



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

September 19, 2013

Ms. Tanya Ward Jordan
Founder
Coalition for Change, Inc.
c4c@coalition4change.org

Re: OLA/13-05194 (F)
VRB:DRH:SGM

Dear Ms. Jordan:

This responds to your Freedom of Information Act (FOIA) request dated and received in this Office on September 17, 2013, in which you requested copies of the Department of Justice's No FEAR Act Annual Reports from fiscal year 2004 through fiscal year 2012. This response is made on behalf of the Office of Legislative Affairs.

Please be advised that a search has been conducted in the electronic database of the Departmental Executive Secretariat and records have been located. I have determined that this material is appropriate for release without excision and copies are enclosed. The records consist of four reports, detailing to the Department's application of the No FEAR Act from fiscal year 2005 through fiscal year 2012, as well as correspondence providing the reports to Congress. For your information, the report dated June 4, 2010, covering fiscal year 2005 through fiscal year 2009, is the first No FEAR Act report submitted by the Department.

Inasmuch as this constitutes a total grant of your request, I am closing your file in this Office.

Sincerely,

A handwritten signature in black ink, appearing to read "Vanessa R. Brinkmann".

Vanessa R. Brinkmann
Counsel, Initial Request Staff

Enclosures

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U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 4, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the Department of Justice, we are submitting the Fiscal Year 2009 Annual Report pursuant to the requirements of Section 203(a) of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 ("No FEAR Act"), Public Law 107-174. In accordance with Section 203(b) of the No FEAR Act, this report includes data from fiscal years 2005 through 2009.

Sincerely,



Ronald Weich
Assistant Attorney General

Enclosure

DEPARTMENT OF JUSTICE
Annual No FEAR Act Report
Fiscal Years 2005 through 2009

Introduction:

This is the United States Department of Justice's (DOJ) Fiscal Year 2009 Annual Report pursuant to the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174, Title II, Section 203(a). The No FEAR Act requires Federal agencies to file reports annually with the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, each committee of Congress with jurisdiction relating to DOJ, the Equal Employment Opportunity Commission, the Office of Personnel Management and the Attorney General. In accordance with Section 203(b) of the No FEAR Act, this report includes data from fiscal years 2005 through 2009.

FY 2009 Report: The required information concerning the DOJ 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-B containing the DOJ case information.

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

In FY 2005, the DOJ reimbursed the Treasury Department \$2,526,198.09; in FY 2006, the DOJ reimbursed the Treasury Department \$880,526.76; in FY 2007, the DOJ reimbursed the Treasury Department \$2,058,316.42; in FY 2008, the DOJ reimbursed the Treasury Department \$5,284,782.43; and in FY 2009, the DOJ reimbursed the Treasury Department \$4,608,380.67.

(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 - 73
FY 2006 - 66
FY 2007 - 69
FY 2008 - 69
FY 2009 - 85

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

See charts attached at pages C-J and see www.doi.gov.

(6) A detailed description of: (A) the policy implemented by the DOJ 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 DOJ does not have a separate policy for disciplining any DOJ employee found to have committed practices referenced in 6(A)(i) or 6(A)(ii). However, DOJ's existing disciplinary policies could be used to discipline such employees.

Under current policy, the DOJ may take progressive discipline to correct unsatisfactory conduct or other work-related problems. Progressive discipline is the application of graduated actions in disciplinary cases. It can include, where appropriate, oral counseling sessions, written warnings, and suspensions of 14 calendar days or less. An adverse action may also be taken against an employee in the form of discharge, removal, or suspension without pay for a period of more than 14 calendar days, or a reduction in grade or pay.

(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 - 73: 1 removal, 1 reassignment, 4 demotions, 23 letters of reprimand, 39 suspensions under 14 days, 4 suspensions over 14 days, and 1 letter of instruction.

FY 2006 - 66: 2 removals, 2 demotions, 25 suspensions under 14 days, 7 suspensions over 14 days, 18 letters of reprimand, 10 cases where discipline has been recommended but has not yet been imposed, 1 case where discipline was recommended but was not imposed, and 1 demotion combined with a 45 day suspension.

FY2007 - 69: 1 removal, 27 suspensions under 14 days, 6 suspensions over 14 days, 12 letters of reprimand, 22 cases where discipline was recommended but has not yet been imposed, and one retirement in lieu of a proposed dismissal.

FY2008 - 69: 2 removals, 26 suspensions under 14 days, 3 suspensions over 14 days, 21 letters of reprimand, 4 demotions, 1 verbal reprimand, and 12 cases where discipline was recommended but has not yet been imposed.

FY2009 - 85: 2 removals, 2 demotions, 28 suspensions under 14 days, 9 suspensions over 14 days, 1 verbal reprimand, 1 non-disciplinary counseling, 40 letters of reprimand, and 2 cases where discipline was recommended but has not yet been imposed.

(7) Analysis of the information described under paragraphs (1) through (6) (in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with part 1614 of title 29 of the Code of Federal Regulations) including - -

(A) an examination of trends;

An analysis of the trends at DOJ during the five year period covered in this report (2005-2009) reveals that the rate of complaints filed over a five year period has not increased. The agency employs a workforce of over 109,000 people and the rate of complaints in FY 2009 is only 0.66 percent.

Throughout the five year period covered by this report, the number of complaints filed ranged from 680 in 2005 to 722 in 2009; but in each fiscal year, the rate of complaints for the agency has been less than 1 percent of the total workforce. Each year a number of individuals filed more than one complaint in a year; therefore, the number of complainants is less than the number of complaints.

From FY 2005 through FY 2009, 2,986 complaints against the DOJ were closed without any findings of employment discrimination. Of the complaints closed, 24 percent were dismissed (either by the DOJ or by the EEOC), 17 percent were settled, 11 percent were withdrawn and over 48 percent resulted in a finding of no discrimination (either by the DOJ or by the EEOC).

(B) causal analysis;

The small number of complaints filed can be attributed, in part, to increased training of employees and managers concerning effective dispute resolution methods and the increased use of Alternate Dispute Resolution Programs ("ADR"). An analysis of the information related to complaint processing shows that the average processing times for investigations completed by the DOJ has remained stable. For example, the average number of days required to complete an investigation ranged from a high of 287 in FY 2008 to 252 in the current fiscal year, FY 2009. This consistency is due to the use of effective and efficient investigative techniques, including the limited use of contract investigators closely supervised by DOJ EEO personnel.

(C) practical knowledge gained through experience;

The DOJ has seen that increased use of ADR and providing training to all employees focused on effective conflict resolution has successfully lowered the number of formal allegations of discrimination.

