

No FEAR Act

THE NOTIFICATION AND FEDERAL EMPLOYEE ANTI-DISCRIMINATION AND
RETALIATION ACT OF 2002

No FEAR Act

What Does This Training Mean to You?

- The No FEAR Act is intended to reduce the incidence of workplace discrimination within the federal government by making agencies and departments more accountable. Discrimination and retaliation in the workplace is illegal.

What is the No Fear Act?

- Congress enacted the Notification and Federal Employee Anti-discrimination and Retaliation Act on May 15, 2002
- The Act requires that “federal agencies be accountable for violations of anti-discrimination and whistleblower protection laws.”
- Federal agencies have an obligation to provide a work environment free of discrimination and retaliation.

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What is Required by the No Fear Act?

- A Federal agency must reimburse the Judgment Fund for payments made to employees, former employees, or applicants for Federal employment because of substantiated violations of Federal employment discrimination laws, Federal whistleblower protection laws, and retaliation claims arising from the assertion of rights under those laws.
- An agency must provide annual notice to its employees, former employees, and applicants for Federal employment concerning the rights and remedies applicable to them under the employment discrimination and whistleblower protection laws.
- At least every two years, an agency must provide training to its employees, including managers, regarding the rights and remedies available under the employment discrimination and whistleblower protection laws. New employees receive initial training upon entering workforce.
- Agency posts on its website summary statistical data pertaining to EEO Complaints filed with the Agency
- Agency submits annual report to EEOC

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Types of Employment Matters Covered?

- The antidiscrimination laws protect you from discrimination concerning the terms and conditions of your employment.
- Below are examples of employment matters covered:
 - Hiring, promotion, pay, leave, awards, assignments, training, suspensions, terminations, etc...
 - Requests for reasonable accommodation for religious reasons or for reasons based on disability.
- Harassment or creation of a hostile work environment based on race, color, religion, sex, national origin, disability, or age is also covered

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Antidiscrimination Laws

- Title VII of the 1964 Civil Rights Act, as amended, protects employees from employment discrimination on the basis of sex, race, color, national origin, or religion. Sexual harassment and pregnancy discrimination are considered forms of sex discrimination and are prohibited by Title VII
- No person shall be retaliated against for opposing any practice(s) prohibited by the antidiscrimination laws.

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Antidiscrimination Laws –Race, National Origin

- Equal employment opportunity cannot be denied to any person because of his/her racial group or perceived racial group, race-linked characteristics (*e.g.*, hair texture, color, facial features), or marriage to or association with someone of a particular race or color. Title VII also prohibits employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals of certain racial groups
- National origin discrimination means treating someone less favorably because he or she comes from a particular place, because of his or her ethnicity or accent (unless the accent materially interferes with job performance), or because it is believed that he or she has a particular ethnic background. National origin discrimination also means treating someone less favorably at work because of marriage or other association with someone of a particular nationality

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Anti-discrimination Laws - Pregnancy

- The Pregnancy Discrimination Act is an amendment to Title VII of the Civil Rights Act of 1964. Discrimination on the basis of pregnancy, childbirth, or related medical conditions constitutes unlawful sex discrimination under Title VII.
- An employer cannot refuse to hire a pregnant woman because of her pregnancy, because of a pregnancy-related condition or because of the prejudices of co-workers, clients, or customers.
- If an employee is temporarily unable to perform her job due to pregnancy, the employer must treat her the same as any other temporarily disabled employee. For example, if the employer allows temporarily disabled employees to modify tasks, perform alternative assignments or take disability leave or leave without pay, the employer also must allow an employee who is temporarily disabled due to pregnancy to do the same.
- Pregnant employees must be permitted to work as long as they are able to perform their jobs. If an employee has been absent from work as a result of a pregnancy-related condition and recovers, her employer may not require her to remain on leave until the baby's birth. An employer also may not have a rule that prohibits an employee from returning to work for a predetermined length of time after childbirth
- Employers must hold open a job for a pregnancy related absence the same length of time jobs are held open for employees on sick or disability leave.

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Anti-discrimination Laws – Religion, Age, Equal Pay

- In addition to protection against discrimination because of religion, Title VII also establishes the agency's duty to provide reasonable accommodation for an employee's religious beliefs unless doing so would impose an undue hardship on the employer
- The Age Discrimination in Employment Act (ADEA) prohibits discrimination against federal employees who are 40 years of age or older, and retaliation against employees who file complaints of age discrimination.
- The Act protects older employees from employment actions based on stereotypes or stigmas associated with age
- The Equal Pay Act of 1963 prohibits federal agencies from paying employees of one sex lower wages than those of the opposite sex for performing substantially equal work.

