



Department of the Air Force

**Notification and Federal Employee
Antidiscrimination and Retaliation Act (NoFEAR)**

Fiscal Year 2016 Report

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I. INTRODUCTION

The U.S. Air Force (USAF or AF) is part of the Department of Defense (DoD). The mission of the USAF is to deliver sovereign options for the defense of the United States of America and its global interests – to fly, fight and win in Air, Space, and Cyberspace. By dominating the media of elevation, the Air Force offers unique warfighting capabilities that leverage the strengths of surface forces and expand the range of potential effects. We will continue to attract, recruit, develop, and retain a high quality and talented force and we will give them the best opportunities for career development, training and standard of living.

The Assistant Secretary of the Air Force (Manpower and Reserve Affairs), SAF/MR, has overall responsibility for supervision of civilian personnel for the Department of the Air Force and has been delegated authority relating to civilian equal employment opportunity programs by the Secretary of the Air Force. The Civilian Appellate Review Office (AFCARO), SAF/MRBA, writes final agency decisions (FADs) for Equal Employment Opportunity (EEO) complaints.

The Air Force's civilian EEO program had been administered and managed through the Deputy Chief of Staff, Manpower, Personnel and Services (HQ USAF/A1). As of 1 October 2016, however, the program began being administered through the Office of the Assistant Secretary of the Air Force, Manpower and Reserve Affairs (SAF/MR). This realignment brings the EEO program into greater compliance with 29 Code of Federal Regulation (CFR) 1614.102; i.e., "The EEO Director shall be under the immediate supervision of the agency head." The new organization symbol for the EEO program is "SAF/MRQ." The discrimination complaints, diversity and inclusion management, Affirmative Employment Program (AEP) and Special Emphasis Programs (SEPs) are administered through the Manpower, Personnel and Services function at major command or equivalent level in the Air Force. The discrimination complaints program, however, is administered by full-time Equal Opportunity (EO) professionals reporting directly to the (local) installation commander or designee.

Accomplishments

The Air Force Directorate of Equal Opportunity conducted five Air Force-wide training sessions to provide required refresher training to EEO professionals. Topics included framing EEO complaint claims, Acceptance and Dismissals, Labor and Employment Law, EEOC Management Directive 110, and reasonable accommodation complaints.

Several EEO working groups continue to meet regularly, including one to identify and eliminate barriers to timely, thorough, and effective EEO complaint processing. The group is made up of EEO, legal, and HR specialists at the headquarters, major commands, and local base levels. Some benefits are: reduction in case losses (and payout awards) due to procedural errors, improved processing times, and enhanced collaboration, mentoring, and networking. Another working group identifies and eliminates barriers to equal employment opportunity.

The Department of the Air Force received approval from EEOC to initiate a 2-year pilot program for expedited processing of EEO complaints called “Compressed, Orderly, Rapid, and Equitable (CORE).” Training was held in October 2016 for over 30 EEO professionals to implement the program.

The Director of EO led an AF-wide Compliance Analysis Working Group (AFCAWG) to improve the timely and efficient processing of EEO complaints.

Throughout FY 2016, AFCARO continued efforts begun in FY 2014 to streamline FADs, including: providing simpler but more instructive model FADs and templates, FAD writing checklists and worksheets – which they intend to share with other interested DoD agencies and activities; increasing more efficient use of software to conduct case law research; personalizing and bookmarking; using various time-saving copying and pasting techniques, and generating reports of previously issued FADs with similar issues and bases (to serve as samples for FADs to be written). A 2015 manpower review resulted in validating a requirement for 12 additional position authorizations for AFCARO, and a request for funded authorizations in FY 2018 is in process.

An EO Business Process Re-engineering project kicked off on 18 Nov 2016. The BPR was initiated by SAF/MR and is a radical redesign of business processes to achieve significant improvements in productivity, quality, and process time. The cornerstone of BPR is transformational thinking. The objectives of BPR are: improving the delivery and execution of EO capabilities, translate strategy into action, and redefine process performance to add more value to our customers. The project will assess current state by conducting subject matter expert interviews gathering data; analyzing all inputs to discover findings, providing opportunities for improvement; facilitating group sessions to unearth root cases in EEO complaint processes; and identifying potential solutions to improve the overall complaint processes.

