

DAVID Y. IGE
GOVERNOR



ARTHUR J. LOGAN
MAJOR GENERAL
ADJUTANT GENERAL

KENNETH S. HARA
BRIGADIER GENERAL
DEPUTY ADJUTANT GENERAL

STATE OF HAWAII
DEPARTMENT OF DEFENSE
OFFICE OF THE ADJUTANT GENERAL
3949 DIAMOND HEAD ROAD
HONOLULU, HAWAII 96816-4495

POLICY DIRECTIVE 2018-02

12 June 2018

SUBJECT: Anti-Harassment Policy

1. Effective 1 January 2018, this policy supersedes and replaces previous Anti-harassment policies and will expire five years from the date of signature, unless cancelled earlier.
2. Applicability. This policy directive applies to all State of Hawaii, Department of Defense federal civilian employees, and supervisors of federal civilian employees.
3. Purpose. This directive provides anti-harassment policy and procedures for harassment complaint processes and points of contact.
4. References.
 - a. Title 29, Code of Federal Regulations, Part 1614, "Federal Sector Equal Employment Opportunity".
 - b. Equal Employment Opportunity Commission Management Directive 110, 05 August 2015, "Federal Sector Complaints Processing Manual".
 - c. Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002, Public Law 107-174.
 - d. State of Hawaii Department of Defense Policy Directive 2017-1. Hawaii National Guard Joint Civilian Discrimination Complaint Instructions.
5. General. As the Adjutant General of the Hawaii National Guard, I am thoroughly committed to taking all necessary steps to prevent harassment in the workplace, and to correct harassing conduct that occurs before it becomes severe or pervasive.
6. Policy.
 - a. Harassing conduct, for purposes of this policy is any unwelcome verbal or physical conduct when:

Anti-Harassment Policy Directive
12 June 2018

(1) The conduct can be reasonably considered to adversely affect the work environment; or

(2) Any employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct. Harassment prohibited under this policy includes but is not limited to harassment based on race, color, religion, sex (including sexual orientation, and pregnancy), national origin, age, disability, genetic information and previous participation in EEO process.

b. Sexual harassment is a form of sex discrimination that includes unwelcome sexual advances, requests for sexual favors, and other conduct of a sexual nature when:

(1) Submission to the conduct is made either explicit or implicitly a condition of employment;

(2) Submission to, or rejection of, the conduct is used as a basis for employment decision; or

(3) The conduct has the purpose or effect of unreasonably interfering with work performance or creating an intimidating, hostile or offensive work environment.

c. Examples of prohibited conduct (non-sexual harassment) include bullying, intimidation, jokes or stories related to race or ethnicity; teasing or mimicking a disability, accent or appearance; making obscene or lewd comments or gestures; commenting on a persons' body or sexual characteristics; and displaying nude or sexually-suggestive objects or images. This list is not all inclusive and can occur in-person or through electronic communication and include cyber-harassment/bullying.

d. "Stalking" is a pattern of repeated and unwanted attention, harassment, contact, or any other course of conduct directed at a specific person that would cause a reasonable person to feel fear. Stalking is also a form of harassment covered under this policy and can include:

(1) Repeated, unwanted, intrusive, and frightening communications from the perpetrator by phone, mail, and/or email.

(2) Repeatedly leaving or sending victim unwanted items, presents, or flowers.

(3) Following or laying in wait for the victim at places such as home, school, work, or recreation places.

Anti-Harassment Policy Directive
12 June 2018

(4) Making direct or indirect threats to harm the victim, the victim's children, relatives, friends, or pets.

(5) Damaging or threatening to damage the victim's property.

(6) Harassing victim through the internet.

(7) Posting information or spreading rumors about the victim on the internet, in a public place, or by word of mouth.

