



United States Department of Agriculture

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Food Safety and
Inspection Service

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TO: Gladys Gary Vaughn
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FROM: Angela E. Kelly
Director

SUBJECT: Data Submission of the 2019 Notification and Federal Employee
Anti-Discrimination and Retaliation (No FEAR Act) Annual
Report

In accordance with the reporting requirements of Title III of the No FEAR Act of 2002 and No FEAR Act Report Guidelines, attached is the Food Safety and Inspection Service (FSIS) Fiscal Year (FY) 2019 Annual Report.

The attached report shows that the Agency's formal complaint inventory marginally increased by four complaints from FY 2018 to FY 2019. This increase is attributed to various factors including the issuance of Executive Order 13839, implementation of the New Poultry Inspection System, staffing shortages, the 35-day partial government furlough, implementation of an Agency-wide reorganization, and the Agency's continued efforts to educate employees of their rights by providing annual EEO and Civil Rights training.

If you have any questions on the contents of the report, please contact me at angela.kelly@usda.gov or Melissa Dull, Equal Employment Specialist, at melissa.dull@usda.gov or by phone at (301) 504-7755.

Attachment

cc: Bridget Peters, OASCR, Washington, DC

**Food Safety and Inspection Service (FSIS)
FY 2019 Annual Report of the Notification and Federal Employee
Anti-Discrimination and Retaliation (No FEAR) Act Report**

1. Number of Formal Complaints Filed

Trend Examination:

There was a seven percent net increase in the number of formal complaints that were filed in Fiscal Year (FY) 2019 (58) compared to the number filed in FY 2018 (54).

Causal Analysis:

The increase in the formal complaint inventory could be attributed to any or all of the following factors:

- **Equal Employment Opportunity and Civil Rights (EEO/CR) Training** – In FY 2019, the Agency issued a mandatory training entitled, “Overview of the EEO Process” that focused on educating the workforce on the EEO process. Eighty-two (82) percent of employees who completed the training satisfied a competency requirement. This percentage exceeded the target competency rate of 80 percent established in the Agency’s FY 2017-2021 Strategic Plan. When employees are educated about the EEO process, they become increasingly aware of their rights and may subsequently file EEO complaints when they believe their rights are violated.
- **Issuance of Executive Order (E.O.) 13839 (Section 5- Ensuring Integrity of Personnel Files):** As a result of the issuance of this E.O. on May 25, 2018, the Agency is prohibited from entering into settlement agreements that alter or rescind personnel actions documented in an employee’s Official Personnel Folder (OPF). This directly impacts the Agency’s ability to settle informal complaints involving disciplinary/adverse actions, neutral references, performance appraisals, and other personnel actions.
- **Staffing Impact of the New Poultry Inspection System (NPIS):** The implementation of this new inspection system resulted in a reduction of on-line inspectors which led to a surplus of employees that were unable to secure off-line positions. This created intense competition for off-line positions in NPIS-certified plants. In-plant inspectors who did not apply or who were not selected for off-line positions were subjected to Agency work reduction procedures. Employees that were dissatisfied with NPIS and the outcome of work reduction procedures subsequently initiated EEO complaints. Claims included: promotion/non-selection, testing/grading of required inspection courses pertaining to training as a condition of employment and various terms and conditions of employment such as

directed reassignments out of the local commuting area, temporary travel and shift reassignments/hardships.

- **Staffing Shortages and Impact on Employee Work/Life Balance:** The Agency experiences periods of staffing shortages due to the nature of inspection work and remote locations of various duty stations. Extended periods of staffing shortages and limited relief coverage culminate in employee stress and dissatisfaction with the work environment. This can result in disciplinary or adverse actions, particularly relating to time and attendance issues, which employees may characterize as harassment.
- **Impact of Furlough on Essential Employees:** As a result of the 35-day furlough, the Agency's essential personnel were required to work without compensation. Some of the circumstances perpetuated by the length of the furlough were the subject of complaints. Examples included: being denied requests for leave and charged Absent Without Leave (AWOL).
- **Agency Reorganization:** The Agency underwent a reorganization in FY 2018 that resulted in the transfer of some functions among staffs and changes in some employees' position titles, work assignments and duty locations within the same local commuting area. These changes were implemented in FY 2019. Although no adverse impact was noted in the civil rights impact analysis, several employees expressed dissatisfaction with these changes by filing discrimination complaints.

