



TRICARE  
MANAGEMENT  
ACTIVITY

**OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE  
HEALTH AFFAIRS**

SKYLINE FIVE, SUITE 810, 5111 LEESBURG PIKE  
FALLS CHURCH, VIRGINIA 22041-3206

**JAN 31 2011**

**MEMORANDUM FOR ALL TRICARE MANAGEMENT ACTIVITY EMPLOYEES**

**SUBJECT: Notification and Federal Employee Antidiscrimination and Retaliation Act Guidance**

On May 15, 2002, Congress enacted Public Law 107-174, the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," commonly referred to as the No FEAR Act. The act requires that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws, and that each Federal agency:

- Provide notice to Federal employees, former Federal employees, and applicants for Federal employment of their rights and protections available under Federal antidiscrimination and whistleblower protection laws;
- Post statistical data quarterly on its public Web site, relating to Federal sector equal employment opportunity complaints filed with such agency; and for other purposes; and
- Train all employees on their rights, responsibilities, and remedies under No FEAR.

**Antidiscrimination Laws**

A Federal agency cannot discriminate against an employee or applicant with respect to terms, conditions, or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, or reprisal for previous participation in Equal Employment Opportunity (EEO)-protected activity. If you believe you have been discriminated against on one or more of the above bases, you must contact an EEO official within 45 calendar days of the action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. Also, if you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the United States Office of Special Counsel (OSC) using Form OSC-11 at 1730 M Street NW, Suite 218, Washington, DC, 20036-4505, or online at <http://www.osc.gov>.

**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 fail to take, or threaten to take or fail 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 management; 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 required by Executive order to be kept secret in the interest of

national defense or the conduct of foreign affairs. Also, 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 you have been the victim of whistleblower retaliation, you may file a written complaint with OSC.

### **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. If you believe you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination and Whistleblower Protection Laws section, 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(d), 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 prohibited retaliation. Further, 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.

### **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 the law specified in 5 U.S.C. 2302(d). Antidiscrimination laws not only include those under the purview of the TRICARE Management Activity (TMA) EEO Office, but also include discrimination based on genetic information. In addition, it is the policy of the United States, as reflected in Executive orders, that discrimination on the basis of sexual orientation and status as a parent in Federal employment is also prohibited.

### **Training**

According to the No FEAR Act implementing guidance, Federal agencies must train all employees on their rights, responsibilities, and remedies available under Federal Antidiscrimination and Whistleblower Protection Laws. This training is mandatory for all employees and will be accomplished within 90 calendar days after assignment for newcomers, and every 2 years thereafter. Training may be accessed through the TMA intranet site under Quick Links: Equal Employment Opportunity, Training and Education, No FEAR Act. Once completed, employees should fill out the certificate at the end of the slide show, print out for their records, and forward a copy to their supervisor.

The No FEAR Act reaffirms our commitment to ensuring that all Federal employees feel free to come forward with allegations of discrimination, wrongdoing, or misconduct, and are aware of their rights. If you require more information regarding the reasonable accommodation process, please contact Mr. Greg Byard of the TMA EEO Office at (703) 681-4029.

A handwritten signature in black ink, appearing to read "C. S. Hunter".

C. S. Hunter  
RADM, MC, USN  
Deputy Director