

# The No FEAR Act

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## Course Overview

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*[Course: The No FEAR Act.]* **Host:** Although everyone can agree that harassment and discrimination have no place in the agency work environment, it's possible that some employees may be reluctant to report incidents they experience or witness. They may fear the loss of their jobs or that they will face other negative repercussions, known as retaliation, for coming forward.

The No FEAR Act of 2002 is designed to help ensure that federal agencies comply with antidiscrimination laws and that those who report incidents of discrimination and harassment are protected.

In this course, you'll learn about the rights of federal employees under antidiscrimination and whistleblower laws, as well as the remedies available for federal employees under the No FEAR Act.

## Introducing the No FEAR Act

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### Learning Objective

After completing this topic, you should be able to

- identify the main reasons the No FEAR Act was passed

### 1.

*[Topic: Introducing the No FEAR Act.]*

**SAM:** (*CONSPIRATORIAL*) Did you hear about Lilly? I finally found a way to get rid of him – or, her.

**ALFONSO:** (*PUZZLED*) No, I haven't heard. What did you do?

**SAM:** (*DISMISSIVE*) You know how she was constantly demanding to use the women's restroom after her so-called "transition?"

**ALFONSO:** (*DUBIOUS TOWARD SAM*) Well, yeah, she just wants to use the restroom that corresponds with her gender identity.

**SAM:** (*DISMISSIVE*) Whatever. I don't have time for that stuff. When "Lilly" was hired, she was "Lester," and that's who she still is, as far as I'm concerned. [*Alfonso frowns and shakes his head.*]

**ALFONSO:** That's really not...

**SAM:** (*INTERRUPTS*) Anyway, I transferred him to Becca's unit. She needed somebody for a grunt work project. (*TRIUMPHANTLY, MOCKING*) So now I don't have to listen to him, or her, carry on about unfair this or discrimination that. [*Sam is please with himself and Alfonso is incredulous.*] I mean, seriously. Like we don't have better things to do with our time?

**ALFONSO:** (*DUBIOUS*) Hang on, did she ask for the transfer?

**SAM:** No, who would? [*Sam shrugs.*] But she doesn't really have much choice, now, does she? [*Alfonso looks at Sam in disbelief.*]

**HOST:** Well, Lilly may have a choice.

The Notification and Federal Employee Antidiscrimination and Retaliation Act, commonly known as the No FEAR Act, is designed to address two major issues. First, it ensures that federal agencies comply with and are held accountable for violations of existing antidiscrimination laws. And second, it ensures that whistleblowers - that is, anyone who reports discrimination, are protected from retaliation.

The No FEAR Act makes federal agencies financially accountable and responsible for each complaint brought against them. Each year, federal agencies must submit a report that lists every discrimination and retaliation complaint brought against them, including the resolution and financial settlement details.

The Act further recognizes that employees may require training on antidiscrimination laws and whistleblower protection laws. The responsibility for awareness and training is passed onto each federal agency individually.

The No FEAR Act enhances the agency's ability to foster a workplace free of discrimination and retaliation by providing strong protections for both the victims of discrimination and those who try to protect them.

# Federal Employee Rights and Remedies

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## Learning Objective

After completing this topic, you should be able to

- identify remedies for federal employees who have been discriminated or retaliated against

## 1.

*[Topic: Federal Employee Rights and Remedies.]*

**HOST:** The No FEAR Act is designed to reinforce employees' existing civil rights, including the right to a workplace free from discrimination and harassment.

Federal employees must avoid certain prohibited personnel practices, which include:

Discriminating against protected classes. It's against the law to discriminate against an employee or applicant based on sex, including sexual orientation, gender identity, or transgender status. Further protected classes are race; color; religion; national origin; age, if the employee or applicant is 40 or older; disability; marital status; status as a parent; individual genetic information; and political affiliation.

Making improper recommendations or statements. Managers or supervisors may not make employment recommendations based on factors other than personal knowledge or records of the applicant's job-related abilities.

Coercing of political activity or forced political affiliation. It's also unlawful to discriminate against employees or applicants because they hold a particular political viewpoint or based on their contribution to a political interest.