The DOJ will continue to examine trends in the areas of discrimination allegations, particularly in the area of retaliation, in order to reduce complaint filings and promote a work environment free of prohibited discrimination.

(D) any actions planned or taken to improve complaint or civil rights programs of the agency;

The DOJ is conducting a training module that provides an overview of the EEO administrative process, the No FEAR Act, and applicable Civil Rights laws. The No FEAR Act training for employees is ongoing, and every current and future employee of the DOJ will receive this training as mandated by the Act.

(8) Any adjustment to comply with the requirements under section 201:

There has been no adjustment to the DOJ's budget to comply with the requirements under section 201.

**U.S. Department of Justice
No FEAR Act Report
Fiscal Year 2009 Report**

Law	Prior Fiscal Years				Current Year
	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Number of Cases Arising Under 5 U.S.C. Section 2302 (b) (1)	680	676	630	687	722
Discriminate against an employee or applicant based on race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation.					
Number of Cases Arising Under 5 U.S.C. Section 2302 (b) (8)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
	0	0	0	0	0
Reprisal for whistleblowing - i.e., take, fail to take, or threaten to take or fail to take a personnel action with respect to any employee or applicant because of any disclosure of information by the employee or applicant that he or she reasonably believes evidences a violation of a law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety (if such disclosure is not barred by law and such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs - if so restricted by law or Executive Order, the disclosure is only protected if made to the Special Counsel, the Inspector General, or comparable agency official).					
Number of Cases Arising Under 5 U.S.C. Section 2302 (b) (9)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
	291	337	291	349	357
Reprisal for exercising rights related to 2302(b)(1) or (b)(8) as applied to discriminatory conduct; take, fail to take or threaten to take or fail to take a personnel action against an employee or applicant for exercising an appeal, complaint, or grievance right, testifying for or assisting another in exercising such a right; cooperating with or disclosing information to the Special Counsel or to an Inspector General; or refusing to obey an order that would require the individual to violate a law; of such section as applied to discriminatory conduct described in paragraphs (1) and (8), of such section.					

	Prior Fiscal Years				Current Year
	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Open Complaints Status Year End					
Pending at end Year (9/30)	609	708	939	1109	1499
Investigation	195	363	569	470	483
EEOC Hearing	217	190	242	311	483
Agency FAD	152	153	109	300	474
Appeal pending at EEOC	96	86	48	77	130
Complaint Disposition During Year	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Dismissed During Year	212	129	69	157	146
Settled During Year	144	72	88	83	122
Withdrawn During Year	39	58	64	86	73
Decided on Merits During Year: No Discrimination	515	321	252	187	169
Decided on Merits During Year: Discrimination Found	14	20	17	18	8

Number of EEO Complaints Processed by DOJ					
	Fiscal Years				
	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
I. Formal Complaints Pending During Period					
A. Total Formal Complaints Pending	1524	1288	1345	1625	2078
1. Complaints filed in a prior period	844	612	715	938	1356
2. Complaints filed during period	680	676	630	687	722
II. Number of Individuals who filed EEO Complaints ("N/A" means data is not available for period)					
A. Individuals who filed at least one complaint during Fiscal Year	668	647	612	650	700
B. Individuals who filed two or more complaints during Fiscal Year	24	22	21	25	14
III. Administrative EEO Complaints pending at end of period					
A. Investigation of Complaint	195	363	569	470	483
B. Administrative Hearing at EEOC	217	190	242	311	483
C. Final Agency Decision to be Issued	152	153	109	300	474
D. Appeals Pending at EEOC	96	86	48	77	130

EEO Bases Alleged in EEO Complaints Filed at DOJ					
	Fiscal Years				
	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Civil Rights Act (Title VII) Bases					
Race - American Indian/Alaskan Native	8	6	5	7	8
Race - Asian/Pacific Islander	5	24	7	11	8
Race - Black	174	200	102	103	101
Race - White	52	69	60	83	90
Color	1	6	22	16	25
Religion	28	24	28	25	37
Sex - female	179	174	177	190	196
Sex - male	84	89	73	85	68
National Origin - Hispanic	88	54	29	29	28
National Origin - Other (non-Hispanic)	40	44	29	31	44
Equal Pay Act - All Complaints	0	0	1	1	4
Filed by females	0	0	1	1	3
Filed by males	0	0	0	0	1

Age Discrimination in Employment Act							
Age (40 or more)	161	237	154	163	184		
Rehabilitation Act - All Complaints	177	167	141	161	143		
Mental Disability Complaints	48	57	26	37	44		
Physical Disability Complaints	129	110	115	124	99		
EEO Reprisal - All Acts	291	337	291	349	357		

Issues Raised in EEO Complaints Filed at DOJ					
Issues	Fiscal Years				
	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Appointment/Hire	24	22	17	23	33
Assignment of Duties	98	117	88	104	85
Awards	15	18	18	21	23
Conversion to Full-Time	0	2	1	0	0
Disciplinary Actions (Total)	70	81	63	61	57
a. Demotion	2	9	8	5	6
b. Reprimand	16	14	13	23	18
c. Suspension	28	39	32	23	23
d. Removal	23	19	9	10	10
e. Other Discipline	1	0	1	0	0
Duty Hours	27	31	27	27	30
Evaluation/Appraisal	80	87	91	107	100
Examination/Test	3	0	3	3	3
Harassment - Non-Sexual	138	141	131	206	264
Harassment - Sexual	53	24	39	47	47

Medical Examination	29	17	13	9	11
Pay (including overtime)	64	36	27	14	24
Promotion or Non-selection	136	167	136	142	154
Reassignment Denied	5	14	10	15	17
Reassignment Directed	19	104	52	36	56
Reasonable Accommodation	40	92	23	40	31
Reinstatement	4	6	2	9	1
Retirement	4	7	10	8	4
Termination	38	27	41	34	33
Terms & Conditions of Employment	107	94	71	87	134
Time & Attendance	42	70	61	63	55
Training	37	21	26	28	31
Other	20	22	56	29	24

Number EEO Complaints Processed or Pending and Average Days Pending at DOJ continued									
Processing Categories	Prior Fiscal Years								Current Year
	FY 2005		FY 2006		FY 2007		FY 2008		FY 2009
	Number	Average Days	Number	Average Days	Number	Average Days	Number	Average Days	Number
2. Final Agency Action Pending - Total:	369	543	343	588	351	510	611	652	957
A. No Hearing Requested (pending decision by DOJ)	152	404	153	470	109	376	300	529	474
B. Hearing Requested (pending at EEOC)	217	640	190	684	242	570	311	770	483
									681

Complaint Outcomes and Average Days to Reach Outcome at DOJ									
Decisions	Prior Fiscal Years								Current Year
	FY 2005		FY 2006		FY 2007		FY 2008		FY 2009
	Number	Average Days	Number	Average Days	Number	Average Days	Number	Average Days	Number
1. All Procedural Dismissals	212	93	129	207	69	337	157	267	146
A. Dismissals by DOJ	201	66	125	169	58	302	142	271	135
B. Dismissals by EEOC	11	579	4	1385	11	523	15	232	11
2. Finding of Discrimination	14	355	20	1256	17	763	18	1164	8
									885

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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

APR 26 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the Department of Justice, we are submitting the Fiscal Year 2010 Annual Report pursuant to the requirements of Section 203(a) of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 ("No FEAR Act"), Public Law 107-174. In accordance with Section 203(b) of the No FEAR Act, this report includes data from fiscal years 2005 through 2010.