II. REPORTING REQUIREMENTS

a. *The number of cases in federal court pending or resolved in each fiscal year and arising under each of the respective provisions of the federal antidiscrimination laws and whistleblower protection laws applicable to them as defined in 5 C.F.R. §724.102, in which an employee, former federal employee, or application alleged a violation of these laws, separating data by the provision of law involved (5 C.F.R. 724.302(a)(1)) and the status or disposition of such cases (5 C.F.R. 724.302(a)(2)(i)).*

Fifteen (15) closed Federal court cases, five (5) from settlements and ten (10) by other means. Eleven (11) cases opened during this period; six (6) Title VII, one (1) ADEA; two (2) Rehab Act and two (2) Whistleblower Protection Act. A total of thirty-one (31) cases were pending at the close of FY 16: Fifteen (15) under Title VII; five (5) under ADEA; seven (7) under the Rehab Act; two (2) under the Equal Pay Act and two (2) under the Whistleblower Protection Act. See below.

Statute	Cases Opened in FY16	Cases Resolved in FY16		Cases Pending at Close of FY16
		Settled	Other	
Title VII, Civil Rights Act of 1964 42 U.S.C. 2000e-16	6	3	6	15
Age Discrimination in Employment Act 29 U.S.C. 631, 633a	1	1	2	5
Fair Labor Standards Act of 1938 29 U.S.C. 206(d)	0	0	0	0
Section 501 of Rehabilitation Act 29 U.S.C. 791	2	1	2	7
Equal Pay Act 29 U.S.C. 206(d)	0	0	0	2
Whistleblower Protection Act 5 U.S.C. 2302(b)(1)	2	0	0	2

b. The amount of money required to be reimbursed to the Judgment Fund by the agency for payments as defined in 5 C.F.R. §724.102 (5 C.F.R. 724.302(a)(2)(ii)), and the amount of reimbursement to the Fund for attorney’s fees where such fees have been separately designated (5 C.F.R. 724.302(a)(2)(iii)), and any adjustment needed or made to the budget of the agency to comply with its Judgment Fund reimbursement obligation(s) incurred (5 C.F.R. 724.302(a)(8)).

37K was reimbursed to the Treasury Judgment Fund and no attorney fees were paid.

\$ Reimbursed to Judgment Fund	\$ Attributed to Attorneys’ Fees	Adjustment Needed
\$37,000.00	0	None

c. In connection with the cases identified above, the total number of employees in each fiscal year disciplined (reprimand, suspension without pay, reduction in grade or pay, or removal) and the specific nature of the disciplinary actions taken, separated by the provision(s) of law involved (5 C.F.R. 724.302(a)(3)) and the number of employees in each fiscal year disciplined in accordance with any agency policy, regardless of whether or not the matters are in connection to a federal court case (5 C.F.R. 724.302(a)(5)).

Three (3) employees’ disciplinary actions fell under the provision of No FEAR Act. One (1) resulted in a reprimand, one (1) resulted in a suspension and one (1) resulted in a removal. None were the result of a federal court case.

Statute	# of Employees Disciplined	Nature of Disciplinary Action (e.g., reprimand, dismissal, etc.)
Title VII, Civil Rights Act of 1964 42 U.S.C. 2000e-16	2	Reprimand, Suspension
Age Discrimination in Employment Act 29 U.S.C. 631, 633a	0	N/A
Fair Labor Standards Act of 1938 29 U.S.C. 206(d)	0	N/A
Section 501 of Rehabilitation Act 29 U.S.C. 791	0	N/A
Equal Pay Act 29 U.S.C. 206(d)	0	N/A
Whistleblower Protection Act 5 U.S.C. 2302(b)(1)	1	Removal
Matters that did <u>NOT</u> result in a federal court case	3	N/A

See Appendix A

d. *The final year-end data about discrimination complaints for each fiscal year that was posted in accordance with Equal Employment Opportunity Regulations 29 C.F.R. §§1614.701, et seq. (5 C.F.R. 724.302(a)(4)).*

Year-end data unavailable.

See Appendix B – input link if available on web-site.

e. *A detailed description of the agency’s policy for taking disciplinary action against Federal employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes another prohibited personnel practice revealed in connection with agency investigations of alleged violations of these laws (5 C.F.R. 724.302(a)(6)).*

See Appendix C

f. *The agency’s written plan to train its employees (5 C.F.R. 724.302(a)(9)).*

III. ANALYSIS

An analysis of the information provided in paragraphs (a)(1) through (6) of this section in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with 29 CFR part 1614 subpart F of the Code of Federal Regulations. Such analysis must include: (i) An examination of trends; (ii) Causal analysis; (iii) Practical knowledge gained through experience; and (iv) Any actions planned or taken to improve complaint or civil rights programs of the agency with the goal of eliminating discrimination and retaliation in the workplace (5 C.F.R. 724.302(a)(7)).

