



Notification and Federal Employee Antidiscrimination and Retaliation Act Report

FISCAL YEAR 2023

Equal Employment Opportunity Office

PURPOSE

Congress passed the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 – the “No FEAR Act” – to hold Federal agencies more accountable for violations of antidiscrimination and whistleblower protection laws. Congress found that “requiring annual reports to Congress on the number and severity of discrimination and whistleblower cases brought against each Federal agency should enable Congress to improve its oversight over compliance by agencies with the law.”

Accordingly, the No FEAR Act requires each agency, no later than 180 days after the end of each fiscal year, to submit a report to the Speaker of the U.S. House of Representatives, the President pro tempore of the U.S. Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, each committee of Congress with jurisdiction relating to the agency, the Chair of the Equal Employment Opportunity Commission (EEOC), and the Attorney General of the United States. Regulations from the Office of Personnel Management (OPM) implementing the No FEAR Act, 5 Code of Federal Regulations (C.F.R.) Part 724, Subpart C, also require the submission of this annual report to the Director of OPM.

The Annual report must provide the following information:

- The number of federal court cases, pending or resolved, arising under the No FEAR Act laws and the status and disposition of the cases;
- Judgment Fund reimbursements and adjustments to agency budgets to meet reimbursement requirements;
- The number and type of disciplinary actions related to discrimination, retaliation, or harassment and the agency’s policy relating to appropriate disciplinary action;
- Year-end summary data related to federal-sector EEO complaint activity;
- An analysis of trends, causation, and practical knowledge gained through experience, and actions planned or taken to improve complaint or civil rights programs; and
- The agency’s plan for No FEAR Act-related training.

The International Boundary and Water Commission (IBWC) prepares and submits this report to comply with these statutory and regulatory requirements.

IBWC’s No FEAR Act data, including the Agency’s most recent No FEAR Act Notice, and quarterly data, can be accessed from the homepage of the IBWC’s website at

<https://www.ibwc.gov/home.html>.

The primary purpose of the No Fear Act of 2002, Public Law 107-174, is to improve Federal agency accountability for violations of the anti-discrimination and whistleblower protection laws related to employment and to ensure that employees, applicants for employment, and former employees know their rights under anti-discrimination laws and the Whistleblower Protection Act.

By improving accountability, the number of incidents of workplace discrimination within Federal government is reduced.

This report covers FY 23 (October 1, 2022 to September 30, 2023).

5 CFR § 724.302 Reporting Obligations

5 CFR § 724.302(a)(1)

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 § 724.102 of subpart A of this part 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;

During the last five years, 2 cases were disposed of in Federal District Court. One Federal District Court filing arose under Title VII. The second case filed was initially filed under the Whistleblower Protection Act and then reopened and filed under the Whistleblower Protection Enhancement Act of 2012 (WPEA), 126 Stat. 1465-76. Both cases are from FY 18.

In FY 23, the IBWC had no cases in Federal court pending or resolved related to Anti-Discrimination or Whistleblower laws.

5 CFR § 724.302(a)(2)

In the aggregate, for the cases identified in paragraph (a)(1) of this section and separated by provision(s) of law involved:

(i) The status or disposition (including settlement);
Both cases were decided in favor of the IBWC in FY 18.

(ii) The amount of money required to be reimbursed to the Judgment Fund by the agency for payments as defined in § 724.102 of subpart A of this part;
There have been no reimbursements.

(iii) The amount of reimbursement to the Fund for attorney's fees where such fees have been separately designated;
There have been no reimbursements.

5 CFR § 724.302(a)(3)

In connection with cases identified in paragraph (a)(1) of this section, the total number of employees in each fiscal year disciplined as defined in § 724.102 of subpart A of this part and the specific nature, e.g., reprimand, etc., of the disciplinary actions taken, separated by the provision(s) of law involved;

No employees were disciplined for discrimination or other infractions of law in FY 18.

Furthermore, since there are no federal court cases this reporting period, there have been no disciplinary actions associated with federal cases.

5 CFR § 724.302(a)(4)

The final year-end data about discrimination complaints for each fiscal year that was posted in accordance with Equal Employment Opportunity Regulations at subpart G of title 29 of the Code of Federal Regulations (implementing section 301(c)(1)(B) of the No FEAR Act); *We ended FY 23 with one (1) case pending a hearing.*

Hearing No.	Status
450-2021-00179X	Closed. Summary judgment was granted in favor of the Agency.
450-2023-00074X	Closed. Summary judgment was granted in favor of the Agency.
450-2023-00223X	Open.

