



United States International Trade Commission

2019 Notification and Federal Employee Antidiscrimination and Retaliation
Act (NoFEAR) Report



Fiscal Year 2019 No FEAR Act Annual Report to Congress

U.S. International Trade Commission

February 15, 2020

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Overview

The mission of the U.S. International Trade Commission (USITC) is to administer U.S. trade remedy laws within its mandate in a fair and objective manner; provide the President, the United States Trade Representative (USTR), and Congress with independent, quality analysis, information, and support on matters relating to tariffs and international trade and competitiveness; and maintain the Harmonized Tariff Schedule of the United States. USITC conducts periodic self-assessments of its Equal Employment Opportunity (EEO) programs against six essential elements identified as standards for a model EEO program by the Equal Employment Opportunity Commission (EEOC).

To maximize effectiveness, USITC seeks to achieve exemplary EEO programs and lead as a model agency by eliminating discrimination, retaliation, or bias conduct within the workplace.

The No FEAR Act, Public Law 107-174, requires federal agencies to be publicly accountable for violations of Antidiscrimination and Whistleblower Protection laws. Federal agencies must post both quarterly and annual statistical data for federal sector EEO complaints on its public website, reimburse the Treasury Judgment Fund (Judgment Fund) for any payments made, and notify employees and applicants for employment about their rights under Antidiscrimination and Whistleblower Protection laws.

The No FEAR Act and its implementing regulations also require federal agencies to report annually on the following:

- The number of Federal Court cases arising under the respective areas of law cited in the No FEAR Act where discrimination was alleged, the status or disposition of cases, and the amount required to be reimbursed to the Judgment Fund;
- The number of employees disciplined for discrimination, retaliation, harassment, or any other infraction of any provision of law referred to under the Act, and specific nature of the disciplinary action taken, separated by provisions of law;
- The final year-end data on discrimination complaints for the fiscal year;
- A detailed description of agency policy relating to appropriate disciplinary actions;
- An analysis of trends, causation, and practical knowledge gained through experience;
- Actions planned or taken to improve complaint or civil rights programs; and
- Any adjustments to the budget

Pursuant to congressional and statutory requirements, this report is being provided to the following:

- Speaker of the U.S. House of Representatives;
- President Pro Tempore of the U.S. Senate;
- Committee on Governmental Affairs, U.S. Senate;
- Committee on Government Reform, U.S. House of Representatives;
- Each Committee of Congress with jurisdiction relating to the agency;
- Chair, Equal Employment Opportunity Commission;
- Attorney General; and
- Director, U.S. Office of Personnel Management

The achievements during Fiscal Year (FY) 2017 have paved the way for meaningful and measurable improvements in USITC's EEO and Diversity programs. We look forward to continuing to provide information on the successes of these programs in future reports.

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Executive Summary

The No FEAR Act aims to reduce the incidents of workplace discrimination within the federal government by holding agencies and departments accountable for their actions. Section 203 of the No FEAR Act and the Office of Personnel Management (OPM) regulations implementing Title II of the No FEAR Act require each federal agency to prepare and submit an annual report.

Accordingly, this report covers information for FY 2019.

During FY 2019, USITC received one (1) EEO complaints, zero (0) Federal Court cases pending or filed and has zero (0) open cases at EEOC. The average investigation time was less than the regulatory timeframe.

In FY 2019, USITC had zero (0) reimbursements, settlements, findings, or disciplinary actions for violating its policies for discrimination, retaliation, harassment, and/or other violations of the Antidiscrimination and Whistleblower Protection laws included in the NoFEAR Act.

USITC continues to place strong emphasis on NoFEAR Act Training. During FY 2019 all agency employees were in compliance with the bi-annual No FEAR Act Training requirements. To ensure the agency maintained 100% participation, all incoming employees received the training during the onboarding process.

The Office of Equal Employment Opportunity (OEEEO) assists USITC's leadership in shaping policies to protect the personal liberties of all employees. The OEEEO develop policies and plans, generate reports, deliver training and briefings, conduct oversight, process EEO complaints, and integrate civil rights and civil liberties into USITC's initiatives and activities.

Data and Results

This report is prepared in accordance with Section 203(a)(1) of the NoFEAR Act which requires federal agencies to include in their annual report to Congress "the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged." OPM's final regulations on reporting and best practices, issued on December 28, 2006, require that federal agencies report on "the number of cases in Federal Court [district or appellate] pending or resolved arising under each of the respective provisions of the Federal Antidiscrimination and Whistleblower Protection laws applicable to them in which an employee, former federal employee, or applicant, alleged a violation(s) of these laws, separating data by the provision(s) of law involved."(5 CFR 724.302)

Complaint Activity and Disposition

During FY 2019, USITC reported zero (0) Federal Court cases ensuing from Antidiscrimination statutes listed in the NoFEAR Act.

