

**U.S. Department of Justice**

Federal Bureau of Prisons

Washington, DC 20531

November 16, 2006

Mike A. Castelle  
Fair Practices Coordinator  
American Federation of Gov't Employees  
25008 Pinecroft Road  
Petersburg, VA 23803

Dear Mr. Castelle:

This letter is in response to your September 19, 2006, data request addressed to Harley Lappin, Director, Federal Bureau of Prisons. I have been designated to respond to your request. In your request, submitted under Title 5 U.S.C. §7114(b)(4), the union is seeking nine items regarding implementation of the notification and training requirements of Title II of the No FEAR Act. Nearly all of the notification and training requirements of the No FEAR Act mandate Agency level (Department of Justice) actions rather than subordinate component level (Bureau) actions. Nevertheless, applicable information regarding actions the Bureau has taken pro-actively at the component level is provided below.

**Item 1. Training.** Please see attached written plan.

**Item 2. Training Materials.** Please see the attached Annual Training lesson plans and instructional materials for FY 2006 and FY 2007 which include No FEAR Act mandated information. Also, please see the attached March 17, 2002, e-mail from Assistant Director/General Counsel Kathleen Kenney and then Acting Assistant Director for Human Resource Management, Elaine Chapman, to all Chief Executive Officers. Please note that due to unexpected delays, the Office of Personnel Management did not issue the final rule regarding the No FEAR Act notification and training requirements until July 26, 2006. The rule was codified at 5 C.F.R. Part 724, with an effective date of September 18, 2006. The regulation requires the Agency to complete the initial training (with format, content, and length to determined by each agency) by December 17, 2006.

**Item 3. Mandatory Training.** All managers and Supervisors completed mandatory training regarding the Whistleblower protection laws between 2003 and 2005. The completion of this training was tracked by the Labor Law Branch. For the period FY 2006 and beyond, the Bureau will continue to proactively provide No FEAR Act training to all employees via mandatory Annual Training.

**Item 4. Tracking of Training.** The Bureau's Employee Services staff will continue to contemporaneously track Bureau employees' completion of mandatory Annual Training each year using the training management system.

**Item 5. Training of New Employees.** The Bureau's EEO Staff is reviewing the Lesson plans for Institution Familiarization and New Employee Orientation to ensure that the proper information is included.

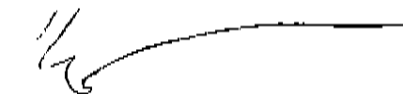
**Item 6. Notification.** The notification requirements are placed on the Agency. The Department of Justice plans to post the No FEAR Act Notice in the Federal Register by November 17, 2006. In addition, the Bureau will be sending a broadcast email, posting an internet headline story on Sallyport, and posting the applicable No FEAR Act information on the EEO website.

**Item 7. Websites.** The Department of Justice (Agency), began posting to the Agency website the applicable No FEAR Act information regarding the Agency and its components in the Winter of 2003. Additionally, the Bureau initially posted a synopsis and copy the No FEAR Act to it's EEO website when this website first went online in August 2006.

**Items 8. and 9. Discipline.** This information is not tracked in the format requested (i.e., by grade/promotion timing), but rather in the format prescribed under the No FEAR Act. Please see the information regarding discipline from the attached annual No FEAR Act Report.

I trust the above has been responsive to your request. If you have any questions, please let me know.

Sincerely,



Kenneth Hyle  
Deputy Associate General Counsel  
Labor Law Branch  
Office of General Counsel

Attachments



## U.S. Department of Justice

## Federal Bureau of Prisons

*Office of the Director*

Washington, DC 20534

March 17, 2005

## MEMORANDUM FOR ALL CHIEF EXECUTIVE OFFICERS

*Kathleen M. Kenney*  
FROM: Kathleen Kenney  
Assistant Director/General Counsel  
Office of General Counsel and Review

*W. Elaine Chapman*  
W. Elaine Chapman  
Acting Assistant Director  
Human Resource Management Division

SUBJECT: Training Requirements under the No Fear Act

Title II of the Notification and Federal Employee Antidiscrimination Act of 2002 (No Fear Act) requires that each agency provide training to all their employees regarding the rights and remedies available under Federal antidiscrimination, whistleblower and retaliation laws. Under the Act, agencies are required to complete initial training by the end of fiscal year 2005. Thereafter, the training must be completed on a training cycle of no longer than every two years. In addition, all new employees must be trained as part of an agency orientation program.

In order to comply with the above requirements, we must ensure that every current employee completes the Annual Training (AT) requirements by the end of the fiscal year. The Equal Employment Opportunity (EEO) training provided during AT must incorporate all of the material included in the lesson plan transmitted from the MSTC as part of the overall training package. You must insure that all of the information contained in that lesson plan is provided to all staff during AT.



## U.S. Department of Justice

Federal Bureau of Prisons

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Washington, DC 20534

November 1, 2005

MEMORANDUM FOR KATHLEEN KENNEY

Assistant Director/General Counsel  
Office of General Counsel and Review

FROM:

Mira Raskin  
EEO Officer/Senior Counsel for Dispute Resolution

SUBJECT:

Training Obligations under the No Fear Act

Section 724.204 of the Notification and Federal Employee Antidiscrimination Act (No Fear Act) requires each agency to develop a written plan to train all of its employees about the rights and remedies available under the Antidiscrimination Laws and Whistleblower Protection Laws. The following is a description of the Bureau's written plan.

Each year, the lesson plan for the EEO session taught during Annual Training will be reviewed and revised to ensure that the information required above is included. The training will be conducted during the requisite annual training schedules for each Bureau facility. The means for documenting the completion of the training will be the employee's attendance at Annual Training which is recorded at each Bureau facility.

