

AFGE

WOMEN'S & FAIR PRACTICES DEPARTMENTS



GUIDE TO

MANAGEMENT DIRECTIVE-715

"That it shall be the policy of the United States to insure equal employment opportunities for Federalemployees withoutdiscrimination..."

-Title VII of the Civil Rights Act of 1964

**AFGE
WOMEN'S & FAIR PRACTICES
DEPARTMENTS
GUIDE TO MANAGEMENT
DIRECTIVE("MD") -715**

Table of Contents

Why Create MD-715? **2**

Provides Guidance **3**

Element A **4**

Element B **5**

Element C **5**

Element D **7**

Element E **9**

Element F **11**

Implements No FEAR Act **12**

Notify Employees **13**

Train Employees **14**

Filing Requirements **15**

Posting Requirments **18**

What Should the Union Do? **19**

WHY CREATE MD-715?

On October 1, 2003, the Equal Employment Opportunity Commission (EEOC) created Management Directive-715 (MD-715) to do the following:

1. Provide guidance for federal agencies to achieve model EEO programs; and
2. Implement the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002" (No FEAR Act) which was created by Congress in 2002

The No Fear Act covers:

Title VII of the Civil Rights Act;
Rehabilitation Act;
Age Discrimination in Employment Act;
Whistleblower Protection Act; and
Prohibited personnel practices.

The purpose of the Act is to hold Federal agencies accountable for any violations of the covered regulations and to provide guidance for maintaining effective EEO and affirmative employment programs.

HOW MD-715 PROVIDES GUIDANCE

MD-715 Model EEO Program is divided into 6 (A-F) elements:

Element A - Demonstrated commitment from agency leadership;

Element B - Integration of EEO into the agency's strategic mission;

Element C - Management and program accountability;

Element D - Proactive prevention of unlawful discrimination;

Element E - Efficiency; and

Element F - Responsiveness and Legal Compliance

These six elements serve as the foundation for each agency to build a Model EEO program.

The EEOC designed an Agency EEO Self-Assessment Checklist in Element F to provide an efficient and effective means for each agency to determine whether its overall EEO program complies with MD-715's six essential elements.

ELEMENT A

DEMONSTRATED COMMITMENT FROM AGENCY LEADERSHIP

MD-715 provides that the Agency must post and disseminate an effective, up-to-date Policy Statement that communicates the Agency's EEO policies and procedures to all employees. MD-715 also encourages agencies to assess and ensure that EEO Principles are part of its culture.

The Union can assess the Agency's compliance with respect to Element A by referring to the below checklists of Required Agency Actions pursuant to MD-715:

MD- 715 ELEMENT A REQUIREMENT	YES	NO
The EEO policy statement is prominently posted in all personnel and EEO offices, throughout the agency, and on the agency's external website.		
The agency disseminates its anti-harassment policy, reasonable accommodation procedures, and other EEO program information to all employees		
The agency disseminates its reasonable accommodation procedures to all employees		
The agency informs all employees of their rights and responsibilities pursuant to the agency's EEO process.		
The agency disseminates and informs all employees of their rights and responsibilities pursuant to the agency's anti-harassment program.		
The agency disseminates and informs all employees of their rights and responsibilities pursuant to the (ADR) process.		
The agency posts its reasonable accommodation procedures, personal assistance services procedures, and other written materials concerning the EEO program on its public website.		

ELEMENT B

INTEGRATION OF EEO INTO THE AGENCY'S STRATEGIC MISSION

The reporting structure for the EEO program provides that the EEO Director reports directly to the agency head. The EEO Director is responsible for providing timely counseling, investigations, and final agency actions. The EEO Director is also responsible for ensuring the agency timely complies with EEOC orders, and for evaluating the EEO program and recommending improvements to the agency head.

ELEMENT C

MANAGEMENT AND PROGRAM ACCOUNTABILITY

Element 3 outlines guidance for the agency to conduct regular internal audits of its components in order to identify deficiencies and the effectiveness of the agency's efforts to remove barriers. The EEOC requires that agencies develop a comprehensive anti-harassment policy that covers all protected statuses to prevent and address harassment.

