



United States Department of Agriculture

January 18, 2023

Food Safety and
Inspection Service

Office of the
Administrator
Civil Rights Staff
5601 Sunnyside
Room 1-2165
Beltsville, MD 20705

TO: USDA Center for Civil Rights Operations
Compliance Division
Office of the Assistant Secretary for Civil Rights

FROM: Angela E. Kelly
Director

SUBJECT: Data Submission of the Notification and Federal Employee Anti-Discrimination and Retaliation (No FEAR Act) Annual Report for Fiscal Year (FY) 2022

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) FY 2022 Annual Report.

The report reflects a decrease in the Agency's FY 2022 formal complaint inventory by 11 complaints when compared to the previous year. We attribute this decrease to actions taken by Agency leadership to improve on-going communication and feedback with employees on workforce initiatives, incentives, and flexibilities, as well as continued annual training efforts to educate the workforce on Equal Employment Opportunity (EEO) and Civil Rights (CR) matters.

Questions on the contents of the report can be directed to me at (301) 504-7755 or Angela.Kelly@usda.gov.

cc: CCROCompliance@usda.gov
Monique.Simmons@usda.gov

Attachment

**Food Safety and Inspection Service
FY 2022 Annual Report of the Notification and Federal Employee
Anti-Discrimination and Retaliation Act Report**

Written Analysis of FSIS FY 2022 No FEAR Act data

Section A: Number of Formal EEO Complaints and Number of Filers

There were 41 formal complaints filed by 40 complainants in FY 2022. This represented a 21 percent decrease from 52 formal complaints filed in FY 2021. Between fiscal years there was a 20 percent decrease in the number of individual filers from 50 individuals in FY 2021 to 40 individuals in FY 2022. For repeat filers there was a 50 percent decrease from two individuals in FY 2021 to one in FY 2022.

Section B: Most Frequently Cited Bases in Formal EEO Complaints

The top three bases remained consistent between fiscal years, although the rank order between claims based on disability and claims alleging reprisal switched places for the top spot.

FY 2022

1. Reprisal (24)
2. Disability (18)
3. Race (15)

FY 2021

1. Disability (22)
2. Reprisal (20)
3. Race (19)

Reprisal was alleged in 24 complaints in FY 2022 compared to 20 complaints in FY 2021, an increase of 20 percent. Conversely, complaints citing the bases of disability and race decreased by 18 percent and 21 percent, respectively, from FY 2021 to FY 2022. The basis of disability was raised in 18 complaints in FY 2022, down from 22 complaints in FY 2021. Similarly, complaints citing the basis of race decreased by four complaints from 19 to 15 during the same period.

Section C: Most Frequently Cited Issues in Formal EEO complaints

The rank order of claims of non-sexual harassment and disciplinary actions remained the two most frequently cited issues across FYs 2021 and 2022. Although non-sexual harassment remained in the top spot in FY 2022, there was a 44 percent decrease in the number of claims (11). The remaining two most frequently alleged claims in FY 2022 were terms/conditions of employment and reasonable accommodation.

FY 2022

1. Non-sexual Harassment (13)
2. Disciplinary Actions (12)
3. Terms/Conditions of Employment (10)
4. Reasonable Accommodation (5)

FY 2021

1. Non-sexual Harassment (24)
2. Disciplinary Actions (14)
3. Reasonable Accommodation (10)
4. Promotion/Non-Selection (8)

There was a 233 percent increase in the number of complaints citing terms/conditions of employment from 3 in FY 2021 to 10 in FY 2022. The number of complaints including a claim of reasonable accommodation decreased by 50 percent from 10 in FY 2021 to 5 in FY 2022.