If you have any questions, please let me know. Thank you.

cc: Florentino Morlote, Chief, Training and Staff Development  
Branch, Human Resource Management Division  
Don LaLiberte, Associate General Counsel, Labor Law Branch,  
Office of General Counsel and Review



## U.S. Department of Justice

## Federal Bureau of Prisons

Washington, DC 20534

DATE: March 28, 2006

MEMORANDUM FOR: Marcus Williams, Acting Director  
EEO Staff  
~~Justice Management Division~~

FROM: Mina Raskin, EEO Officer/  
Senior Counsel for Dispute Resolution  
Federal Bureau of Prisons

SUBJECT: Bureau of Prisons  
Annual No FEAR Act Report  
Fiscal Year 2005

This is the Federal Bureau of Prisons' (Bureau) Annual Report pursuant to the Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act of 2002, 107 Public Law 174, Title II, Section 203(a).

The required information concerning the Bureau and the relevant language and reference numbers from Title II, section 203(a) are set forth below.

1. Number of cases arising under each of the respective provisions of the law in which discrimination on the part of the agency was alleged; and

2. The status or disposition of such cases:

For items (1) and (2), see charts attached as pages A-C containing the Bureau's case information.

3. The amount of money required to be reimbursed under section 201:

In FY05, the Bureau reimbursed a total of \$1,279,209.56 to the Judgement Fund.

4. The number of employees disciplined for discrimination,

4. **The number of employees disciplined for discrimination, retaliation, harassment, or any other infraction of any provision of law referred to in paragraph (1):**

FY 2005 - Sixty-six (66) Bureau employees were disciplined for violations that could be interpreted to fall under the reporting requirements of the No Fear Act. The information regarding these disciplinary cases is noted on the attachment marked D.

5. **The final year-end data posted under section 301(c)(1)(B):**

See charts attached as pages A-C.

- 6(A) **Detailed description of the policy implemented by the Bureau relating to appropriate disciplinary actions against a federal employee who (i) discriminated against any individual in violation of any of the laws cited under section 201(a)(1) or (2); or (ii) committed another prohibited personnel practice that was revealed in the investigation of a complaint alleging a violation of any of the laws, cited under section 201(a)(1) or (2):**

The most recent Bureau policy implemented relating to disciplinary actions for violations of EEO law is Program Statement 3420.09, Standards of Employee Conduct. This Program Statement, along with the regulations published in Title 5, CFR Part 2635, set forth the standard of conduct for all Bureau employees. The Bureau policy was last updated on February 5, 1999 and is available on the Bureau's website, WWW.BOP.GOV.

- 6(B) **With respect to each of such laws, the number of employees who were disciplined in accordance with such policy and the specific nature of the disciplinary action taken;**

FY 2005: 66 employees were disciplined - 1 removal, 1 reassignment, 4 demotions, 23 written reprimands and 37 suspensions (36 of those suspensions were 14 days or less, 1 suspension was for 30 days).

Should you have any questions, please contact Kathleen White, Sr. EEO Specialist, of my office at 202-514-6165.

Bureau of Prisons  
No FEAR Act Report  
Fiscal Year 2005

Number of cases arising under 5 U.S.C. Section 2302(b)(1): 496

Number of cases arising under 5 U.S.C. Section 2302(b)(8): 7

Number of cases arising under 5 U.S.C. Section 2302(b)(9): 185

Open Complaints Status Year End:

Pending at end of year (9/30/05):	120
Investigation:	29
EEOC Hearing:	35
Agency FAD:	45
Appeal Pending at EEOC:	95

Complaint Disposition During Year:

Dismissed during year:	123
Settled during year:	44
Withdrawn During year:	17
Decided on Merits During Year	
No Discrimination:	329
Decided on Merits During Year	
Discrimination Found:	8

Formal Complaints Pending During Period:

Total Formal Complaints Pending: 708  
(Complaints filed in a prior period: 370 + complaints filed during period: 335 + 3 remands = 708)

Number of individuals who filed EEO complaints:

Individuals who filed at least one complaint during fiscal year: 332

Individuals who filed two or more complaints during fiscal year: 0

Administrative EEO Complaints pending at end of period in:

Investigation of Complaint:	29
Administrative EEOC Hearing:	35
Issuance of Final Agency Decision:	45
Appeals pending at EEOC:	95

EEO bases alleged in FY05 EEO complaints filed at BOP:Civil Rights Act (Title VII) Bases:

Race - American Indian/Alaskan Native:	4
Race - Asian/Pacific Islander:	2
Race - Black:	87
Race - White:	35
Color:	0
Religion:	19
Sex (female):	104
Sex (male):	59
National Origin - Hispanic:	21
National Origin (other than Hispanic):	21

Equal Pay Act - All complaints

Filed by females:	0
Filed by males:	0

Age Discrimination in Employment Act

Age 40 or more:	70
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Rehabilitation Act - All Complaints

Mental disability complaints:	21
Physical disability complaints:	53

EEO Reprisal - All Acts:

185

Issues Raised in FY05 EEO Complaints filed at BOP:

Appointment/hire:	2
Assignment of Duties:	57
Awards:	8
Conversion to Full-time:	0
Disciplinary Actions Total:	32
Demotion:	0
Reprimand:	3
Suspension:	13
Removal:	16
Other Discipline:	0
Duty Hours:	25
Evaluation/Appraisal:	50
Examination/Test:	0
Harassment/non-sexual:	61
Harassment-sexual:	43
Medical Examination:	0
Pay (including overtime):	1
Promotion or non-selection:	64
Reassignment Denied:	2
Reassignment Directed:	0
Reasonable Accommodation:	21
Reinstatement:	3
Retirement:	2
Termination:	0

Terms & Conditions of Employment:	45
Time & Attendance:	30
Training:	20
Other:	n/a

