



Notification and Federal Employee Antidiscrimination and Retaliation Act Report

Fiscal Year 2009

Enclosure

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I. Executive Summary

The U.S. Nuclear Regulatory Commission (NRC) provides its fiscal year (FY) 2009 Annual Report to Congress as required by Section 203 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174.

The NRC's mission is to license and regulate the Nation's civilian use of byproduct, source, and special nuclear materials to ensure adequate protection of public health and safety, promote the common defense and security, and protect the environment. The NRC is headed by a five-member Commission. The President designates one member as Chairman and official spokesperson. The Executive Director for Operations (EDO) carries out the policies and decisions of the Commission. During FY 2009, the agency's workforce increased by approximately 100 employees, and at the end of this period, the agency had more than 3,900 permanent employees. To accommodate the growth in staff, the agency obtained additional space for its headquarters employees in several buildings in Montgomery County, Maryland. This expansion requires the agency to be more attentive to proper notification of No FEAR Act rights; the agency has been successful in this task. NRC's headquarters operations are located in offices in Rockville and Bethesda, Maryland, and its regional offices are located in King of Prussia, Pennsylvania; Atlanta, Georgia; Lisle, Illinois; and Arlington, Texas. The NRC's Technical Training Center is located in Chattanooga, Tennessee.

The Partnership for Public Service ranked the NRC the Best Place to Work in the Federal Government in 2009 based on the results of the 2008 Federal Human Capital Survey. NRC previously achieved the same ranking in 2007, based on the results of the 2006 survey. This rating reflects the agency's commitment to create a positive work environment.

The agency's informal and formal complaint activity decreased slightly. The agency resolved a significant number of complaints through the Alternative Dispute Resolution (ADR) program. The greatest number of complaints filed was under Title VII of the Civil Rights Act of 1964, as amended (Title VII). Age, race, and reprisal discrimination were the most frequently filed bases, and performance appraisal and harassment (nonsexual) were the most common issues. During this period, the agency issued nine final agency decisions. There were no findings of discrimination.

During FY 2009, there were two Federal district court cases filed against the agency. One case was dismissed and the second case is pending a decision by the court on a motion for summary judgment and/or dismissal. There were no reimbursements to the Judgment Fund, nor were there any judgments against the agency by a district court.

The agency's Office of Human Resources (HR) provides an ancillary process for dealing with issues of harassment raised under the NRC's Policy for Preventing and Eliminating Harassing Conduct in the Workplace. HR's efforts have been instrumental in encouraging early intervention to resolve workplace disputes. During FY 2009, no disciplinary actions were issued in conjunction with the Whistleblower Protection Act (WPA) or the agency's Policy for Preventing and Eliminating Harassing Conduct in the Workplace.

Since the enactment of the No FEAR Act, the NRC has had many accomplishments that have positively impacted the workplace climate. Examples include the following:

- Demonstrating continued support for the No FEAR Act by the Commission and senior agency executives through policy statements and in key meetings;

- Issuing a revised Comprehensive Diversity Management Plan (CDMP) and continuing promotion of the CDMP, which includes goals and strategies to achieve a positive and discrimination-free work environment where all employees are valued and use their diverse talents to support the agency's mission;
- Holding semi-annual equal employment opportunity (EEO) Commission briefings;
- Including a flow chart on the HR web page depicting the process for reporting harassing conduct in the workplace;
- Creating a web-based awareness training class on the Policy for Preventing and Eliminating Harassing Conduct in the Workplace;
- Posting in all facilities notices on Whistleblower Rights and Protections as required for Office of Special Counsel (OSC) 2302(c) compliance and certification [5 U.S.C § 2302(c)];
- Sponsoring an OSC briefing session for all managers and supervisors on their responsibilities under the No FEAR Act, specifically regarding Whistleblower regulations, Prohibited Personnel Practices, and the Hatch Act in February 2010;
- Conducting training programs and briefings for managers and employees on the No FEAR Act, EEO, diversity management, the Policy for Preventing and Eliminating Harassing Conduct in the Workplace, the WPA, prohibited personnel practices, reasonable accommodation, and ADR;
- Conducting EEO, affirmative employment, and diversity management program assessments to determine whether the agency is meeting the Equal Employment Opportunity Commission's (EEOC) standards for a model EEO program;
- Holding a number of Special Emphasis Program events and seminars to build a more positive work environment;
- Partnering with NRC offices to address issues through the CDMP organizational assessment process;
- Proactively addressing issues raised by staff and management to facilitate early resolution of differences; and
- Timely processing of all EEO complaints and ensuring that no backlog of cases occurs.

