



# Defense Threat Reduction Agency

## **Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act**

### **Fiscal Year 2016 Report**

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## I. Introduction

Pursuant to Section 203 of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No Fear Act), Public Law 107-174, the Defense Threat Reduction Agency (DTRA) hereby submits its Annual Report for Fiscal Year (FY) 2016.

In FY 2016, 8 complaints were filed against DTRA, remaining the same as in FY 2015. The most common basis cited for complaints in FY 2016 was reprisal.

In FY 2016 the DTRA Equal Opportunity Office also took a number of proactive steps to mitigate workplace conflicts and educate leaders and the workforce including:

- Hosting a series of seminars targeting supervisors and managers on topics such as workplace bullying, unconscious bias, gender identity and sexual orientation,
- Conducting a leadership summit focused on maintaining a diverse workforce, and
- Drafted a charter for the implementation of a diversity and inclusion council.

## II. Reporting Requirements

a. *The number of cases in federal court pending or resolved in each fiscal year and arising under each of the respective provisions of the federal antidiscrimination laws and whistleblower protection laws applicable to them as defined in 5 C.F.R. §724.102, in which an employee, former federal employee, or application alleged a violation of these laws, separating data by the provision of law involved (5 C.F.R. 724.302(a)(1)) and the status or disposition of such cases (5 C.F.R. 724.302(a)(2)(i)).*

Statute	Cases Opened in FY16	Cases Resolved in FY16		Cases Pending at Close of FY16
		Settled	Other	
<b>Title VII, Civil Rights Act of 1964</b> 42 U.S.C. 2000e-16	8	3	11	25
<b>Age Discrimination in Employment Act</b> 29 U.S.C. 631, 633a	0	2	2	4
<b>Fair Labor Standards Act of 1938</b> 29 U.S.C. 206(d)	0	0	0	0
<b>Section 501 of Rehabilitation Act</b> 29 U.S.C. 791	5	0	2	9
<b>Equal Pay Act</b> 29 U.S.C. 206(d)	0	0	0	0
<b>Whistleblower Protection Act</b> 5 U.S.C. 2302(b)(1)	0	0	0	0

b. *The amount of money required to be reimbursed to the Judgment Fund by the agency for payments as defined in 5 C.F.R. §724.102 (5 C.F.R. 724.302(a)(2)(ii)), and the amount of reimbursement to the Fund for attorney’s fees where such fees have been separately designated (5 C.F.R. 724.302(a)(2)(iii)), and any adjustment needed or made to the budget of the agency to comply with its Judgment Fund reimbursement obligation(s) incurred (5 C.F.R. 724.302(a)(8)).*

<b>\$ Reimbursed to Judgment Fund</b>	<b>\$ Attributed to Attorneys’ Fees</b>	<b>Adjustment Needed</b>
0	\$430,508.61	0

c. *In connection with the cases identified above, the total number of employees in each fiscal year disciplined (reprimand, suspension without pay, reduction in grade or pay, or removal) and the specific nature of the disciplinary actions taken, separated by the provision(s) of law involved (5 C.F.R. 724.302(a)(3)) and the number of employees in each fiscal year disciplined in accordance with any agency policy, regardless of whether or not the matters are in connection to a federal court case (5 C.F.R. 724.302(a)(5)).*

<b>Statute</b>	<b># of Employees Disciplined</b>	<b>Nature of Disciplinary Action (e.g., reprimand, dismissal, etc.)</b>
<b>Title VII, Civil Rights Act of 1964</b> 42 U.S.C. 2000e-16	0	
<b>Age Discrimination in Employment Act</b> 29 U.S.C. 631, 633a	0	
<b>Fair Labor Standards Act of 1938</b> 29 U.S.C. 206(d)	0	
<b>Section 501 of Rehabilitation Act</b> 29 U.S.C. 791	0	
<b>Equal Pay Act</b> 29 U.S.C. 206(d)	0	
<b>Whistleblower Protection Act</b> 5 U.S.C. 2302(b)(1)	0	
<b>Matters that did <u>NOT</u> result in a federal court case</b>	0	

d. *The final year-end data about discrimination complaints for each fiscal year that was posted in accordance with Equal Employment Opportunity Regulations 29 C.F.R. §§1614.701, et seq. (5 C.F.R. 724.302(a)(4)).*

**See Appendix A**

e. *A detailed description of the agency’s policy for taking disciplinary action against Federal employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes another prohibited personnel*

practice revealed in connection with agency investigations of alleged violations of these laws (5 C.F.R. 724.302(a)(6)).

