



# Surface Transportation Board

Washington, D.C. 20423-0001

Office of the Chairman

## Memorandum

**TO:** All Employees **DATE:** May 29, 2024

**FROM:** Chairman Robert E. Primus

**SUBJECT:** Notice of Rights and Protections Available under Federal Antidiscrimination, Whistleblower Protection, and Retaliation laws

On May 15, 2002, Congress enacted the “Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,” which is now known as the No FEAR Act. One purpose of the Act is to “require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.” Pub. L. 107-174, Summary. In support of this purpose, Congress found that “agencies cannot be run effectively if those agencies practice or tolerate discrimination.” Pub. L. 107-174, Title I, General Provisions, Section 101(1).

The Act also requires this agency to provide this notice to Federal employees, former Federal employees, and applicants for Federal employment to inform you of the rights and protections available to you under Federal antidiscrimination, whistleblower protection, and retaliation laws.

### Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant for employment with respect to the terms, conditions, or privileges of employment on the basis of race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability (physical and mental), conditions related to pregnancy and childbirth, genetic information (individual or family medical history), marital status, political affiliation and/or reprisal for opposing discrimination or engaging in protected activity. 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), 631, 633a, and 791, 42 U.S.C. § 2000e-16, and 42 U.S.C. § 2000ff et seq.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability (physical and mental), conditions related to pregnancy and childbirth, genetic information (individual or family medical history), and from actions taken in retaliation or reprisal for an individual’s opposition to discrimination or participation in the EEO process, 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 the agency. See 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.

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).

The Office of Equal Employment Opportunity (OEEEO) is available for questions or concerns about anti-discrimination statutes. To contact an EEO Counselor or for further information about the STB's policy or to obtain technical advice on anti-discrimination and other EEO-related matters, please contact the OEEEO at (202) 360-9302 or email [eeo@stb.gov](mailto:eeo@stb.gov). The OEEEO also provides alternative dispute resolution services for all workplace disputes.

## **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 for employment because of protected disclosure. A protected disclosure is a 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 employment 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 N.W., Suite 218, Washington, DC 20036-4505, or online through the [OSC website](#) (external link).

## **Retaliation for Engaging in Protected Activity**

A Federal agency cannot retaliate against an employee or applicant for employment 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 of this document or, if applicable, the administrative grievance procedures in order to pursue any legal remedy.

## **Disciplinary Actions**

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee, up to and including removal, who has engaged in discriminatory or retaliatory conduct. 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.

### **Additional Information**

For further information regarding the No FEAR Act regulations, refer to 5 C.F.R. Part 724, as well as the appropriate offices within the Board (e.g., the OEEO or Office of Human Resources). STB's specific antidiscrimination policies relating to [equal employment opportunity](#) have been electronically posted on the STB website. Additional information regarding Federal antidiscrimination, whistleblower protection, prohibited personnel practices and retaliation laws can be found at the [EEOC website](#) (external link) and the [OSC website](#) (external link).

### **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 for employment under the laws of the United States, including the provisions of law specified in 5 U.S.C. § 2302(d).