



**Notification and Federal Employee
Antidiscrimination and Retaliation Act Report**

FISCAL YEAR 2017

Enclosure

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Attachment:

Fiscal Year 2017 No FEAR Act Data Posted on the NRC Web Site

I. Executive Summary

The U.S. Nuclear Regulatory Commission (NRC or agency) provides its fiscal year (FY) 2017 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 radioactive materials to provide reasonable assurance of adequate protection of public health and safety and to promote the common defense and security, and to protect the environment. A five-member Commission heads the NRC, however, at this time there are two vacancies. The President designates one member as Chairman and official spokesperson. The Executive Director for Operations carries out the policies and decisions of the Commission. During FY 2017, the agency had approximately 3,400 permanent employees. The NRC's Headquarters is located in Rockville, MD, and its regional offices are located in King of Prussia, PA; Atlanta, GA; Lisle, IL; and Arlington, TX. The agency's technical training center is located in Chattanooga, TN. Because staff members are located at all locations—NRC Headquarters, regional offices, and the technical training center—the agency must be especially attentive to providing all employees proper notification of their rights under the No FEAR Act. The agency has been successful in this task.

The Partnership for Public Service ranked the NRC 11th in midsized agencies as one of the best places to work in the Federal Government based on the results of the 2017 Federal Employee Viewpoint Survey. The NRC was ranked 7th for its support for diversity. National publications have highlighted the NRC's commitment to diversity.

In FY 2017, the agency experienced a small decrease in informal complaint activity and a small increase in formal complaint activity as compared to that in FY 2016. Most of the complaints filed were brought under Title VII of the Civil Rights Act of 1964, as amended, or the Age Discrimination in Employment Act of 1967, as amended. Reprisal, age, and sex discrimination were the most frequently filed alleged bases. The most frequently filed issues alleged were assignment of duties, harassment (nonsexual), and performance evaluations or appraisals. The NRC issued six final agency decisions during FY 2017.

During FY 2017, the agency had no new equal employment opportunity (EEO) lawsuits in Federal District Court. There were no reimbursements to the Judgment Fund.

The NRC's Office of the Chief Human Capital Officer (OCHCO) provides an ancillary process for allegations of harassment to be presented under the NRC's Policy for Preventing and Eliminating Harassing Conduct in the Workplace (the anti-harassment policy). OCHCO's efforts have been instrumental in encouraging early intervention to resolve workplace disputes. During FY 2017, 32 claims of violations of the anti-harassment policy were filed. Of these, five were found to be violations of the anti-harassment policy resulting in written counseling for two employees and no further action in remaining cases.

In one of the above mentioned cases, it was determined that management had sufficiently addressed the inquiry when they directed the employee to discontinue contact with the alleged. The alleged was satisfied with this outcome and did not want any further action. In another case, it was resolved prior to completion of the inquiry when the two offending parties apologized and participated in anti-harassment training.

In a third case, the violator could not be determined, however the offensive material was removed from the worksite.

The NRC currently has no whistleblowing cases pending in Federal Court.

Since the enactment of the No FEAR Act, the NRC continues to realize many positive changes in the workplace. Examples include the following:

- continuing support for the No FEAR Act by the Commission and senior agency executives through policy statements and discussion in key meetings
- continuing support and promotion of the NRC's Diversity and Inclusion Strategic Plan which includes the Comprehensive Diversity Management Plan goals and strategies to achieve a positive and discrimination-free environment
- implementing a Diversity Management and Inclusion Council consisting of agency executives, equal employment opportunity (EEO) advisory committee members, and others to assist the agency in developing a more comprehensive, integrated, and strategic focus on diversity and inclusion in the workplace
- briefing the Commission biannually on the accomplishments and plans of the agency's EEO program
- implementing agency values known as ISOCER—integrity, service, openness, commitment, cooperation, excellence, and respect—as a guide for fostering an open, collaborative work environment for all employees
- continuing to support a workplace where diverse views, alternative approaches, critical thinking, collaborative problem-solving, unbiased evaluations, and honest feedback are encouraged, recognized, and valued
- posting notices on whistleblower rights and protections in all facilities, as required by the Office of Special Counsel, for agency certification under 5 U.S.C. Section 2302(c)
- developing and implementing training programs and briefings for managers and employees on the No FEAR Act, EEO, diversity management, the NRC Anti-Harassment Policy, reasonable accommodation, and alternative dispute resolution (ADR)
- continuing the implementation of DIALOGUE—Diversity Inclusion Awareness Leading Organizational Growth, Understanding, and Engagement—in which small groups of managers and employees participate in forums to discuss diversity topics in an open environment
- conducting annual internal EEO, affirmative employment, and diversity management assessments of NRC program offices to determine compliance with the Equal Employment Opportunity Commission's (EEOC's) standards for a model EEO program
- processing EEO complaints promptly to ensure that no backlog of cases occurs
- implementing a *Speed of Trust* initiative consisting of workshops to provide opportunities for strengthening mutual trust among agency leaders, supervisors, and staff
- training collateral duty EEO counselors, EEO advisory committee members, staff in the Office of Small Business and Civil Rights (SBCR), and managers and supervisors on the

concepts of workplace civility to develop a unified approach to behavior that fosters a safe, inclusive, and productive workplace

Additionally, the NRC is 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 each Federal agency to submit an annual report that describes its efforts to improve compliance with the employment discrimination and whistleblower protection laws and that details the status of complaints brought against the agency under these laws. Agencies submit the report to the Speaker of the U.S. House of Representatives, the President pro tempore of the U.S. 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 of the United States, the EEOC, and the U.S. Office of Personnel Management (OPM). The NRC is submitting this report to satisfy the No FEAR Act reporting requirement.

III. Background

On May 15, 2002, President George W. Bush signed into law the No FEAR Act, which took effect on October 1, 2003. The Act requires each Federal agency to be accountable for making violations of antidiscrimination and whistleblower protection laws publicly known, and to post on its Web site a summary of statistical data relating to Federal-sector EEO complaints filed with its agency. Section 203 of the No FEAR Act requires that each Federal agency submit an annual report to Congress no later than 180 days after the end of each fiscal year. The agencies must report the number of Federal District Court cases arising from each area of law specified in the Act in which discrimination was alleged, the status or disposition of cases, the amount of money to be reimbursed to the Judgment Fund, the number of employees disciplined, any policies implemented that are 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 causes.

SBCR is responsible for administering and ensuring NRC compliance with Federal EEO laws, regulations, policies, and guidance that prohibit discrimination in the Federal workplace based on race, color, national origin, religion, sex (including pregnancy, gender identity, and sexual orientation), age, disability, genetic information, or reprisal. SBCR is also responsible for preparing the agency's annual No FEAR Act report. The Office of Investigations, OCHCO, and the Office of the General Counsel also play roles in implementing the No FEAR Act for NRC employees.

IV. Data Posted for Fiscal Year 2017

As required by the No FEAR Act, the NRC promptly posts and displays a link to its No FEAR Act data on its public Web site (www.nrc.gov). The agency updates this information no later than 30 calendar days after the end of each quarter. The attachment provides details.

The NRC's informal and formal complaint activity is relatively low—less than 1 percent for each type of filed complaints. This outcome can be attributed to the NRC's continual effort to maintain a positive work environment and to the resolution of workplace disputes before the informal complaint process is initiated. The following sections provide more information on the informal and formal complaints filed against the agency.

A. Fiscal Year 2017 Informal and Formal Complaint Activity

During FY 2017, 24 new informal complaints were filed, and 5 informal complaints were carried over from the previous fiscal year. Of the total informal complaints, 26 were closed during FY 2017. Nineteen (19) new formal complaints were filed against the agency, and 21 were carried over from the previous fiscal year. Of the total formal complaints, 20 were closed during FY 2017.