Number of EEO complaints processed or pending and average days pending:

Total investigations:  
Completed during period: 179  
Open at end of period: 29

Investigations exceeding Time Limit:  
Completed during period: 76  
Open at end of period: 0

Final Agency Action Pending - total:

No hearing requested (pending decision by DOJ): 45  
Hearing requested (pending at EEOC): 35

Appeals pending at EEOC: 95

Decisions:

All Procedural dismissals  
Dismissed by DOJ: 123  
Dismissed by EEOC: 0  
Finding of Discrimination: 8

## Attachment D

Discipline administered to employees for discrimination:

In Fiscal Year 2005 (FY05), sixty-six (66) Bureau of Prisons (Bureau) employees were disciplined for violations that could be interpreted to fall under the reporting requirements of the No Fear Act. The information regarding these disciplinary cases is listed below.

1. Offense: Inappropriate comments and behavior. Derogatory comments about homosexuals.  
Discipline Administered: Letter of Reprimand.
2. Offense: Inappropriate comments. Derogatory comment of a sexual nature.  
Discipline Administered: Letter of Reprimand.
3. Offense: Inappropriate comments and inappropriate behavior of a sexual nature towards coworkers. Comments and actions (touching) of a sexual nature toward co-workers.  
Discipline Administered: Letter of reprimand.
4. Offense: Inappropriate comments. Supervisor made comment of a sexual nature.  
Discipline Administered: Letter of reprimand.
5. Offense: Inappropriate behavior. Staff member made several inappropriate comments of a sexual nature about a co-worker.  
Discipline Administered: Suspension (one day).
6. Offense: Conduct unbecoming of a supervisor. Supervisor invited staff to visit his personal website which contained nude photos of himself.  
Discipline Administered: Letter of reprimand. A three day suspension was proposed, but management considered the following mitigating factors when imposing the letter of reprimand: first disciplinary offense for subject and subject acknowledged the seriousness of his behavior.
7. Offense: Inappropriate behavior, unauthorized touching. Staff member touched a co-worker's hair.  
Discipline Administered: Suspension (one day).
8. Offense: Inappropriate behavior. Staff grabbed co-worker's arm and kissed her.  
Discipline Administered: Suspension (three days).

9. Offense: Inappropriate comments and behavior. Staff made derogatory comments about co-workers, called them names, used foul language, and threw a roster toward a supervisor.  
Discipline Administered: Letter of reprimand.
10. Offense: Inappropriate behavior. Staff made sexually inappropriate comments.  
Discipline Administered: Suspension (one day).
11. Offense: Unprofessional conduct of a sexual nature. Staff member made an inappropriate gesture during a birthday party during duty hours.  
Discipline Administered: Letter of reprimand.
12. Offense: Unprofessional conduct. Staff member assisted in assaulting two (2) co-workers.  
Discipline Administered: Suspension (one day)  
A three day suspension was proposed, but management considered the following mitigating factors when imposing the one day suspension: the subject accepted responsibility for actions, subject was forthcoming in his response, and subject exhibited an understanding of the impact of his actions.
13. Offense: Unprofessional conduct. Staff made an inappropriate comment toward co-worker.  
Discipline Administered: Suspension (one day).
14. Offense: Inappropriate comments. Supervisor called a staff member names such as honey, baby, sweetie, etc.  
Discipline Administered: Letter of reprimand.
15. Offense: Inappropriate comments. Staff made a derogatory and threatening comment about female supervisor.  
Discipline Administered: Letter of reprimand.
16. Offense: Inappropriate comments. Staff made negative, racially-charged comments to supervisor.  
Discipline Administered: Suspension (two days).
17. Offense: Inappropriate comments. Staff member repeatedly called his supervisor a racist.  
Discipline Administered: Letter of reprimand.
18. Offense: Inappropriate behavior. Staff member made inappropriate and derogatory comments to and about another staff member.  
Discipline Administered: Letter of reprimand.

19. Offense: Conduct unbecoming a supervisor. Supervisor threatened subordinate's career.  
Discipline Administered: Suspension (seven days).
20. Offense: Conduct unbecoming a supervisor. A supervisor made a threatening comment toward a pregnant staff member and also made derogatory comments about Puerto Rican men.  
Discipline Administered: Suspension (five days).
21. Offense: Inappropriate comments and behavior, conduct unbecoming a supervisor. Supervisor used profanity toward subordinates, made threats against supervisor, and grabbed a subordinate and yelled at him.  
Discipline Administered: Removal.
22. Offense: Unprofessional conduct. Staff member gave her supervisor a sexually explicit photo of a nude male that was altered by superimposing a staff member's face onto the body of the picture.  
Discipline Administered: Letter of reprimand.
23. Offense: Inappropriate comments. A supervisor made a vulgar, racist comment about a staff member.  
Discipline Administered: Suspension (seven days).
24. Offense: Inappropriate comments. A supervisor made a negative sexually-related comment about a supervisor. He also displayed offensive, video clips, cartoons and photos on his computer to his staff.  
Discipline Administered: Suspension (five days).
25. Offense: Inappropriate comments and behavior, conduct unbecoming of a supervisor. A supervisor made racist comments about other staff, made vulgar, sexual comments about women, used profanity toward his staff, threw an item at a supervisor, made derogatory comments about ethnic groups.  
Discipline Administered: Demotion and transfer. Subject was demoted from a department head position (facilities manager) to a maintenance worker supervisor, received a pay grade demotion, and was transferred to a different institution.
26. Offense: Unprofessional conduct and inappropriate comments. Supervisor made inappropriate comments of a sexual nature to a staff member.  
Discipline Administered: Suspension (three days).

