

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop N2-22-16
Baltimore, Maryland 21244-1850



Office of Equal Opportunity and Civil Rights

DATE: May 26, 2016

TO: All CMS Employees

FROM: Anita Pinder /s/
Director
Office of Equal Opportunity and Civil Rights (OEOCR)

SUBJECT: Notification and Federal Employee Antidiscrimination and Retaliation Act Notice

As a CMS employee, you are afforded protection under the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (“No FEAR Act” or “Act”). The Act requires that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws. The Act also requires that each agency provide training to its staff and provide this notice to Federal employees, former Federal employees, and applicants for Federal employment to inform them of their rights and protections available under Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex (including pregnancy, gender identity and sexual orientation), national origin, age, disability, genetic information, marital status or political affiliation. One or more statutes prohibit discrimination on these bases.¹ If you believe that you have been the victim of unlawful discrimination, it is important that you contact an Equal Employment Opportunity (EEO) Counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action. You may reach a CMS EEO Counselor by calling 410-786-5110.

If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) by mail at 1730 M Street N.W., Suite 218, Washington, D.C. 20036-4505, or online through the OSC website at <http://www.osc.gov>. In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through the Agency's administrative or negotiated grievance procedures.

Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or threaten to take a personnel action against an employee or applicant 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 United States Code (U.S.C.) 2302(b) (8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (using Form OSC-11) with the U.S. Office of Special Counsel by mail at 1730 M Street N.W., Suite 218, Washington, D.C. 20036-4505, or online through the OSC website at <http://www.osc.gov>.

Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection 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.

Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal antidiscrimination and whistleblower protection laws 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 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.

Required Training

All employees must receive initial training on the No FEAR Act within their first 90 days of appointment and biannually thereafter. The training educates employees on their rights and the remedies available under the provisions of the No FEAR Act. CMS employees will receive notice of this training and should register for the training via the Health and Human Services (HHS) Learning Portal at <https://lms.learning.hhs.gov>. Users should access the HHS Learning

Portal using Google Chrome. If you do not have Google Chrome installed, please call the CMS IT Service Desk at 410-786-2580 or 800-562-1963 to request the application.

If you have questions regarding the No FEAR Act training or if you need a reasonable accommodation in order to access and/or complete the training, please contact LaTrina Scott, EEO Training Coordinator, OEOCR at 410-786-5119. If you experience technical difficulties in accessing the HHS Learning Portal, contact the HHS Learning Portal Help Desk at 1-866-967-3095.

Additional Information

For further information regarding the No FEAR Act, refer to 5 CFR Part 724 at <http://www.ecfr.gov> or contact the Office of Equal Opportunity and Civil Rights at 410-786-5110. Additional information regarding Federal antidiscrimination laws, whistleblower protections, and retaliation laws can be found at the EEOC website at <http://www.eeoc.gov> and the OSC website at <http://www.osc.gov>.

Existing Rights Unchanged

Pursuant to Section 205 of the No FEAR Act, neither the Act nor this notice 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).

¹Section 5 U.S.C. 2302(b)(1) Prohibited Personnel Practices

29 U.S.C. 206(d) Equal Pay Act

29 U.S.C. 631, 29 U.S.C. 633a Age Discrimination in Employment Act

29 U.S.C. 791 Rehabilitation Act

42 U.S.C. 2000e-16 Title VII of the Civil Rights Act and the Lilly Ledbetter Fair Pay Act

42 U.S.C. 12101 Americans with Disabilities Act and Amendments

Genetic Information Nondiscrimination Act, Public Law 110–233