The Air Force is unable to provide paragraphs a through d due to non-availability of an automated case management system... See conclusion below.

IV. CONCLUSION

The challenge for FY 2016 was the lack of an automated EEO complaint tracking and reporting tool from February to December 2016, which resulted in Department of Air Force not submitting an EEOC 462 report, and which has resulted in this report being incomplete.

Additionally, the manual tracking tool utilized during the absence of an automated system caused questionable data results, and because the integrity of the program is of most concern to the Air Force, it was decided to remove those areas in the report that could not be validated. The new Air Force Case Management System is expected to go-live on 31 May 2017.

APPENDIX A

The final year-end data about discrimination complaints for each fiscal year that was posted in accordance with Equal Employment Opportunity Regulations 29 C.F.R. §§1614.701, et seq. (5 C.F.R. 724.302(a)(4)).

The Air Force is unable to produce the year-end final report due to non-availability of automated case management system.

APPENDIX B

A detailed description of the agency's policy for taking disciplinary action against Federal employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes another prohibited personnel practice revealed in connection with agency investigations of alleged violations of these laws (5 C.F.R. 724.302(a)(6)).

If the policy is available electronically, please only include the public link. http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-704/afi36-704.pdf

Air Force Instruction (AFI) 36-704, *Discipline and Adverse Actions*, provides instructions for maintaining discipline and for taking disciplinary and adverse actions against certain civilian employees paid with appropriated funds only. Use this AFI with the requirements in Title 5, United States Code, Chapter 75 Subchapters I and II and the Office of Personnel Management's (OPM) implementing regulations in Title 5, Code of Federal Regulations (CFR), Part 752, Subparts A through D, *Adverse Actions*.

The Guide to Disciplinary Actions in AFI 36-704 contains the following two items in the "Causes of Actions:"

"28a. Committing a prohibited personnel practice (see 5 U.S.C. 2302). First Penalty: Reprimand to 5-Day Suspension; Second Penalty: Reprimand to 14-Day Suspension; and Third Penalty: Reprimand to Removal"

"28b. If violation was deliberate. First Penalty: Reprimand to Removal; and Second Penalty: Removal.

NOTE: If a supervisor or manager has engaged in an activity which adversely reflects upon the integrity of the management process, a decision should be made as to whether he or she should be reassigned or changed to lower grade to a position of a different character."

It should be noted that "whistleblower retaliation" is considered a prohibited personnel practice.

APPENDIX C

The agency's written plan to train its employees (5 C.F.R. 724.302(a)(9)).

No FEAR Training Plan

This document sets forth the Department of the Air Force's (DAF) training plan, pursuant to the Notification and Federal Antidiscrimination and Retaliation Act of 2002 ("No FEAR Act"), Public Law 107-174, and 5 CFR Part 724.203.

The No FEAR Act requires that all federal civilian employees receive and complete training with respect to their rights and remedies under the federal antidiscrimination and whistleblower protection laws. While not required by the No FEAR Act, military personnel who supervise federal civilian employees must also complete the training.

All new federal civilian employees must receive and complete No FEAR Act training within 90 days of entry on duty date (EOD). All federal employees are required to complete refresher No FEAR Act training once every two years.

The Advanced Distributed Learning Service (ADLS) is an online tool utilized to conduct the "No FEAR Act" training course. The 30 minute interactive course provides instruction on all topics required by the No FEAR Act. The on-line training satisfies the initial and the biennial training requirement of 5 CFR § 724.203(e). There is a ten question quiz with a minimum passing score of 70%.

For employees without ADLS accounts (e.g., Non-Appropriated Fund employees, Federal Wage System employees, etc.), the Equal Opportunity offices conducts on-site briefings using hard copies of the Air Force approved No FEAR Act training course. Attendees at on-site briefings do not have to take a quiz.

EO offices must train new employees as part of its orientation program within 90 calendar days of each new employee's appointment. Additionally, for all on-site briefings, employees will sign an attendance roster to document their attendance/completion of training. All supervisors are responsible for ensuring that their employees complete the training. The EO offices must track numbers of individuals trained and report the statistical data when required by the Air Force Equal Opportunity Operations Office, or higher headquarters.