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Anti-discrimination Laws -Disabilities

- The Rehabilitation Act of 1973 prohibits employment discrimination against federal employees who are qualified individuals with disabilities. In addition, agencies must provide reasonable accommodation for a qualified employee or applicant with a disability.
- The nondiscrimination standards of Title I of the Americans with Disabilities Act apply to federal sector employees under section 501 of the Rehabilitation Act, as amended, and its implementing rules and regulations.
- “Qualified individual with a disability” means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position

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Anti-discrimination Laws - Disabilities

- A “disability” is a physical or mental impairment that substantially limits a major life activity (breathing, walking, seeing, hearing, performing manual tasks).
- The terms disability and qualified individual with a disability do not include individuals currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.
 - Drug means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C 812)
 - However, the terms disability and qualified individual with a disability may not exclude an individual who:
 - Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs; or,
 - Is participating in a supervised rehabilitation program and is no longer engaging in such use; or
 - Is erroneously regarded as engaging in such use, but is not engaging in such use.

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Anti-discrimination Laws - Disabilities

- A temporary or short term illness is not a disability.
- You must be qualified for your position.
- If you cannot perform the essential functions of the job, with or without reasonable accommodation, you are not qualified.
- An employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if it would not impose an "undue hardship" on the operation of the employer's business. Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation.
- An employer is not obligated to provide personal use items such as glasses or hearing aids.

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Anti-discrimination Laws - Disabilities

- The accommodation does not have to be specifically what is requested by the employee. However, it does have to be a reasonable, effective accommodation.
- The Agency has no obligation to change performance standards or to eliminate essential functions of your position as a reasonable accommodation.
- Employers may not ask **job applicants** about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform specific job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in similar jobs. Medical examinations of employees must be job-related and consistent with the employer's business needs.

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Protection Against Reprisal or Retaliation

- The Antidiscrimination laws mentioned above also protect you from reprisal for exercising your rights under those Acts.
- Protected activities may include filing a complaint of discrimination, requesting reasonable accommodation, giving evidence or testimony to an investigator or in a hearing, or complaining about or protesting perceived discrimination against you or another employee.
- Federal law makes it illegal to discriminate against federal employees because of their marital status or political affiliation or to retaliate against employees for exercising their rights.
- If you believe discrimination has occurred on one of these basis, you may file a written complaint with the U.S. Office of Special Counsel. You may also pursue such a complaint through the administrative grievance system or the negotiated grievance procedures, if applicable

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If You Believe Discrimination Occurred?

- You must contact an EEO counselor or the SEEM within *45 calendar days* of the date of the matter alleged to be discriminatory or, in the case of personnel action, within 45 days of the effective date of the action, or when you first became aware of the alleged discrimination.
- The names and telephone numbers of EEO counselors and SEEM are available on the IDNG HRO web site, or by contacting the SEEM.
- The counselor will try to resolve the complaint and may offer you an opportunity to use Alternative Dispute Resolution (ADR) to resolve your complaint.
- If the complaint is not resolved, you will be provided a Notice of Right to File a Complaint. You must file within *15 calendar days* from receipt of the Notice

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Manager and Supervisor Responsibilities:

- Ensure that there is a legitimate, non-discriminatory reason for the actions taken.
- Ensure employees are treated fairly and equitably.
- Provide reasonable accommodation to qualified individuals with disabilities. Check with the Disability Program Manager or SEEM if you have questions about whether reasonable accommodation is appropriate.
- Only disclose medical information to officials with a need to know and keep medical information separate from personnel files.
- Provide a reasonable amount of official time to an employee who requests time to work on an EEO complaint.
- Cooperate with an EEO counselor or EEO investigator. Failure to do so may result in disciplinary action.
- Ensure employees are not subjected to a hostile work environment because of their race, color, religion, national origin, age, sex or disability.
- Act on all complaints of harassment-The Agency has affirmative action responsibility to stop Harassment!

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Where Do I Go For More Information?

- Questions or concerns about Discrimination Laws, contact the SEEM.
- For a detailed explanation of the EEO complaint process, visit the web at https://www.eeoc.gov/federal/fed_employees/complaint_overview.cfm
- Information regarding the Whistleblower Act and Protections can be obtained from the IG or SEEM

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Questions?

State Equal Employment Manager

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