Section D: EEO Processing Stages

1. Average number of days for completion of select EEO stages

- **Investigation:** There was an increase of 12 days (a nine percent increase) in the amount of time it took USDA to complete EEO investigations in FSIS cases.
FY 2022 – 152 days FY 2021 – 140 days
- **Final Agency Action with Hearing:** There was an increase of 6 days (a 67 percent increase) in the amount of time it took USDA to issue final orders from an EEOC Administrative Judge’s decision in FSIS cases.
FY 2022 – 15 days FY 2021 – 9 days
- **Final Agency Action without Hearing:** There was an increase of 20 days (a 48 percent increase) in the amount of time it took USDA to issue merit Final Agency Decisions in FSIS cases.
FY 2022 – 62 days FY 2021 – 42 days
- **Dismissals:** There was an increase of 10 days (a 32 percent increase) in the amount of time it took USDA to issue procedural dismissals in FSIS cases.
FY 2022 – 41 days FY 2021 – 31 days

2. Pending Complaints Filed in Previous Fiscal Years

- **Investigations:** Both fiscal years had zero complaints pending.
- **Hearings:** There were 15 fewer cases pending in FY 2022 than were pending the previous year, representing a 58 percent decrease: In FY 2022 there were 11 cases pending; in FY 2021 there were 26 cases pending.
- **Final Agency Actions:** Three cases were pending at the end of FY 2022, representing a fifty percent increase from the number pending in the previous year: FY 2022 – 3 FY 2021 – 2
- **Dismissals:** There was a 50 percent increase in the number of complaints dismissed in FY 2022 (3 cases) compared to the number dismissed in FY 2021 (2 cases).

- **Appeals:** There was an increase of 12 pending appeals between fiscal years representing a 171 percent increase: FY 2022 – 19 FY 2021 – 7

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

One case exceeded the 180-day regulatory timeframe for completion of the investigation. This is a 100 percent increase from FY 2021 where all cases were timely completed.

Section E: Final Agency Actions with a Finding of Discrimination

There were no findings of discrimination in FY 2022. In FY 2021, the Agency was found liable by an EEOC Administrative Judge for engaging in religious-based harassment in one complaint.

Section F: Analysis, Experience, and Actions

1. Causal Analyses

The decrease in the formal complaint inventory may be attributed to any of the following activities taken by the Agency in FY 2022:

- **EEO/CR Training:** Employees were required to complete mandatory training on the following topics – FSIS Reasonable Accommodation (RA) policies and procedures; Section 508 of the Rehabilitation Act of 1973; the No FEAR Act; USDA Whistleblower Rights and Remedies; and Workplace Violence Prevention. Supervisors and managers were also required to complete a module on Diversity Recruiting to understand and overcome bias in the hiring process. Other ongoing training and educational efforts included Agency-wide special emphasis programs, webinars, and EEO/CR articles in the FSIS newsletter and in local newsletters written by the various Equal Employment Opportunity Advisory Committees within the Agency.

The Agency hosted a virtual Diversity and Inclusion Training Conference that was available to the entire workforce. The training conference provided training on inclusive mindsets, gender bias, hidden disabilities, and conflict resolution. There are plans to host a similar training conference in FY 2023.

- **Issuance of EEO/CR policies:** The Agency issued a civil rights policy, an anti-harassment policy, and a policy on Limited English Proficiency in FY 2022. These policies demonstrated the Administrator’s commitment to a diverse, equitable, and discrimination/harassment-free work environment. The policies also placed employees on notice of potential disciplinary consequences for engaging in discriminatory, harassing, or retaliatory conduct.