Engaging in nepotism. With limited and narrow exceptions, federal law and regulations prohibit public officials from hiring relatives.

Engaging in retaliation for whistleblowing. Federal employees with personnel authority may not retaliate against employees or applicants who have disclosed information that provides evidence of violation of laws, rules, or regulations. It's also within an employee's or applicant's rights to file a complaint regarding gross mismanagement, gross waste of funds, the abuse of authority, and situations that may pose a danger to public health or safety. An employee also may not face retaliation for refusing to obey an order that would have required violating the law.

Retaliating against employees who exercise their rights. Managers and supervisors may not punish employees or applicants who have exercised appeals, complaints, or grievance rights. Employees or applicants who have given evidence on behalf of, or assisted, others in exercising their rights are also protected from reprisal.

Improperly influencing an applicant to withdraw from competition for a position. Federal employees with personnel authority may not improperly influence an applicant to withdraw from competition for any position so as to improve or injure the employment prospects of any other applicant.

Improperly exercising influence to benefit or harm a particular employee. Federal employees with personnel authority may not give an unauthorized advantage to anyone so as to improve or injure the employment prospects of any particular employee or applicant.

Violating a veteran's preference requirement. Federal employees are required to uphold the employment preference requirement available to veterans. Qualified men and women who have served on active duty in the Armed Forces during certain specified time periods or in military campaigns are entitled to preference over other applicants.

Intentionally obstructing someone from competing for employment. Federal employees may not deceive employees or applicants or otherwise prevent them from enjoying an equal opportunity to compete for a position or promotion.

Discriminating based on conduct that's not job-related. It's against the law to use an employee or applicant's personal conduct outside of the work environment as grounds for discrimination.

Violating the merit system principles. Managers and supervisors may not make decisions that run counter to merit system principles established in order to create honest, fair, and equal opportunity working environments. Merit system principles include providing fair and open competition for employment, recruiting qualified employees on the basis of merit, managing employees in an efficient and effective manner, and providing equal pay for equal work.

Failing to include the required statement in a nondisclosure document. In any nondisclosure policy, form, or agreement, federal employees must include a statement that states it is consistent with rules on certain matters such as classified information, communications to Congress, and whistleblower protections.

By protecting employees, the No FEAR Act makes it more likely that they will report any prohibited personnel practices they experience or witness. This allows the agency's management to address the improper behavior – which they may not have otherwise been aware of – quickly and efficiently.

If an employee feels they've personally experienced discrimination, they must contact an EEO Counselor within 45 days of the incident or the effective date of the personnel action.

In response, the EEO Counselor will explain the options available for the complaint process, summarize and clarify the employee's concerns, and attempt to resolve the issue informally before the employee files a formal complaint.

[Sam and Alfonso are both busy with their smartphones. Sam is typing a message.]

**SAM:** And... sent. [To Alfonso.] Invite to the team lunch incoming. (ALERT ON ALFONSO'S PHONE SOUNDS)

**ALFONSO:** Oh, that'll be fun. [*Alfonso reads the message.*] You forgot to CC Devi.

**SAM:** (*SNIDE*) No, I certainly didn't forget her.

**ALFONSO:** She's not in the distribution list.

**SAM:** (*OFFHAND*) I know. But if she's not gonna be a team player, well... she not gonna be treated like a member of the team.

**ALFONSO:** (*CONFUSED*) What are you talking about? Devi's a lynchpin. She's great.

**SAM:** What's so great about running off to the EEO counselor and whining about not getting that promotion last month?

**ALFONSO:** (*SURPRISED*) She did? [Alfonso is taken aback.]

**SAM:** Yep. Claimed I passed her over for... (*MOCKING*)..."religious reasons."

**ALFONSO:** (*FIRM*) Did you?

**SAM:** (*DEFENSIVE*) Not entirely, no. But how would it look to have some Muslim meeting outside agencies. [*Alfonso is uncomfortable.*] Not to mention, she has to drop everything and run off and pray all the time. Of course, I didn't tell her that. [*Sam is pleased with himself.*] So, she has no right to go over my head and make me look bad because she's not right for the job. That's not teamwork.