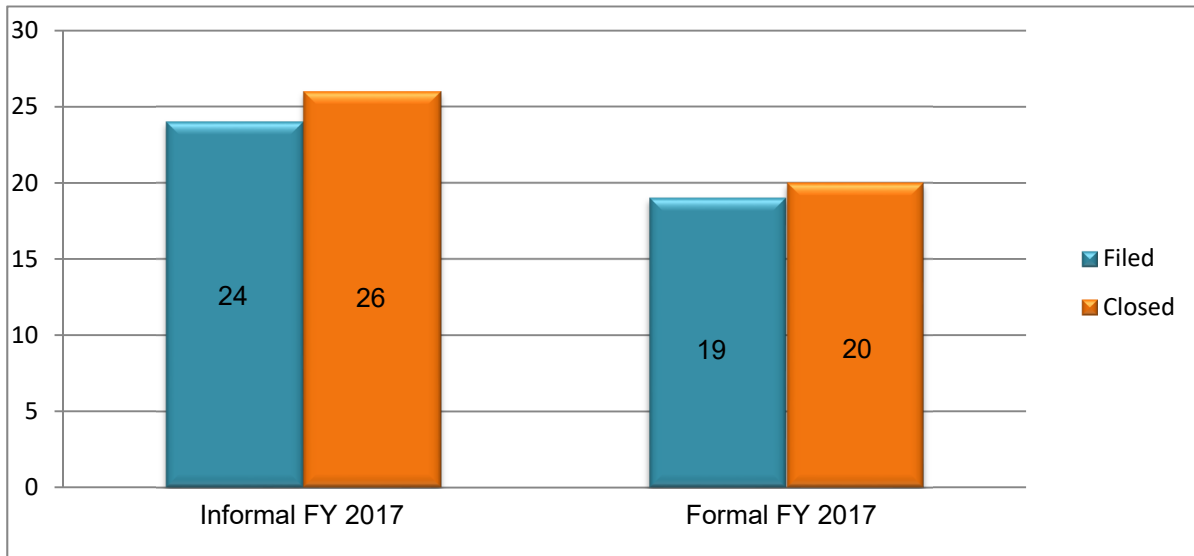


Figure 1: FY 2017 informal and formal complaint activity

During FY 2017, the agency investigated seven formal complaint cases, all of which were completed in accordance with EEOC regulatory timeframes. As of the end of FY 2017, five formal complaint cases were pending investigation. The agency issued six final agency decisions during FY 2017 and had no findings of discrimination.

In FY 2017, the agency settled 12 formal and 3 informal cases using various informal resolution techniques, including mediation and facilitated discussion. The NRC attributes the relatively low complaint activity to the use of early intervention to resolve workplace disputes, the agency's ADR program, and the agency-provided No FEAR Act training to all employees. The NRC also uses internal expertise to train managers and supervisors on EEO and diversity. All new managers and supervisors receive one day of training, and all present managers and supervisors receive a full day of refresher training on this subject every 3 years. The agency also emphasizes excellent customer service and responsiveness to issues.

B. Bases and Issues

The FY 2017 complaint data show that complainants identified reprisal, age, and sex as the most frequently filed bases for complaints. Additionally, the data show that complainants identified harassment (nonsexual), assignment of duties, and performance evaluations or appraisals as the most common issues in complaints filed. Several complaints contained multiple bases and issues. The attachment provides details.

V. Civil Cases—Reimbursement to the Judgment Fund

Section 203(1) of the No FEAR Act requires each agency to state in its annual report the number of civil cases arising from the Whistleblower Protection Act and antidiscrimination laws, the status of such cases, and the amount of money reimbursed to the Judgment Fund.

Pursuant to the reporting requirements of 5 CFR Part 724, "Implementation of the Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," the NRC reports that, in FY 2017, it made no reimbursements to the Judgment Fund in connection with these lawsuits.

OPM published the final regulations on May 10, 2006, to carry out the agency reimbursement provisions of the No FEAR Act. These final regulations state that the Financial Management Service (FMS), U.S. Department of the 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 it must contact FMS to make arrangements in writing for reimbursement.

VI. Disciplinary Actions

Section 203(a)(6) of the No FEAR Act requires the annual report of each agency to describe in detail the policy that it implements relating to disciplinary actions imposed against a Federal employee found to have discriminated against any individual in violation of any law cited under Section 201(a)(1) or (2) or to have committed another prohibited personnel practice that was revealed in the investigation of a complaint alleging a violation of any of the laws cited under Section 201(a)(1) or (2). Furthermore, the Act requires that the agency report the number of employees disciplined in accordance with such policy and the specific nature of the disciplinary action.