27. Offense: Inappropriate behavior. A staff member attached a sticker with a derogatory comment of a sexual nature onto another staff member.  
Discipline Administered: Letter of reprimand.
28. Offense: Conduct unbecoming a supervisor. Supervisor touched a subordinate inappropriately by lifting her in the air and turning her around. Engaged in inappropriate conversation of a sexual nature with subordinate.  
Discipline Administered: Suspension (fourteen days).
29. Offense: Disrespectful conduct. Staff member made a comment about supervisor's perceived mental disability.  
Discipline Administered: Suspension (one day).
30. Offense: Unprofessional conduct. Staff member made an inappropriate, racist comment to another staff member.  
Discipline Administered: Suspension (five days).
31. Offense: Conduct unbecoming of a supervisor. A supervisor had an inappropriate relationship of a sexual nature with a subordinate.  
Discipline Administered: Demotion.  
Subject was demoted from a supervisory position, received a pay grade demotion and was placed in a subordinate position.
32. Offense: Inappropriate comments. Staff member made an inappropriate comment of a sexual nature to another staff member.  
Discipline Administered: Suspension (one day).
33. Offense: Inappropriate behavior. A staff member used government computer to view nude photos and also displayed photos of a sexual nature on several institution computers' screen savers.  
Discipline Administered: Suspension (twelve days).
34. Offense: Inappropriate comments. A staff member made comments of a racist nature.  
Discipline Administered: Suspension (two days).
35. Offense: Inappropriate comments. A supervisor made several inappropriate comments of a sexual nature.  
Discipline Administered: Demotion.  
Subject was demoted from a GS13 position to a GS11 subordinate position. Removal had been proposed, but management considered the following mitigating factor when imposing the demotion: the subject did not have a prior disciplinary record, first offense.

36. Offense: Unprofessional conduct. Staff assisted in assaulting 2 co-workers.  
Discipline Administered: Suspension (one day).  
A three day suspension was proposed, but management considered the following mitigating factors when imposing the one day suspension: the subject accepted responsibility for actions, subject was forthcoming in his response, and subject exhibited an understanding of the impact of his actions.
37. Offense: Unprofessional conduct. Supervisor asked another staff member sexually explicit questions and made vulgar comments of a sexual nature.  
Discipline Administered: Letter of reprimand.  
A three day suspension was proposed, but management considered the following mitigating factors when imposing letter of reprimand: subject has been employed with agency for 22 years and this was his first disciplinary offense.
38. Offense: Unprofessional conduct. A staff member made several derogatory, racial remarks.  
Discipline Administered: Letter of reprimand.  
A two day suspension was proposed, but management considered the following mitigating factors when imposing letter of reprimand: subject has been employed with agency for 10 years, this was his first disciplinary offense, subject demonstrated remorse for his actions and also acknowledged the seriousness of his behavior.
39. Offense: Unprofessional conduct. A supervisor made inappropriate comments of a sexual nature toward a subordinate.  
Discipline administered: Suspension (14 days).
40. Offense: Conduct unbecoming a supervisor. A supervisor engaged in inappropriate conduct with subordinate females. Massaged a female subordinate's shoulders.  
Discipline administered: Suspension (ten days).
41. Offense: Unprofessional conduct of a sexual nature. A supervisor made a vulgar comment of a sexual nature to a co-worker.  
Discipline Administered: Letter of reprimand.
42. Offense: Inappropriate behavior. A supervisor put his arms around a subordinate's shoulders.  
Discipline Administered: Suspension (one day).

43. Offense: Conduct unbecoming of a supervisor. A supervisor made inappropriate comments of a sexual nature to subordinates.  
Discipline Administered: Demotion.  
Subject was demoted from an executive position, received a pay grade demotion and was transferred to another facility.
44. Offense: Inappropriate comments. A staff member made derogatory comments of a racial nature to a co-worker.  
Discipline administered: Suspension (three days).
45. Offense: Inappropriate comments. A staff member used obscene/profane language while addressing supervisor.  
Discipline Administered: Letter of reprimand.
47. Offense: Unprofessional conduct. Staff assisted in assaulting 2 co-workers.  
Discipline Administered: Suspension (one day).  
A three day suspension was proposed, but management considered the following mitigating factors when imposing the one day suspension: the subject accepted responsibility for actions, subject was forthcoming in his response and subject exhibited an understanding of the impact of his actions.
48. Offense: Unprofessional conduct. Staff assisted in assaulting 2 co-workers.  
Discipline Administered: Suspension (one day).  
A three day suspension was proposed, but management considered the following mitigating factors when imposing the one day suspension: the subject accepted responsibility for actions, subject was forthcoming in his response and subject exhibited an understanding of the impact of his actions.
49. Offense: Conduct unbecoming of a supervisor. A supervisor threatened retaliation against a subordinate.  
Discipline Administered: Suspension (five days).
50. Offense: Inappropriate comments. A staff member made racial remarks and comments of a sexual nature.  
Discipline Administered: Suspension (three days).
51. Offense: Inappropriate comments and behavior. A supervisor used profanity and referred to female staff as honey, babe, or girl.  
Discipline Administered: Suspension (two days).