**HOST:** Under the complaints procedures of the No FEAR act, several remedies are available to employees if retaliation is found to have occurred.

These include returning to the role they would have occupied if the retaliation involved losing a position or promotion. They may also receive payment of compensatory damages, if appropriate, as well as back pay and reimbursement for lost benefits.

Similarly, an employee who was wrongfully passed over for a promotion or denied some other benefit can receive compensation and can be promoted, where appropriate.

Use this job aid to review the full text of the required statement federal employees must include in a nondisclosure document.

## Job Aid – Required Statement

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### **Required Statement**

**Purpose:** Use this job aid to review the full text of the required statement that federal employees must include in a nondisclosure document.

### **Statement**

"These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling."

### Question

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True or False? If an employee feels they've experienced discrimination, they must contact an EEO Counselor within 45 days of the incident or personnel action.

Options:

1. True
2. False

### Answer

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**Option 1:** That's right. Employees have 45 days following an incident of discrimination to make a report of discrimination under the No FEAR Act.

**Option 2:** That's incorrect. Employees have 45 days following an incident of discrimination to make a report of discrimination under the No FEAR Act.

Correct answer(s):

1. True

## Reporting and Reimbursement Requirements

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Learning Objective

After completing this topic, you should be able to

## 1.

*[Topic: Reporting and Reimbursement Requirements.]*

**Host:** While the No FEAR Act does not create individual rights of enforcement regarding an agency's compliance with its reimbursement and reporting requirements, if an agency has been found liable of a violation, it's required to pay damages. The initial settlement is paid out of the Judgment Fund, which is managed by the Department of the Treasury and later repaid into the fund by the specific agency.

Prior to the No FEAR Act, agencies weren't required to award damages to victims, with the Judgment Fund compensating all victims. Now, agencies carry the financial responsibility and must pay back the Judgment Fund.

In addition, every federal agency is required to submit a detailed annual report on all equal employment opportunity complaints filed with the agency. This report is a useful tool to analyze the agency's success in implementing antidiscrimination and antiretaliation regulations. It contains the total number of complaints filed against the agency, including the status and disposition of each complaint; specific details about each complaint; details of any payments made; an account of employee disciplinary actions taken as a result of the reports; and a comprehensive analysis of all the information submitted in the report.

The agency is also required to post statistical data related to discrimination and equal employment opportunity complaints on its website and include this data in its annual report. This data should be updated quarterly and include, at minimum, the five previous fiscal years.

Remember that if you have any questions about your rights, or if you feel you've experienced or witnessed a prohibited personnel practice, don't hesitate to speak with your agency's EEO counselor.

Now, let's pause here so you can answer a few practice questions.

Use these two job aids to learn more about the laws and executive orders to which the No FEAR Act applies and for an example of an annual No FEAR Act report. Next, you'll have a chance to practice what you've learned by answering some questions.

### Job Aid – Laws Reinforced by the No FEAR Act

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#### ***Laws Reinforced by the No FEAR Act***

**Purpose:** Use this job aid to learn more about the laws and executive orders to which the No FEAR Act applies.

## DISCRIMINATION LAWS ENFORCED BY THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

### ***Title VII of the Civil Rights Act of 1964 (Title VII)***

This law makes it illegal to discriminate against someone on the basis of race, color, religion, national origin, or sex, including gender stereotyping. The law also makes it illegal to retaliate against a person because he or she complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate applicants' and employees' sincerely held religious practices, unless doing so would impose an undue hardship on the operation of the employer's business.

