



UNITED STATES NUCLEAR REGULATORY COMMISSION

Yellow Announcement: YA-23-0015

Date: February 23, 2023

Expiration Date: July 22, 2027

TO: All NRC Employees

SUBJECT: No FEAR Act – Annual Notification of Employee Rights

On May 15, 2002, Congress enacted the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act). The Office of Small Business and Civil Rights (SBCR) wants to take this opportunity to provide U.S. Nuclear Regulatory Commission (NRC) employees with an annual notification of their rights in the workplace. The intent of the Act, then and now, is to reduce the incidences of workplace discrimination by holding the NRC accountable, and to reinvigorate its obligation to provide a work environment free from discrimination and reprisal (retaliation). As this information is made available to the general public, you can access the No FEAR Act data at: <https://www.nrc.gov/about-nrc/civil-rights/crp/dca.html>.

This policy notification provides a reminder to all NRC employees, former employees, and applicants for employment of the right to a workplace that is free from discrimination, harassment, reprisal (retaliation), and prohibited personnel practices, including reprisal for whistleblowing activities.

Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020

On January 1, 2021, Congress enacted the Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020 which amends the No FEAR Act. The Cummings Act increases Federal agencies' accountability by requiring the following:

- **Section 207 “Complaint Processing”** – Establishment of a system to track each complaint of discrimination arising and adjudicated through the Equal Employment Opportunity (EEO) process from the filing of a complaint with the Agency to resolution of the complaint, including whether a decision has been made regarding disciplinary action as the result of a finding of discrimination.
- **Section 208 “Notation in Personnel Record”** - If the Agency takes an adverse action against an employee for an act of discrimination (including retaliation), the Agency shall,

after all appeals relating to that action have been exhausted, include a notation of the adverse action and the reason for the action in the personnel record of the employee.

- **Section 401 “Processing and Resolution of Complaints”** - The Agency is responsible for the fair and impartial processing and resolution of complaints of employment discrimination (including retaliation).
- **Section 401 “Processing and Resolution of Complaints”** – Establishment of a model Equal Employment Opportunity (EEO) Program that:
 - Is not under the control, either structurally or practically, of the Agency’s Office of Human Capital (OCHCO) or Office of the General Counsel (OGC);
 - Is devoid of internal conflicts of interest and ensures fairness and inclusiveness within the agency; and
 - Ensures the efficient and fair resolution of complaints alleging discrimination (including retaliation).
- **Section 402 “No Limitation on Advice or Counsel”** - Nothing shall prevent an Agency or a subcomponent of an Agency, or the Department of Justice, from providing advice or counsel to employees of that Agency (or subcomponent, as applicable) in the resolution of a complaint.
- **Section 403 “Head of Program Supervised by Head of Agency”** - The head of each Agency’s Equal Employment Opportunity (EEO) Program shall report directly to the head of the agency.
- **Section 404 “Referrals of Findings of Discrimination”** - Not later than 30 days after the date on which the Equal Employment Opportunity Commission (referred to in this section as the ‘Commission’) receives, or should have received, an Agency report, the Commission may refer the matter to which the report relates to the Office of Special Counsel if the Commission determines that the Agency did not take appropriate action with respect to the finding that is the subject of the report.

Antidiscrimination Laws and Reprisal

The NRC cannot discriminate against an employee (current or former) or applicant for employment with respect to the terms, conditions, or privileges of employment on the basis of race, color, religion, sex (including sexual orientation, equal pay, gender identity and expressions, and pregnancy), national origin, age (40 years or older), disability (physical and/or mental), and genetic information (information about an individual’s genetic tests or the manifestation of a disease or disorder in the individual’s family members). The NRC is also prohibited from subjecting employees to reprisal (retaliation) for either participating in a protected activity or opposing practices made unlawful by relevant civil rights statutes and regulations. Discrimination on these bases is prohibited by one or more of the following statutes: 5 United States Code (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, 42 U.S.C. §2000e-16, and 42 U.S.C. §2000ff-1, 29 U.S.C. §621. You can find more information about each of these statutes at <https://www.nrc.gov/about-nrc/civil-rights/crp/eo-statutes-regs.html>.

Although not specifically listed under the No FEAR Act, and covered under other statutes or Agency policy, the NRC cannot discriminate against an employee with respect to the compensation, terms, conditions, or privileges of employment because of the employee’s marital status, parental status, political affiliation, or military service. Discrimination of these types are prohibited by NRC’s [Equal Employment Opportunity \(EEO\) Policy Statement](#).