**See Appendix B – input link if available on web-site.**

f. *The agency’s written plan to train its employees (5 C.F.R. 724.302(a)(9)).*

**See Appendix C**

### III. Analysis

*An analysis of the information provided in paragraphs (a)(1) through (6) of this section in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with 29 CFR part 1614 subpart F of the Code of Federal Regulations. Such analysis must include:(i) An examination of trends;(ii) Causal analysis;(iii) Practical knowledge gained through experience; and (iv) Any actions planned or taken to improve complaint or civil rights programs of the agency with the goal of eliminating discrimination and retaliation in the workplace (5 C.F.R. 724.302(a)(7)).*

#### **a. Examination of Trends**

There were several trends noted after an analysis of DTRA’s complaint data. There was a decrease in complaints occurring in FY 2015. That decrease was maintained in FY 2016 as noted in the chart below (Figure 1.)

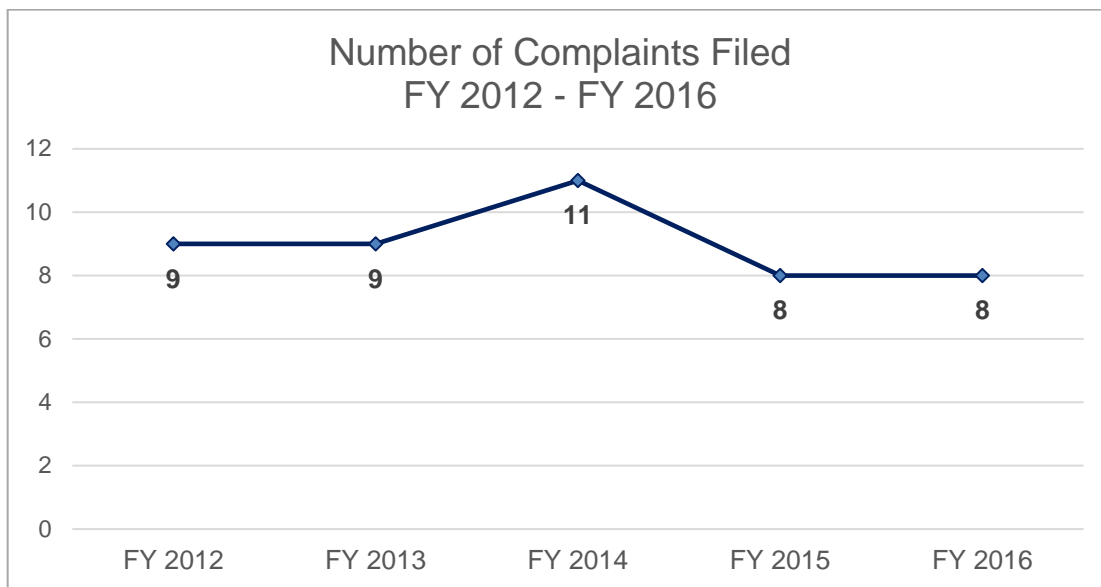


Figure 1.

Since FY 2012, complaints have remained relatively low and consistent in number, averaging approximately 10 per year during that timeframe. The number of times reprisal was cited as a basis increased significantly in FY 2016 when compared to FY 2015. (Figure 2.) A review of data in other agencies indicates that reprisal is a commonly cited basis for complaints. Figure 3 below shows the breakout of complaint basis for FY 2016.

Overall, the most often cited basis of complaints were reprisal, national origin, and disability.