(8) Obtaining personal information about the victim by accessing public records, using internet search services, hiring private investigators, going through the victim's garbage, following the victim, contacting victim's friends, family work, or neighbors, etc.

e. All allegations of harassment including retaliation and reprisal will be taken seriously and dealt with expeditiously, fairly, and thoroughly in accordance with applicable federal laws, and agency procedures.

f. Consequences of substantiated harassment may include: oral or written counseling or reprimand; transfer or reassignment; demotion; reduction of wages; suspension; discharge; additional training; monitoring of harasser and loss of employee privileges. Examples of corrective measures that may be granted to recipient of harassment may include: restoration of leave taken due to harassment; having records expunged of related negative evaluations and actions in personnel files; reinstatement; implementation of retaliation plan to actively protect against reprisal; and correction of any other harm caused by harassment. Commanders and managers will support this policy, ensure their personnel are advised of it, and post it on highly visible bulletins boards at all workplaces.

g. Procedures for reporting of harassment start by immediately contacting one of the following designated offices:

(1) Inspector General (IG);

(2) Labor Relations Specialist (LRS);

(3) Equal Employment Office and Representatives (EEO).

h. Upon receiving a harassment complaint, the receiving individual will route it through the IG who will log the complaint and forward within three (3) business days to Equal Employment Office (primary) or Labor Relations Specialist (alternate).

Anti-Harassment Policy Directive
12 June 2018

i. Investigations will be initiated within 10 days of notification and will be thorough, impartial and normally completed within 14 calendar days by EEO professionals or labor relations specialist. Upon completion of an investigation, the responsible supervisor shall promptly evaluate the evidence and determine appropriate actions, if any, to take. Where an investigation establishes that an employee engaged in harassing or retaliatory conduct in violation of this policy, he or she shall be subject to appropriate corrective or disciplinary action, up to and including removal. The identified procedures shall apply with or without allegation from a complainant to the EEO office. EEO personnel will submit alleged harassment to IG whenever consent is given by complainant.

7. Responsibilities.

a. Managers and supervisors will:

(1) Immediately report incidents of harassment to one of the identified individuals in 6.g. Failure to report allegations of harassment is a violation of policy and may result in disciplinary action.

(2) Provide interim relief to alleged victims of harassment pending outcome of investigations to ensure further harassment does not occur.

(3) Take prompt and effective corrective or disciplinary action against employees who violate this policy and other necessary steps to keep the workplace free of harassment.

(4) Document all incidents of harassment witnessed, or brought to their attention along with efforts to correct them.

(5) Communicate this policy and management support of harassment to subordinate, monitor workplace areas on an ongoing basis for inappropriate conduct.

(6) Conduct training on this policy and procedures on an annual basis.

b. HRO is responsible for ensuring that new employees are trained on the same training during new employee orientation training. HRO will include Anti-Harassment Policy information in all Management/Supervisor Training and Interview Board Training.

c. IG will act as the anti-harassment program manager by maintaining tracking mechanism for all complaints of harassment.

Anti-Harassment Policy Directive
12 June 2018

d. It is imperative that all incidents of harassment be immediately reported for action before it becomes a pattern of misconduct so pervasive as to constitute a hostile work environment. Harassing conduct cannot be corrected if it is not identified. The failure to take advantage of this procedure by any alleged victim of harassment may hinder his or her ability to seek recovery in the EEO forum. To the extent possible, information concerning harassment allegations and investigations, including witnesses' identities will be kept confidential, and only shared with those with a need to know.

e. Appeals may be raised to the TAG for further consideration in writing if the alleging individual does not believe that proper procedures were followed.

8. The point of contact for this policy is the State Equal Employment Manager, and can be reached at 808-672-1316.

LOGAN.ARTHURJO
SEPH.1180366977

Digitally signed by
LOGAN.ARTHURJOSEPH.11803669
77
Date: 2018.07.24 12:41:23 -10'00'

ARTHUR J. LOGAN
Major General, HING
Adjutant General



Prohibited Personnel Practices

By law, Federal employees **may not**:

- Discriminate
 - Solicit or consider employment recommendations based on factors other than personal knowledge or records of job related abilities or characteristics
 - Coerce the political activity of any person
 - Deceive or willfully obstruct any person from competing for employment
 - Influence any person to withdraw from job competition
 - Give an unauthorized preference or advantage to improve or injure the prospects of any particular person for employment
 - Engage in nepotism
 - Take or threaten to take a personnel action because of whistleblowing
 - Take or threaten to take a personnel action because of the exercise of a lawful appeal, complaint, or grievance right
 - Discriminate based on personal conduct which does not adversely affect the performance of the employee or other employees
 - Knowingly take or fail to take personnel action in the violation of veteran's preference laws
 - Violate any law, rule or regulation implementing or directly concerning merit system principles
 - Implement or enforce a nondisclosure agreement or policy lacking notification of whistleblower rights
 - Access the medical record of an employee or applicant, as part of, or in furtherance of any of the above-listed prohibitions
-

