



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

Fiscal Year 2016

Enclosure

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Attachment:
Fiscal Year 2016 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) 2016 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 byproduct, source, and special nuclear materials to ensure adequate protection of public health and safety, to promote the common defense and security, and to protect the environment. A five-member Commission heads the NRC. 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 2016, the agency had approximately 3,500 permanent employees. The NRC 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 posted 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 twelfth in mid-sized agencies as one of the best places to work in the Federal Government based on the results of the 2016 Federal Employee Viewpoint Survey. The NRC was ranked sixth for its support for diversity. National publications have highlighted the NRC's commitment to diversity.

In FY 2016, there was a small decrease in both formal and informal complaint activity as compared to that in FY 2015. 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. Age, reprisal, and sex discrimination were the most frequently filed bases. The most frequently claimed issues alleged were harassment (nonsexual), assignment of duties, and performance evaluations or appraisals. The NRC issued five final agency decisions during FY 2016.

During FY 2016, the agency had one equal employment opportunity (EEO) lawsuit in Federal District Court, which was decided by the court in favor of the agency on February 7, 2017. 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 policy). OCHCO's efforts have been instrumental in encouraging early intervention to resolve workplace disputes. During FY 2016, 33 claims of harassment were filed under the policy. Of these, there was one finding of harassment for which the employee was issued an official reprimand. Two cases filed in FY 2015 were closed in FY 2016. Both of the FY 2015 allegations had no findings of harassment.

In FY 2016, there was one case in Federal District Court in conjunction with the Whistleblower Protection Act of 1989, as amended (WPA). In February of 2017, the case was remanded back to the Merit Systems Protection Board, and the agency is awaiting a decision from the board.

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 of 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 Comprehensive Diversity Management Plan, which includes goals and strategies to achieve a positive and discrimination-free work environment
- continuing implementation of a Diversity Management and Inclusion Council that consists of agency executives, 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
- publishing an agencywide announcement on whistleblower protection and prohibited personnel practices
- 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. § 2302(c)
- developing and implementing training programs and briefings for managers and employees on the No FEAR Act, EEO, diversity management, NRC anti-harassment policy, WPA, prohibited personnel practices, reasonable accommodation, and alternative dispute resolution (ADR)
- implementing the Diversity Dialogue Project, which allows small groups of managers and employees to participate in forums to discuss diversity topics in an open environment
- conducting annual internal EEO, affirmative employment, and diversity management assessments to determine compliance with the U.S. 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
- publishing annual agencywide announcements on the EEO Complaint Process and the EEO and Diversity Policy Statement
- training collateral duty EEO counselors, Civil Rights Office staff, managers, supervisors, and employees to understand that sexual orientation claims are now to be processed

under Title 29 of the *Code of Federal Regulations* (29 CFR) Part 1614, “Federal Sector Equal Employment Opportunity,” as decided by the EEO Commission

- designating an ombudsman in the Office of the Inspector General under the Whistleblower Protection Enforcement Act

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. The report is submitted 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 website a summary of statistical data related 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.

The NRC’s Office of Small Business and Civil Rights (SBCR) is responsible for administering and ensuring agency 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 the Inspector General, OCHCO, and the Office of the General Counsel also play a role in implementing the No FEAR Act for NRC employees.

IV. Data Posted for Fiscal Year 2016

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

The NRC's informal and formal complaint activity is relatively low; less than 1 percent of the agency's workforce filed informal EEO complaints, and approximately 0.5 percent filed formal 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 initiation of the informal complaint process. The following sections provide more information on the informal and formal complaints filed against the agency.

A. Fiscal Year 2016 Informal and Formal Complaint Activity

During FY 2016, a total of 27 new informal complaints were filed, and 1 informal complaint was carried over from the previous fiscal year (see Figure 1). Of the total informal complaints, 23 were closed during FY 2016. A total of 17 new formal complaints were filed against the agency. Twenty-three formal complaints were carried over from the previous fiscal year. Of the total formal complaints, 19 were closed during FY 2016.