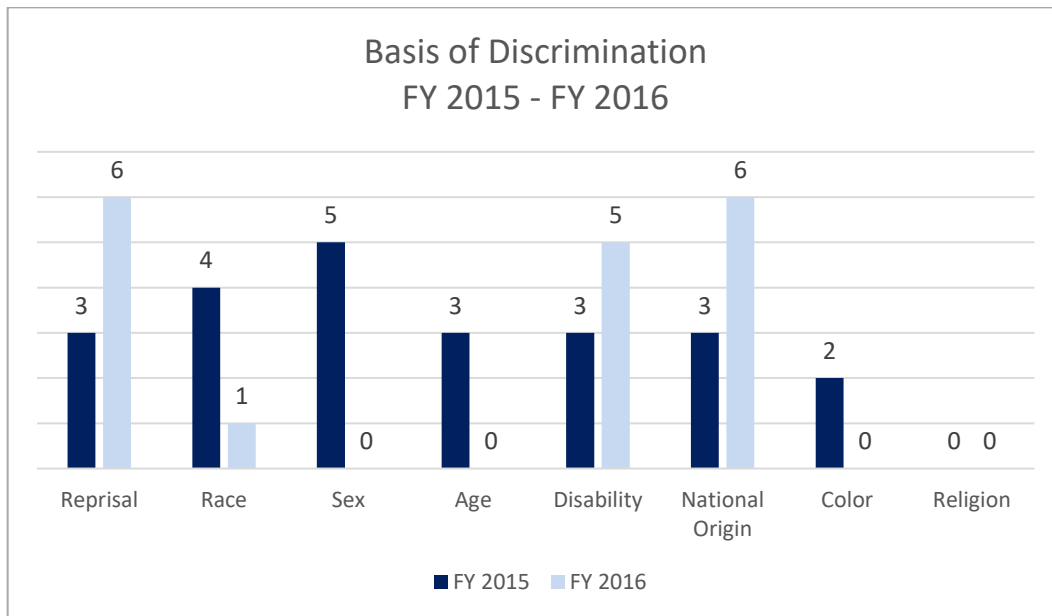


Figure 2.

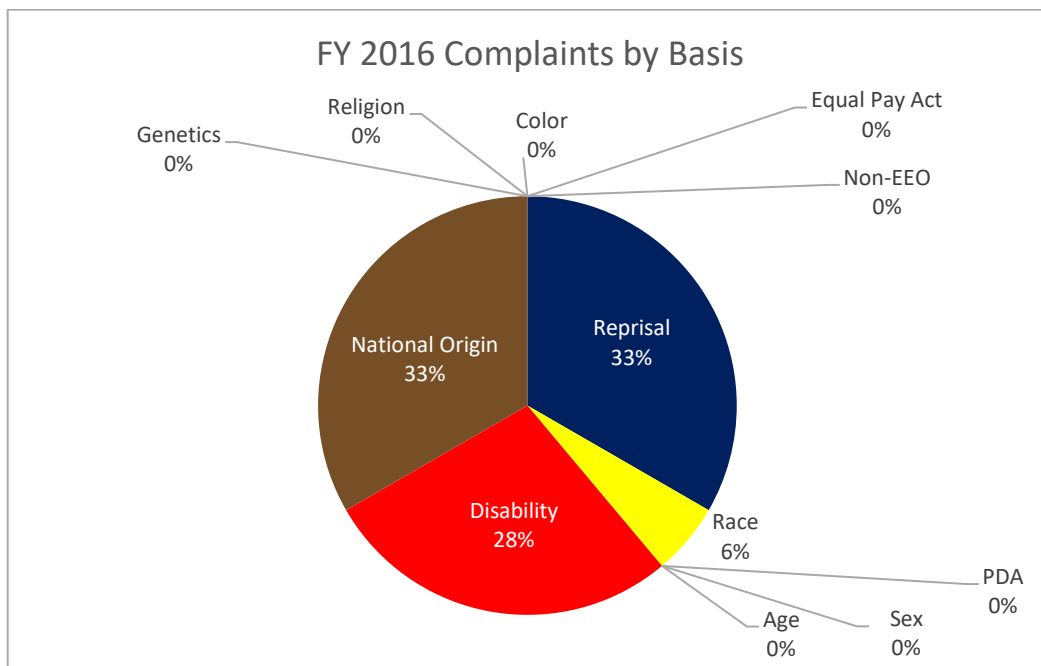


Figure 3.