More information may be obtained from:

U.S. OFFICE OF SPECIAL COUNSEL
1730 M STREET, N.W., SUITE 218
WASHINGTON, DC 20036-4505
www.osc.gov | info@osc.gov

PHONE: (202) 804-7000* | TOLL FREE: 1-800-872-9855*

*Hearing and Speech Disabled: Federal Relay Service 1-800-877-8339



WHISTLEBLOWER RETALIATION

—5 U.S.C. § 2302(b)(8)—

THE U.S. OFFICE OF SPECIAL COUNSEL

What is whistleblower retaliation?

A federal employee authorized to take, direct others to take, recommend, or approve any personnel action may not take, fail to take, or threaten to take any personnel action against an employee because of protected whistleblowing.

EXAMPLE: A supervisor directs the geographic reassignment of an employee because the employee reported safety violations to senior agency officials.

Protected whistleblowing is defined as disclosing information that the discloser reasonably believes evidences:

1. a violation of law, rule, or regulation;
2. gross mismanagement;
3. gross waste of funds;
4. an abuse of authority;
5. a substantial and specific danger to public health or safety; or
6. censorship related to scientific research if censorship meets one of the above-listed categories.

This section also prohibits retaliation against government scientists who challenge censorship or make disclosures concerning the integrity of the scientific process if the censorship will cause one of the five types of misconduct described above.

What can you do if you believe whistleblower retaliation has occurred?

If you believe that you have been subject to retaliation for protected whistleblowing you can file a complaint with the U.S. Office of Special Counsel (OSC). OSC is an independent agency that investigates and prosecutes allegations of prohibited personnel practices (PPP) by federal employees. OSC has the authority to investigate PPPs, including allegations of whistleblower retaliation, and may seek corrective or disciplinary action when warranted.

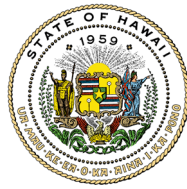
U.S. Office of Special Counsel

1730 M Street, N.W., Suite 218 | Washington, D.C. 20036

Phone: (202) 804-7000 | Toll Free: (800) 872-9855

TTY: 1-800-877-8339 | Email: info@osc.gov

www.osc.gov



STATE OF HAWAII
DEPARTMENT OF DEFENSE
OFFICE OF THE ADJUTANT GENERAL
3949 DIAMOND HEAD ROAD
HONOLULU, HAWAII 96816-4495

POLICY DIRECTIVE 2020-02

2 March 2020

SUBJECT: Hawaii National Guard (HING) Equal Employment Opportunity (EEO) Policy

1. Effective 6 December 2019, this policy directive supersedes previous EEO policy directives and will be updated annually.
2. Applicability. This policy directive applies to HING Title 32 Dual Status Technicians and Title 5 Employees.
3. Purpose. This directive reinforces the agency's commitment to EEO and ensuring fair treatment to all HING federal employees and applicants for employment.
4. References.
 - a. Title 29, Code of Federal Regulations, Part 1614, "Federal Sector Equal Employment Opportunity".
 - b. Equal Employment Opportunity Commission Management Directive 110, "Federal Sector Complaints Processing Manual", 05 August 2015.
 - c. Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, Public Law 107-174.
 - d. State of Hawaii Department of Defense Policy Directive 2017-1, Hawaii National Guard Joint Civilian Discrimination Complaint Instructions, 25 September 2017.
5. General. As the Adjutant General, I am committed to the principles and goals of EEO for all HING federal employees and applicants for employment. Discrimination based on age, color, disability, sex (including pregnancy, sexual orientation and gender identity), genetic information, national origin, race, religion or reprisal for engaging in prior EEO protected activity is prohibited and will not be tolerated.