Judgment Fund Reimbursements and Budget Adjustments

Section 203 (a)(8) of the NoFEAR Act requires that agencies include in their annual report to Congress information about “any adjustment (to the extent the adjustment can be ascertained in the budget of the agency) to comply with the requirements under section 201.” Section 201 requires federal agencies to pay awards for discrimination and retaliation violations out of their own budgets. They are required to reimburse the Judgment Fund within a reasonable time of any such award.

USITC had no findings of discrimination or retaliation; therefore, no budget adjustments were made.

Disciplinary Actions

Section 203(a)(4) of the No FEAR Act requires that agencies include in the annual report to Congress “the number of employees disciplined for discrimination, retaliation, harassment, or any other infraction of any provision of law referred to in paragraph (1).” For Federal Court cases involving allegations of a violation of Antidiscrimination or Whistleblower Protection laws, 5 CFR 724.302 (a)(3) requires the agency to report the number of employees disciplined.

The 5 CFR 724.102 defines discipline to include any one, or a combination, of the following actions: reprimand, suspension without pay, reduction in grade or pay, or removal.

During FY 2019, no USITC employees were involved in any Federal Court cases. Additionally, there were no findings of discriminatory, retaliatory, or harassing practices. Therefore, there were no disciplinary actions taken on any employee for violating the agencies’ policies on discrimination, retaliation, harassment, and/or other violations of the Antidiscrimination and Whistleblower Protection laws included in the NoFEAR Act.

Section 203 (a)(6) of the NoFEAR Act requires that federal agencies include in their annual report to Congress a detailed description of the policy implemented by the agency relating to disciplinary actions imposed against a federal employee who discriminates against any individual in violation of any of the laws cited under section 201(a)(1) or (2), or who committed another prohibited personnel practice which was revealed in the investigation of a complaint claiming a violation of any of the laws cited under section 201(a)(1) or (2).

On June 17, 2018, by operation of law, David S. Johanson became USITC’s Chairman. Chairman Johanson issued his initial EEO policy statements on July 17, 2018. The policies were issued to: (1) cover all forms of harassment, (2) require immediate and appropriate corrective action, (3) provide points of contact for reporting and filing a complaint, (4) define necessary legal terms, (5) require training for the workforce, and (6) protect employees from retaliation. These statements were posted in employee work areas and on USITC’s intranet and its public websites. Other USITC policies require all employees to cooperate in EEO investigations. These policies also require the agency to take appropriate disciplinary action against those engaging in unlawful discriminatory practices or allowing discriminatory practices to exist.

Trend Analysis for EEO Complaint Data

Year-end summary data for FY 2019 EEO complaint activity included in this section presents a three-year (FY 2017 to FY 2019) trend analysis for EEO complaint data, pursuant to the No FEAR Act, Section 1614.704. Overall, the data shows an average of one (1) complaint annually.

Complaint Activity

The complaints made against the USITC during FY 2017 and FY 2019, was an applicant as defined by EEOC and two terminations. The complaint filed during FY 2019, was a termination. The complainant withdrew.

Complaints by Bases and Issues

The complaint filed by the applicant was a claim of non-selection, based on age discrimination and the termination complaints were based on race, color, sex, and gender.

Processing Time

The average investigation time when a hearing was requested or not was less than the regulatory timeframe under 29 CFR 1614. Overall, no major difference in the average investigation time was identified during the three-year period.

Final Actions Finding Discrimination

FY 2017 through FY 2019, USITC did not issue any final actions or findings of discrimination.

Pending Complaints

At the end of 2019, there were zero complaints pending in the investigation stage.

Complaint Investigations

In the three-year period, all complaints were investigated within the regulatory timeframe.

NoFear Act Training

Section 202(c) of the NoFEAR Act requires federal agencies to provide training for employees on the rights and remedies under Antidiscrimination or Whistleblower Protection laws. Under 5 CFR 724.203, federal agencies were required to develop a written training plan and to have trained their employees by December 17, 2006, and every two years thereafter. Under implementing regulations, new employees are to receive No FEAR Act training within 90 days of appointment through either an agency's orientation program or some other No FEAR Act training program.