## b. Analysis

Supervisory training and adherence to policy was determined to be a primary root cause for reprisal issues. A review of the reprisal cases indicated there is confusion surrounding the definition of reprisal. The information gained over the last year is shaping how we will train supervisors in the future. Using this new knowledge, the Agency developed a revised two day supervisory training program that includes a two hour block on EEO policies and best practices. The new supervisory training pilot program took place December 1-2, 2016. Initial feedback was positive. Additionally, the EEO Office will emphasize unconscious bias training to help managers think differently and focus on empathy when dealing with their subordinates and co-workers.

## IV. Conclusion

The Agency Senior Leaders take equal opportunity seriously and work collaboratively with the EEO Office on a regular basis. The Agency executed five barrier analyses: Hispanic Working Group, Women's Working Group, Senior Executive Service (SES) Working Group, Individuals with Disabilities Working, and Mission Critical Occupations Working Group. Each group was championed by an SES and chaired by a GS-15. Additionally, the Agency created its first Diversity and Inclusion Charter that will maintain a focus on hiring, developing, and retaining the most diverse and inclusive workforce possible.

# APPENDIX A

*The final year-end data about discrimination complaints for each fiscal year that was posted in accordance with Equal Employment Opportunity Regulations 29 C.F.R. §§1614.701, et seq. (5 C.F.R. 724.302(a)(4)).*

Complaints by Basis	Previous Fiscal Year				
	2012	2013	2014	2015	2016
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total</i>					
Race	3	2	3	4	1
Color	0	0	0	2	0
Religion	0	0	1	0	0
Reprisal	5	7	3	3	6
Sex	1	1	4	5	0
PDA	0	0	0	0	0
National Origin	1	4	8	3	6
Equal Pay Act	0	0	0	0	0
Age	1	4	4	3	0
Disability	5	2	1	3	5



# APPENDIX B

*A detailed description of the agency's policy for taking disciplinary action against Federal employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes another prohibited personnel practice revealed in connection with agency investigations of alleged violations of these laws (5 C.F.R. 724.302(a)(6)).*

DTRA/SCC-WMD Instruction 1400.25-M, Subchapter 752, "Civilian Disciplinary and Adverse Actions" explains, "In deciding whether to take an action under this volume, there may be no discrimination against an employee for political beliefs, marital status, disabling condition, sex, race, religion, color, national origin, age, sexual orientation, genetic discrimination, or other non-merit factors."

Supervisors are accountable for initiating disciplinary or adverse action in a nondiscriminatory and impartial manner.

Punishment for a charge of discrimination that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protections Laws or for conduct that constitutes a prohibited personnel practice can range from a Letter of Reprimand to Removal from Federal Service.

# APPENDIX C

*The agency's written plan to train its employees (5 C.F.R. 724.302(a)(9)).*

Section 202(c) of the No FEAR Act requires Federal agencies to provide training to their employees on the rights and remedies under Federal antidiscrimination, retaliation, and whistleblower protection laws.

DTRA's No FEAR Act Training Plan has been incorporated into the Agency's "Designation of Mandatory Core Training for DTRA/SCC-WMD Civilian Employees and Military Personnel, Policy 15-02," dated November 13, 2015 (not a public document). All Civilian Employees are required to take the "Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) Training" via Joint Knowledge Online (JKO). The training covers the rights and remedies under Federal antidiscrimination, retaliation, and whistleblower protection laws. This training is launched, managed and tracked via the Agency's Learning Management System. Currently, civilian employees are required to take this training once upon arrival. We are in the process of changing this requirement to once every two years.