

Department of Veterans Affairs
No FEAR Act Training

This presentation will:

- Provide an overview of the No FEAR Act
- Explain how the No FEAR Act impacts the VA, managers, and employees; and
- Review your rights and remedies under antidiscrimination and whistleblower protection laws.

Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002

Congress enacted the “Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002” on May 15, 2002.

Congress found that Federal agencies cannot operate effectively if those agencies practice or tolerate discrimination.

The Act requires accountability by Federal agencies for violations of antidiscrimination and whistleblower protection laws.

The Act requires VA to:

- Provide written notice to all employees, former employees and applicants for VA employment of the rights and protections available under Federal antidiscrimination and whistleblower protection laws.

The Act requires VA to:

- Ensure managers have adequate training in the management of a diverse workforce and in dispute resolution and other essential communication skills. The Secretary is committed to providing this training every two years.
- Provide training to all employees regarding the rights and remedies under the existing antidiscrimination and whistleblower protection laws.

To improve compliance with existing laws, the Act also requires the VA to do the following:

- Report annually to congress data regarding the numbers and outcomes of cases where discrimination was alleged to have occurred.
- Post on its public Web site summary statistical data relating to equal employment opportunity complaints.
- Finally, the Act requires the VA to reimburse the General Fund of the Treasury for monies paid through court judgments, awards and/or settlements relating to discrimination and whistleblower violations.

In doing so, the VA cannot reduce employee compensation, benefits, or the size of the workforce or use reductions-in-force or furloughs to pay for the required reimbursements.

Existing Rights Unchanged

The No FEAR Act does not create, expand, or reduce any rights otherwise available to you under the existing laws of the United States.

The No FEAR Act is intended to strengthen the enforcement of the laws that are currently in place to protect you.

To understand your rights and protections as a Federal employee, we will now review the various types of antidiscrimination and whistleblower protection laws enforced by VA and the remedies available to you should you feel your rights have been violated.

Antidiscrimination Laws

- | | |
|-------------------|--------------------------|
| • Race | • Age |
| • Color | • Disability |
| • Religion | • Marital status* |
| • Sex | • Political affiliation* |
| • National origin | |

- Title VII of the Civil Rights Act of 1964
- Equal Pay Act of 1963
- Age Discrimination in Employment Act of 1967
- Sections 501 and 505 of the Rehabilitation Act of 1973
- Civil Rights Act of 1991

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin, or disability you must:

Contact an ORM (Office of Resolution Management) Equal Employment Opportunity (EEO) counselor at 1 888 RES EEO1, TDD 1 888 626-9008, within 45 calendar days of the alleged discriminatory action or, in the case of a personnel action, within 45 days of the effective date of the action.

If you believe that you have been the victim of unlawful discrimination on the basis of age, you must:

Contact an Counselor with the VA's Office or Resolution Management (ORM) as noted on the previous slide; or

Give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 days of the alleged discriminatory action.

If you believe you have been discriminated against based on marital status or political affiliation, you must:

File a written complaint with the U.S. Office of Special Counsel (OSC); or
In some cases, you may file a grievance under the VA grievance procedures or the negotiated procedures for bargaining unit employees.

In some circumstances you may have as an alternative to these remedies, the option to file a grievance through either the:

- VA's administrative grievance procedures; or
- The negotiated grievance procedures contained in your collective bargaining agreement (if your position is covered by a union).

You may find information regarding the VA administrative grievance procedures in VA Handbook 5021, Part IV, or by contacting your local human resources office.

If you are a bargaining unit employee, you may find information regarding the negotiated grievance procedures in your union contract or by contacting a union representative or your local human resources office.

Whistleblower Protection Laws

Under the whistleblower protection laws, a VA manager or supervisor is prohibited from using his/her authority to *take* a personnel action, to *threaten* to take an action, or to *not take* an action because the employee or applicant made a protected disclosure.

What is a protected disclosure?

A protected disclosure would be information that the employee reasonably believed to be:

- Evidence of violation 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.

The only exception is if the disclosure of such information is...

Specifically prohibited by law or such information is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Not all disclosures rise to the level covered under the law.

Minor waste of funds or trivial wrong doing or negligence are not considered to be “gross” waste or mismanagement.

Disclosures may be made to any person and need not be completely accurate to be protected.

If you believe that you have been the victim of whistleblower retaliation, you may:

- Report it to the VA IG (Office of Inspector General) Hotline number at 1 800 488-8244;
or
- File a written complaint with the U.S. Office of Special Counsel (OSC)*

Details regarding contacting the Office of Special Counsel are included at the end of this presentation.

Retaliation for Engaging in Protected Activity

VA 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 discussed here.

When an employee exercises rights under these laws s/he is engaging in protected activity.

If you believe you are the victim of retaliation for engaging in protected activity, you must:

Follow the procedures for filing a complaint under the Antidiscrimination Laws and Whistleblower Protection Laws previously discussed; or

Under some circumstances you may file a grievance under the agency or negotiated grievance procedures.

Example:

Shortly after filing an informal EEO complaint involving your supervisor, you are given a marginal performance rating and reassigned to a less desirable position within the facility. By participating in the initial EEO complaint process you engaged in “protected activity.”

If you feel your supervisor’s actions were taken to retaliate against you for the protected activity, you may file a complaint under the same procedures discussed previously for filing a complaint of discrimination.

Disciplinary Actions

Under existing laws, the VA retains the right, where appropriate, to discipline a manager or supervisor who has engaged in discriminatory or retaliatory conduct, up to and including removal.

However, the No FEAR Act does not alter existing laws or permit the VA 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.

Additional Information

Further information regarding the No FEAR Act may be found at:

VA's Office of Human Resource Management and Labor Relations' Web site at <http://vaww1.va.gov/ohrm/EmployeeRelations/Grievance.htm>; and
5 CFR 724

Additional information regarding antidiscrimination laws and complaint procedures can be found at:

- The VA's Office of Resolution Management's web site at www.va.gov/orm/index.asp
- The U.S. Equal Employment Opportunity Commission's web site at www.eeoc.gov
- The U.S. Office of Special Counsel's web site at www.osc.gov

Additional information regarding Whistleblower Protection laws and complaint procedures can be found at:

- U.S. Office of Special Counsel's web site at www.osc.gov
- VA's Office of Human Resources Web site -
<http://vaww1.va.gov/ohrm/EmployeeRelations/Grievance.htm>

The contact information for the U.S. Office of Special Counsel (OSC) is:

U.S. Office of Special Counsel
1730 M Street NW., Suite 218
Washington DC 20036-4505

OSC Website – www.osc.gov

For additional information you may also contact:

Your facility EEO Manager;

Your local Human Resources Management Service;

The VA Office of Resolution Management (1-888-737-3361)

Department of Veterans Affairs

Certificate of Completion

This certifies that

_____ *(Fill in your name)*

Has successfully completed the following course by reading the required document

No FEAR Act

On _____ *(Fill in the date)*

Signed certification by participant: _____ *Your Signature*



To receive credit, please give this completed certificate to your VA Service Training Coordinator or the VASDHS Education Service