52. Offense: Inappropriate comments. A staff member used profanity and called another staff member a racial epithet.  
Discipline Administered: Suspension (fifteen days).
53. Offense: Unprofessional conduct. Staff assisted in assaulting two co-workers.  
Discipline Administered: Suspension (one day).  
A three day suspension was proposed, but management considered the following mitigating factors when imposing the one day suspension: the subject accepted responsibility for actions, subject was forthcoming in his response and subject exhibited an understanding of the impact of his actions.
54. Offense: Conduct unbecoming of a correctional worker. Staff member made inappropriate comments about an employee's citizenship.  
Discipline Administered: Suspension (one day).
55. Offense: Inappropriate behavior. A supervisor wrote a sexually explicit phrase on a commissary list so that another staff member would read it aloud during commissary line.  
Discipline Administered: Suspension (three days).
56. Offense: Unprofessional conduct. Staff assisted in assaulting co-workers.  
Discipline Administered: Suspension (one day).  
A three day suspension was proposed, but management considered the following mitigating factors when imposing the one day suspension: the subject accepted responsibility for actions, subject was forthcoming in his response and subject exhibited an understanding of the impact of his actions.
57. Offense: Inappropriate comments. Staff member told other staff member to speak English.  
Discipline Administered: Letter of reprimand.
58. Offense: Unprofessional conduct. Staff assisted in assaulting co-workers.  
Discipline Administered: Suspension (one day).  
A three day suspension was proposed, but management considered the following mitigating factors when imposing the one day suspension: the subject accepted responsibility for actions, subject was forthcoming in his response and subject exhibited an understanding of the impact of his actions.

59. Offense: Inappropriate comments. A staff member made comments of a racial nature.  
Discipline Administered: Letter of reprimand.
60. Offense: Unprofessional conduct. Subordinate engaged in inappropriate sexually explicit conversations with his supervisor.  
Discipline Administered: Letter of reprimand.
61. Offense: Inappropriate behavior. A staff member sexually harassed a female employee.  
Discipline Administered: Letter of reprimand.
62. Offense: Inappropriate comments and unprofessional conduct. A male supervisor grabbed, hugged, and kissed a male subordinate and also used profanity.  
Discipline Administered: Suspension (thirty days).
63. Offense: Unprofessional conduct. A staff member gave his supervisor a sexually explicit photograph that had been altered.  
Discipline Administered: Letter of reprimand.
64. Offense: Inappropriate comments. A staff member made an racially offensive comment.  
Discipline Administered: Suspension (three days).
65. Offense: Conduct unbecoming of a supervisor. A supervisor invited a subordinate out socially and made inappropriate comments of a sexual nature and placed his hands on her shoulders and turned her around.  
Discipline administered: Suspension (three days).
66. Offense: Inappropriate comments and unprofessional conduct. A supervisor made comments of a sexual nature to a subordinate.  
Discipline administered: Letter of reprimand.

The eight (8) adverse findings entered against the Bureau in FY05 were reviewed and no disciplinary action was taken due to several circumstances, i.e., retirements of the parties involved and/or no finding of code of conduct violations.

**ANNUAL TRAINING FY 2006**

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<b>LESSON PLAN:</b>	Discrimination and the EEO Process
<b>TIME FRAME:</b>	Local Discretion
<b>PURPOSE:</b>	Refresh staff about the issues surrounding discrimination, including sexual harassment, in the workplace and reaffirm the Bureau's and DOJ's policy on its prohibition. Satisfies DOJ and BOP requirement.
<b>OBJECTIVES:</b>	<ul style="list-style-type: none"><li>A. List the steps and time lines in the EEO Administrative Process.</li><li>B. Define Sexual Harassment.</li><li>C. Identify two responses to discrimination (to include sexual harassment).</li><li>D. Identify the measures the Bureau of Prisons has in place to maintain a workplace free of sexual harassment.</li><li>E. Identify additional protections against discrimination which are available to staff.</li></ul>
<b>STUDENT MATERIALS:</b>	EEO Brochure Info Sheet
<b>INSTRUCTOR MATERIALS:</b>	Annual Training Instructor Lesson Plan COREL Presentation

**REFERENCES:**

Title VII, Civil Rights Act of 1964, as amended.  
 29 C.F.R.  
 DOJ Manual and Procedures for Providing Reasonable Accommodation  
 Age Discrimination in Employment Act of 1967  
 The Americans with Disabilities Act of 1990  
 Executive Order 13807  
 Executive Order 13152  
 Civil Service Reform Act  
 P.S. 3717.23 Discrimination and Retaliation Complaints Processing  
[http://sallyport.bop.gov/co/ipp/policy/ps/3713\\_023.pdf](http://sallyport.bop.gov/co/ipp/policy/ps/3713_023.pdf)  
 Whistleblower Protection Act of 1989  
 P.S. 3420.09 Standards of Employee Conduct

**RECOMMENDED INSTRUCTORS:**

Institution Executive Staff or  
 Trained Diversity Instructors

**CONTACT:**

Training and Staff Development Branch, Central Office  
 202.514.8758

**DEVELOPED AND APPROVED BY:**

Mina Raskin, EEO Officer, Central Office, Washington, D.C.

**SPECIAL NOTES:**

As needed by the instructor, additional slides may be added to the basic COREL presentation provided; **however, all of the above Objectives must be covered.**

## ANNUAL TRAINING FY 2006 - Discrimination and the EEO Process -

### I. INTRODUCTION

Introduce self and class.

The purpose of this session is to reaffirm the Bureau's and the Department of Justice's policy on the prohibition of discriminatory behavior and explain the BOP EEO Administrative Process.

Slide #1.

The Program Statement that covers this is P3713.23, Discrimination and Retaliation Complaints Processing, and can be found at <http://sallyport.bop.gov>, BOP Links, BOPDOCS.

Discrimination is considered to be a form of misconduct which interferes with work productivity and wrongfully deprives employees or others of opportunities and also to work in an environment independent from unsolicited and unwelcome sexual overtones.

### II. INSTRUCTIONAL INPUT

The concept of Discrimination in the workplace derives from:

Slide #2

Discuss Bases for Filing EEO Complaints

- Section 703 of Title VII of the Civil Rights Act of 1964 which prohibits discrimination on the basis of race, color, sex, religion, national origin and reprisal/retaliation.
- The Age Discrimination in Employment Act of 1967 which prohibits discrimination on the bases of age (age 40 and above).
- The Americans with Disabilities Act of 1990 which prohibits discrimination based upon disability
- Executive Orders and the Civil Service Reform Act which prohibit discrimination based upon sexual orientation (13807) and parental status (13152).