Policy Directive 2020-02

SUBJECT: Hawaii National Guard (HING) Equal Employment Opportunity (EEO) Policy

6. Policy.

a. All HING federal employees will be treated fairly and considered without regard to age, color, disability, sex (including pregnancy, sexual orientation and gender identity), genetic information, national origin, race, religion and reprisal.

b. EEO covers all personnel and employment programs, management practices and decisions, including but not limited to recruitment, hiring, merit promotions, transfers, reassignments, training and career development, benefits and any other employment related matters.

c. Discrimination, whether real or perceived, can destroy cohesion, undercut morale and discipline, interfere with mission accomplishment, and have a negative impact on our organization's readiness. Every individual has a right to work in an environment free of discrimination and harassment.

d. Leaders at all levels must establish and sustain a climate that fosters human dignity, fairness, and respect for individual goals and aspirations while eliminating attitudes, behaviors, and practices that adversely impact our organization's cohesiveness.

e. Individuals who believe they have been subjected to discriminatory actions are encouraged to immediately bring the matter to their manager or supervisor and if desired, have the uninhibited right to file a complaint with the State Equal Employment Manager.

f. All EEO complaints will be handled expeditiously, fairly and thoroughly addressed in accordance with applicable state and federal laws, and agency policies.

7. Responsibilities.

a. All HING federal employees in conduct of their official duties and any function related to workplace activity will comply with Title VII of the Civil Rights Act of 1964, as amended and treat others without regard to age, color, disability, sex (including pregnancy, sexual orientation and gender identity), genetic information, national origin, race, religion and reprisal. This includes treatment of co-workers, subordinates, supervisors, contractors and any other individual that an employee will interact with relating to the workplace.

POLICY DIRECTIVE 2020-02

SUBJECT: Hawaii National Guard (HING) Equal Employment Opportunity (EEO) Policy

b. Managers and supervisors are responsible for ensuring all employees receive annual EEO training, including awareness of this policy, No FEAR Act training, and their right to file an EEO complaint with the appropriate agency representative. Managers and supervisors will be required to participate in the alternate dispute resolution process if accepted by complainant.

c. The Human Resource Officer is responsible for ensuring that new employees receive EEO and No FEAR Act training during the New Employee Orientation.

d. The State Equal Employment Manager (SEEM) will ensure every complaint is addressed in accordance with applicable state and federal laws.

8. Proponent. The SEEM is the proponent for this policy. Questions may be directed to Ms. Shirley Bryant at 672-1303.

KENNETH S. HARA
Major General, HING
Adjutant General



KNOW YOUR RIGHTS WHEN REPORTING WRONGS

Whistleblower disclosures can save lives as well as billions of taxpayer dollars. They play a critical role in keeping our government honest, efficient and accountable. Recognizing that whistleblowers root out waste, fraud and abuse, and protect public health and safety, federal laws strongly encourage employees to disclose wrongdoing. Federal laws also protect federal employees from retaliation.

The U.S. Office of Special Counsel (OSC) plays an important role in helping whistleblowers. OSC is an independent agency that protects federal employees from prohibited personnel practices (PPPs), including whistleblower retaliation and unlawful hiring practices, such as nepotism. OSC also provides an independent, secure channel for disclosing and resolving wrongdoing in federal agencies. This guide provides a summary of whistleblower protections and avenues available to employees to disclose wrongdoing. For more information, please visit OSC's website at www.osc.gov.

Disclosures of Wrongdoing

Where can I report wrongdoing?

Current and former federal employees and applicants (henceforth "federal employees") can report on any of the following types of wrongdoing:

- a violation of any law, rule, or regulation,
- gross mismanagement,
- a gross waste of funds,
- an abuse of authority,
- a substantial and specific danger to public health or safety, or
- censorship related to scientific research if censorship meets one of the above-listed categories.

Federal employees have many options on where to disclose wrongdoing, including but not limited to, making disclosures to supervisors or someone higher up in management; the agency's Inspector General (IG); OSC; or, Congress. For whistleblower disclosures involving classified national security information or other information protected from public release by law (e.g. patient privacy information), whistleblowers must use confidential channels such as an IG, OSC, or Congress in order to be protected from adverse personnel actions related to their disclosures.

Can probationary employees file disclosures or PPP complaints with OSC?