It is the mission of SBCR to protect people by enabling the NRC to have a diverse and inclusive workforce, advance equal employment opportunities for employees and applicants for employment, and to provide a fair and impartial process throughout EEO complaint processing. It is the goal of SBCR to create a work environment free from discrimination, harassment, and reprisal (retaliation). If you believe you have been subjected to discrimination, harassment, retaliation and/or have knowledge of discriminatory or harassing behavior as a bystander, you are encouraged to initiate contact with the Office of Small Business and Civil Rights (SBCR) as soon as possible, but no later than 45 calendar days of the date of the alleged discriminatory event or in the case of a personnel action, within 45 calendar days of the effective date of the action. SBCR will promptly, fairly, and impartially process your EEO complaint of discrimination. Note: You may express interest in filing an EEO complaint by contacting [SBCR's Civil Rights Team](#), the [Agency's Collateral Duty EEO Counselors](#), SBCR's mailbox at EEOPrograms@nrc.gov, [NRC's EEO eFile Portal](#), [OCHCO's Anti-Harassment Policy](#), or [the NRC and National Treasury Employees Union \(NTEU\) Collective Bargaining Agreement \(CBA\)](#).

Any matter that falls within the scope of the EEO complaint process may be raised in a formal EEO complaint or through the negotiated grievance procedure, but not both. Employees whose claims fall outside the scope of the EEO complaint process (i.e., claims that may not be brought before the EEOC) may nonetheless raise such matters, if otherwise grievable, through the negotiated grievance procedure (CBA Article 46, Grievance Procedures). [See also 29 CFR 1614, Subpart C](#).

The Office of Special Counsel (OSC) is an independent agency that protects Federal employees from prohibited personnel practices, including unlawful hiring practices. If you believe you have been discriminated against based on marital status, parental status, or political affiliation, you may file a complaint with the U.S. Office of Special Counsel (www.osc.gov) online at <https://osc.gov/Pages/File-Complaint.aspx>.

Whistleblower Protection

OSC also protects Federal employees from whistleblower retaliation. OSC also provides an independent, secure channel for disclosing and resolving wrongdoing in Federal agencies.

An 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 a personnel action against an employee or applicant because of disclosure of information that the employee reasonably believed to be a violation 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 such disclosure was specifically required by Executive Order to remain secret due to national security.

The NRC is prohibited from retaliating against a whistleblower employee because that individual exercised their rights under whistleblower protection laws (5 U.S.C. §2302(b)(8)). If you believe you have been the victim of retaliation for whistleblowing activities, you can contact the Office of the Inspector General at whistleblower_coordinator@nrc.gov or on (301) 415-1146. NRC encourages employees to review all the information on whistleblowing that may be found on the OCHCO [Whistleblower/Anti-Discrimination webpage](#).

Disciplinary Actions

Under the existing laws, the NRC retains the right to discipline, where appropriate, a federal employee who engaged in discriminatory or retaliatory conduct, up to and including removal from Federal service. If OSC has initiated an investigation, the NRC must seek approval from the Special Counsel to discipline any employee for any alleged prohibited activity under investigation or for any related activity under 5 U.S.C. §1214(f). There is no provision under the No FEAR Act that alters existing laws or permits the NRC to take unfounded disciplinary action against an employee or to violate the procedural rights of an employee who was accused of discrimination.

Please be sure to read this notice in its entirety and follow the links provided for additional information. If you should have any questions about this announcement, please feel free to contact SBCR at EEOPrograms@nrc.gov or by telephone on (301) 415-7380. As we stand together, let's continue to be a model employer by fostering an open and collaborative work environment that's free from discrimination, harassment, and reprisal.

/RA/

Vonna L. Ordaz, Director
Office of Small Business and Civil Rights

Management Directive Reference: MD 10.161, "[Civil Rights Program and Affirmative Employment and Diversity Management Program](#)"

SUBJECT: No FEAR Act – Annual Notification of Employee Rights
DATED: FEBRUARY 23, 2023

ADAMS ACCESSION NUMBER: ML23046A405

OFFICE	SBCR: CRPM	SBCR:DEIA	SBCR: OD
NAME	SSmith	LMcKoyMoore	YWeed
DATE	02/16/2023	02/16/2023	02/17/2023
OFFICE	OGC	OGC/NLO	SBCR/OD
NAME	TBarczy	CScott	VOrdaz*
DATE	02/23 /2023	02/23/2023	02/23/2023

OFFICIAL RECORD COPY