Knowledge Gained:

The Agency observed the following actions during the reporting period:

Implementing and enforcing E.O. 13839 resulted in the Agency's inability to negotiate settlement terms with aggrieved parties that could have potentially resolved disciplinary, adverse action, and performance related cases. The Agency observed that informal complaints relating to these claims had a higher probability of aggrieved parties filing formal complaints.

Implementing the new inspection system caused some employee dissatisfaction because the changes impacted staffing levels and resulted in work reductions. Work reductions also caused employees to be reassigned to less desirable locations or those requiring household moves. Additionally, there was intense competition for promotions to a limited number of higher-graded positions within the same establishment or local commuting area. This contributed to an increased number of promotion/non-selection claims.

The Agency observed that hardships caused by the furlough and staffing challenges may have negatively impacted employees' work/life balance and resulted in the filing of complaints.

Employees who received training about the EEO process became aware of their rights and the ability to exercise these rights when they believe they are aggrieved.

Action Taken or Planned:

In FY 2019, Agency leadership convened a series of meetings to improve the overall employee communication strategy regarding NPIS. This included reviewing and updating talking points about NPIS, clarifying information on work reduction handouts, and offering targeted resume training.

Following the furlough, the Agency issued monetary awards to essential personnel who were required to work during the furlough to recognize their extra effort and dedication.

To address staffing shortages, the Agency requested and received direct hire authority from the Office of Personnel Management (OPM) for GS-1863-5/7 Food Inspector and GS-1862-5/7/8/9 Consumer Safety Inspector positions. This enables the Agency to directly select candidates for positions where there is a critical hiring need.

As noted previously, the Agency issued mandatory EEO/CR training to the workforce in FY 2019. In FY 2020, the Agency plans to issue mandatory “No FEAR” training to the entire workforce and Anti-Reprisal training to managers and supervisors. The Agency’s goal is to increase and refresh employees’ knowledge of EEO/CR laws and regulations.

2. Number of Filers

Trend Examination:

In FY 2019, 56 individual complainants and two repeat filers filed formal EEO complaints. This represents a 4 percent increase compared to the number of individual complainants (54) who filed formal complaints in FY 2018.

Causal Analysis:

The increase in complaint filers is associated with the same contributing factors resulting in an increased volume of total complaints filed. The causal analysis for the increased number of complaint filers is described in Section 1 of this report.

Knowledge Gained:

The increase in the number of complaint filers is associated with the same contributing factors resulting in an increased volume of total complaints filed. The knowledge-gained analyses of those factors were described in Section 1 of this report.

Action Taken or Planned:

The increase in the number of complaint filers is associated with the same contributing factors resulting in an increased volume of total complaints filed. The actions taken or planned analyses of those factors were described in Section 1 of this report.

3. Number of Repeat Filers

Trend Examination:

In FY 2019, there were two repeat complainants who filed formal complaints. In FY 2018, there were no repeat filers.

Causal Analysis:

While there was no clear explanation for the cause of the increase in repeat filers during FY 2019, the following were contributing factors pertaining to the repeat complaints: staffing shortages affecting work/life balance resulting in denial of leave and subsequently applying AWOL; insufficient production of medical documentation by employees; employees not adhering to established call-in procedures; and employees not receiving their preferred reasonable accommodation (RA).

Knowledge Gained:

Each repeat filer's subsequent complaint alleged reprisal and contained, in part, similar claims to those alleged in their first complaint. Repeated EEO filings from the same complainant that are filed within close proximity of each other may result when Agency officials engage in alleged conduct that does not comply with Agency policy or legal and regulatory authorities. Repeated patterns of conduct that were not in compliance with controlling authorities highlighted the need for Agency re-training on the applicable subject matter to ensure understanding and compliance.

Action Taken or Planned:

The Agency utilized verbal instruction and written corrective memoranda to document efforts to re-educate and re-instruct employees on Agency policy and procedure. Where initial methods failed to correct behavior, disciplinary action was proposed and taken where warranted.

