



MEMORANDUM FOR ALL ACUS EMPLOYEES

DATE: October 28, 2022
FROM: Andrew Fois, Chairman
SUBJECT: Annual Policy Statement on Equal Employment Opportunity; No FEAR Act/Whistleblower Protection Notice

The Administrative Conference of the United States (ACUS) is committed to enforcing a zero-tolerance policy for any form of discrimination or harassment in the workplace, including physical, psychological, or sexual harassment. Related to this commitment is a determination to seek diversity and to ensure the rights of employees under the federal whistleblower protection laws and policies that prohibit reprisals. The following information will serve as the official annual Policy Statement on Equal Employment Opportunity, as well as the annual notice required by the No FEAR Act of 2002, Pub. L. 107-174.

I. Equal Employment Opportunity Policy Statement

ACUS supports the principles of equal employment opportunity (EEO) for all employees and applicants for employment. ACUS's EEO policy covers all agency employment programs, management practices, and decisions, including recruitment, hiring, merit promotion, transfers, reassignments, training and career development, benefits, discipline, and separation. Moreover, the policy is consistent with all applicable law and presidential directives, including the latest requirements under Executive Order 14035, *Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce* (June 25, 2021).

This EEO Policy Statement is a reminder that all ACUS employees are protected from discrimination under the law. ACUS employees and applicants for employment are covered by federal laws and presidential executive orders designed to safeguard federal employees and job applicants from discrimination on the basis of race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), parental status, national origin, age, disability, genetic information (including family medical history), political affiliation, military service, or other non-merit-based factors. These protections extend to all management practices and decisions, including recruitment and hiring, appraisal systems, promotions, training, and career development programs. Consistent with these obligations, ACUS also provides reasonable accommodations to employees and applicants with disabilities and for sincerely held religious beliefs, observances, and practices.

ACUS employees and applicants are also protected against retaliation. Consistent with federal laws, acts of retaliation against an employee who engages in protected activity, such as reporting discrimination or harassment or participating in the EEO process, whistleblowing, or the exercise of any appeal or grievance right provided by law will not be tolerated. Importantly, ACUS will take swift action when an ACUS employee or non-employee is found to have engaged in discrimination, retaliation, or harassment (including sexual harassment).

We must all be diligent in maintaining a workplace free from unlawful discrimination. This includes working to ensure that harassment, on any protected basis, does not occur at our agency. In addition, as leaders, ACUS managers and supervisors have a special role and responsibility to help prevent and eliminate harassment in the workplace. Moreover, I wish to remind all ACUS employees of their duty not to engage in harassing conduct *and* to report any such conduct if it occurs.

ACUS employees or applicants who believe that they have experienced harassment, retaliation, or discrimination should contact GSA's Office of Civil Rights (ACUS's EEO contractor) at eeo@gsa.gov or 202-501-0767; or, as appropriate, the Office of Special Counsel at 202-804-7000 or the Merit Systems Protection Board at 202-653-7200.

It is incumbent upon all of us to ensure that ACUS is a model employer and serves as an example of equity and inclusiveness in the federal government. In so doing, we reaffirm our collective commitment to a workplace free of unlawful discrimination, harassment, and retaliation, and enhance our overall mission.

This statement reaffirms principles of equal employment opportunity and assures that EEO program requirements will be enforced. A copy of this statement is to be made available to all employees via shared computer drives. For general questions concerning EEO, contact Shawne McGibbon, EEO Director, at 202-480-2080 or smcgibbon@acus.gov.

This policy statement supersedes all prior versions.

II. No FEAR Act Notice

On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002" (No FEAR Act), 116 Stat. 566, Pub. L. 107-174 (5 U.S.C. § 2301 note). The Act is intended to hold federal agencies accountable for violations of antidiscrimination and whistleblower protection laws. In support of this purpose, Congress found that "agencies cannot be run effectively if those agencies practice or tolerate discrimination." Sec. 101(1), Pub. L. 107-174. ACUS provides this No FEAR Act notice to inform its current employees, former employees, and applicants for employment of the rights and protections available under federal antidiscrimination, whistleblower protection, and retaliation laws, as required by the Office of Personnel Management, 5 CFR § 724.202.

A. Antidiscrimination Laws

ACUS cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. § 2302(b) (1), 29 U.S.C. § 206(d), 29 U.S.C. § 631, 29 U.S.C. § 633a, 29 U.S.C. § 791, and 42 U.S.C. § 2000e-16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an Equal Employment Opportunity (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. *See, e.g.*, 29 CFR 1614. 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.

Since ACUS is a very small agency, it has entered into an agreement with the General Services Administration (GSA) for EEO services, including, but not limited to, counseling and Alternative Dispute Resolution (ADR) services. EEO counselors are available by contacting GSA's EEO Office at their centralized intake hotline and mailbox at 202-501-0767 and eeo@gsa.gov. You may also file a written complaint of discrimination with that office.

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) (see contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through the agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

B. Whistleblower Protection Laws

An ACUS 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 prohibited by law and 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 website: www.osc.gov.

C. Retaliation for Engaging in Protected Activity

ACUS 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 or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

D. 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.

E. Additional Information

For information regarding No FEAR Act regulations, refer to 5 CFR 724, or contact the General Counsel's Office at ACUS, 1120 20th Street, NW, Suite 706 South, Washington, DC 20036, (202) 480-2080. Additional information regarding federal antidiscrimination, whistleblower protection, and retaliation laws can be found at www.eeoc.gov and www.osc.gov.

F. 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).