CHECKLIST FOR EEOC'S GUIDANCE ON WHAT SHOULD BE INCLUDED IN AN AGENCY'S ANTI-HARASSMENT POLICY	YES	NO
Does the Anti-Harassment Policy establish a separate procedure outside of the EEO complaint process?		
Does the Anti-Harassment Policy require a prompt inquiry of all harassment allegations to prevent or eliminate conduct before it rises to the level of unlawful harassment?		
Does the Anti-Harassment Policy ensure that a firewall exists between the EEO Director and the Anti-Harassment Coordinator to avoid a conflict of interest?		
If the anti-harassment program resides within the EEO office is there a procedure for preventing the EEO Director from involvement in the day-to-day functions of the anti-harassment program?		
Does the Anti-Harassment Policy ensure that the EEO office informs the anti-harassment program of all EEO counseling activity alleging harassment?		

MD-715 requires agencies to establish effective reasonable accommodation procedures in order to ensure compliance with EEOC regulations, enforcement guidance, and other applicable executive orders, guidance, and standards.

CHECKLIST REGARDING WHETHER THE AGENCY'S REASONABLE ACCOMMODATION PROCEDURES COMPLY WITH RELEVANT EEOC REGULATIONS AND ENFORCEMENT GUIDANCE	YES	NO
Do the Reasonable Accommodation Procedures appoint a designated agency official or other mechanism to assist with processing requests?		
Do the Reasonable Accommodation Procedures identify a maximum amount of time to process the requests and ensure the requests are processed in a timely manner?		
Do the Reasonable Accommodation Procedures ensure that job applicants can request and receive accommodations during the application and placement processes?		
Do the Reasonable Accommodation Procedures establish a firewall between the EEO Director and the Reasonable Accommodation Program Manager to avoid a conflict of interest?		
If the Reasonable Accommodation Program resides within the EEO office, does the firewall prevent the EEO Director from involvement in the day-to-day functions of the reasonable accommodation program?		
Do the Reasonable Accommodation Procedures establish effective procedures to provide personal assistance services (PAS) to eligible employees that complies with EEOC regulations and is posted on the agency's external website.		

ELEMENT D

PROACTIVE PREVENTION OF UNLAWFUL DISCRIMINATION

An agency must conduct a self-assessment on at least an annual basis. The self-assessment must identify areas where barriers may operate to exclude certain groups, and develop strategic plans to eliminate identified barriers.

- I. The agency conducts a reasonable assessment to monitor progress toward achieving equal employment opportunity.
 - a. The agency has a process for identifying triggers in the workplace.
 - b. The agency regularly uses a variety of information to investigate whether triggers exist: workforce data; complaint/grievance data; exit surveys; employee climate surveys; focus groups; affinity groups; union; program evaluations; special emphasis programs; and/or external special interest groups.
 - c. The agency conducts exit interviews or surveys to improve the recruitment, hiring, inclusion, and advancement of people with disabilities.

- II. The agency identifies areas where barriers may exclude EEO groups.
 - a. The agency has a process for identifying barriers in the workplace.
 - b. The agency regularly examines the impact of management/personnel policies, procedures, and practices for potential barriers.
 - c. The agency considers whether an EEO group will be negatively impacted prior to making human resource decisions, such as re-organizations and realignments.
 - d. The agency regularly review a variety of information to investigate whether barriers exist: workforce data; complaint/grievance data; exit surveys; employee climate surveys; focus groups; affinity groups; union; program evaluations; special emphasis programs; and/or external special interest groups.
 - e. The agency conducts exit interviews or surveys concerning the recruitment, hiring, inclusion, retention, and advancement of individuals with disabilities.

- III. The agency establishes appropriate action plans to remove identified barriers.
 - a. The agency tailors action plans to address the identified barriers in a particular policy, procedure, or practice.
 - b. If the agency has identified one or more barriers during the reporting period, the agency has implemented a plan and met the target dates for the planned activities.
 - c. The agency periodically reviews the effectiveness of the plan.

