



## DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Washington, DC 20004-2901

November 25, 2020

### No FEAR Act Notice

The “Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,” otherwise known as the “No FEAR Act,” requires Federal agencies like the Defense Nuclear Facilities Safety Board (DNFSB) to “be accountable for violations of antidiscrimination and whistleblower protection laws.” Congress found in passing the No FEAR Act that “agencies cannot be run effectively if those agencies practice or tolerate discrimination.” Pub. L. 107-74, Title I, General Provisions, § 101(1).

The No FEAR Act also requires Federal agencies, like the DNFSB, to provide this notice to Federal employees, former employees, and applicants for employment. This notice is intended to inform you of the rights and protections available to you under Federal antidiscrimination, civil service, whistleblower protection, and anti-retaliation laws.

### Antidiscrimination Laws

A Federal agency cannot discriminate or tolerate harassment against any employee or applicant for employment on the basis of race, color, religion, sex (including pregnancy, sexual orientation and gender identity), national origin, age, disability, genetic information, reprisal, marital status, parental status, political affiliation, military service, protected equal employment opportunity (EEO) activity, whistleblower activity, or any other non-merit factor. Discrimination on these bases is prohibited by Federal statutes and Executive Orders. *See* 5 U.S.C. §§ 2302(b); 5 U.S.C. §§ 7101-7135; 29 U.S.C. § 206(d); 29 U.S.C. § 633a; 29 U.S.C. § 791; 38 U.S.C. §§ 4301-35; 42 U.S.C. § 2000e-16; 42 U.S.C. § 2000ff et seq.; E.O. 11478; E.O. 13087; E.O. 13145; E.O. 13152; E.O. 13672.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin, age, disability or reprisal, you must contact an EEO counselor within 45 calendar days of the alleged discriminatory 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.

If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC). If you are alleging discrimination based on military service, you may request assistance from the

Veterans' Employment and Training Service (VETS) at the Department of Labor (DOL), the Merit Systems Protection Board (MSPB), or OSC, depending on the circumstances.

## **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 mismanagement; 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 required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. § 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC-11) with the U.S. Office of Special Counsel at 1730 M Street NW, Suite 218, Washington, DC 20036-4505 or online through the OSC Web site: <http://www.osc.gov>.

## **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 listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections.

## **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, 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. 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.

However, under the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017, an agency must propose certain disciplinary actions against supervisors who have engaged in certain specified acts of whistleblower retaliation or other forms of retaliation and prohibited personnel practices under civil service laws.

## **Additional Information**

For further information regarding the No FEAR Act regulations, refer to 5 CFR Part 724. You can find additional information regarding Federal antidiscrimination, whistleblower protection, and retaliation laws on the EEOC website at <http://www.eeoc.gov>, on the OSC website at <http://www.osc.gov>, on the MSPB website at <http://www.mspb.gov>, or on the VETS website at <https://www.dol.gov/vets>.

## **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 law specified in 5 U.S.C. § 2302(d).

I fully support the principles of the No FEAR Act, and I am committed to providing a workplace environment that is free from discrimination. It is the DNFSB's policy to prohibit employment discrimination and interference or retaliation when protected disclosures are made.

I have assigned the Director of EEO joint responsibility for ensuring the proper implementation of the No FEAR Act's mandatory requirements. I expect all offices to offer their full support to ensure compliance with the requirements of the No FEAR Act. You may obtain further information regarding the No FEAR Act by contacting the Director of EEO for assistance.

*Thomas A. Summers*

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Thomas A. Summers  
Acting Chairman