5 CFR § 724.302(a)(5)

Whether or not in connection with cases in Federal court, the number of employees in each fiscal year disciplined as defined in § 724.102 of subpart A of this part in accordance with any agency policy described in paragraph (a)(6) of this section. The specific nature, e.g., reprimand, etc., of the disciplinary actions taken must be identified.

Since there are no federal court cases this reporting period, there have been no disciplinary actions associated with federal cases.

5 CFR § 724.302(a)(6)

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 *based* Whistleblower Protection Laws or for conduct that constitutes another prohibited personnel practice revealed in connection with agency investigations of alleged violations of these laws;

The IBWC Employee Code of Conduct consists of fourteen principles that serve to guide employees in carrying their day-to-day work in an ethical manner. The fourteen principles are on Executive Order 12674 and 5 CFR part 2635. A violation of one or more principles could result in disciplinary action or, for certain offenses, prosecution under related criminal statutes on conflicts of interest. Public service is a public trust. Federal employees must always place loyalty to high ethical standards above private gain. Understanding and observing principles of ethical conduct are essential to fulfilling that trust. Every employee must review and certify the Agency's Code of Conduct, as the Commission directs.

In October 24, 2018, the IBWC created the Employee Conduct Manual which establishes agency-wide policy and procedures for management officials to follow in identifying,

documenting, and taking corrective action regarding acts of misconduct. Management wrote the manual from the perspective that agency management officials (specifically supervisors, managers, and executives) are the primary users of the guidelines. As such, the manual has management officials in mind by using the singular second-person point of view, including the pronouns “you” and “your.” For the sake of brevity, the manual’s use of the term “supervisor” also includes managers and executives. At the same time, non-supervisory employees also benefit from knowing the agency’s employee conduct policy because they will be held accountable for acts of misconduct.

Additionally, USIBWC issues annual policies on the Harassment Prevention Policy, Equal Employment Opportunity and Non-Discrimination Policy Statement, and Diversity & Inclusion Statement to reaffirm the agency’s commitment to providing a work environment free of discrimination.

5 CFR § 724.302(a)(7)

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.**

The IBWC’s workforce population has varied over the years, and during FY 22, five discrimination complaints were filed.

The Equal Employment Opportunity Office did not find any significant pattern or trend that could be identified as a trigger for EEO complaints. Additionally, when examining complaints from FY 19 to FY 23, there is no discernible pattern indicating a trend across IBWC or within any specific department.

We are committed to providing ongoing training for managers and employees on Employee Rights, including EEO rights, whistle-blower rights, and others.

5 CFR § 724.302(a)(8)

For each fiscal year, any adjustment needed or made to the budget of the agency to comply with its Judgment Fund reimbursement obligation(s) incurred under § 724.103 of subpart A of this part; and

As previously noted there were no cases filed in the Federal District Court this fiscal year; therefore, the Agency did not have any reimbursement to the Judgment Fund in 2023.

5 CFR § 724.302(a)(9)

The agency's written plan developed under § 724.203(a) of subpart B of this part to train its employees.

The USIBWC Training Directive, SD.I.08091 documents mandatory training under applicable federal regulations. It is not portrayed as an exhaustive list because of continually changing training requirements in certain functional areas such as environmental management. This Directive was updated in December 10, 2013 to include the Management Succession Plan which establishes a program to ensure the availability of highly qualified candidates within the agency for management positions that are projected to be filled within the next three to ten years. The plan establishes a process for the following: identifying high-potential candidates through the application of merit principles, including the promotion of equal opportunity; developing their leadership and management skills through classroom and experiential learning; and retaining them to ensure both their availability and a return on the agency's investment.

5 CFR § 724.302(b)

The first report also must provide information for the data elements in paragraph (a) of this section for each of the five fiscal years preceding the fiscal year on which the first report is based to the extent that such data is available. Under the provisions of the No FEAR Act, the first report was due March 30, 2005, without regard to the status of the regulations.

From 2019-2023, the IBWC didn't have any cases pending in Federal court. No judgments funds are owed to the treasury department.

5 CFR § 724.302(c)

Agencies must provide copies of each report to the following:

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

CONCLUSION

The report showcases IBWC's notable accomplishments in its complaints program, which can be credited to the No FEAR Act and the Commissioner's unwavering commitment to workplace discrimination, harassment prevention, whistleblower rights, conflict resolution, open door policy, and mandatory No FEAR Act training. Despite these successes, IBWC continues to identify and address areas for improvement as part of its dedication to upholding merit systems principles and ensuring protection from prohibited personnel practices for all employees as mandated by law.