- IV. The Agency takes affirmative action to promote the recruitment, hiring, and advancement of qualified people with disabilities and people with targeted disabilities.
 - a. The agency has a posted its affirmative action plan on its public website.
 - b. The agency takes steps to ensure qualified people with disabilities and targeted disabilities are encouraged to apply for vacancies.
 - c. The agency ensures that disability-related questions from members of the public are answered promptly and correctly.
 - d. The agency takes specific steps that are reasonably designed to increase the number of persons with disabilities and targeted disabilities until it meets the goals.

ELEMENT E EFFICIENCY

The agency head is required to ensure that there are effective systems for evaluating the impact and effectiveness of the agency's EEO programs and an efficient and fair dispute resolution process.

- I. The agency maintains an efficient, fair, and impartial complaint resolution process.
 - a. The agency must timely implement an EEO complaint program, including EEO counseling, investigations, acceptance/dismissal decisions, final agency decisions, and final actions.
 - b. The agency must provide written notification of rights and responsibilities in the EEO process during the initial counseling session.
 - c. The agency must hold contractors and employees accountable for poor work product and/or delays.
 - d. The agency must submit complaint files and other documents in the proper format to EEOC through the Federal Sector EEO Portal (FedSEP).

- II. The agency has a neutral EEO process.
 - a. The agency must establish a clear separation between its EEO complaint program and its defensive function.
 - b. To obtain legal sufficiency reviews, the EEO office must have access to sufficient legal resources separate from the agency representative. If the EEO office chooses to utilize the agency representative for legal sufficiency reviews, the agency must establish a firewall between the reviewing attorney and the agency representative and incorporate time frames into the process. Chapter 1(IV) of MD-110 provides that a firewall will prevent the agency's legal defense activity from negatively influencing the agency's process for determining whether discrimination has occurred.
 - c. The agency must ensure that its agency representative does not intrude upon the counseling, investigation, and final agency decision stages of the EEO process.

- III. The agency has established and encouraged the widespread use of a fair alternative dispute resolution (ADR) program.
 - a. The ADR program is available during the pre-complaint and formal complaint processes.
 - b. The ADR program requires a management official with settlement authority, other than the responsible management official named in the complaint, to be available during the dispute resolution process.
 - c. Once the agency offers ADR, managers and supervisors have a duty to participate in the ADR process.
 - d. The agency annually evaluates the effectiveness of its ADR program.

- IV. The agency has effective and accurate data collection systems in place to evaluate its EEO Program.
 - a. The agency must have systems in place to accurately collect, monitor, and analyze complaint data, employee demographic data, applicant flow data, recruitment activities, reasonable accommodation requests, and allegations of harassment. These systems will have the ability to provide the data required by the Form 462 and MD-715 report.
 - b. The agency has a system to resurvey its workforce on a regular basis.

- V. The agency identifies and disseminates significant trends and best practices in its EEO program.
 - a. The agency must monitor trends in its EEO program to determine whether the agency is meeting its obligations under the statutes EEOC enforces.
 - b. The agency reviews other agencies' best practices to improve the effectiveness of its EEO program.
 - c. The agency compares its performance in the EEO process to other agencies of similar size.

ELEMENT F
RESPONSIVENESS AND LEGAL COMPLIANCE

- I. The agency has a processes in place to ensure timely and full compliance with EEOC orders and settlement agreements.
 - a. The agency must have a system of management controls to ensure that its officials timely comply with EEOC orders/ directives, final agency actions, and resolutions/settlement agreements.
 - b. The agency has established procedures to timely process ordered monetary relief and other forms of ordered relief.
 - c. When EEOC issues an order requiring compliance, the agency holds its compliances officer(s) accountable for poor work products and/or delays during performance review.
- II. The agency complies with the law, including EEOC regulations, management directives, orders and other written instructions.
 - a. The agency timely responds and fully complies with EEOC orders.
 - b. When a complainant requests a hearing, the agency must timely submit the investigative file to the appropriate EEOC hearing office.
 - c. When there is a finding of discrimination that is not the subject of an appeal, the agency ensures timely compliance with the orders of relief.
 - d. When a complainant files an appeal, the agency must timely submit the complaint file to EEOC's Office of Federal Operations.
 - e. Relief ordered in a final Commission decision is mandatory and binding on the agency except as provided in 29 C.F.R. § 1614.502. The agency must promptly provide documentation to EEOC substantiating compliance with EEOC ordered relief.
- III. The agency reports to EEOC its program efforts and accomplishments.
 - a. The agency timely and accurately submits its No FEAR Act report to EEOC. This requirement applies to agencies and their components with 1,000 or more employees.
 - b. The agency timely posts its quarterly No FEAR Act data on its public webpage.