- **Marketing the use of ADR services to address workplace disputes:** The Agency has a robust ADR program that assists managers, supervisors, and employees in addressing and resolving workplace disputes. The program offers a variety of services for both EEO and non-EEO matters, including training, facilitations, individual conflict coaching, early intervention services for individuals and teams, and mediations. These services are communicated to the workforce through brochures, ADR information available on the Agency website, training, and by word-of-mouth. ADR is routinely included in training course curricula given to new and experienced supervisors to help proactively address workplace conflict. ADR training is also provided to managers, supervisors, and employees upon request. During FY 2022, ADR efforts resulted in the resolution of 64 percent of EEO disputes. The Agency will continue to market the availability and benefits of the ADR program as a means of resolving disputes.
- **Monthly Town Hall Meetings Hosted by Agency Leadership:** Throughout FY 2022, Agency leadership held monthly all-employee telephonic and virtual town hall meetings where information was shared, and employee feedback was solicited. In conjunction with employee surveys, discussions with the employee union, and information received from an employee feedback email inbox, these town hall meetings communicated new initiatives, incentives, and workplace flexibilities such as recruitment and retention bonuses, leave, flexible work arrangements, and professional development. Top leadership communicated frequently, provided ample feedback opportunities, and took steps to implement meaningful changes. This assisted in creating a workplace where employees felt heard and valued. This action by top management may have contributed to a reduction in EEO complaints in circumstances where employees otherwise may have invoked the complaint process to have their concerns heard or where they believed they were treated disparately or unfairly.
- **Title VII employment compliance reviews:** On an annual basis, the Agency conducts Title VII compliance reviews of its offices and program areas to monitor the implementation and execution of EEO policies and practices necessary to maintain model EEO programs. These reviews proactively assist program managers in identifying potential violations and/or deficiencies in EEO programs, as well as identifying workplace climate concerns that may prevent potential EEO complaints. Through these reviews, the Agency analyzes workforce data to assess disproportionate employment representation, reviews program procedures and practices related to EEO/CR, examines EEO complaint activity for a three-year period, assesses results of climate assessment surveys, and conducts facility assessments to determine building accessibility for persons with disabilities and to ensure EEO posters and materials are prominently displayed. Findings, recommendations, and action plans are issued to improve each work unit's EEO program. The Agency monitors the implementation of corrective actions noted in the previous year's reviews and issues closure letters upon completion. The Agency conducted four Title VII compliance reviews during FY 2022.
- **Accountability assessments on actions of responsible officials engaging in or contributing to discriminatory practices:** In accordance with Departmental

Regulation 4300-010 on civil rights accountability, the Agency routinely conducts assessments into the actions of officials identified in EEO complaints where findings of discrimination were issued or where settlement agreements were reached to avoid potential findings of liability. Employees found to have engaged in discriminatory actions are held accountable by a range of potential corrective actions, from remedial training to adverse measures. If applicable, the Agency also reviews existing policies and/or procedures to identify if knowledge deficiencies exist or if there are inconsistencies in how policies/procedures are executed. This is done to proactively prevent future complaints and adverse findings. The Agency will continue the practice of performing accountability assessments and taking actions as appropriate.

- **Remote work:** In FY 2022, the Agency identified a large number of non-frontline positions as telework or remote work eligible. In a majority of cases, the employee's residence was designated as their official duty station, which either eliminated or greatly reduced the employee's presence in an office setting. Remote work arrangements may have resulted in a reduction of complaint filings due to improvements in employee work-life balance, increased morale, as well as a reduction in the number of interpersonal interactions that can result in conflict.

The changes in the rank order of alleged EEO bases in the formal complaint inventory may be attributed to the following factors occurring in FY 2022:

- The twenty percent net increase in cases alleging reprisal as a basis may be the result of an increased number of complainants raising 'opposition to discrimination' as prior EEO activity. There was an increased number of complaints filed by individuals who voiced their opposition to alleged discrimination or harassment by making statements to their supervisory chain and/or by filing complaints in other forums where allegations of harassment or discrimination may appear, including the Agency's workplace violence and prevention program and the USDA Office of Inspector General whistleblower hotline.
- The decrease in cases citing disability may be attributed to USDA and FSIS mandatory training efforts for the past two years on the subject of reasonable accommodation.
- The reduction in the number of race-based allegations may be attributed to the Agency's continual efforts to identify and resolve conflict early in the process. Through traditional counseling and ADR, the Agency emphasized identifying root causes of conflict, improved communication between the parties, and worked to reach resolution. Annual EEO/CR training and issuance of policy statements also kept employees apprised of current agency policies and consequences for violating the policies.

