DEPARTMENT OF DEFENSE
WASHINGTON HEADQUARTERS SERVICES
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

OCT 19 2015

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Fiscal Year 2016 Federal Employee Antidiscrimination and Retaliation Act (No FEAR Act) Training and Notification Requirements

The No FEAR Act of 2002 increased the accountability of agencies for protecting Federal employees from unlawful discrimination, harassment, and reprisal for participation in protected equal employment opportunity and whistleblowing activity.

New employees are required to receive No FEAR Act training within 90 calendar days of entering on duty to ensure that they understand their rights and responsibilities. All employees are required to complete refresher training every two years thereafter. It is imperative that all employees, supervisors, and officials understand the protections afforded by the No FEAR Act and the Whistleblower Protection Act.

The No FEAR Act training is available online at the Washington Headquarters Services (WHS) iCompass at https://whsportal.osd.mil/lms. Additionally, the WHS Office of Equal Employment Opportunity and Diversity (EEOD) also provides comprehensive classroom training that satisfies No FEAR Act training requirements.

Agencies are required to provide written notice on the rights and remedies available under applicable anti-discrimination, anti-harassment, and whistleblower protection laws to ensure that employees have easy access to No FEAR Act information. The attached "No Fear Act Notice" should be displayed in common areas, agency website, or other readily accessible media. Senior leaders must ensure that deployed civilian personnel receive this notice which is available online at http://www.whs.mil/EEOD/NoFEARAct/docs/NoFEARActNotice.pdf.

For technical assistance with iCompass please contact icompasslms@gpstrategies.com or call 1-800-735-1236. For other questions and assistance on the No FEAR Act, please contact EEOD at (571) 372-0832 or at whs.diversity@mail.mil.

Patricia Young

Patricia M. Young
Director

Attachment:
As stated

No FEAR Act Notice

On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," which is commonly 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." In support of this purpose, Congress found that "agencies cannot run effectively if those agencies practice or tolerate discrimination."

Federal employees, former Federal employees and applicants for Federal employment are encouraged to review the following information on the rights and protections available to them under Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

Directors, managers and supervisors are responsible for ensuring that the work environment is free from discrimination based on the following protected groups: race, color, religion, sex (including sexual harassment), national origin, age (40 and older), disability (mental or physical), or reprisal for participation in previous EEO activity. A Federal agency also cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of 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, age, disability, and/or reprisal, you should contact the Washington Headquarters Services (WHS) Equal Employment Opportunity Programs (EEOP) at 703-699-1805. Contact with EEOP must be made within 45 calendar days of the alleged discriminatory act, or in the case of a personnel action, within 45 calendar days of the effective date of the action. EEOP should be contacted in accordance with 29 Code of Federal Regulations 1614 in order to attempt informal resolution through mediation or counseling prior to filing a formal complaint of discrimination.

If you are alleging equal pay or age discrimination, you have the right to file an administrative complaint under 29 Code of Federal Regulations (C.F.R.) 1614, or to bypass the administrative process and file a civil action in U.S. District Court. In the latter case, you must file a Notice of Intent to Sue, pursuant to 29 C.F.R. Section 1614.201(a), after giving the Equal Employment Opportunity Commission (EEOC) not less than 30 days notice of your intent to file such an action. Such notice must be filed in writing with the EEOC, Federal Sector Programs, 1801 L. Street NW, Washington DC 20507, within 180 days of the occurrence of the alleged unlawful practice.

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.

The Uniformed Services Employment and Reemployment Rights Act (USERRA) protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services. The U.S. Department of Labor, Veterans Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations. For assistance in filing a complaint, or for any other information on USERRA, contact VETS at 1-866-4-USA-DOL or visit its website at http://www.dol.gov/vets

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 be evidence of 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 are 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 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 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.

Collaborative Resolution Program

It is WHS policy to use and offer alternative dispute resolution (ADR) services to its serviced customers as an alternative to litigation or formal administrative procedures to the maximum extent appropriate. In support of Administrative Instruction No. 106, the Collaborative Resolution Program (CRP) offers informal, neutral, voluntary, and confidential methods for early dispute resolution of selected prohibited personnel practice disputes.

When used in appropriate circumstances, the CRP can yield results that are faster, less expensive, and less contentious than formal administrative processes. Mediation is the primary mechanism used to provide parties the opportunity to resolve such disputes without the need for a lengthy investigation or costly litigation. The CRP is an alternative to formal processes, not a replacement. If settlement does not occur, the right to pursue formal processes still exists. You may contact the WHS Collaborative Resolution Program Manager at 703-699-1813 to explore the appropriate use of ADR techniques.

Disciplinary Actions

Under the 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 OSC 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 WHS EEOP. 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).

THIS NOTICE IS FOR PERSONNEL WITHIN WHS AND SERVICED COMPONENTS