USITC provides NoFEAR Act training to new hires during new-hire orientation. Further, USITC requires employees to complete NoFEAR Act training every two years. NoFEAR Act training is available through the USITC Learning Portal and in classroom. The Portal is USITC's primary

electronic platform to capture training data. During FY 2018 all agency employees received NoFEAR Act training and will received again during FY 2020.

USITC recognizes the critical role that training plays in raising awareness and fostering behaviors. In addition to the NoFEAR Act training, USITC provides employees and managers training on the prevention of harassment in the workplace and other EEO related training.

Practical Knowledge Gained Through Experience and Actions Planned or Taken to Improve Complaint or Civil Rights Programs

The dignity with which USITC treats employees is critical to the successful completion of its mission. To foster continuous improvement in this area, USITC fully engages the talents and competencies of employees through the formation of an USITC-wide Diversity and Inclusion Council in support of Executive Order 13583. The purpose of the Council is to develop and implement a more comprehensive and integrated Diversity and Inclusion Strategic Plan. The Council is committed to identifying and adopting best practices to promote a diverse workforce, in an inclusive environment, and to identify and remove barriers to equal employment opportunities, consistent with merit system principles and applicable laws.

The agency evaluates its EEO program on an annual basis, as required by the EEOC's Management Directive 715. As a result, USITC developed action plans to address areas in need of improvement, including capturing and analyzing relevant job applicant flow data. The agency will analyze workforce demographic data, including salary levels; the distribution of awards; and the approval of training and career development opportunities, by race, ethnicity, gender, age, and disability status. Further, USITC will conduct reviews and analysis of hiring practices for people with disabilities and, if necessary, update employment information and recruitment materials to be more accessible as a way of advancing employment opportunities to those individuals. The agency will also perform an analysis of career advancement opportunities for employee groups with lower representation at the senior management level.

The agency realizes the importance of having EEO, human resources, and alternative dispute resolution (ADR) policies in place to establish standards and to promote consistency throughout the agency. The agency is also in the process of establishing internal rules and procedures for all offices to maintain consistency in all aspects of the agency's functions.

Conclusion

USITC's successes spelled out in this report are due to the strong and clear policy statements on workplace discrimination, harassment, and the No FEAR Act issued by the Chairman.

Nonetheless, there are still opportunities for advancement which USITC will continue to capture and report on as part of its commitment to abide by and support merit systems principles, and to provide protection from prohibited personnel practices for all employees under the law. USITC will continue to develop and implement improvements in the recruitment, hiring, retention, and development of under-represented groups in the workforce, such as veterans and people with disabilities.

Appendix

USITC NOFEAR Report: FY 2019

Complaint Activity 2015-2019

	2015	2016	2017	2018	2019
Number of Complaints Filed	1	0	1	1	1
Number of Complainants	1	0	1	1	1
Repeat Filers	0	0	0	0	0

Complaints by Basis 2015-2019

	2015	2016	2017	2018	2019
Race	0	0	1	1	0
Color	0	0	1	0	0
Religion	0	0	0	0	0
Reprisal	0	0	0	0	0
Sex	0	0	0	1	0
National Origin	0	0	0	0	0
Equal Pay Act	0	0	0	0	0
Age	1	0	0	0	0
Disability	0	0	1	0	1
Non-EEO basis	0	0	0	0	0

Complaints by Issue 2015-2019

	2015	2016	2017	2018	2019
Appointment/Hire (+)	1	1	0	0	0
Assignment of Duties	0	0	0	0	0
Awards	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0
Demotion	0	0	0	0	0
Reprimand	0	0	0	0	0
Removal	0	0	0	0	0
Suspension	0	0	0	0	0
Other: Non-Selection/Hire	0	0	0	0	0
Duty Hours	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0
Examination/Test	0	0	0	0	0
Harassment: Non-Sexual	0	0	0	1	0
Harassment: Sexual	0	0	0	0	0
Medical Examination	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0
Promotion/Non-Selection	1	0	0	1	0
Reassignment: Denied	0	0	0	0	0
Reassignment: Directed	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0
Reinstatement	0	0	0	0	0
Retirement	0	0	0	0	0
Termination	0	0	1	1	1
Terms/Conditions of Employment	0	0	0	0	0
Time and Attendance	0	0	0	0	0
Training	0	0	0	0	1

Other	0	0	0	0	0
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Processing Time 2015-2019