Sincerely,

A handwritten signature in dark ink, appearing to read "m w", likely representing Ronald Weich.

Ronald Weich
Assistant Attorney General

Enclosure

DEPARTMENT OF JUSTICE
Annual No FEAR Act Report
Fiscal Years 2005 through 2010

Introduction:

This is the United States Department of Justice's (DOJ) Fiscal Year 2010 Annual Report pursuant to the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174, Title II, Section 203(a). The No FEAR Act requires Federal agencies to file reports annually with the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, each committee of Congress with jurisdiction relating to DOJ, the Equal Employment Opportunity Commission, the Office of Personnel Management and the Attorney General. In accordance with Section 203(b) of the No FEAR Act, this report includes data from fiscal years 2005 through 2010.

FY 2010 Report: The required information concerning the DOJ 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-B containing the DOJ case information.

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

In FY 2005, the DOJ reimbursed the Treasury Department \$2,526,198.09; in FY 2006, the DOJ reimbursed the Treasury Department \$880,526.76; in FY 2007, the DOJ reimbursed the Treasury Department \$2,058,316.42; in FY 2008, the DOJ reimbursed the Treasury Department \$5,284,782.43; in FY 2009, the DOJ reimbursed the Treasury Department \$4,608,380.67; and in FY 2010 the DOJ reimbursed the Treasury Department \$2,886,002.75.

(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 - 73
FY 2006 - 66
FY 2007 - 69
FY 2008 - 69
FY 2009 - 85
FY 2010 - 54

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

See charts attached at pages C-J and see www.doj.gov.

(6) A detailed description of: (A) the policy implemented by the DOJ 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 DOJ does not have a separate policy for disciplining any DOJ employee found to have committed practices referenced in 6(A)(i) or 6(A)(ii). However, DOJ's existing disciplinary policies could be used to discipline such employees.

Under current policy, the DOJ may take progressive discipline to correct unsatisfactory conduct or other work-related problems. Progressive discipline is the application of graduated actions in disciplinary cases. It can include, where appropriate, oral counseling sessions, written warnings, and suspensions of 14 calendar days or less. An adverse action may also be taken against an employee in the form of discharge, removal, or suspension without pay for a period of more than 14 calendar days, or a reduction in grade or pay.

(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 - 73: 1 removal, 1 reassignment, 4 demotions, 23 letters of reprimand, 39 suspensions under 14 days, 4 suspensions over 14 days, and 1 letter of instruction.

FY 2006 - 66: 2 removals, 2 demotions, 25 suspensions under 14 days, 7 suspensions over 14 days, 18 letters of reprimand, 10 cases where discipline has been recommended but has not yet been imposed, 1 case where discipline was recommended but was not imposed, and 1 demotion combined with a 45 day suspension.

FY 2007 - 69: 1 removal, 27 suspensions under 14 days, 6 suspensions over 14 days, 12 letters of reprimand, 22 cases where discipline was recommended but has not yet been imposed, and 1 retirement in lieu of a proposed dismissal.

FY 2008 - 69: 2 removals, 26 suspensions under 14 days, 3 suspensions over 14 days, 21 letters of reprimand, 4 demotions, 1 verbal reprimand, and 12 cases where discipline was recommended but has not yet been imposed.

FY 2009 - 85: 2 removals, 2 demotions, 28 suspensions under 14 days, 9 suspensions over 14 days, 1 verbal reprimand, 1 non-disciplinary counseling, 40 letters of reprimand, and 2 cases where discipline was recommended but has not yet been imposed.

FY 2010 - 54: 1 demotion, 15 letters of reprimand, 1 memo of caution, 24 suspensions under 14 days, 1 suspension over 14 days, 1 demotion combined with a 60 day suspension, 1 demotion combined with a 50 day suspension, 2 demotions combined with 45 day suspensions, 2 resignations in lieu of proposed dismissals, 1 retirement in lieu of a

proposed dismissal, and 5 cases where discipline was recommended but has not yet been imposed.

(7) Analysis of the information described under paragraphs (1) through (6) (in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with part 1614 of title 29 of the Code of Federal Regulations) including - -

(A) an examination of trends;

An analysis of the trends at DOJ during the six year period covered in this report (2005-2010) reveals that the rate of complaints filed over a five year period has not increased. The agency employs a workforce of over 114,800 people and the rate of complaints in FY 2010 is only 0.59 percent.

Throughout the six year period covered by this report, the number of complaints filed ranged from 680 in 2005 to 678 in 2010; but in each fiscal year, the rate of complaints for the agency has been less than one percent of the total workforce. Each year a number of individuals filed more than one complaint in a year; therefore, the number of complainants is less than the number of complaints.

From FY 2005 through FY 2010, 3,614 complaints against the DOJ were closed without any findings of employment discrimination. Of the complaints closed, 24 percent were dismissed (either by the DOJ or by the EEOC), 17 percent were settled, 11 percent were withdrawn and over 48 percent resulted in a finding of no discrimination (either by the DOJ or by the EEOC).

(B) causal analysis;

The small number of complaints filed can be attributed, in part, to increased training of employees and managers concerning effective dispute resolution methods and the increased use of Alternate Dispute Resolution Programs ("ADR"). An analysis of the information related to complaint processing shows that the average processing times for investigations completed by the DOJ has remained stable. For example, the average number of days required to complete an investigation ranged from a high of 287 in FY 2008 to 218 in the current fiscal year, FY 2010. This consistency is due to the use of effective and efficient investigative techniques, including the limited use of contract investigators closely supervised by DOJ EEO personnel.

(C) practical knowledge gained through experience;

The DOJ has seen that increased use of ADR and providing training to all employees focused on effective conflict resolution has successfully lowered the number of formal allegations of discrimination.

The DOJ will continue to examine trends in the areas of discrimination allegations, particularly in the area of retaliation, in order to reduce complaint filings and promote a work environment free of prohibited discrimination.