Slide #3

Reference DOJ Manual regarding all requests for reasonable accommodation.

Slide #4

## ANNUAL TRAINING FY 2006 - Discrimination and the EEO Process -

### A. List the steps and time lines in the EEO Administrative Process.

State Objective A

#### Step 1: Avenues for Addressing Complaints

Any person who believes that (s)he are being discriminated against may contact the EEO Counselor, Management Official, Ombudsman, HRM, or Union Representative in order to informally resolve the complaint. [If there is a Dispute Resolution Specialist (DRS) at your institution, add DRS to this list.]

Slide #5

Additional information about this program can be added here.

However, the EEO process is initiated only upon contact with an EEO Counselor.

Initial Contact must take place within **45 days** of the incident or within 45 days from the time a personnel action takes effect.

Slide #6

#### Step 2: Counseling/ADR

Slide #7

Discuss what ADR is and that it is available at all stages of the process. It is the goal to resolve complaints at the lowest level.

The counselor has 30 days to attempt informal resolution. The time may be extended to 90 days if Alternative Dispute Resolution (ADR) is elected. The EEO Counselor will assist the complainant in requesting ADR and approval is granted by the EEO Officer.

An aggrieved individual must complete counseling or ADR prior to filing a formal complaint.

ADR will be offered to an aggrieved individual during both the pre-complaint and the formal complaint phases of the EEO Administrative Process. The BOP uses mediation as a form of ADR with non-bureau staff used as mediators.

If the complaint is not informally resolved with counseling or ADR, the EEO Counselor will issue the Notice of Right to File form and a complaint form to the aggrieved individual.

## ANNUAL TRAINING FY 2006 - Discrimination and the EEO Process -

### Step 3: Filing a Formal Complaint

Slide #8

Formal complaints of discrimination must be submitted to the EEO Office within **15 days** of receiving the Notice of Right to File.

Discuss the 15-day requirement

The complainant will receive acknowledgment, in writing, that the complaint has been received.

At a later date, the complainant will be notified in writing as to which issues will be accepted for investigation.

A complainant may pursue a formal complaint through **one** of the following processes:

- EEO Administrative Process
- Negotiated Grievance Process
- Merit Systems Protection Board (MSPB)

An agency may dismiss a complaint for one of the following reasons:

Slide #9

- Complaint has been filed with MSP or through Negotiated Grievance Process prior to employing the EEO Process.
- Failure to state a claim.
- Failure to comply with time limits.
- The complaint is pending civil action.
- The complaint is moot.
- The complaint alleges a proposal not an action.
- The complainant cannot be located or does not respond to inquiries.

### Step 4: The Investigation.

Slide #10

The EEO investigator is either a BOP employee or a contract investigator.

The investigator will interview the complainant and others who have information relevant to the complaint and collect relevant documents.

The complainant will receive a copy of the investigative file when the investigation is complete. This should be within 180 days of the date the formal complaint was filed.

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### Step 5: What Next?

Slide #11

Once the complainant receives the copy of the investigative report, s(he) has 30 days within which to request a hearing before the Equal Employment Opportunity Commission (EEOC).

- If the complainant requests an EEOC hearing, the decision letter from the EEOC will delineate appeal rights.

If the complainant does not elect to have a hearing, the case will be forwarded directly to the Complaint Adjudication Officer (CAO) for a final agency decision (FAD)

The FAD will delineate the complainant's appeal rights.

If the basis(es) for the complaint is sexual orientation or parental status OR if the complainant is a Public Health Service Commissioned Corp (PHS) Officer, the complainant DOES NOT have appeal rights to the EEOC. The decision of the CAO is FINAL.

Slide #12

### **B. Define Sexual Harassment.**

State Objective B.

Can anyone define sexual harassment?

The EEOC describes sexual harassment as , "Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

Slide #13

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of employment.
- b. Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting the individual's work;
- c. The conduct substantially interferes with an individual's work performance; or
- d. The conduct creates an intimidating, hostile, or offensive working environment.

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The key point to remember is that sexual harassment is a prohibited personnel practice and it is a violation of law.

The U.S. Supreme Court recognizes two (2) forms of sexual harassment:

Slide #14

- a. **Tangible Employment Action (Quid Pro Quo).** Defined as harassment which involves the conditioning of concrete employment benefits on sexual favors.
- b. **Hostile Environment.** Defined as language or other actions which have the effect of creating a hostile or abusive work environment.

### C. Identify two responses to discrimination, (to include sexual harassment).

State Objective C.

1. If you believe that you are a victim of sexual harassment by another employee remain calm and professional. You have the option of first notifying the person harassing that the behavior is unwelcome. Clearly communicate when another's behavior is unwelcome or offensive. Be direct and candid.

Slide #15

Invite suggestions regarding how to avoid sexual harassment, i.e. conducting oneself in a professional manner; etc.;

Staff do not have to notify the harasser first. They can also notify a supervisor.

Remind staff to become acquainted with the Bureau's policy and procedures for reporting harassment.

2. If the conduct continues, or in cases where you feel uncomfortable confronting the person harassing, you should contact a management official or an EEO Counselor.

Slide #16

Remind staff to become acquainted with the Bureau's policy and procedures for reporting harassment.

The EEO Office, Central Office, reports all formal complaints alleging sexual harassment regardless of any prior reporting.

Tell the students that all formal complaints alleging sexual harassment are forwarded to the Office of Internal Affairs (OIA).