### ***The Pregnancy Discrimination Act***

This law amended Title VII to make it illegal to discriminate against a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. The law also makes it illegal to retaliate against a person because he or she complained about pregnancy-related discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

### ***The Equal Pay Act of 1963 (EPA)***

This law makes it illegal to pay different wages to men and women if they perform equal work in the same workplace. The law also makes it illegal to retaliate against a person because he or she complained about wage discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

### ***The Age Discrimination in Employment Act of 1967 (ADEA)***

This law protects people who are 40 or older from discrimination because of their age. The law also makes it illegal to retaliate against a person because he or she complained about age-based discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

### ***Title I of the Americans with Disabilities Act of 1990 (ADA), as amended***

This law makes it illegal to discriminate against a qualified person with a disability in the private sector and in state and local governments. The law also makes it illegal to retaliate against a person because he or she complained about disability-based discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless doing so would impose an undue hardship on the operation of the employer's business.



### ***Sections 102 and 103 of the Civil Rights Act of 1991***

Among other things, this law amends Title VII and the ADA to permit jury trials and compensatory and punitive damage awards in intentional discrimination cases.

### ***Sections 501 and 505 of the Rehabilitation Act of 1973***

This law makes it illegal to discriminate against a qualified person with a disability in the federal government. The law also makes it illegal to retaliate against a person because he or she complained about disability-based discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless doing so would impose an undue hardship on the operation of the employer's business.

### ***The Genetic Information Nondiscrimination Act of 2008 (GINA)***

This law makes it illegal to discriminate against employees or applicants because of genetic information. Genetic information includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder, or condition of an individual's family members (i.e. an individual's family medical history). The law also makes it illegal to retaliate against a person because the person complained about genetics-based discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

### ***DISCRIMINATION LAWS ENFORCED BY OFFICE OF SPECIAL COUNSEL (OSC)***

The OSC is statutorily authorized to investigate allegations of discrimination based on race, color, religion, sex (including gender identity), national origin, age, or disability. It also is authorized to investigate allegations of discrimination based on marital status and political affiliation, as well as allegations of discrimination based on conduct that does not affect job performance, including sexual orientation discrimination.

### ***DISCRIMINATION LAWS ENFORCED BY THE MERIT SYSTEMS PROTECTION BOARD (MSPB)***

If an employee alleges discrimination, as defined in 5 U.S.C. § 2302(b), in connection with most actions that are otherwise appealable to the MSPB, the MSPB has jurisdiction over the matter. The MSPB does not have jurisdiction over all claims, and not every employee may file an appeal with the MSPB about a personnel action. The MSPB has original jurisdiction over agency adverse actions such as removals, suspensions of more than 14 days, reductions in grade or pay, and furloughs of 30 days or less for cause. The MSPB also has jurisdiction over some other matters, including reductions in force for more than 30 days and involuntary resignations. For an understanding of the matters over which the MSPB has jurisdiction, please consult 5 C.F.R. § 1201.3.

**DISCRIMINATION LAWS ENFORCED BY NEGOTIATED GRIEVANCE PROCEDURE**

Consult the applicable collective bargaining agreement that covers your position.

**DISCRIMINATION LAWS ENFORCED BY FEDERAL AGENCIES THROUGH AN ADMINISTRATIVE COMPLAINT PROCESS, OTHER THAN THAT COVERED BY 29 C.F.R. § 1614.**

Pursuant to an Executive Order, each federal agency creates internal complaint procedures for processing complaints based on sexual orientation, marital status, and status as a parent. These procedures do not toll or supplant any administrative complaint procedure based on a federal nondiscrimination claim. Please consult your agency's Office of Civil Rights to learn more about the availability of any such procedures. In addition, several agencies have administrative grievance procedures, and some may cover allegations of discrimination, so you may want to consult your agency's Office of Human Resources to learn more about procedures that may be available to you.

**Job Aid – Sample No FEAR Act Report**

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**Sample No FEAR Act Report**

**Purpose:** Use this job aid to view an example of an annual No FEAR Act report.

This table contains the type of information you may find in an annual No FEAR Act report. You may wish to recreate the table in a word processing or spreadsheet application to adapt and use as a template for your own reports.