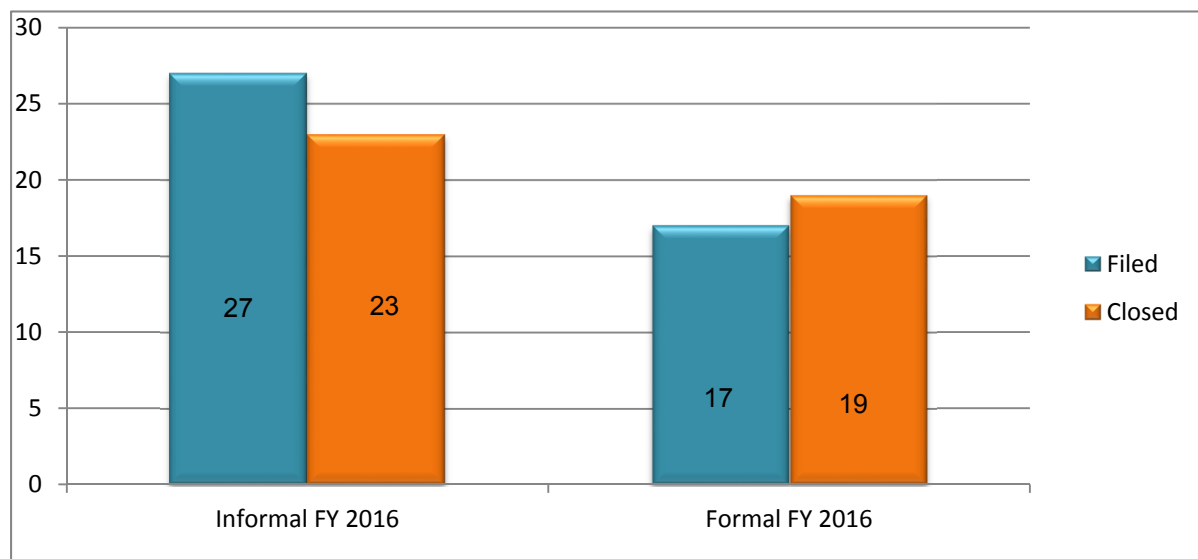


Figure 1: FY 2016 informal and formal complaint activity

During FY 2016, the agency investigated 11 cases, all of which were completed in accordance with EEOC regulatory timeframes. As of the end of FY 2016, nine cases were pending investigation. The agency issued five final agency decisions during FY 2016 and had no findings of discrimination. In FY 2016, the agency settled eight formal and three informal cases. The NRC attributes the relatively low complaint activity to the use of early intervention to resolve workplace disputes, the agency's ADR program, and agency-provided No FEAR Act training for all employees. The NRC also uses internal expertise to train managers and supervisors on EEO and diversity. All new managers and supervisors receive 2 days of training, and all present managers and supervisors receive a full day of training on this subject every 3 years. The agency also emphasizes excellent customer service and responsiveness to issues.

B. Bases and Issues

The FY 2016 complaint data show that complainants identified age, reprisal, and sex as the most frequently filed bases for complaints. Additionally, the data shows 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. (See the attachment for details.)

V. Civil Cases—Reimbursement to the Judgment Fund

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

Under the reporting requirements of 5 CFR Part 724, “Implementation of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,” the NRC reports that, in FY 2016, the agency had one EEO lawsuit in Federal District Court, which was decided by the court in favor of the agency on February 7, 2017, and the agency made no reimbursements to the Judgment Fund.

VI. Disciplinary Actions

Section 203(a)(6) of the No FEAR Act requires each agency to include in its annual report a detailed description of 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 the agency to 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 2016, 33 claims of harassment were filed under the Policy and Procedure for Preventing and Eliminating Harassing Conduct in the Workplace. Of these, there was one finding of harassment for which the employee was issued an official reprimand. Two of the cases filed in 2015 were closed in FY 2016. Both of the FY 2015 allegations had no findings of harassment.

In FY 2016, there was one case in Federal District Court in conjunction with the WPA. In February of 2017, the case was remanded back to the Merit Systems Protection Board, and the agency is awaiting a decision from the board.

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 2016, 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 was rated as the agency’s most effective online training, and OPM deemed it “best in class.” Ninety-nine 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.

As compared to FY 2015, an analysis of complaints filed during FY 2016 shows a small decrease in the number of both informal and formal complaints filed. 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 11 investigations, all were processed within the EEOC regulatory timeframes. The agency's average processing time for investigations decreased from 262 calendar days in FY 2015 to 224 calendar days in FY 2016.

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 EEOC's revised Management Directive 110, "Federal Sector Complaints 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. The agency offered ADR to all parties in both the informal and formal complaint processes in FY 2016. 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. 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.