To address the RA issues, the Agency continued to enhance its RA program to improve efficiency and ensure compliance with the Equal Employment Opportunity Commission's requirements. The Agency also provided RA training to new supervisors, Frontline Supervisors and various offices within the Agency to ensure and reinforce understanding of RA procedures.

In FY 2020, managers and supervisors will be required to complete “Anti-Reprisal” training. This training will increase management’s understanding of what constitutes reprisal and may prevent supervisors and managers from engaging in such behavior.

4. Number of Bases Alleged in Complaints

Trend Examination:

In FY 2019, the top four bases were reprisal, sex, race and disability (tied), and age. Except for sex, these bases paralleled the top bases noted in FY 2018 and the top four bases filed across the Federal Government.

<u>FY 2019</u>	<u>FY 2018</u>
1. Reprisal (41)	1. Reprisal (29)
2. Sex (24)	2. Race (23)
3. Race and Disability (23)	3. Disability (21)
4. Age (18)	4. Age (19)

In FY 2019, reprisal was the most frequently cited basis; it was cited in 41 complaints, representing a 41 percent increase from FY 2018 (29 complaints).

Complaints citing sex increased by 41 percent, from 17 in FY 2018 to 24 in FY 2019.

Complaints citing race and disability were tied for third. Race was alleged in 23 complaints in both FY 2018 and FY 2019. In FY 2019, disability had a net increase of 10 percent from FY 2018 (21 complaints) to FY 2019 (23 complaints).

Age was the fourth most frequently cited basis in FY 2019 with a net decrease of 5 percent from 19 complaints in FY 2018 to 18 in FY 2019.

Causal Analysis:

Increases in complaints on the bases of reprisal, sex, race and disability are commensurate with increases in those same bases as reported in the FY 2018 EEOC Federal Sector Report (462 Report). The Agency attributes the increases, in general, to continued EEO training to employees regarding the EEO process; their rights and responsibilities; and the protected bases.

Additionally, the Agency infers the current social climate contributes to sexual sensitivities and racial and cultural intolerance/insensitivity. This especially may have also increased the number of complaints citing sex and race as a basis.

Knowledge Gained:

Training reaffirmed the Agency’s commitment to educating the workforce in EEO/CR. The relatively consistent ranking of the top EEO bases across fiscal years suggests that training content is assisting employees in identifying applicable bases.

Action Taken or Planned:

During FY 2019, the Agency implemented all planned actions reported in the FY 2018 No FEAR Report. Specifically, employees completed mandatory “Overview of EEO Process” training. In addition, RA training was delivered to the workforce to increase awareness of the RA policy and process. In FY 2020, the Agency plans to issue mandatory “No FEAR” training to the entire workforce and “Anti-Reprisal” training to managers and supervisors. The Agency will also provide additional EEO/CR training to New Supervisors, Frontline Supervisors, and Agency leadership. Additionally, three Special Emphasis Programs will be conducted in field locations. These actions will assist the Agency’s efforts towards achieving and maintaining a discrimination-free workplace.

5. Number of Issues Alleged in Complaints

Trend Examination:

In FY 2019, the top four claims were harassment (non-sexual), disciplinary/adverse actions, terms/conditions of employment and time and attendance (tied) and non-selection or non-promotion. Except for time and attendance issues, this ranking mirrors the same top four claims cited in complaints filed across the Federal Government.

<u>FY 2019</u>	<u>FY 2018</u>
1. Non-sexual Harassment (38)	1. Non-sexual Harassment (35)
2. Disciplinary Actions (18)	2. Time and Attendance (11)
3. Terms/Conditions of Employment and Time and Attendance (17)	3. RA and Performance Appraisal (10)
4. Promotion/Non-selection (13)	4. Termination (7)

There was a 9 percent net increase in the number of complaints citing non-sexual harassment, from 35 in FY 2018 to 38 in FY 2019.

The number of complaints citing disciplinary/adverse actions increased by 200 percent from 6 in FY 2018 to 18 in FY 2019.