**No Fear Act annual report**

<b>Total number of discrimination and retaliation complaints filed</b>	66
<b>Specific details about each complaint filed</b>	Investigations Completed: 06 Investigations in Progress: 03 Final Agency Order (Dismissal): 01 Final Agency Decisions (Dismissal): 45 Filed an Appeal: 05 Pending a Hearing: 02 Pending Class Action Determination: 01 Withdrawals: 02

	Filed in District Court: 01  <b>Total: 66</b>
<b>Details of the financial compensations made</b>	None
<b>Number of employees disciplined for discrimination, retaliation, harassment, or any other infraction of any provision of law</b>	None
<b>Final year-end data posted under section 301(c)(1) (B) for such fiscal year</b>	See Attached No FEAR Act Fiscal Year 2004 Data Posting Internal Complaint Activity
<b>Account of the disciplinary actions that were taken</b>	None
<b>A comprehensive analysis of all the information submitted in the report</b>	See Attached Section 203(a)(7) Analysis
<b>Any adjustment to comply with the requirements under section 201</b>	Not Applicable

## Knowledge Check: Understanding the No Fear Act

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### Learning Objective

After completing this topic, you should be able to

- identify ways federal employees are protected by the No Fear Act

### 1.

#### Question

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Identify two reasons why the No FEAR Act was enacted.

Options:

1. To increase federal agencies' compliance with antidiscrimination laws
2. To prevent retaliation for whistleblowing
3. To enable supervisors to handle discrimination cases more secretly

#### Answer

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**Option 1:** This option is correct. The No FEAR Act was enacted to ensure federal employees comply with antidiscrimination laws since Congress believed that federal agencies were not doing enough to prevent discrimination in the workplace.

**Option 2:** This option is correct. The No FEAR Act was also enacted to ensure anyone who reports discrimination is protected from retaliation.

**Option 3:** This option is incorrect. In fact, the opposite is true: the aim of the No FEAR Act is to improve accountability within federal agencies when it comes to discrimination.

Correct answer(s):

1. To increase federal agencies' compliance with antidiscrimination laws
2. To prevent retaliation for whistleblowing

### Question

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What remedies are you, as a federal employee, entitled to seek if you have been a victim of discrimination or retaliation?

Options:

1. Reimbursement for lost benefits
2. Back pay and lost benefits
3. Compensatory damages
4. Promotion as compensation

### Answer

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There are several remedies available through the complaints procedure, including being returned to the role previously held, payment of compensatory damages, awarding attorney's fees and other costs, and reimbursement for lost benefits.

Correct answer(s):

1. Reimbursement for lost benefits
2. Back pay and lost benefits
3. Compensatory damages

### Question

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Which statement about compensating victims of discrimination and retaliation under the No FEAR Act is correct?

Options:

1. Agencies are responsible for compensating victims of discrimination directly
2. Agencies are responsible for reimbursing the Judgment Fund
3. Agencies must budget for possible financial payouts as a result of discrimination complaints
4. Agencies are required to petition the Bureau of the Fiscal Service for a repayment plan once a victim has been paid

Answer

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**Option 1:** This is an incorrect option. These kinds of payments are made by the Judgment Fund, which the agency is required to reimburse.

**Option 2:** This is the correct option. The Judgment Fund compensates discrimination and retaliation victims. The agency must then reimburse the Judgment Fund for the amount.

**Option 3:** This is an incorrect option. The No FEAR Act does not require agencies to budget for potential discrimination or retaliation complaints.

**Option 4:** This is an incorrect option. The No FEAR Act does not require agencies to work with the Bureau of the Fiscal Service to develop a plan for reimbursing the Judgment Fund, but it is an available option for agencies.

Correct answer(s):

2. Agencies are responsible for reimbursing the Judgment Fund

## Let's Review

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Learning Objective

After completing this topic, you should be able to

- reflect on what you've learned

**1.**

*[Topic: Let's Review.]*

**Host:** Let's review what you've learned in this course.

You learned that the No FEAR Act addresses federal agencies' compliance with antidiscrimination laws and prevents retaliation for whistleblowing. The Act provides remedies for employees discriminated against or if retaliation has been taken against them.

Further, you learned that the Judgement Fund pays any damages to the victims of discrimination or retaliation, and that the individual agencies are then responsible for paying back the Fund if they're found liable.

Good work. You completed the course instruction. You can now move on to the course test.

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