retaliation should be filed with the Office of Special Counsel.

Which of the following is a type of disclosure that constitutes whistleblowing?

a. Gross mismanagement or gross waste of funds

b. Abuse of authority or violation of a law, rule or regulation

c. A substantial and specific danger to public health or safety

d. All of the above

Self-Test

The answer is d. All of these types of disclosures would constitute whistleblowing.

The Merit Systems Protection Board has the authority to review and issue rulings on adverse actions such as removals, suspensions, furloughs and demotions.

True or False?

Self-Test

The answer is true.

An employee or who has received an adverse employment action, such as a 14 day suspension, and believes the adverse action was taken because of the employee's race, color, national origin, sex, religion, age, disability, or in reprisal for protected EEO activity, must file a complaint with the employee's servicing EEO office.

True or False?

Self-Test

The answer is false. The employee may choose to file a complaint with the servicing EEO office, or file an appeal with the MSPB.

GARRISON EEO Office

If you believe you have been subjected to employment discrimination on the basis of race, color, national origin, sex, age, religion or disability, or in reprisal for protected EEO activity, you have the right to initiate an EEO complaint.

You must contact the EEO office to initiate the process within **45 calendar days** of the date of the alleged discrimination, or the date you learned of the discrimination, or if a personnel action is involved, within **45 calendar days** of the date the action became effective.

USAG Hohenfels EEO Office
Bldg# 317
DSN 466-2052; Commercial: 09472-83-2052; Fax 2064
POC: Alma R. Molina at alma.molina@eur.army.mil

Certification of Completion

I, _____, certify that I have reviewed the No FEAR Act training slides, and completed the self-test to complete the IMCOM No FEAR Act training course.

_____ _____

Signature **Date**

Employing Organization/Directorate: _____

Please provide a copy of this certificate to your supervisor.

Supervisor: 1) Place this certificate in the employee training records, 2) forward completion status spreadsheet and 3) submit training certification memorandum to your servicing EEO office.

Alma R. Molina, EEO Officer
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INSTALLATION MANAGEMENT COMMAND

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