HOW MD-715 IMPLEMENTS NO FEAR ACT

1. Require that federal employees are notified of their rights under whistleblowing and antidiscrimination laws.
2. Require that federal employees, including managers and supervisors, are trained on their rights and obligations under whistleblowing and antidiscrimination laws.
3. Require production of a report within 6 months after the end of each fiscal year which documents the required training, information regarding the discrimination complaints filed, trends, and adjustments necessary because of said trends. The report must be provided to:
 - Speaker of the U.S. House of Representatives;
 - President pro tempore of the U.S. Senate;
 - Committee on Governmental Affairs, U.S. Senate; -
Committee on Government Reform, U.S. House of
Representatives;
 - Each committee of Congress with jurisdiction relating to the
agency;
 - Chair, Equal Employment Opportunity Commission.
 - Attorney General; and
 - Director, U.S. Office of Personnel Management.
4. Require public disclosure of each agency's record for how it handles antidiscrimination complaints under the EEO process.

NOTIFICATION TO EMPLOYEES

The Agency is required to provide a "No FEAR Act Notice" to all employees and former employees, by publication in the Federal Register and on their agency websites annually by the end of the fiscal year. Posted materials must remain until revised or replaced.

Notification must be given to new employees within 90 calendar days of being on duty. All notices must include the model text provided in the regulation under 5 CFR Part 724, although agencies may add additional text specific to their needs.

The following is sample language for the No Fear Act Notice posting which is relevant to anti-discrimination laws:

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302 (b) (1), 29 U.S.C. 206 (d), 29 U.S.C. 631 , 29 U.S.C. 633 a, 29 U.S.C. 791 and 42 U.S.C. 2000 e-16. If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. See, e.g., 29 CFR § 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

TRAINING FOR EMPLOYEES

Each agency is required to develop a written training plan to train all employees, including supervisors and managers, in their rights and obligations under antidiscrimination and whistleblower protection laws. Plans must include:

- Training materials.
- Method.
- Schedule.
- Documentation.

All employees are to be trained in a training cycle at least every two years. All new employees must be provided training as part of their new employee orientation, or, if the training is provided in another manner, within 90 calendar days of their appointment.

The regulation does not explain in what way, if at all, training for supervisors and managers should differ from training for other employees. This is therefore left to the discretion of individual agencies.

AGENCY FILING REQUIREMENTS

The Agency must produce a report within 6 months after the end of each fiscal year. The report must include the following sections:

1. The agency's written plan for employee training on antidiscrimination laws and whistleblower protection laws.
2. Total number of pending and resolved cases in federal court under the applicable anti-discrimination and whistle-blowing laws.
 - a. The status or disposition (including settlement);
 - b. The amount of money required to be reimbursed to the Judgment Fund by the agency;
 - c. The amount of reimbursement to the Judgment Fund or attorney's fees.
 - d. The total number of employees disciplined and the nature of the discipline.
3. The final year-end data about discrimination complaints that was posted in accordance with EEOC regulations.
4. For all cases in federal court or administrative proceedings, the number of employees disciplined in accordance with any agency policy described in numeral five, below, and the type of action taken.
5. A detailed description of the agency's policy for taking disciplinary action against employees for conduct that is inconsistent with federal antidiscrimination laws and whistleblower protection laws or for conduct that constitutes another prohibited personnel practice revealed in connection with agency investigations of alleged violations of these laws.
6. An analysis of the above information in conjunction with other data to identify trends, knowledge gained, and actions planned for eliminating discrimination and retaliation.
7. Any adjustment needed or made to the budget of the agency to comply with its Judgment Fund reimbursement obligation from the previous year.

Use the report to analyzing trends and detect possible barriers that may impede the fair and equitable treatment of a specific EEO group.