The changes in the ranking of the top alleged EEO claims in the formal complaint inventory may be attributed to the following factors occurring in FY 2022:

It is understood harassment covers a wide range of offensive behaviors stemming from discriminatory grounds that serve no purpose except to annoy, embarrass, or cause emotional

distress. However, complainants frequently cite supervisory decisions they disagree with or supervisory attempts to caution or correct performance and conduct deficiencies as unwelcome harassment because the results are annoying, embarrassing, or upsetting.

The ranking of non-sexual harassment as the top cited claim in Agency complaints is consistent with trends reported at both the Department and Federal levels. In locations where more males employees are present than females, female employees could feel vulnerable to sex-based harassment.

It is common for employees who receive corrective, disciplinary, or adverse action to object to such measures and raise allegations of discrimination. As a result, disciplinary actions remained the second most frequently raised claim in FY 2022. Complainants sought ways to mitigate or undo actions or recover harm they perceived as discriminatory, unfair, or unjustified, and the EEO complaint process served as a mechanism to raise and pursue those objections.

The increase in claims characterized as terms/conditions of employment was likely the result of complainants raising a variety of work conditions or situations that rendered them as aggrieved, but which could not be identified under another claim of discrimination, e.g., disciplinary action.

The decrease in claims pertaining to reasonable accommodation may be attributed to continued efforts by USDA and FSIS to deliver mandatory training on RA policy and procedures in FYs 2021 and 2022 as well as the issuance of a revised departmental regulation on the subject.

With respect to the complaint where the Agency was found liable in FY 2021 for creating a hostile work environment, the finding was based on the Administrative Judge's credibility determination that the supervisor made insensitive and inappropriate religious comments to the complainant during an off-site meeting in 2018 where there were no witnesses. The Agency determined the supervisor's behavior was an isolated incident wherein the supervisor used poor judgment. The behavior has not been repeated in the years that followed.

2. Experience Gained in Processing Formal Complaints

Supervisors and managers who participated in trainings gained increased knowledge about discrimination laws and potential missteps that can generate complaints. On-going training helped supervisors ensure work environments remained free from disparate actions and harassing behaviors that result in complaints.

The Agency gained insight into its workforce climate through four Title VII compliance reviews conducted in FY 2022. Findings from the reviews were provided to appropriate management officials accompanied by recommendations to address areas of concern. The information facilitated management awareness of issues potentially contributing to EEO complaints and enabled them to proactively address matters to improve their EEO programs.

Transparent and on-going communication between top management and the workforce helped improve employee morale and confidence in Agency policy and workplace initiatives. When employees recognize their feedback is solicited, heard, and when possible, acted upon by management, they may be less likely to believe discriminatory, harassing, or retaliatory intent were the root causes of their aggrievement. This may have contributed to the twenty-one percent reduction in complaint filings in FY 2022.

With regard to the increase in allegations of reprisal, past agency EEO/CR training efforts have increased employee knowledge of their rights. This included a broader awareness of actions that constituted reprisal in addition to prior EEO complaint filings such as voicing opposition to discrimination in the workplace.

Two consecutive years of training on reasonable accommodation and the reissuance of anti-harassment policy and procedures had a positive impact in reducing the number of complaints with RA and harassment claims from the previous fiscal year. Recurring Agency-wide town hall meetings have contributed to improved employee engagement by soliciting employee feedback and timely implementing initiatives meant to improve recruitment, retention, and the work life balance of field personnel. A reduction in the number of complaints filed was observed when the workforce is engaged, and morale is higher.

With regard to the finding of discrimination relating to harassment, it was determined to be an isolated incident; however, it highlighted the need for the Agency to re-issue its anti-harassment policy statement to the entire workforce as a continued reminder of appropriate conduct and the consequences of engaging in harassing behavior.

