



Notification and Federal Employee Antidiscrimination and Retaliation Act Report

FISCAL YEAR 2022

Enclosure

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I. Executive Summary

The U.S. Nuclear Regulatory Commission (NRC or agency) provides its annual “Notification and Federal Employee Antidiscrimination and Retaliation Act Report” to Congress for fiscal year (FY) 2022 as required by section 203 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law (Pub. L.) 107-174. This report summarizes the agency’s activities to ensure accountability for antidiscrimination and whistleblower laws related to employment.

The NRC is an independent agency established by the Energy Reorganization Act of 1974 that began operations in 1975 as a successor to the licensing and regulatory activities of the Atomic Energy Commission. The NRC’s mission is to license and regulate the Nation’s civilian use of radioactive materials to provide reasonable assurance of adequate protection of public health and safety, to promote the common defense and security, and to protect the environment.

The NRC is headed by five Commissioners appointed by the President of the United States, and confirmed by the U.S. Senate, to serve staggered 5-year terms. The President designates one of the Commissioners to serve as Chair. The Commission, as a whole, formulates policies and regulations governing the safety and security of nuclear facilities and radioactive materials, issues orders to licensees, and adjudicates legal matters brought before it. The Executive Director for Operations carries out the policies and decisions of the Commission.

During FY 2022, the agency had approximately 2,716 permanent employees. NRC Headquarters is in Rockville, Maryland, and NRC regional offices are in King of Prussia, Pennsylvania; Atlanta, Georgia; Lisle, Illinois; and Arlington, Texas. The agency’s Technical Training Center is located in Chattanooga, Tennessee. NRC’s Resident Inspectors are also working at the operating nuclear power plants and Category I fuel facilities throughout the country. With NRC staff members working at this variety of locations, the agency must be especially attentive to providing all employees proper notification of their rights under the No FEAR Act through online training and agency network announcements. The agency continues to be successful in this task.

Since the enactment of the No FEAR Act, the NRC continues to realize many positive changes in the workplace. Examples include the following:

- Demonstrates continuous support for the No FEAR Act by the Commission and senior agency executives through policy statements and discussions in town hall and key meetings.
- Implemented the “Agency Desired Culture Initiative” to align the NRC’s workplace culture with its transformation vision to ensure that it is consistently valuing and supporting behaviors and norms that help the agency best accomplish its mission. Culture sets the tone and expectations for how staff members interact with each other; how the agency makes decisions; how the agency gets work done; and how staff members are expected to innovate and collaborate with one another.
- Continues to support and promote the NRC’s Inclusive Diversity Strategic Plan, which includes the diversity, equity, inclusion, and accessibility (DEIA) goals and strategies to achieve a positive and discrimination-free environment.

- Revised the NRC’s “Anti-Harassment Policy and Procedures for Preventing and Eliminating Harassing Conduct in the Workplace” to ensure full compliance with requirements of the Equal Employment Opportunity Commission (EEOC).
- Maintains the Diversity Management and Inclusion Council, consisting of agency executives, Equal Employment Opportunity (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.
- Demonstrates its commitment to the Initiative on Civility, Awareness, Respect and Engagement, known as “iCARE,” to assist with agency efforts to facilitate deeper understandings and appreciation of cultural diversity and inclusion-related issues among employees and promote individual personal and professional growth and effectiveness through the processes of listening, introspection, and building acceptance for differing perspectives.
- Continues to brief the Commission biannually on the accomplishments and plans of the agency’s EEO affirmative employment and diversity management program.
- Continues to uphold the 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.
- Posts notices on whistleblower protection rights in all facilities, as required by the Office of Special Counsel, for agency certification under Title 5 of the United States Code (U.S.C.) section 2302(c).
- Develops and implements training programs and briefings for managers and employees on the No FEAR Act, EEO, diversity management, the NRC’s antiharassment policy, reasonable accommodation, and alternative dispute resolution (ADR).
- Continues with DIALOGUE—Diversity Inclusion Awareness Leading Organizational Growth, Understanding, and Engagement—in which small groups of managers and employees participate in facilitated forums to discuss diversity topics in an open environment.
- Remains committed to the NRC Leadership Model, which emphasizes observable behaviors that are representative of leadership characteristics, including receptivity to new ideas and diversity of thought.
- Continues to support a workplace where diverse views, alternative approaches, critical thinking, collaborative problem solving, unbiased evaluations, and honest feedback are encouraged, recognized, and valued.
- Demonstrates its commitment to the agency’s reasonable accommodation policies and procedures in compliance with amendments to the regulations governing section 501 of the Rehabilitation Act, to include the provision of personal assistant services.
- Continues to process EEO complaints promptly to ensure that cases are dispositioned in a timely manner.