(D) any actions planned or taken to improve complaint or civil rights programs of the agency;

The DOJ is conducting a training module that provides an overview of the EEO administrative process, the No FEAR Act, and applicable Civil Rights laws. The No FEAR Act training for DOJ employees is ongoing; every current employee of the DOJ has received this training in FY 2010 and all future DOJ employees will receive the training in the time mandated by the Act.

(8) Any adjustment to comply with the requirements under section 201:

There has been no adjustment to the DOJ's budget to comply with the requirements under section 201.

**U.S. Department of Justice
No FEAR Act Report
Fiscal Year 2010 Report**

Law	Prior Fiscal Years						Current Year
	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	
Number of Cases Arising Under 5 U.S.C. Section 2302 (b) (1)	680	676	630	687	722	678	
Discriminate against an employee or applicant based on race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation.							
Number of Cases Arising Under 5 U.S.C. Section 2302 (b) (8)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	
	0	0	0	0	0	0	
Reprisal for whistleblowing - i.e., take, fail to take, or threaten to take or fail to take a personnel action with respect to any employee or applicant because of any disclosure of information by the employee or applicant that he or she reasonably believes evidences a violation of a law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety (if such disclosure is not barred by law and such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs - if so restricted by law or Executive Order, the disclosure is only protected if made to the Special Counsel, the Inspector General, or comparable agency official).							
Number of Cases Arising Under 5 U.S.C. Section 2302 (b) (9)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	
	291	337	291	349	357	359	
Reprisal for exercising rights related to 2302(b)(1) or (b)(8) as applied to discriminatory conduct; take, fail to take or threaten to take or fail to take a personnel action against an employee or applicant for exercising an appeal, complaint, or grievance right, testifying for or assisting another in exercising such a right; cooperating with or disclosing information to the Special Counsel or to an Inspector General; or refusing to obey an order that would require the individual to violate a law; of such section as applied to discriminatory conduct described in paragraphs (1) and (8), of such section.							

	Prior Fiscal Years						Current Year
Open Complaints Status Year End	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	
Pending at end Year (9/30)	609	708	939	1109	1499	1568	
Investigation	195	363	569	470	483	363	
EEOC Hearing	217	190	242	311	483	597	
Agency FAD	152	153	109	300	474	542	
Appeal pending at EEOC	96	86	48	77	130	69	
Complaint Disposition During Year	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	
Dismissed During Year	212	129	69	157	146	146	
Settled During Year	144	72	88	83	122	109	
Withdrawn During Year	39	58	64	86	73	89	
Decided on Merits During Year: No Discrimination	515	321	252	187	169	284	
Decided on Merits During Year: Discrimination Found	14	20	17	18	8	10	

Number of EEO Complaints Processed by DOJ							
	Fiscal Years						
	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	
I. Formal Complaints Pending During Period							
A. Total Formal Complaints Pending	1524	1288	1345	1625	2078	2188	
1. Complaints filed in a prior period	844	612	715	938	1356	1510	
2. Complaints filed during period	680	676	630	687	722	678	
II. Number of Individuals who filed EEO Complaints ("N/A" means data is not available for period)							
A. Individuals who filed at least one complaint during Fiscal Year	668	647	612	650	700	666	
B. Individuals who filed two or more complaints during Fiscal Year	24	22	21	25	14	10	
III. Administrative EEO Complaints pending at end of period							
A. Investigation of Complaint	195	363	569	470	483	363	
B. Administrative Hearing at EEOC	217	190	242	311	483	597	
C. Final Agency Decision to be Issued	152	153	109	300	474	542	
D. Appeals Pending at EEOC	96	86	48	77	130	69	

EEO Bases Alleged in EEO Complaints Filed at DOJ

	Fiscal Years					
	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Civil Rights Act (Title VII) Bases						
Race - American Indian/Alaskan Native	8	6	5	7	8	2
Race - Asian/Pacific Islander	5	24	7	11	8	13
Race - Black	174	200	102	103	101	112
Race - White	52	69	60	83	90	60
Color	1	6	22	16	25	31
Religion	28	24	28	25	37	31
Sex - female	179	174	177	190	196	210
Sex - male	84	89	73	85	68	91
National Origin - Hispanic	88	54	29	29	28	41
National Origin - Other (non-Hispanic)	40	44	29	31	44	47
Equal Pay Act - All Complaints	0	0	1	1	4	0
Filed by females	0	0	1	1	3	0
Filed by males	0	0	0	0	1	0

Age Discrimination in Employment Act						
Age (40 or more)	161	237	154	163	184	168
Rehabilitation Act - All Complaints	177	167	141	161	143	170
Mental Disability Complaints	48	57	26	37	44	39
Physical Disability Complaints	129	110	115	124	99	131
EEO Reprisal - All Acts	291	337	291	349	357	359

Issues Raised in EEO Complaints Filed at DOJ							
Issues	Fiscal Years						
	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	
Appointment/Hire	24	22	17	23	33	29	
Assignment of Duties	98	117	88	104	85	62	
Awards	15	18	18	21	23	14	
Conversion to Full-Time	0	2	1	0	0	0	
Disciplinary Actions (Total)	70	81	63	61	57	54	
a. Demotion	2	9	8	5	6	5	
b. Reprimand	16	14	13	23	18	17	
c. Suspension	28	39	32	23	23	19	
d. Removal	23	19	9	10	10	13	
e. Other Discipline	1	0	1	0	0	0	
Duty Hours	27	31	27	27	30	25	
Evaluation/Appraisal	80	87	91	107	100	105	
Examination/Test	3	0	3	3	3	5	
Harassment - Non-Sexual	138	141	131	206	264	239	

Harassment - Sexual	53	24	39	47	47	46
Medical Examination	29	17	13	9	11	7
Pay (including overtime)	64	36	27	14	24	24
Promotion or Non-selection	136	167	136	142	154	148
Reassignment Denied	5	14	10	15	17	11
Reassignment Directed	19	104	52	36	56	31
Reasonable Accommodation	40	92	23	40	31	38
Reinstatement	4	6	2	9	1	2
Retirement	4	7	10	8	4	8
Termination	38	27	41	34	33	45
Terms & Conditions of Employment	107	94	71	87	134	135
Time & Attendance	42	70	61	63	55	61
Training	37	21	26	28	31	31
Other	20	22	56	29	24	26