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- D. Identify the measures the Bureau of Prisons has in place to maintain a workplace free of sexual harassment.** State Objective D.
- Corel Slide #17
1. Program Statements addressing discrimination and sexual harassment.:
    - 3713.23 Discrimination and Retaliation Complaints Processing.
    - 3420.09 Standards of Employee Conduct
  
  2. Employees who are found to have participated in discriminatory conduct of any kind, including sexual harassment, are subject to disciplinary action. This disciplinary action ranges from an official reprimand to removal.
 

Discuss disciplinary actions

    - For a 1<sup>st</sup> offense - Official Reprimand to Removal.
    - For a 2<sup>nd</sup> offense - 14 day Suspension to Removal.
    - For a 3<sup>rd</sup> offense - Removal

The performance evaluation standards for all supervisors and managers include elements for assessing performance in the area of EEO and sexual harassment. Discriminating behaviors, however, are not limited to supervisors and managers.

- E. Identify additional protections against discrimination which are available to staff.** State Objective E.
- Slides 18 - 21
1. Employees are also protected by the Whistleblower Protection Act. This Act was enacted to strengthen protections for federal employees who believe they have been subjected to unjustified personnel actions in reprisal for their whistleblowing activities.
 

Discuss WPA protections.

Whistleblowing is defined as the disclosure of information that an employee reasonably believes is evidence of a violation(s) of any law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or a substantial danger to public health or safety.

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- |  |   |
|--|---|
| <p>2. The pamphlet, "The Role fo the U.S. Office of Special Counsel," contains valuable information as well as telephone numbers for reporting purposes. Each employee is encouraged to read this pamphlet and familiarize yourself with its contents.</p> | <p>Slide #22</p> <p>Discuss role of OSC</p> |
|--|---|

The pamphlet can be obtained by logging on to the website at [www.osc.gov/documents/pubs/oscrole.pdf](http://www.osc.gov/documents/pubs/oscrole.pdf).

### III. GUIDED / INDEPENDENT PRACTICE

N/A

### IV. EVALUATION

N/A

### V. CLOSURE (Summarize main points taught and relate to objective)

Conduct a summary of at least the points indicated. Cover any other institutional issues discussed in class.

Let me briefly remind you of some of the points we covered this past hour:

1. Discrimination, including sexual harassment is not just "not nice," it is against the law.
2. If you believe that you are a victim of sexual harassment, you should:
  - a. If you choose, notify the person harassing that the behavior is unwelcome.
  - b. If the conduct continues, or, if you are uncomfortable notifying the person harassing, you should notify a management official or an EEO Counselor.

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3. The EEO process has many stages, beginning with EEO counseling through the Final Agency Decision. ADR is available at all stages of the EEO process and the goal is to resolve issues at the lowest possible level.

Slide #23

I want to leave you with this last thought. The Federal Bureau of Prisons prohibits discrimination of any kind, including sexual harassment. It is committed to maintaining an environment conducive to its workforce being in a productive and functional environment.

Slide #24

Ask for final questions. Give a break and tell students when to be back.

Are there any final questions? Please take a break and be back at \_\_: \_\_ ready for the next class.

## DISCRIMINATION AND THE EEO PROCESS

The Program Statement that covers EEO is P-3713.23, Discrimination and Retaliation Complaints, which can be found at

<http://sallyport.hop.gov>

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## Bases For Filing EEO Complaints

Section 703 of Title VII of the Civil Rights Act of 1964, as amended

- Race
- Color
- Sex
- Religion
- National Origin
- Reprisal/Retaliation

## Bases For Filing EEO Complaints

- Age Discrimination in Employment Act of 1967
  - Age
- Americans with Disabilities Act of 1990
  - Disability

The DOJ Reasonable Accommodation Manual serves as a guide and can be located at:

<http://www.usdoj.gov/jmd/eos/ada/comprose/final081502.htm>

## Bases For Filing EEO Complaints

- Executive Orders (EO) and the Civil Service Reform Act
- Sexual Orientation (EO13807)
- Parental Status (EO13152)

## Avenues for Addressing Complaints

Any person who believes that (s)he are being discriminated may contact the following individuals:

- EEO Counselor
- Management Official
- Ombudsman
- HRM
- Union Representative

## EEO Counseling

A complainant MUST complete pre-complaint counseling before filing a formal complaint.

- Initial contact with a counselor must take place within **45-days** of the incident
- The counselor has **30-days** to attempt informal resolution
  - Time may be extended if needed
- Complainant has **15-days** to submit Notice of Right to File form and complaint form to EEO Office

## Alternative Dispute Resolution (ADR)

- ADR or other forms of mediation will be offered during the counseling phase of the complaint
- Where the aggrieved person chooses to participate in the ADR program, the pre-complaint processing period will be 90-days
  - Bureau uses mediation as its form of ADR with non-bureau staff used as mediators

## Formal Complaints

- Must submit a formal complaint to the EEO Office within 15 days of receiving the Notice of Right to file
- Receive written acknowledgment of receipt of complaint
- If the issues are accepted, an investigator will be assigned

## Formal Complaints

- Agency may dismiss complaint for the following reasons:
  - Complaint has been filed with MSPB, Negotiated Grievance Process prior to employing the EEO Process
  - Failure to state a claim
  - Pending civil action
  - Complaint is moot
  - Alleges a proposal, not an action (e.g., SIL)
  - Complainant cannot be located

## Investigation

- BOP employee or contract investigator
- Interview complainant and witnesses, and collect relevant documents
- Complainant receives copy of Report of Investigation (ROI)

## What Next?

- 30 days to request hearing before Equal Employment Opportunity Commission (EEOC)
- Final Agency Decision (FAD) from Department of Justice, Complaint Adjudication Office (CAO) if hearing not requested
- Decision letters will delineate appeal rights

## What Next?

- NO APPEAL RIGHTS - CAO Decision is final if bases are:
  - Sexual Orientation
  - Parental Status
- OR
- Complainant is Public Health Service (PHS) Officer

## **Sexual Harassment**

### **EEOC definition**

“Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature”

Prohibited personnel practice and violation of law!