- Continues to facilitate the “Speed of Trust” initiative, consisting of workshops to provide opportunities for strengthening mutual trust among agency leaders, managers and supervisors, and employees.
- Continues to raise awareness of the agency’s ADR program as a voluntary option to resolve disputes and conflicts at the earliest opportunity and at the lowest possible level.

In addition, the NRC’s Office of Small Business and Civil Rights (SBCR) offers a new way for employees to make an EEO contact or file a complaint through the use of the e-File Secure Portal, where employees can electronically contact an EEO counselor, file an informal complaint, request ADR, submit documents, and receive real-time status updates on their EEO complaints.

SBCR also continues to maintain its internal software “Entellitrak,” leveraging technology to assist with the processing of EEO complaints of discrimination, harassment, and retaliation in the workplace. Entellitrak is EEO case management software that allows SBCR to effectively manage workloads, improve its reporting capabilities, and maintain data integrity. Maintenance included an upgrade complete with built-in business rules to ensure compliance with the agency’s mandatory reporting requirements.

Finally, the NRC encourages applications from across the agency and federal government to the agency’s Senior Executive Service (SES) Candidate Development Program in an effort to draw a diverse pool of candidates.

II. Introduction

The NRC’s overall responsibility is to protect public health and safety in the civilian uses of radioactive materials. It has the following main regulatory functions:

- Establish standards and regulations.
- Issue licenses, certificates, and permits.
- Ensure compliance with established standards and regulations.
- Issue adjudicatory decisions.
- Conduct research, adjudication, and risk and performance assessments to support regulatory decisions.

The NRC carries out these regulatory functions to regulate nuclear power plants, fuel cycle facilities, and other civilian uses of radioactive materials, such as nuclear medicine programs at hospitals and academic activities at educational and research institutions. The NRC also uses these functions to regulate such industrial applications as gauges, irradiators, and other devices that contain radioactive material. The NRC also licenses the import and export of radioactive materials and works closely with other Federal agencies and international counterparts to enhance global nuclear safety and security.

The Director of SBCR has been delegated the overall responsibility for programs and activities related to small businesses; civil rights; diversity, equity, and inclusion; and minority-serving institutions. SBCR provides agencywide guidance and standards for establishing and maintaining effective programs and activities. To meet agency objectives, SBCR assists the NRC's leadership in shaping policies to protect and ensure the principles of EEO for all employees by developing policies and procedures; generating workforce analysis and responses to reporting requirements; conducting annual multiyear studies and research; delivering trainings and briefings; conducting oversight and monitoring; processing EEO complaints; integrating civil rights, diversity, equity, inclusion, and engagement into the NRC's initiatives and activities; and submitting annual reports to internal and external customers, constituents, and stakeholders. As part of its responsibility for preparing the agency's annual No FEAR Act report, SBCR also collaborates with the Office of the Inspector General (OIG), the Office of the Chief Human Capital Officer (OCHCO), and the Office of the General Counsel (OGC), which also have major roles in implementing the No FEAR Act for the NRC.

This annual "Notification and Federal Employee Antidiscrimination and Retaliation Act" report to Congress for FY 2022 covers the period of October 1, 2021, to September 30, 2022. During FY 2022, the NRC employed 2,716 permanent employees. There were 22 precomplaint (informal) activities initiated, 14 formal complaints filed, and 34 EEO contacts resulting in no filings being made in FY 2022. Disability, race, reprisal/retaliation, sex, and age were the most common bases for complaints filed in FY 2022. The most prevalent issues during this reporting period were harassment (nonsexual), time and attendance, terms and conditions, performance appraisal, and promotion/nonselection.

III. Purpose of This Report

On May 15, 2002, President George W. Bush signed the Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR Act), which increases Federal agency accountability for acts of discrimination or reprisal against employees. This act, which took effect on October 1, 2003, makes Federal agencies individually accountable for violations of antidiscrimination and whistleblower protection laws related to employment and ensures that employees, applicants for employment, and former employees know their rights under antidiscrimination laws and the Whistleblower Protection Act. Section 203 of the No FEAR Act specifically requires that, not later than 180 days after the end of each FY, each Federal agency must submit to the Speaker of the House of Representatives, the President pro tempore of the 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 EEOC, and the Attorney General an annual report with specific information relating to each agency's EEO complaints activity.

Regulations from the U.S. Office of Personnel Management (OPM) implementing the No FEAR Act, in Title 5 of the *Code of Federal Regulations* (5 CFR) Part 724, "Implementation of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," Subpart C, "Annual Report," also require the submission of this annual report to the Director of OPM.