Number EEO Complaints Processed or Pending and Average Days Pending at DOJ										
	Prior Fiscal Years									
	FY 2005		FY 2006		FY 2007		FY 2008		FY 2009	
	Number	Average Days	Number	Average Days	Number	Average Days	Number	Average Days	Number	Average Days
Processing Categories	Number	Average Days	Number	Average Days	Number	Average Days	Number	Average Days	Number	Average Days
1a. Investigations - Total:	606	233	688	221	872	215	1115	231	1080	218
995										
213										
632										
218										
A. Completed during period	411	262	325	261	303	267	645	287	597	252
363										
203										
B. Open at end of period	195	171	363	186	569	188	470	153	483	175
363										
206										
322										
1b. Completed Investigations Exceeding Time Limit:	120	373	144	376	94	391	236	423	263	376
206										
322										

Number EEO Complaints Processed or Pending and Average Days Pending at DOJ continued													
Prior Fiscal Years												Current Year	
FY 2005		FY 2006		FY 2007		FY 2008		FY 2009		FY 2010			
Processing Categories	Number	Average Days	Number	Average Days	Number	Average Days	Number	Average Days	Number	Average days	Number	Average Days	
2. Final Agency Action Pending - Total:	369	543	343	588	351	510	611	652	957	637	1139	661	
A. No Hearing Requested (pending decision by DOJ)	152	404	153	470	109	376	300	529	474	592	542	642	
B. Hearing Requested (pending at EEOC)	217	640	190	684	242	570	311	770	483	681	597	678	

Complaint Outcomes and Average Days to Reach Outcome at DOJ												
Decisions	Prior Fiscal Years										Current Year	
	FY 2005		FY 2006		FY 2007		FY 2008		FY 2009		FY 2010	
	Number	Average Days	Number	Average Days	Number	Average Days	Number	Average Days	Number	Average Days	Number	Average Days
1. All Procedural Dismissals	212	93	129	207	69	337	157	267	146	187	146	202
A. Dismissals by DOJ	201	66	125	169	58	302	142	271	135	149	137	167
B. Dismissals by EEOC	11	579	4	1385	11	523	15	232	11	657	9	739
2. Finding of Discrimination	14	355	20	1256	17	763	18	1164	8	885	10	954

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U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D. C. 20530

JUL 12 2012

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the Department of Justice, we are submitting the Fiscal Year 2011 Annual Report pursuant to the requirements of Section 203(a) of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 ("No FEAR Act"), Public Law 107-174. In accordance with Section 203(b) of the No FEAR Act, this report includes data from fiscal years 2006 through 2011.

Sincerely,

A handwritten signature in dark ink, appearing to read "Judith C. Appelbaum".

Judith C. Appelbaum
Acting Assistant Attorney General

Enclosure

DEPARTMENT OF JUSTICE
Annual No FEAR Act Report
Fiscal Years 2006 through 2011

Introduction:

This is the United States Department of Justice's (DOJ) Fiscal Year 2011 Annual Report pursuant to the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174, Title II, Section 203(a). The No FEAR Act requires Federal agencies to file reports annually with the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, each committee of Congress with jurisdiction relating to DOJ, the Equal Employment Opportunity Commission, the Office of Personnel Management and the Attorney General. In accordance with Section 203(b) of the No FEAR Act, this report includes data from fiscal years 2006 through 2011.

FY 2011 Report: The required information concerning the DOJ 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-B containing the DOJ case information.

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

DOJ reimbursed the Treasury Department, the following.

FY 2006 - \$ 880,526.76
FY 2007 - \$2,058,316.42
FY 2008 - \$5,284,782.43
FY 2009 - \$4,608,380.67
FY 2010 - \$2,886,002.75
FY 2011 - \$1,849,494.00

(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 2006 - 66
FY 2007 - 69
FY 2008 - 69
FY 2009 - 85
FY 2010 - 54
FY 2011 - 75

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

See charts attached at pages C-J and see www.doj.gov.

(6) A detailed description of: (A) the policy implemented by the DOJ 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 DOJ does not have a separate policy for disciplining any DOJ employee found to have committed practices referenced in 6(A)(i) or 6(A)(ii). However, DOJ's existing disciplinary policies could be used to discipline such employees.

Under current policy, the DOJ may take progressive discipline to correct unsatisfactory conduct or other work-related problems. Progressive discipline is the application of graduated actions in disciplinary cases. It can include, where appropriate, oral counseling sessions, written warnings, and suspensions of 14 calendar days or less. An adverse action may also be taken against an employee in the form of discharge, removal, or suspension without pay for a period of more than 14 calendar days, or a reduction in grade or pay.

(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 2006 - 66: 2 removals, 2 demotions, 25 suspensions under 14 days, 7 suspensions over 14 days, 18 letters of reprimand, 10 cases where discipline has been recommended but has not yet been imposed, 1 case where discipline was recommended but was not imposed, and 1 demotion combined with a 45 day suspension.

FY 2007 - 69: 1 removal, 27 suspensions under 14 days, 6 suspensions over 14 days, 12 letters of reprimand, 22 cases where discipline was recommended but has not yet been imposed, and 1 retirement in lieu of a proposed dismissal.

FY 2008 - 69: 2 removals, 26 suspensions under 14 days, 3 suspensions over 14 days, 21 letters of reprimand, 4 demotions, 1 verbal reprimand, and 12 cases where discipline was recommended but has not yet been imposed.

FY 2009 - 85: 2 removals, 2 demotions, 28 suspensions under 14 days, 9 suspensions over 14 days, 1 verbal reprimand, 1 non-disciplinary counseling, 40 letters of reprimand, and 2 cases where discipline was recommended but has not yet been imposed.

FY 2010 - 54: 1 demotion, 15 letters of reprimand, 1 memorandum of caution, 24 suspensions under 14 days, 1 suspension over 14 days, 1 demotion combined with a 60 day suspension, 1 demotion combined with a 50 day suspension, 2 demotions combined with 45 day suspensions, 2 resignations in lieu of proposed dismissals, 1 retirement in lieu of a proposed dismissal, and 5 cases where discipline was recommended but has not yet been imposed.

FY 2011 - 75: 2 removals, 4 demotions, 26 letters of reprimand, 1 letter of censure, 29 suspensions under 14 days, 1 suspension of 14 days, 1 suspension over 14 days,

FY 2011 - 75: 2 removals, 4 demotions, 26 letters of reprimand, 1 letter of censure, 29 suspensions under 14 days, 1 suspension of 14 days, 1 suspension over 14 days, 1 demotion combined with a 30 day suspension, 1 retirement in lieu of dismissal and 9 cases where discipline was recommended but has not yet been imposed.

(7) Analysis of the information described under paragraphs (1) through (6) (in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with part 1614 of title 29 of the Code of Federal Regulations) including - -

(A) an examination of trends;

An analysis of the trends at DOJ during the six year period covered in this report (2006-2011) reveals that the rate of complaints filed over a five year period has not increased. The agency currently employs a workforce of over 114,321 people and the rate of complaints in FY 2011 is 0.61 percent, which is almost identical to the rate in FY 2010 of 0.59 percent.