	2015	2016	2017	2018	2019
Complaints pending (for any length of time) during fiscal year	0	0	0	0	0
Average number of days in investigation stage	62	0	84	77	30
Complaints pending (for any length of time) during fiscal year where hearing was requested	0	0	0	0	0
Average number of days in final action stage	0	0	0	0	0
Complaints pending (for any length of time) during fiscal year where hearing was not requested	0	0	0	0	0
Average number of days in final action stage	0	0	0	0	0

Complaints Dismissed by Agency 2015-2019

	2015	2016	2017	2018	2019
Total Complaints Dismissed by Agency	0	0	0	0	0
Average days pending prior to dismissal	0	0	0	0	0
Total complaints Withdrawn by Complainants	0	0	0	0	1

Total Final Actions Finding Discrimination 2015-2019

	2015	2016	2017	2018	2019
Total Number Findings	0	0	0	0	0
Without Hearing	0	0	0	0	0
With Hearing	0	0	0	0	0

Findings of Discrimination Rendered by Basis 2015-2019

	2015	2016	2017	2018	2019
Total Number Findings	0	0	0	0	0
Race	0	0	0	0	0
Color	0	0	0	0	0
Religion	0	0	0	0	0
Reprisal	0	0	0	0	0
Sex	0	0	0	0	0
National Origin	0	0	0	0	0
Age	0	0	0	0	0
Disability	0	0	0	0	0
Non-EEO	0	0	0	0	0

Findings After Hearing	0	0	0	0	0
Race	0	0	0	0	0
Color	0	0	0	0	0
Religion	0	0	0	0	0
Reprisal	0	0	0	0	0
Sex	0	0	0	0	0
National Origin	0	0	0	0	0
Equal Pay Act	0	0	0	0	0
Age	0	0	0	0	0
Disability	0	0	0	0	0
Non-EEO	0	0	0	0	0
Findings Without Hearing	0	0	0	0	0
Race	0	0	0	0	0
Color	0	0	0	0	0
Religion	0	0	0	0	0
Reprisal	0	0	0	0	0
Sex	0	0	0	0	0
National Origin	0	0	0	0	0
Equal Pay Act	0	0	0	0	0
Age	0	0	0	0	0
Disability	0	0	0	0	0
Non-EEO	0	0	0	0	0

Findings of Discrimination Rendered by Issue 2015-2019

	2015	2016	2017	2018	2019
Total Number Findings	0	0	0	0	0
Appointment/Hire	0	0	0	0	0
Assignment of Duties	0	0	0	0	0
Awards	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0
Demotion	0	0	0	0	0
Reprimand	0	0	0	0	0
Suspension	0	0	0	0	0
Removal	0	0	0	0	0
Other	0	0	0	0	0
Duty Hours	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0
Examination/Test	0	0	0	0	0
Non-Sexual	0	0	0	0	0
Sexual	0	0	0	0	0
Medical Examination	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0
Denied	0	0	0	0	0
Directed	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0
Reinstatement	0	0	0	0	0
Retirement	0	0	0	0	0
Termination	0	0	0	0	0

Terms/Conditions of Employment	0	0	0	0	0
Time and Attendance	0	0	0	0	0
Training	0	0	0	0	0
Other	0	0	0	0	0
Appointment/Hire	0	0	0	0	0
Assignment of Duties	0	0	0	0	0
Awards	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0
Reprimand	0	0	0	0	0
Suspension	0	0	0	0	0
Removal	0	0	0	0	0
Other	0	0	0	0	0
Duty Hours	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0
Examination/Test	0	0	0	0	0
Harassment: Non-Sexual	0	0	0	0	0
Harassment: Sexual	0	0	0	0	0
Medical Examination	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0
Reassignment: Denied	0	0	0	0	0
Reassignment: Directed	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0
Reinstatement	0	0	0	0	0
Retirement	0	0	0	0	0
Termination	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0
Time and Attendance	0	0	0	0	0
Training	0	0	0	0	0
Other	0	0	0	0	0

Pending Complaints Filed in Previous Fiscal Years by Status 2015-2019

	2015	2016	2017	2018	2019
Total complaints from previous FYs	1	1	0	1	0
Total Complainant	1	1	0	1	0
Investigation	0	0	0	0	0
Hearing	0	0	0	0	0
Final Agency Action	0	0	0	0	0
Appeal with EEOC OFO	0	0	0	1	0

Complaint Investigations 2015-2019

	2015	2016	2017	2018	2019
Pending Completion Where Investigation Exceeds Required Time Frames	0	0	0	0	0