Yes. Probationary employees have the same right to file disclosures or PPP complaints with OSC as do most current federal employees, former federal employees, or applicants for federal employment. Note – except for appeals alleging retaliation for whistleblowing or engaging in protected activity, probationary employees generally do not have the right to appeal personnel actions to the Merit Systems Protection Board (MSPB).

Can I keep my identity confidential?

Yes. Most Inspectors General have hotlines that allow employees to make confidential disclosures. Inspectors General are prohibited from disclosing an employee's identity unless the IG determines that disclosure is unavoidable or is compelled by a court order. If you file a disclosure with OSC, your identity will not be shared outside of OSC without your consent. However, OSC may disclose your identity only if OSC determines that it is necessary because of an imminent danger to public health or safety or an imminent violation of any criminal law.

What will OSC do once I make a disclosure?

When a federal employee discloses wrongdoing to OSC, OSC evaluates the information and interviews the federal employee. OSC determines whether it is substantially likely that the employee's allegation – or any portion of it – can be proven and whether it discloses a violation of a law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety. If it meets that standard, OSC will require the agency to investigate and submit a report of the agency's findings to OSC. The whistleblower then has an opportunity to comment on the agency report. Those comments, together with any comments or recommendations by the Special Counsel, are sent with the agency report to the President and congressional oversight committees. The agency report is usually made available to the public.

Prohibited Personnel Practices

Are whistleblowers protected from retaliation?

Yes. The Civil Service Reform Act and whistleblower protection laws prohibits retaliation. Retaliation for whistleblowing is one of fourteen [PPPs](#). Protection from whistleblower retaliation means it is unlawful for agencies to take, threaten to take, or fail to take a personnel action because the employee disclosed one or more of the six categories of government wrongdoing (listed on page 1). Personnel actions can include actions such as poor performance reviews, demotions, suspensions, or terminations. As noted above, probationary employees have the right to file PPP complaints with OSC.

However, disclosures of information specifically prohibited by law or required by Executive Order to be kept secret are protected only when made to an OIG, OSC, or certain individuals within Congress. Additionally, federal law establishes that a federal employee has the right to communicate with and provide information to Congress.

OSC also has jurisdiction to protect federal employees at most agencies from retaliation for filing an appeal, complaint, or grievance; helping someone else file or testifying on their behalf; cooperating with or disclosing information to the Special Counsel, an Inspector General, or a component responsible for internal investigations/reviews; or, refusing to obey an order that violates a law, rule or regulation.

What can you do if you believe retaliation occurred?

If you believe that an agency has retaliated against you because of your whistleblowing or because you engaged in protected activity such as disclosing information to an Inspector General, you can:

- file a complaint with OSC, which may seek corrective or disciplinary action when warranted;
- file a union grievance; or
- if you have been subject to a significant personnel action, you can file an appeal with the MSPB (www.mspb.gov) and assert retaliation (or any other PPP) as a defense.

Note that a federal employee may choose only one of these three options when appealing a significant personnel action.

What relief is available to an employee who has suffered retaliation?

Many forms of relief are available. They include job restoration, reversal of suspensions and other adverse actions, back pay, reasonable and foreseeable consequential damages, such as medical costs, attorney fees, and compensatory damages. In addition, damages may be awarded for attorney fees and expenses incurred due to retaliation.

Can OSC delay a personnel action while the matter is investigated?

Yes. An individual may ask OSC to delay, or “stay,” an adverse personnel action pending an investigation. OSC will consider requesting a delay of a personnel action if OSC has reasonable grounds to believe that a prohibited personnel action was taken and, absent a stay, the employee will be subjected to immediate and substantial harm, such as removal, suspension for more than 14 days, or geographic reassignment.

How can OSC remedy a prohibited personnel practice?

Federal employees may report suspected PPPs to OSC. Their complaint will be investigated. If there is sufficient evidence to prove a violation, OSC can seek corrective action, disciplinary action, or both. Alternatively, parties in selected cases may agree to mediate their dispute in order to reach a mutually agreeable resolution of the complaint. OSC may attempt to resolve a case with an agency at any stage. If an agency refuses to provide corrective action, then OSC can take the case to the MSPB. The MSPB can order the agency to take corrective action. Such litigation begins with the filing of a petition by OSC that alleges there are reasonable grounds to believe a PPP occurred, is occurring, or is imminent.