Throughout the six year period covered by this report, the number of complaints filed ranged from 676 in 2006 to 704 in 2011; but in each fiscal year, the rate of complaints for the agency has been less than one percent of the total workforce. Each year a number of individuals filed more than one complaint in a year; therefore, the number of complainants is less than the number of complaints.

From FY 2006 through FY 2011, 3,384 complaints against the DOJ were closed without any findings of employment discrimination. Of the complaints closed, 22 percent were dismissed (either by the DOJ or by the EEOC), 16 percent were settled, 13 percent were withdrawn and over 49 percent resulted in a finding of no discrimination (either by the DOJ or by the EEOC).

(B) causal analysis;

The small number of complaints filed can be attributed, in part, to increased training of employees and managers concerning effective dispute resolution methods and the increased use of Alternate Dispute Resolution Programs (ADR). An analysis of the information related to complaint processing shows that the average processing times for investigations completed by the DOJ has decreased recently. The average number of days required to complete an investigation ranged from a high of 287 in FY 2008 to 196 in FY 2011. This improvement is due to the use of effective and efficient investigative techniques, including the use of contract investigators who are closely supervised by DOJ EEO personnel.

(C) practical knowledge gained through experience;

The DOJ has seen that increased use of ADR and providing training to all employees ~~focused on effective conflict resolution has successfully lowered the number of formal~~ allegations of discrimination. The DOJ will continue to examine trends in the areas of discrimination allegations, particularly in the area of retaliation, in order to reduce complaint filings and promote a work environment free of prohibited discrimination.

(D) any actions planned or taken to improve complaint or civil rights programs of the agency;

The DOJ is conducting a training module that provides an overview of the EEO administrative process, the No FEAR Act, and applicable Civil Rights laws. The No FEAR Act training for DOJ employees is ongoing; every current employee of the DOJ received this training in FY 2010 and will receive it again in FY 2012, and all future DOJ employees will receive the training in the time mandated by the Act.

(8) Any adjustment to comply with the requirements under section 201:

There has been no adjustment to the DOJ's budget to comply with the requirements under section 201.

**U.S. Department of Justice
No FEAR Act Report
Fiscal Year 2011 Report**

Law	Prior Fiscal Years					Current Year
	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	
Number of Cases Arising Under 5 U.S.C. Section 2302 (b) (1)	676	630	687	722	678	FY 2011 704
Discriminate against an employee or applicant based on race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation.						
Number of Cases Arising Under 5 U.S.C. Section 2302 (b) (8)	0	0	0	0	0	FY 2011 0
Reprisal for whistleblowing - i.e., take, fail to take, or threaten to take or fail to take a personnel action with respect to any employee or applicant because of any disclosure of information by the employee or applicant that he or she reasonably believes evidences a violation of a law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety (if such disclosure is not barred by law and such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs - if so restricted by law or Executive Order, the disclosure is only protected if made to the Special Counsel, the Inspector General, or comparable agency official).						
Number of Cases Arising Under 5 U.S.C. Section 2302 (b) (9)	337	291	349	357	359	FY 2011 397
Reprisal for exercising rights related to 2302(b)(1) or (b)(8) as applied to discriminatory conduct; take, fail to take or threaten to take or fail to take a personnel action against an employee or applicant for exercising an appeal, complaint, or grievance right, testifying for or assisting another in exercising such a right; cooperating with or disclosing information to the Special Counsel or to an Inspector General; or refusing to obey an order that would require the individual to violate a law; of such section as applied to discriminatory conduct described in paragraphs (1) and (8), of such section.						

	Prior Fiscal Years					Current Year
	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Open Complaints Status Year End						
Pending at end Year (9/30)	708	939	1109	1499	1568	1561
Investigation	363	569	470	483	363	282
EEOC Hearing	190	242	311	483	597	601
Agency FAD	153	109	300	474	542	477
Appeal pending at EEOC	86	48	77	130	69	81
Complaint Disposition During Year	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Dismissed During Year	129	69	157	146	146	92
Settled During Year	72	88	83	122	109	84
Withdrawn During Year	58	64	86	73	89	64
Decided on Merits During Year: No Discrimination	321	252	187	169	284	440
Decided on Merits During Year: Discrimination Found	20	17	18	8	10	13

Number of EEO Complaints Processed by DOJ						
	Fiscal Years					
	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
I. Formal Complaints Pending During Period						
A. Total Formal Complaints Pending	1288	1345	1625	2078	2188	2240
1. Complaints filed in a prior period	612	715	938	1356	1510	1536
2. Complaints filed during period	676	630	687	722	678	704
II. Number of Individuals who filed EEO Complaints ("N/A" means data is not available for period)						
A. Individuals who filed at least one complaint during Fiscal Year	647	612	650	700	666	691
B. Individuals who filed two or more complaints during Fiscal Year	22	21	25	14	10	10
III. Administrative EEO Complaints pending at end of period						
A. Investigation of Complaint	363	569	470	483	363	282
B. Administrative Hearing at EEOC	190	242	311	483	597	601
C. Final Agency Decision to be Issued	153	109	300	474	542	477
D. Appeals Pending at EEOC	86	48	77	130	69	81

EEO Bases Alleged in EEO Complaints Filed at DOJ						
	Fiscal Years					
	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Civil Rights Act (Title VII) Bases						
Race - American Indian/Alaskan Native	6	5	7	8	2	4
Race - Asian/Pacific Islander	24	7	11	8	13	15
Race - Black	200	102	103	101	112	106
Race - White	69	60	83	90	60	79
Color	6	22	16	25	31	57
Religion	24	28	25	37	31	36
Sex - female	174	177	190	196	210	207
Sex - male	89	73	85	68	91	96
National Origin - Hispanic	54	29	29	28	41	23
National Origin - Other (non-Hispanic)	44	29	31	44	47	46
Equal Pay Act - All Complaints	0	1	1	4	0	0
Filed by females	0	1	1	3	0	0
Filed by males	0	0	0	1	0	0

Age Discrimination in Employment Act									
Age (40 or more)	237	154	163	184	168	168			
Rehabilitation Act - All Complaints	167	141	161	143	170	152			
Mental Disability Complaints	57	26	37	44	39	38			
Physical Disability Complaints	110	115	124	99	131	114			
EEO Reprisal - All Acts	337	291	349	357	359	397			