Additionally, the NRC has been committed to raising awareness and promoting the agency's ADR program to resolve complaints at the earliest stage.

II. Introduction

The No FEAR Act requires Federal agencies to submit annual reports to the Speaker of the House of Representatives, the President *pro tempore* of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of

Representatives, each committee of Congress with jurisdiction relating to the agency, the Attorney General, the EEOC, and the Office of Personnel Management (OPM). This report is submitted by the NRC to satisfy this reporting requirement.

III. Background

The No FEAR Act was signed into law by President George W. Bush on May 15, 2002, and became effective on October 1, 2003. The act requires each Federal agency to be accountable for violations of antidiscrimination and whistleblower protection laws and post on its web site certain statistical data relating to Federal sector EEO complaints filed with the agency. Section 203 of the No FEAR Act requires that each Federal agency submit an annual report to Congress not later than 180 days after the end of each fiscal year. Agencies must report on the number of Federal district court cases arising under each of the respective areas of law specified in the act in which discrimination was alleged, the status or disposition of cases, the amount of money required to be reimbursed to the Judgment Fund, the number of employees disciplined, any policies implemented related to appropriate disciplinary actions against a Federal employee who discriminated against any individual or committed a prohibited personnel practice, and an analysis of the data collected with respect to trends and causal analysis.

NRC's Office of Small Business and Civil Rights (SBCR) is responsible for administering and ensuring agency compliance with the Federal EEO laws, regulations, policies, and guidance that prohibit discrimination in the Federal workplace based on race, color, national origin, religion, sex, age, disability, or reprisal. SBCR is also responsible for preparing the agency's *Annual No FEAR Act Report*. HR, the Office of the Inspector General (OIG), and the Office of the General Counsel (OGC) also play a role in the implementation of the No FEAR Act for NRC employees.

IV. Data Posted for FY 2009

As required by the No FEAR Act, NRC timely posts and prominently displays a link to the No FEAR Act data on its public Web site (www.nrc.gov). This information is updated quarterly, not later than 30 calendar days after the end of each quarter. See Attachment 1 for details.

Overall, NRC's informal and formal complaint activity is relatively low. It is likely that this is due to a continual effort to maintain a positive work environment and the fact that a number of workplace disputes are resolved prior to complainants initiating the informal process.

The following sections provide more information on the informal and formal complaints filed against the agency:

A. FY 2009 Informal and Formal Complaint Activity

During FY 2009, a total of 16 new informal complaints were initiated; only one informal complaint was carried over from the previous FY. Of the 17 informal complaints, 17 were closed during FY 2009. A total of 8 formal complaints were filed against the agency, and 20 formal complaints (several from prior fiscal years) were closed. Formal complaint activity for FY 2009 declined slightly from prior years.

During FY 2009, all EEO investigations were completed in a timely manner. As of the end of FY 2009, there were no cases pending investigation. During FY 2009, the agency issued nine final agency decisions; there were no findings of discrimination. In FY 2009, the agency settled a record number of cases (11) using ADR techniques to

include mediations and facilitated discussions. The NRC attributes the relatively low complaint activity to the use of proactive early intervention to resolve workplace disputes; the agency's ADR program; and the provision of EEO and No FEAR Act training to NRC managers, supervisors, and employees. The agency also emphasizes excellent customer service and responsiveness to issues.

B. Bases and Issues

The FY 2009 complaint data shows that complainants identified age, race, and reprisal as the most frequently filed bases that gave rise to complaints. Additionally, the data shows that complainants identified performance appraisals and harassment (non-sexual) as the most common issues for filing complaints. Several complaints included multiple bases. See Attachment 1 for details.

V. Civil Cases - Reimbursement to the Judgment Fund

Section 203(1) of the No FEAR Act requires that agencies include in their annual report the number of civil cases arising under the WPA and antidiscrimination laws, the status of such cases, and the amount of money reimbursed to the Judgment Fund. OPM published final regulations on May 10, 2006, to carry out the agency reimbursement provisions of the No FEAR Act. These final regulations state that the Federal Management Service (FMS), U.S. Department of Treasury, will provide written notice to an agency's Chief Financial Officer within 15 business days after payment from the Judgment Fund. The agency is required to reimburse the Judgment Fund within 45 business days after receiving the notice from FMS or must contact FMS to make arrangements in writing for reimbursement.

During FY 2009, there were two Federal district court cases filed against the agency. One case was dismissed and the second case is pending a decision by the court on a motion for summary judgment and/or dismissal. There were no reimbursements to the Judgment Fund, nor were there any judgments against the agency by a district court.