Claims classified as terms/conditions of employment and time and attendance were tied for the third most frequently cited issues in FY 2019. Terms/conditions of employment had a net increase of 183 percent from FY 2018 (6 complaints) to FY 2019 (17 complaints). Time and attendance claims were also cited in 17 complaints in FY 2019; this represented a net increase (55 percent) from FY 2018 (11 complaints).

Promotion/non-selection was the fourth most frequently cited issue in FY 2019. It was cited in 13 complaints in FY 2019, up from 6 complaints filed in FY 2018 (117 percent net increase).

Causal Analysis:

From FY 2018 to FY 2019, there was change in the ranking of the top issues. Non-sexual harassment remained the top cited claim, which is consistent with trends reported at both

Departmental and Federal levels. Complainants frequently raised a series of work-related incidents that occurred over time as harassment. Complainants less frequently alleged isolated acts of discrimination and disparate treatment (i.e., alleging they were treated differently than other employees who were similarly situated).

Potential factors, influencing the ranking of the remaining most frequently cited FY 2019 claims, can be found in the causal analyses described under Section 1, as they are similarly relevant here.

Knowledge Gained:

The description of knowledge gained under Section 1 is similarly relevant here.

Action Taken or Planned:

The description of actions taken and/or planned under Section 1 is similarly relevant here.

6. Findings of Discrimination

Trend Examination:

For the past two years, there were no findings of discrimination issued to the Agency by the EEOC or USDA's Office of the Assistant Secretary for Civil Rights (OASCR).

Causal Analysis:

None.

Knowledge Gained:

None.

Action Taken or Planned:

None.

7. Average Length of Time to Complete Each Stage of the Complaint Process

Investigation: 16 percent increase (average of 28 more days to process)
FY 2019 – 199 FY 2018 – 171

Final Agency Action with Hearing: 20 percent increase (average of 5 more days to process)
FY 2019 – 30 FY 2018 – 25

Final Agency Action without Hearing: 8 percent increase (average 4 more days to process)

FY 2019 – 54 FY 2018 – 51

Dismissals: No change

FY 2019 – 15 FY 2018 – 15

8. Pending Complaints Filed in Previous Fiscal Years

Investigation: 100 percent increase (1 more case pending)

FY 2019 – 1 FY 2018 – 0

Hearing: 11 percent increase (4 more cases pending)

FY 2019 – 40 FY 2018 – 36

Final Agency Action: 100 percent increase (3 more cases pending)

FY 2019 – 6 FY 2018 – 3

Appeal: 8 percent increase (5 more cases pending)

FY 2019 – 69 FY 2018 – 64

9. Total Number of Pending Complaints Where Investigations Exceed Required Timeframes

The number of pending cases exceeding the 180-day timeframe decreased from 3 in FY 2018 to 0 in FY 2019.

Additional Reporting Requirements for Agency Annual No FEAR Report

10. Posting No FEAR Statistical Data

A hyperlink to USDA's No FEAR page reflecting the Agency's quarterly complaint data is available on the FSIS public website home page at

<https://www.fsis.usda.gov/wps/portal/fsis/home>, as well as the FSIS Civil Rights page at <https://www.fsis.usda.gov/wps/portal/informational/aboutfsis/civil-rights>.

11. No FEAR Training of Agency Employees

The Agency provides mandatory No FEAR training as part of the initial onboarding process for new hires. The Agency provides bi-annual mandatory refresher No FEAR training through AgLearn and through distributing paper copies to employees without AgLearn accounts. The Agency's Civil Rights Staff reviews FSIS No FEAR data in AgLearn and provides notification to employees who have not taken the No FEAR training each year. In addition, the Agency routinely notifies the workforce about the requirement for No FEAR training through the Agency weekly newsletter (*Wednesday Newslines*).

12. No FEAR Notice

A hyperlink to USDA's No FEAR page and the No FEAR Act Notice is available at <https://www.fsis.usda.gov/wps/portal/fsis/home>; on the FSIS Civil Rights page at <https://www.fsis.usda.gov/wps/portal/informational/aboutfsis/civil-rights>; and through FSIS' weekly newsletter (Wednesday Newsline).