Issues Raised in EEO Complaints Filed at DOJ						
Issues	Fiscal Years					
	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Appointment/Hire	22	17	23	33	29	28
Assignment of Duties	117	88	104	85	62	72
Awards	18	18	21	23	14	26
Conversion to Full-Time	2	1	0	0	0	1
Disciplinary Actions (Total)	81	63	61	57	54	57
a. Demotion	9	8	5	6	5	13
b. Reprimand	14	13	23	18	17	14
c. Suspension	39	32	23	23	19	24
d. Removal	19	9	10	10	13	6
e. Other Discipline	0	1	0	0	0	0
Duty Hours	31	27	27	30	25	31
Evaluation/Appraisal	87	91	107	100	105	97
Examination/Test	0	3	3	3	5	1
Harassment - Non-Sexual	141	131	206	264	239	259

Harassment - Sexual	24	39	47	47	46	35
Medical Examination	17	13	9	11	7	5
Pay (including overtime)	36	27	14	24	24	17
Promotion or Non-selection	167	136	142	154	148	139
Reassignment Denied	14	10	15	17	11	25
Reassignment Directed	104	52	36	56	31	46
Reasonable Accommodation	92	23	40	31	38	34
Reinstatement	6	2	9	1	2	2
Retirement	7	10	8	4	8	8
Termination	27	41	34	33	45	30
Terms & Conditions of Employment	94	71	87	134	135	96
Time & Attendance	70	61	63	55	61	59
Training	21	26	28	31	31	22
Other	22	56	29	24	26	0

	Number EEO Complaints Processed or Pending and Average Days Pending at DOJ														Current Year
	Prior Fiscal Years														
	FY 2006			FY 2007		FY 2008		FY 2009		FY 2010			FY 2011		
Processing Categories	Number	Average Days	Number	Average Days	Number	Average Days	Number	Average Days	Number	Average Days	Number	Average Days	Number	Average Days	
1a. Investigations - Total:	688	221	872	215	1115	231	1080	218	995	213	813	191			
A. Completed during period	325	261	303	267	645	287	597	252	632	218	531	196			
B. Open at end of period	363	186	569	188	470	153	483	175	363	203	282	182			
1b. Completed Investigations Exceeding Time Limit:	144	376	94	391	236	423	263	376	206	322	124	324			

Number EEO Complaints Processed or Pending and Average Days Pending at DOJ continued											
Prior Fiscal Years											Current Year
FY 2006		FY 2007		FY 2008		FY 2009		FY 2010		FY 2011	
Number	Average Days	Number	Average Days	Number	Average Days	Number	Average days	Number	Average Days	Number	Average Days
Processing Categories											
2. Final Agency Action Pending - Total:	343	351	510	611	652	957	637	1139	661	1078	685
A. No Hearing Requested (pending decision by DOJ)	153	109	376	300	529	474	592	542	642	477	596
B. Hearing Requested (pending at EEOC)	190	242	570	311	770	483	681	597	678	601	755

Complaint Outcomes and Average Days to Reach Outcome at DOJ																	
Decisions	Prior Fiscal Years																
	FY 2006			FY 2007			FY 2008			FY 2009			FY 2010			FY 2011	
	Number	Average Days		Number	Average Days		Number	Average Days		Number	Average Days		Number	Average Days	Number	Average Days	
1. All Procedural Dismissals	129	207		69	337		157	267		146	187	146	202	92	257		
A. Dismissals by DOJ	125	169		58	302		142	271		135	149	137	167	83	163		
B. Dismissals by EEOC	4	1385		11	523		15	232		11	657	9	739	9	1124		
2. Finding of Discrimination	20	1256		17	763		18	1164		8	885	10	954	13	1059		

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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 29 2013

The Honorable Patrick J. Leahy
President Pro Tempore &
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Leahy:

On behalf of the Department of Justice, we are submitting the Fiscal Year (FY) 2012 Annual Report pursuant to the requirements of Section 203(a) of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 ("No FEAR Act"), Public Law 107-174. In accordance with Section 203(b) of the No FEAR Act, this report includes data from FY 2012.

Sincerely,

A handwritten signature in black ink, appearing to read "P. J. Kadzik".

Peter J. Kadzik
Principal Deputy Assistant Attorney General

Enclosure

DEPARTMENT OF JUSTICE
Annual No FEAR Act Report
Fiscal Year 2012

Introduction:

This is the United States Department of Justice's (DOJ) Fiscal Year (FY) 2012 Annual Report pursuant to the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Public Law 107-174, Title II, Section 203(a). The No FEAR Act requires Federal agencies to file reports annually with the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, each committee of Congress with jurisdiction relating to DOJ, the Equal Employment Opportunity Commission, the Office of Personnel Management and the Attorney General. In accordance with Section 203(b) of the No FEAR Act, this report includes data from FY 2012.

FY 2012 Report: The required information concerning the DOJ 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-B containing the DOJ case information.

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

In FY 2012, the DOJ reimbursed the Treasury Department \$771,800.00.

(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 2012 - 52

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

See charts attached at pages C-J and see www.doj.gov.

(6) A detailed description of:

(A) the policy implemented by the DOJ 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 DOJ does not have a separate policy for disciplining any DOJ employee found to have committed practices referenced in 6(A)(i) or 6(A)(ii). However, DOJ's existing disciplinary policies could be used to discipline such employees.

Under current policy, the DOJ may take progressive discipline to correct unsatisfactory conduct or other work-related problems. Progressive discipline is the application of graduated actions in disciplinary cases. It can include, where appropriate, oral counseling sessions, written warnings, and suspensions of 14 calendar days or less. An adverse action may also be taken against an employee in the form of discharge, removal, or suspension without pay for a period of more than 14 calendar days, or a reduction in grade or pay.

(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 2012 - 52: 1 removal, 15 letters of reprimand, 28 suspensions under 14 days, 2 suspensions over 14 days, 1 demotion combined with a 15 day suspension, 2 resignations in lieu of dismissal, and 3 cases where discipline was recommended but has not yet been imposed.

(7) Analysis of the information described under paragraphs (1) through (6) (in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with part 1614 of title 29 of the Code of Federal Regulations) including:

(A) an examination of trends;

An analysis of the trends at DOJ during the period covered in this report (FY 2012) and the previous 5 fiscal years reveals a minimal increase in the rate of complaints filed. The agency currently employs a workforce of over 114,870 people and the rate of complaints in FY 2012 is 0.66 percent, which is just slightly higher than the rate in FY 2011 of 0.61 percent.

In the past six years, the number of complaints filed ranged from 630 in FY 2007 to 761 in FY 2012; but in each fiscal year over this time period, the rate of complaints for the agency has been less than one percent of the total workforce. Each year, a number of individuals filed more than one complaint in a year; therefore, the number of complainants is less than the number of complaints.

