

# NO FEAR ACT TRAINING



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# Overview of No Fear Act

- Title: Notification and Federal Employee Anti-Discrimination and Retaliation Act of 2002 (effective 10/01/03)
- Three titles:
  - Title I – General Provisions
  - Title II – Federal Employee Discrimination and Retaliation
  - Title III – EEO Complaint Data Disclosure

# Policy

- **“A Federal agency may not 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.**

# Purpose of Act

- **The Act requires that “Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.”**
- **The Act also requires that DoD inform current employees, former employees and applicants for employment, of the rights and protections available under Federal antidiscrimination, whistleblower protection and retaliation laws.**

# What are Your Rights?

- Existing Rights Unchanged
  - Pursuant to section 205 of the No FEAR Act, neither the Act nor any notice issued in compliance with the Act 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).

# WHISTLEBLOWER PROTECTION ACT



# Whistleblower Protection Laws

- A Federal employee with authority to approve any personnel action must not use that authority to take action against an employee 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.
- 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 website: <http://www.osc.gov>.

# Examples of Protected Whistleblower Disclosures

- **Violation of Law, Rule or Regulation.**
- **Substantial and specific danger to public health or safety.**
- **Gross Waste of Funds**
  - More than a debatable expenditure.
- **Gross Mismanagement**
  - An action that creates a risk of significant adverse impact on the accomplishment of an Agency's mission.
- **Abuse of Authority**
  - An arbitrary or capricious exercise of power that injures another, or benefits the abuser or others.

# Whistleblower Disclosures

- **No Requirement that employee go through Chain of Command.**
- **Whistleblower's personal motivation does not affect reasonableness of a disclosure.**
- **Employee or applicant is protected if employer mistakenly believes he or she is a whistleblower.**
- **Disclosure is not protected (unless made to the Special Counsel or Inspector General), where the disclosure is:**
  - Prohibited by law, or
  - Required by Executive Order to be secret for National Security or Foreign Affairs reasons.

# Office of Special Counsel

## Role in Whistleblower Protection

- The Office of Special Counsel (OSC) provides a secure channel through which current and former federal employees and applicants may make confidential disclosures.
- OSC evaluates the disclosures to determine whether there is a substantial likelihood that one of the conditions listed above has been disclosed.
- If such a determination is made, OSC has the authority to require the head of the agency to investigate the matter.

- **To make a disclosure contact:**

**U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 218  
Washington, DC 20036-4505**

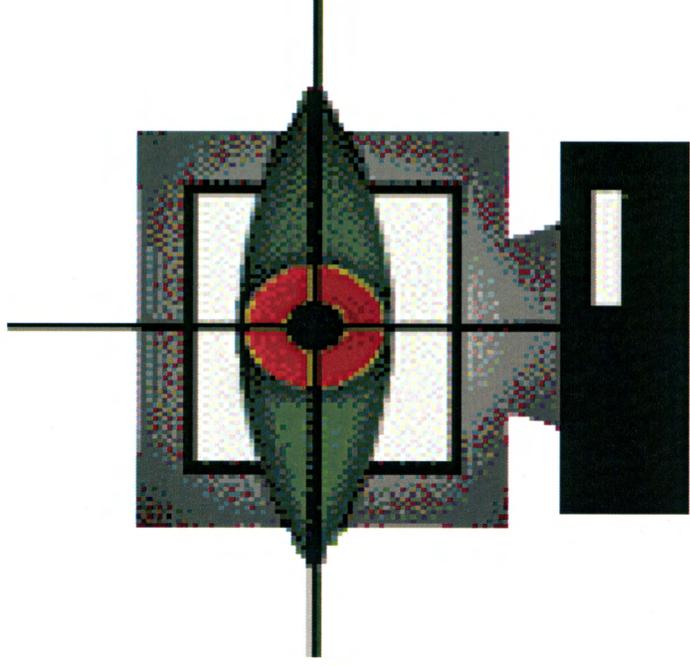
**Phone: (202)254-3640**

**Toll Free: 1-800-572-2249**

**Hearing and Speech Disabled: Federal Relay Service**

**1-800-877-8339**

# FREEDOM FROM REPRISAL



## Retaliation for Engaging in Protected Activity

- A Federal agency may not 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.

# Applicable Regulations

- 29 C.F.R. §1614.101(b) states:

“No person shall be subjected to retaliation for opposing any practice made unlawful by Title VII of the Civil Rights Act, the Age Discrimination in Employment Act (ADEA), the Equal Pay Act (EPA), or the Rehabilitation Act (Rehab Act), or for participating in any stage of the administrative or judicial proceedings under those statutes.”

# Elements of Reprisal Claim

- **First Element:**
  - Individual expressed opposition to discriminatory practice; or,
  - Individual participated in the discrimination complaint process.
- **Second Element:**
  - Agency (Management) aware of protected activity.
  - The individual whom the complainant alleges retaliated against him/her must have knowledge of his/her protected activity.
- **Third Element:**
  - Agency must have taken an adverse action after the complainant engaged in the protected activity.
  - Examples of Adverse Action: Denial of promotion, award, or position; disciplinary action; negative evaluation; or harassment.
- **Fourth Element:**
  - Complainant must demonstrate a “Causal Connection” between the adverse action and the protected activity.

# 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
  - USUHS EEO Office
  - Website: <http://www.usuhs.mil/asd/eo.html>
  - Phone: (301)295-9732
- **Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at:**
  - EEOC Website: <http://www.eeoc.gov>
  - OSC Website: <http://www.osc.gov>

# This Certifies that



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Name

Completed No Fear Act Training

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Date

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(Please e-mail this certificate to Mr. George Forrest (CHR) at [george.forrest@usuhs.edu](mailto:george.forrest@usuhs.edu))