The annual No FEAR Act report must provide the following information:

- the number, status, and disposition of Federal court cases, pending or resolved, arising under the laws covered by the No FEAR Act

- Judgment Fund reimbursements and adjustments to the NRC budget to meet reimbursement requirements
- the number and type of disciplinary actions related to discrimination, retaliation, or harassment and the NRC's policy relating to appropriate disciplinary action
- final year-end summary data related to the NRC's EEO complaint activity for the FY
- an analysis of trends, causation, and practical knowledge gained through experience
- actions planned or taken to improve the NRC's discrimination complaint program
- the agency's No FEAR Act training plan

IV. No FEAR Act Legal Coverage

The laws covered in the No FEAR Act include the following:

- Title VII of the Civil Rights Act of 1964, as amended, as it applies to Federal agencies, 42 U.S.C. section 2000e-16 (race, color, religion, sex, national origin, and reprisal)
- the Age Discrimination in Employment Act of 1967, as amended, as it applies to Federal government employment, 29 U.S.C. section 633a (age (40 and over) and reprisal)
- the Equal Pay Act of 1963, as amended, 29 U.S.C. section 206(d) (sex-based wage differentials and reprisal)
- section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. section 791 (physical and mental disabilities and reprisal)
- the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. section 2000ff et seq. (genetic information about an individual or an individual's family members and reprisal)
- the Civil Service Reform Act of 1978, 5 U.S.C. section 2302 (prohibited personnel practices in connection with whistleblowing)
- the Whistleblower Protection Act of 1989, 5 U.S.C. section 2302b, Pub. L. 101-12 as amended (protects Federal whistleblowers who work for the Federal Government and report the possible existence of an activity constituting a violation of law, rules, or regulations or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health and safety)
- Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020 (Pub. L 107-174) (amends the No FEAR Act to strengthen Federal antidiscrimination laws enforced by the EEOC and expand accountability within the Federal Government)

V. Data Analysis and Results¹

¹ This annual No Fear Act Report to Congress is comprised of data taken from the NRC's Equal Employment Opportunity Commission (EEOC) certified Annual Federal Equal Employment Opportunity

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 ([No FEAR Act](#)). The agency updates this information no later than 30 calendar days after the end of each quarter. Appendix 7 contains more details.

The NRC’s informal and formal complaint activity is relatively low in comparison to that of other agencies of similar size—less than 1.0 percent of the agency’s total workforce filed informal EEO complaints, and approximately 0.5 percent filed formal complaints. These results can be attributed to the NRC’s “Agency Desired Culture Initiative” and continuing efforts to reeducate the workforce and provide robust training and cultural awareness seminars on the importance of EEO/civil rights, DEIA, and engagement initiatives for all employees. The following sections provide more information on the informal and formal complaints filed against the agency.

A. EEO Complaint Activity and Disposition

During FY 2022, 22 precomplaints (informal complaints) were initiated, and 4 precomplaints were on-hand at the beginning of the reporting period (i.e., remained from the previous FY), for a total of 26 precomplaints. Of the 26 precomplaints, 22 were completed/counseling ended during FY 2022. Individuals filed 14 new formal complaints against the agency, and 34 were on-hand at the beginning of the FY, for a total of 48 formal complaints. A total of 24 formal complaints were closed during FY 2022.