In FY 2012, 840 complaints against the DOJ were closed without any findings of employment discrimination. Of the complaints closed, 13 percent were dismissed (either by the DOJ or by the EEOC), 18 percent were settled, 11 percent were withdrawn and over 58 percent resulted in a finding of no discrimination (either by the DOJ or by the EEOC).

(B) causal analysis;

The small number of complaints filed can be attributed, in part, to increased training of employees and managers concerning effective dispute resolution methods and the increased use of Alternative Dispute Resolution Programs ("ADR"). An analysis of the information related to complaint processing shows that the average processing times for investigations completed by the DOJ has decreased. The average number of days required to complete an investigation ranged from a high of 287 in FY 2008 to 202 in FY 2012. This improvement is due to the use of effective and efficient investigative techniques, including the use of contract investigators who are closely supervised by DOJ EEO personnel.

(C) practical knowledge gained through experience;

The DOJ has seen that increased use of ADR and providing training to all employees focused on effective conflict resolution has successfully lowered the number of formal allegations of discrimination. The DOJ will continue to examine trends in the areas of discrimination allegations, particularly in the area of retaliation, in order to reduce complaint filings and promote a work environment free of prohibited discrimination.

(D) any actions planned or taken to improve complaint or civil rights programs of the agency.

The DOJ conducts a training module that provides an overview of the EEO administrative process, the No FEAR Act, and applicable Civil Rights laws. The No FEAR Act training for DOJ employees is ongoing; every current employee of the DOJ received this training in FY 2012, and all future DOJ employees will receive the training in the time mandated by the Act.

(8) Any adjustment to comply with the requirements under section 201:

There has been no adjustment to the DOJ's budget to comply with the requirements under section 201.

**U.S. Department of Justice
No FEAR Act Report
Fiscal Year 2012 Report**

Law	Fiscal Year 2012
Number of Cases Arising Under 5 U.S.C. Section 2302 (b) (1)	761
Discriminate against an employee or applicant based on race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation.	
Number of Cases Arising Under 5 U.S.C. Section 2302 (b) (8)	Fiscal Year 2012 0
Retrial for whistleblowing - i.e., take, fail to take, or threaten to take or fail to take a personnel action with respect to any employee or applicant because of any disclosure of information by the employee or applicant that he or she reasonably believes evidences a violation of a law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety (if such disclosure is not barred by law and such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs - if so restricted by law or Executive Order, the disclosure is only protected if made to the Special Counsel, the Inspector General, or comparable agency official).	
Number of Cases Arising Under 5 U.S.C. Section 2302 (b) (9)	Fiscal Year 2012 440
Retrial for exercising rights related to 2302(b)(1) or (b)(8) as applied to discriminatory conduct; take, fail to take or threaten to take or fail to take a personnel action against an employee or applicant for exercising an appeal, complaint, or grievance right, testifying for or assisting another in exercising such a right; cooperating with or disclosing information to the Special Counsel or to an Inspector General; or refusing to obey an order that would require the individual to violate a law; of such section as applied to discriminatory conduct described in paragraphs (1) and (8), of such section.	

Open Complaints Status Year End		FY 2012
Pending at end Year (9/30)		1454
Investigation		251
EEOC Hearing		624
Agency FAD		372
Appeal pending at EEOC		114
Complaint Disposition During Year		FY 2012
Dismissed During Year		110
Settled During Year		148
Withdrawn During Year		93
Decided on Merits During Year: No Discrimination		489
Decided on Merits During Year: Discrimination Found		17

Number of EEO Complaints Processed by DOJ		Fiscal Year 2012
I. Formal Complaints Pending During Period		
A. Total Formal Complaints Pending		2292
1. Complaints filed in a prior period		1531
2. Complaints filed during period		761
II. Number of Individuals who filed EEO Complaints ("N/A" means data is not available for period)		
A. Individuals who filed at least one complaint during Fiscal Year		749
B. Individuals who filed two or more complaints during Fiscal Year		11
III. Administrative EEO Complaints pending at end of period		
A. Investigation of Complaint		251
B. Administrative Hearing at EEOC		624
C. Final Agency Decision to be Issued		372
D. Appeals Pending at EEOC		114

EEO Bases Alleged in EEO Complaints Filed at DOJ	
	Fiscal Year 2012
Civil Rights Act (Title VII) Bases	
Race - American Indian/Alaskan Native	8
Race - Asian/Pacific Islander	14
Race - Black	205
Race - White	65
Color	85
Religion	41
Sex - female	225
Sex - male	90
National Origin - Hispanic	55
National Origin - Other (non-Hispanic)	45
Equal Pay Act - All Complaints	3
Filed by females	2
Filed by males	1
Age Discrimination in Employment Act	

Age (40 or more)	215
Rehabilitation Act - All Complaints	187
Mental Disability Complaints	65
Physical Disability Complaints	122
EEO Reprisal - All Acts	440

Issues Raised in EEO Complaints Filed at DOJ	
Issues	Fiscal Year 2012
Appointment/Hire	42
Assignment of Duties	69
Awards	19
Conversion to Full-Time	0
Disciplinary Actions (Total)	67
a. Demotion	6
b. Reprimand	27
c. Suspension	24
d. Removal	10
e. Other Discipline	0
Duty Hours	21
Evaluation/Appraisal	98
Examination/Test	6
Harassment - Non-Sexual	276
Harassment - Sexual	35
Medical Examination	4

Pay (including overtime)	21
Promotion or Non-selection	151
Reassignment Denied	12
Reassignment Directed	50
Reasonable Accommodation	39
Reinstatement	2
Retirement	5
Termination	32
Terms & Conditions of Employment	124
Time & Attendance	45
Training	24
Other	0

Number EEO Complaints Processed or Pending and Average Days Pending at DOJ		
Fiscal Year 2012		
Processing Categories	Number	Average Days
1a. Investigations - Total:	865	200
A. Completed during period	614	202
B. Open at end of period	251	195
1b. Completed Investigations Exceeding Time Limit:	131	325

		Number EEO Complaints Processed or Pending and Average Days Pending at DOJ continued	
		Fiscal Year 2012	
Processing Categories	Number	Average Days	
2. Final Agency Action Pending - Total:	996	666	
A. No Hearing Requested (pending decision by DOJ)	372	498	
B. Hearing Requested (pending at EEOC)	624	767	

Complaint Outcomes and Average Days to Reach Outcome at DOJ		
Fiscal Year 2012		
Decisions		
	Number	Average Days
1. All Procedural Dismissals	110	136
A. Dismissals by DOJ	110	136
B. Dismissals by EEOC	0	0
2. Finding of Discrimination	17	773