As indicated in the agency's previous No FEAR Act reports, the NRC's policy is to take appropriate disciplinary action against any employee found to have discriminated against an individual or to have engaged in other prohibited personnel actions, including retaliation for lawful whistleblowing activities or for exercising an appeal, complaint, or grievance right. During FY 2017, 32 claims of violations of the anti-harassment policy were filed. Of these, five were found to be violations of the anti-harassment policy resulting in written counseling for two employees; no further action was taken in the remaining cases.

In one of the above mentioned cases, it was determined that management had sufficiently addressed the inquiry when they directed the employee to discontinue contact with the alleged. The alleged was satisfied with this outcome and did not want any further action. In another case, it was resolved prior to completion of the inquiry when the two offending parties apologized and participated in anti-harassment training.

In a third case, the violator could not be determined, however the offensive material was removed from the worksite.

The NRC currently has no whistleblowing cases pending in Federal Court.

VII. Training Requirement for No FEAR Act

Section 202(c) of the No FEAR Act requires each agency to provide training to its employees about their protections and responsibilities under the Act. During FY 2017, the agency updated,

improved, and reissued its Web-based training on the No FEAR Act to comply with this provision. The training explains the rights, responsibilities, and remedies available to NRC employees under antidiscrimination and whistleblower protection laws. The NRC's training is highly regarded and has been shared with several other federal agencies. As of December 31, 2017, 99 percent of all employees completed the training. New employees are required to complete the training within 90 calendar days of entering into employment.

VIII. Trends, Analysis, and Practical Knowledge

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

An analysis of complaints filed during FY 2017 shows a small decrease in informal complaint activity and a small increase in formal complaint activity, as compared to FY 2016. Reprisal, age, and sex were the most frequent bases of alleged discrimination. In addition, harassment (nonsexual), assignment of duties, and performance evaluations or appraisals were the most frequent issues. Of the seven investigations, all were processed within the EEOC regulatory timeframes. The agency's average processing time for investigations increased from 224 calendar days in FY 2016 to 275 calendar days in FY 2017. The increase in processing time resulted from several cases being amended to add new claims, thus necessitating additional time to complete investigations.

The NRC continues to make progress in developing standard operating procedures and internal controls to improve investigations. The agency has ongoing contractual arrangements to procure investigative services, including an interagency agreement with the U.S. Postal Service.

The NRC also employs EEO investigators on its staff. The agency's civil rights staff has considerable experience in processing EEO complaints. This knowledge base contributes significantly to the following:

- ongoing improvement in communication with complainants and managers
- high-quality EEO training for employees to prevent discrimination
- ongoing revisions to EEO complaint processing to be compliant with the EEOC's revised Management Directive 110, "Federal Sector Complaint Processing Manual," dated August 5, 2015
- effective training for collateral duty EEO counselors on the No FEAR Act, ADR, reasonable accommodation, and EEO case law
- interagency agreements to assist other Federal agencies with EEO complaint processing, including EEO counseling and EEO investigations
- effective dissemination of information on the ADR program

The SBCR continues to maintain interactions with other Federal agencies, the Federal EEO and Civil Rights Council, and the Small Agency Council to gain and share knowledge and best practices in civil rights. The NRC uses its ADR program to help resolve workplace EEO disputes. The NRC is committed to promoting ADR to eliminate actions that may give rise to EEO complaints, and it shares the availability of the ADR program with all parties.

To increase the overall ADR participation rate, the agency continues to promote the program through the use of periodic ADR training sessions and other interactive events. For FY 2017, these activities included ongoing training on the ADR program for NRC managers and supervisors. The agency continues to support ADR through participation in the interagency Federal Sharing Neutrals Program. NRC employees conduct mediations for other Federal agencies, and Sharing Neutrals Program mediators facilitate mediation as a method to resolve complaints initiated at the NRC.