VI. Disciplinary Actions

Section 203(a)(6) of the No FEAR Act requires that agencies include in their annual report a detailed description of the policy implemented by the agency relating to disciplinary actions. These actions would be imposed against a Federal employee who discriminated against any individual in violation of any laws cited under section 201(a)(1) or (2), or committed another prohibited personnel practice that is disclosed in the investigation of a complaint alleging a violation of any of the laws cited under section 201(a)(1) or (2). Further, the act requires that, with respect to each such law, the agency report on the number of employees who were disciplined in accordance with such policy and the specific nature of the disciplinary action taken.

As indicated in the agency's prior No FEAR Act reports, the NRC's policy is to take appropriate disciplinary action against any employee who discriminates against an individual or engages in other prohibited personnel actions against an individual, including retaliation for lawful whistleblowing activities or for exercising an appeal, complaint, or grievance right. On February 1, 2010, the agency issued the Annual Reminder Notice of Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act. See Attachment 3 for details. This policy reinforces the agency's commitment to establishing a workplace free from discrimination, harassment, and retaliation.

During FY 2009, 19 claims of harassment were filed with HR; however, the inquiries did not result in findings of violations related to prohibited personnel practices. Therefore, no disciplinary actions were issued.

VII. Training Requirement for No FEAR Act

Section 202(c) of the No FEAR Act requires that agencies train employees about the Act. To comply with the provision, on September 30, 2005, the agency implemented a No FEAR Act web-based training course concerning the rights and remedies applicable to NRC employees under antidiscrimination and whistleblower protection laws. See Attachment 2 for details. The NRC's training was updated during early FY 2010. This new state-of-the-art training includes an introductory message from the Executive Director for Operations, interactive vignettes, and knowledge checks to reinforce learning. Approximately 98 percent of employees completed this refresher training course as of March 11, 2010. New employees are required to complete the training within 90 calendar days of being hired by the agency.

VIII. Trends, Analysis, and Practical Knowledge

Section 203(7) of the No FEAR Act requires that agencies examine trends, causal analyses, practical knowledge gained through experience, and any actions planned or taken to improve the complaint or civil rights program of the agency.

An analysis of complaints filed during FY 2009 shows there was a slight decrease in the number of informal and formal complaints filed against the agency. Complaint activity alleging race discrimination and reprisal remained consistent in FY 2009. Age complaints declined.

The agency continues to improve the processing time for investigations and ensure that all investigations are completed in a timely manner. The agency's average processing time for investigations was 198 calendar days, which was in accordance with EEOC regulations. This average includes four amended complaints.

The agency has made tremendous progress in developing standard operating procedures and internal controls to improve investigations. The agency has contractual arrangements to procure investigative services including an inter-agency agreement with the U.S. Postal Service. The NRC also has an internal staff of EEO investigators. SBCR's recruitment of a staff with considerable EEO complaint processing experience has resulted in the Civil Rights Program improving communication with complainants and managers; providing EEO training to employees to prevent discrimination; and reducing the processing time for investigations. The staff has also been able to publicize the ADR Program and provide training for collateral duty EEO Counselors on the No FEAR Act, ADR, reasonable accommodation, and EEO case law. SBCR continues to maintain contact with other Federal agencies and the Council of Federal EEO and Civil Rights Executives to gain knowledge and learn about best practices in the civil rights area.

The NRC's ADR program is used to help resolve workplace EEO disputes. The NRC has been committed to promoting ADR to resolve EEO complaints and offered ADR to 100 percent of all parties in both the informal and formal complaint processes. The ADR program manager meets with the agency official and employee separately to discuss the ADR process and the issues in dispute. The parties are encouraged to discover, discuss, and engage in creative methods of dispute resolution.

The agency's participation rate for ADR for formal complaints was 40 percent in FY 2009. During FY 2009, the NRC took several steps to increase the agency's use of ADR: (1) providing ADR awareness training, (2) holding informational exhibits about ADR, (3) distributing ADR brochures to employees, (4) evaluating assessments of ADR sessions, and (5) conducting an ADR brown bag luncheon.

The agency continues to make progress in the area of ADR including participating in the Federal Sharing Neutrals Program (SNP) by providing SBCR staff to conduct mediations for other Federal agencies and also by using SNP mediators to facilitate NRC mediation for EEO matters.

It is anticipated that the agency's ADR participation rate will increase to meet EEOC's goal of 50 percent through the use of these and other interactive events and initiatives.