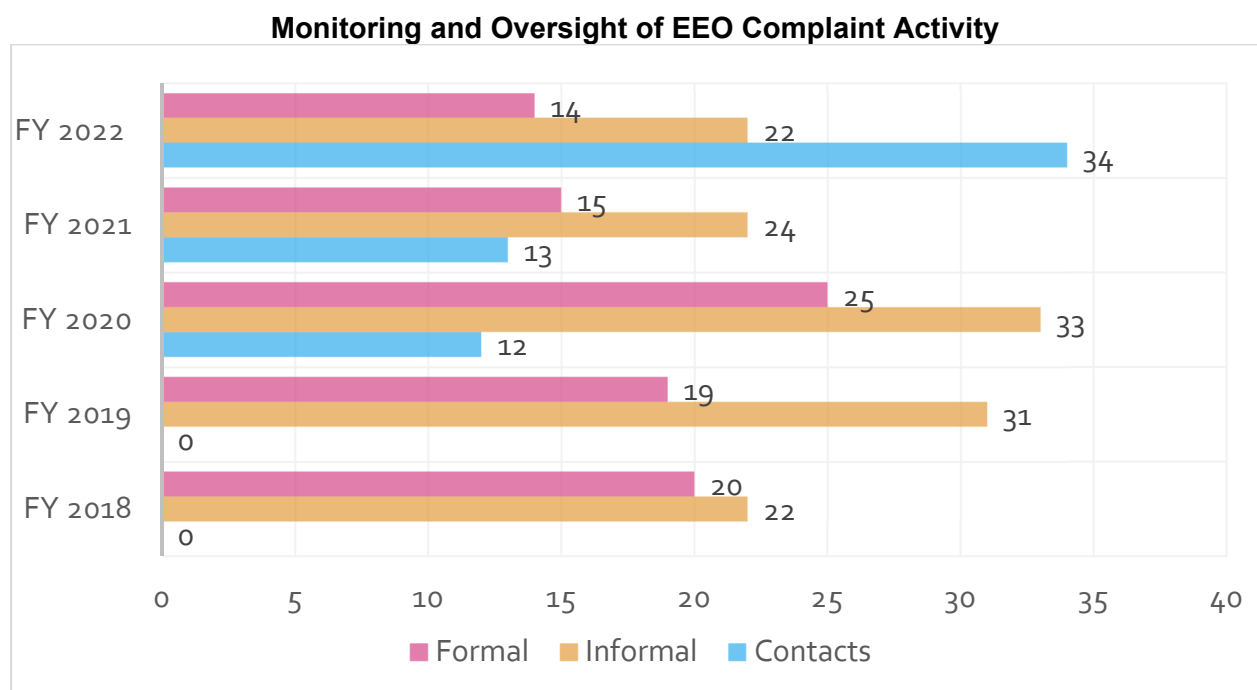


Figure 1: Precomplaint (Informal) and Formal Complaint Activity

During FY 2022, the agency completed a total of 9 out of the 11 investigations in accordance with EEOC regulatory timeframes. At the end of FY 2022, seven complaints were pending

Statistical Report of Discrimination Complaints (EEOC Form 462) and data required to be reported in the end of fiscal year No Fear Act Report. The data in this No Fear Act Report varies from the data in Appendix 7 to this report, which is comprised of that set of No Fear Act data required to be displayed on the NRC’s public Web site.

investigation. The agency issued four final agency decisions during FY 2022 and had no findings of discrimination. In comparison to other Federal agencies of similar size, the NRC's complaint activity is relatively low, which is attributed to the use of early and continuing intervention to resolve workplace disputes, the agency's ADR program, and the agency's continuing efforts to provide No FEAR Act training to all employees. The NRC uses internal expertise to train managers, supervisors, and team leaders on topics related to EEO and DEIA. All managers, supervisors, and team leaders receive 2 full days of EEO and diversity training, in addition to refresher training every 3 years on various EEO and DEIA-related topics.

B. Bases and Issues

The FY 2022 complaint data show that disability, race, reprisal/retaliation, sex, and age were the most frequently filed bases for complaints. Additionally, the data show that harassment (nonsexual), time and attendance, terms and conditions, performance appraisal, and promotion/nonselection were the most common issues identified in the complaints filed. Note that complaints may be filed alleging multiple bases and issues, and the sum of the bases reflected in the complaint data may not equal the total number of complaints filed. Appendix 7 provides details.

VI. Civil Cases—Reimbursement to the Judgment Fund

Section 203(a)(1) of the No FEAR Act requires each agency to state in its annual report the number of civil cases arising from the Whistleblower Protection Act and antidiscrimination laws, the status of such cases, and the amount of money reimbursed to the Judgment Fund. During FY 2022, the agency had five EEO lawsuits pending before Federal district courts, one of which was dismissed. These cases were brought under Title VII of the Civil Rights Act of 1964.

Pursuant to the reporting requirements of 5 CFR Part 724, the NRC reports that, in FY 2022, it made no reimbursements to the Judgment Fund in connection with any lawsuits.

VII. Disciplinary Actions

Section 203(a)(6) of the No FEAR Act requires the annual report of each agency to describe 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 No FEAR Act requires that the agency report the number of employees disciplined in accordance with such policy and the specific nature of the disciplinary action.

The NRC's antidiscrimination policy provides for appropriate disciplinary action to be taken 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. During FY 2022, 26 claims of antiharassment policy violations were filed, which resulted in no findings. The most commonly alleged basis under the agency's antiharassment program was race, followed closely by sex (gender).

VIII. No FEAR Act Training Plan

The NRC adheres to the requirements of the No FEAR Act by providing biennial training for all its employees. A global message is issued to all employees announcing the training cycle, which for this reporting period was 2022. In addition, the NRC issues its No FEAR Act notice annually to all employees through the agency's internal and external websites to inform them of the available rights and protections under Federal antidiscrimination and whistleblower protection laws.