Can a manager be held accountable for retaliating against a federal employee?

Yes. OSC may seek disciplinary action against any employee who commits a PPP. If an agency fails to take disciplinary action, then OSC can bring a disciplinary action case to the MSPB against the employee who committed the PPP. If the MSPB finds that an individual has committed a PPP, it can order disciplinary action, including removal, reduction in grade, debarment from federal employment for up to five years, suspension, reprimand, or a fine of up to \$1,000. Additionally, new statutory provisions impose a mandatory proposed penalty for supervisors that commit violations of 5 U.S.C. § 2302(b)(8), (b)(9), or (b)(14).

Can appeals of PPP complaints be filed with the MSPB?

Retaliation Claims – Individual Right of Action (IRA) Appeals

Under some circumstances, employees may file appeals of PPP complaints with the MSPB. Employees may file what is called an IRA appeal with the MSPB for any personnel action taken, not taken, or threatened because of retaliation for whistleblowing or for engaging in protected

activity, such as filing an Office of Inspector General complaint. More information on the right to file an IRA may be found at [5 U.S.C. § 1221\(a\)](#). However, before filing an IRA appeal with the MSPB, employees must file a retaliation PPP complaint with OSC, requesting an investigation.

Can other types of appeals involving PPPs be filed with the MSPB?

Appeals of Significant Adverse Actions – Affirmative Defense

Yes. Employees may raise one or more of the 14 PPPs as a defense to a significant adverse action with the MSPB. However, the employee must elect whether to file a PPP complaint with OSC, file an appeal of the significant adverse action with the MSPB, or file a grievance with the union. The list of significant adverse actions may be found at [5 C.F.R. § 1201.3](#). If the employee elects to raise a PPP as a defense to a significant adverse action with the MSPB, such an appeal is called an “affirmative defense” to the agency’s personnel action and the MSPB will determine if the action that was taken was based on any of the 14 PPPs described in section 2302(b) of Title 5 of the U.S. Code.

For more information on MSPB appeal rights, go to www.mspb.gov.

*For more information on PPPs, including retaliation, go to www.osc.gov/ppp.
To learn more about filing a whistleblower disclosure with OSC, go to www.osc.gov/disclose.
To file a PPP complaint or whistleblower disclosure with OSC, go to www.osc.gov/efile.*

U.S. Office of Special Counsel

1730 M Street, N.W., Suite 218 | Washington, D.C. 20036

Phone: (202) 804-7000 | Toll Free: 1-800-872-9855

TTY: 1-800-877-8339 | Email: info@osc.gov

www.osc.gov

Rev. 03/19



United States Office of Personnel Management

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." Pub. L. 107-174, Summary. In support of this purpose, Congress found that "agencies cannot be run effectively if those agencies practice or tolerate discrimination." Pub. L. 107-74, Title I, General Provisions, Section 101(1).

The Act also requires this agency to provide this notice to Federal employees, former Federal employees and applicants for Federal employment to inform you of the rights and protections available to you under Federal antidiscrimination, whistleblower protection and retaliation laws.

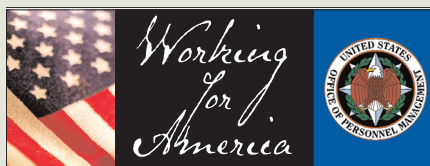
Antidiscrimination Laws

A Federal agency 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 an Equal Employment Opportunity (EEO) counselor 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 with your agency. *See, e.g.*, 29 CFR § 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 days of the alleged discriminatory action. 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 by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

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 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.

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT





United States Office of Personnel Management

No FEAR ACT NOTICE (cont'd)

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 Web site -- 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 protections 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, each agency retains the right, where appropriate, to discipline a Federal employee who has engaged in discriminatory or retaliatory conduct, 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 724, as well as the appropriate offices within your agency (e.g., Center for Equal Employment Opportunity, Center for Human Capital Management Services, or Office of General Counsel). OPM's specific antidiscrimination policies relating to equal employment opportunity and prohibited personnel practices have been physically and electronically posted throughout OPM. Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site-- www.eeoc.gov and the OSC Web site-- 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).

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