## **Sexual Harassment**

### **Two types:**

- **Tangible Empl. Action (Quid Pro Quo)**
- **Hostile Environment**

## **Discrimination to Include Sexual Harassment**

### **Two responses:**

- **Communicate with harasser (optional)**
- **Contact management official or EEO Counselor**

## **EEO Counselors**

- **The EEO Counselor at our institution is:**
- **The contact phone number is:**

### **Discrimination to Include Sexual Harassment**

BOP's two measures for prevention

- Program Statement
  - 3713.23 Discrimination and Retaliation Complaints Processing [http://sallyport.bop.gov/co/ipp/policy/ps/3713\\_023.pdf](http://sallyport.bop.gov/co/ipp/policy/ps/3713_023.pdf)
  - 3420.09 Standards of Employee Conduct
- Performance Evaluation Standards

### **Whistleblower Protection Act**

**Congress mandated the creation of the Whistleblower education programs by Federal agencies in 1994.**

### **Whistleblower Protection Act**

**In May 2002, President Bush signed into law another measure, the Notification and Federal Employee Anti-discrimination and Retaliation (No Fear) Act of 2002, which requires, among other things, that agencies make employees aware of Whistleblower protection laws.**

### **Whistleblower Protection Act**

**The Whistleblower Protection Act was enacted to strengthen protections for Federal employees who believe they have been subjected to unjustified personnel actions in reprisal for their whistleblowing activities.**

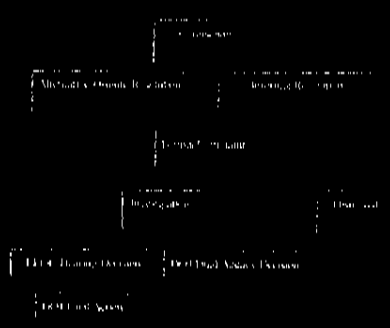
### Whistleblower Protection Act

Whistleblowing is defined as the disclosure of information that an employee reasonably believes is evidence of a violation of any law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or a substantial danger to public health or safety.

### Whistleblower Protection Act

The pamphlet, "The Role of the U.S. Office of Special Counsel," contains valuable information as well as telephone numbers for reporting purposes. Each employee is encouraged to read this pamphlet and familiarize yourself with its contents. The pamphlet can be obtained by logging on to the website at: [www.osc.gov/documents/pubs/oscrole.pdf](http://www.osc.gov/documents/pubs/oscrole.pdf)

### Overview



QUESTIONS???????????????

# EEO INFO

## P.S. 3713.23, Discrimination and Retaliation Complaints

<http://sallyport.bop.gov>

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The EEOC site for Federal Sector Information is: <http://www.eeoc.gov/federal/index.htm>

### BASES FOR FILING EEO COMPLAINTS

Race, color, sex, religion, national origin, disability, age (40 and above), reprisal/retaliation, sexual orientation, and parental status. The DOJ Reasonable Accommodation Manual serves as a guide and can be located at:

<http://www.usdoj.gov/jmd/eeos/ddaeocomproefinal081502.htm>

### SEXUAL HARASSMENT

- The EEO Process is one method for addressing sexual harassment.
- Definition: "Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature."

### BEHAVIORS THAT CAN CREATE A HOSTILE WORK ENVIRONMENT

- Off-color jokes, comments or teasing
- Suggestive pictures, calendars, or cartoons
- Leering, stares, or gestures
- Repeated requests for dates
- Love letters, telephone calls or gifts
- Touches, brushes, hugs, shoulder rubs, or pinches
- Assault/Rape

For additional information about Sexual Harassment Prevention, please read the Department of Justice (DOJ) Sexual Harassment page, <http://www.usdoj.gov/jmd/eeos/sexualharassmenthome.htm>

### AVENUES FOR ADDRESSING COMPLAINTS OF DISCRIMINATION OR HARASSMENT

- Report Offensive Conduct to a Supervisor or Management Official
- Contact EEO Counselor to initiate EEO process.
- Your EEO Counselor is: Wanda Dorsey, (202) 514-6165.

If you are unable to reach a counselor or believe there is a conflict of interest, contact the EEO Office at (202) 514-6165.

### EEO Counseling

- A complainant must complete counseling prior to filing a formal complaint
- Initial contact with a counselor must take place within 45 days of the incident.
- The counselor has 30 days to attempt informal resolution. This time may be extended if needed.
- At the completion of counseling the complainant will be given a Notice of Right to File form and a complaint form and will have 15 days to file a formal EEO complaint.

### ALTERNATIVE DISPUTE RESOLUTION (ADR)

- Mediation or other forms of ADR will be offered during the counseling phase of the complaint.
- Where the aggrieved person chooses to participate in the ADR program, the pre-complaint processing period will be 90 days.
- The Bureau uses mediation as its form of ADR with non-bureau staff used as mediators.

### WHISTLEBLOWER PROTECTION ACT

The Civil Service Reform Act (CSRA) prohibits reprisal against federal employees or applicants for whistleblowing. The CSRA is enforced by both the Office of Special Counsel (OSC) and the Merit Systems Protection Board (MSPB) rather than the Equal Employment Opportunity Commission.

Additional information about the enforcement of the CSRA may be found on the OPM web site at <http://www.opm.gov/er/address2/guide01.htm>; from OSC at (202) 653-7188 or at <http://www.osc.gov>; and from MSPB at (202) 653-6772 or at <http://www.mspb.gov>.