The NRC revised its No FEAR Act training in 2022 to clarify changes to the EEOC case law and whistleblower regulations. SBCR examined trends and incorporated information in the revised biennial No FEAR Act training course on issues relating to harassment, reprisal/retaliation, and reasonable accommodation. In FY 2022, the NRC administered the No FEAR Act training to all employees, including managers, supervisors, and team leaders, achieving a completion rate of 98 percent. The NRC will continue to track and monitor the number of employees completing the training and issue notifications to those who have not completed it within the mandatory training cycle. All new NRC employees are advised during the new employee orientation program of the requirement to complete their No FEAR Act training within 90 days of onboarding.

IX. Trends, Analysis, and Practical Knowledge

Section 203(a)(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.

In reaffirming the NRC's unwavering commitment to the principles of EEO and the elimination of unlawful discrimination, harassment, and reprisal/retaliation in the workplace, SBCR briefed the Commission on the state of the EEO program, provided awareness of issues and trends, and solicited Commission perspectives and recommendations for strengthening the agency's EEO program.

Despite the spike in EEO complaint activity during the FY 2019 and FY 2020 reporting periods, the agency's complaint activity has been consistently stable and low in comparison to that for other Federal agencies of similar size.

As shown in the agency's annual EEOC Form 462 reporting for FY 2022, the agency's EEO complaint activity remained stable for precomplaints (informal), from 24 in FY 2021 to 22 in FY 2022, and for formal complaints, from 15 in FY 2021 to 14 in FY 2022. SBCR continues to be a resilient and collaborative resource to the agency. In FY 2022, SBCR's outreach efforts in supporting the agency's EEO program included (1) hosting EEO and diversity training for managers, supervisors, and team leaders with OGC and OCHCO on affirmative employment, DEIA, merit system principles and prohibited personnel practices, unconscious/implicit bias, reasonable accommodation, harassment, the EEO complaint process, and ADR, (2) conducting lunch-n-learns on various topics related to EEO and civil rights, (3) leveraging advanced technology by launching a new web-based EEO case management system (Entellitrak) and NRC EEO eFile Secure Portal, (4) issuing the EEO and ADR policy statements endorsed by the Chair, (5) leading the way as the ambassadors to promoting the use of inclusive language throughout the agency, (6) revising policy guidance on the use of official time in the EEO complaint process, and (7) issuing a newly designed EEO program poster and EEO complaint process flow chart.

Disability, race, reprisal/retaliation, sex (gender), and age were the most cited bases for NRC formal complaints for FY 2022, constituting approximately 85 percent of the formal complaint filings. While reprisal/retaliation still remains one of the most asserted bases (generally those having prior EEO activity or opposition to an employment policy or practice) over the past few years, it should be noted that disability and race were the top two protected bases cited for this reporting period.

Harassment (nonsexual), time and attendance, terms and conditions, performance appraisal, and promotion/nonselection were the most common issues identified in the complaints filed in FY 2022. As such, the NRC continues to work with its partners in OCHCO, OGC, and OIG to cultivate a workplace that is free from all forms of harassing behavior and misconduct, discrimination, and retaliation.

Of the 11 total investigations completed in FY 2022, two were untimely, as they were not processed within the EEOC regulatory timeframes. However, the agency's average processing time for investigations decreased from 283 calendar days in FY 2021 to 231 calendar days in FY 2022. At the end of FY 2022, seven complaints were pending investigation. The agency will continue to improve its internal controls measures to ultimately meet the regulatory timeframes for completing investigations.

In addition, the NRC continues to focus on collecting and analyzing workforce data to comply with the EEOC's guidelines for a model EEO program, particularly by incorporating mechanisms for identifying triggers, analyzing barriers, and developing action plans to eliminate barriers.

The NRC, in accordance with EEOC Management Directive 715, routinely conducts barrier analyses in which it evaluates groups that show low participation rates in the workforce, focusing on promotions, separations, awards, and developmental opportunities.

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 EEO, civil rights, and DEIA.

X. Conclusion

The NRC's meaningful and measurable accomplishments highlighted in this report are due in part to the No FEAR Act and related training, as well as strong and clear policy statements on EEO, ADR, diversity and inclusion, antiharassment, whistleblower rights, and reasonable accommodation procedures. The NRC continues to hold management officials accountable for compliance with EEO principles and policies by the placement of EEO critical elements in all SES performance appraisals and standards. Additionally, the NRC offers annual EEO and diversity training for managers and supervisors and periodic antiharassment training to its entire workforce. The NRC will continue report on its commitment to merit systems principles and protect all employees from prohibited personnel practices under the law.