3. Past and Future Actions Related to EEO Complaint Processing

The following actions include those taken to improve complaint processing or other civil rights programs in the Agency, as well as planned actions for the next fiscal year:

Policy Issuances: The FSIS Administrator issued three EEO/CR policies during FY 2022. These policies reinforced the agency's commitment to a diverse, equitable, discrimination and harassment-free work environment. In FY 2021 the Agency revised its directive on employee responsibilities and conduct that put employees on notice regarding conduct for which discipline or adverse action could be imposed including harassing, discriminatory and retaliatory conduct. In FY 2022, the Agency issued its anti-harassment policy statement and its civil rights policy statement to the workforce as well as disseminated USDA's policies on the same subject matter. The Agency continues to conduct employment compliance reviews to identify workplace issues or trends that may need to be addressed. Finally, the Agency continues to follow the Departmental Regulation on Civil Rights Accountability to assess actions leading to findings of discrimination and taking corrective or disciplinary action where appropriate.

EEO/CR Training Courses: EEO/CR training is an integral part of the Agency's mandatory annual training programs for all employees. Customized EEO/CR course content is also developed and delivered upon program request and/or where a need is

identified. These actions collectively assisted Agency efforts toward achieving and maintaining a discrimination-free workplace.

During FY 2022, the Agency implemented the planned training actions reported in the FY 2021 No FEAR report. The Agency ensured the workforce completed training on FSIS' RA program, policies, and procedures. The Agency also ensured supervisors and managers completed Diversity Recruitment training that focused on considering diversity in the hiring process. Course content included recruiting from a diverse pool of sources and tips on interviewing candidates to avoid bias. The Agency also issued USDA's mandatory training modules on Section 508, whistleblower protection, and workplace violence and prevention and ensured timely completion by employees. In FY 2023, the Agency will deliver Unconscious Bias training to the workforce and a yet-to-be-determined mandatory course for managers and supervisors. The Agency will continue to ensure USDA-issued EEO/CR training is completed by employees.

The Agency ensures all new employees receive No FEAR training as part of the initial onboarding process and a bi-annual refresher through AgLearn. Employees are notified of the requirement to complete training through the Agency's newsletter, through supervisory channels, and by emails issued from AgLearn.

The Agency hosted a second Virtual Diversity Conference in FY 2022 with topics on inclusive mindsets, gender bias, hidden disabilities, and conflict resolution. The virtual platform and recorded sessions allowed employees across the country to participate. A similar conference is planned for FY 2023.

Senior Leadership Town Hall meetings: For the past three years top Agency management has actively engaged with the workforce by holding recurring interactive all-employee Town Hall meetings. In these meetings employee feedback was actively solicited and new policy initiatives on recruitment, retention, benefits, and work life balance have been implemented and communicated to the workforce. The Agency plans to continue these meetings on a monthly basis.

ADR offers: ADR is offered to all parties during the informal stage of the EEO complaint process in an attempt at early resolution. In some instances, ADR is offered at the formal stage of the EEO complaint process.

EEO/CR information on the Agency's internet and intranet: The Agency's civil rights web pages are frequently updated and expanded with relevant information such as current EEO/CR policies, information on the EEO complaint process, and ADR.

Annual Meetings with Senior Leaders: On an annual basis, the Civil Rights Director meets with all senior management officials to brief them on trends in EEO complaint activity and affirmative employment germane to their programs and other EEO/CR topics.

USDA Civil Rights Enterprise System: FSIS uses this EEO complaints system to accurately process, track, monitor, report, and assess trends in EEO complaint activity from the time an EEO complaint is initiated until final closure.

Posting No FEAR Statistical Data and No FEAR Notice: A hyperlink to USDA’s No FEAR page, the No FEAR Act Notice, and the Agency’s quarterly complaint data is publicly available in two locations on the FSIS internet site – on the FSIS home page at <https://www.fsis.usda.gov/wps/portal/fsis/home> as a footer hyperlink to USDA’s No FEAR page, and on the FSIS Civil Rights page at <https://www.fsis.usda.gov/wps/portal/informational/aboutfsis/civil-rights>.