A barrier is a policy, procedure, practice, or condition that limits employment opportunities for members of a particular race, ethnic background, or gender, or because of a disability. For example, barriers may be identified in: Hiring; Promotions and Other Internal Selections; Attainment of supervisory and management positions; Training and career development opportunities; Performance incentives and awards; Disciplinary Actions; and Separations.

Barriers may be:

Institutional- policies, procedures, or situations that systematically disadvantage certain groups of people. For example, agency will promote employees to the journeyman-level positions (GS-12 and above) only from outside of the organization.

Attitudinal- attitude and assumptions that built up over the years and often get reflected in one's day-to-day communications. For example, individuals with targeted disabilities can only perform marginal task and are harder to place in journeyman-level positions.

Physical- structural obstacles in natural or manmade environments that prevent or block mobility or access. For example, the office building is not wheelchair accessible.

Examples of Statistical Data Analysis:

Step 1: Identitify Problem: There are fewer minorities at the journeyman-level

Step 2: Collecting the Data: Start with the emphasis on defining the workforce population about which you are seeking to make inference- define what is the journeyman-level. Data can be obtained from existing sources or through observation. Determine what sources are available to you (MD-715, Human Resource Data System, Civilian Personnel Data System, survey or observation).

Step 3: Analyzing the Data: Use simple arithmetic and easy-to-draw pictures, tables, or charts to summarize the data and what the data is saying.

Key to Example Tables: H/M – Hispanic Male and H/F – Hispanic Female
W/M – White Male and W/F – White Female
B/M – Black Male and B/F – Black Female
A/M – Asian Male and A/F – Asian Female
AI/M – American Indian Male and
AI/F – American Indian Female

Example: Table 1 – Journeyman Level (JL) (By Fiscal Year, Race/ Ethnicity and Gender)

FY	Nos @ JL	M	F	H/M	H/F	W/M	W/F	B/M	B/F	A/M	A/F	AI/M	AI/F
'16	293	202	91	2	3	166	73	30	10	4	3	0	2
'17	305	196	109	5	1	149	91	36	12	6	3	0	2
'18	300	185	115	7	2	142	92	30	16	6	3	0	2
'19	293	181	112	10	2	131	88	32	17	8	3	0	2

Example: Table 2 – Journeyman Level (JL) (By Fiscal Year, Race/ Ethnicity, and Gender) (Presented in Percentages)

FY	% @ JL	M %	F %	H/M %	H/F %	W/M %	W/F %	B/M %	B/F %	A/M %	A/F %	AI/M %	AI/F %
'16	100	69.62	31.06	0.68	1.02	56.66	24.91	10.24	3.41	1.37	1.02	0	0.68
'17	100	64.26	35.74	1.64	0.33	48.85	29.84	11.80	3.93	1.97	0.98	0	0.66
'18	100	61.67	38.33	2.33	0.67	47.33	30.67	10.00	5.33	2.00	1.00	0	0.67
'19	100	61.77	38.23	3.41	0.68	44.71	30.03	10.92	5.80	2.73	1.02	0	0.68

What the data says: Total Journeyman positions have remained relatively within the same range from 2016 through 2019, increasing slightly in 2017 and decreasing slightly in 2018 and 2019. The Male representation has continued to decrease. The Female representation has increased from 2016 to 2019, although there has been a slight decrease in numbers from 2018 to 2019. The Female representation by percentage has increased, from 31.06% in 2016 to 38.23% in 2019. Hispanic males had the largest increase in representation, increasing from 2 to 10 and from 0.68% in 2016 to 3.41% in 2019. White males had the largest decrease in representation both in numbers, from 166 to 131, and percentage representation, from 56.66% to 44.71%.

AGENCY POSTING REQUIREMENTS

The posting requirements of the No FEAR Act refer only to the handling of EEO complaints, not to whistleblowing.

The data requirements are limited to formal EEO complaints. They do not apply to EEO counseling, generally called the informal process, nor do they consider settlements.

The EEOC does not produce a government wide report collating agency No FEAR Act data.

Although the EEOC does not consolidate agency No FEAR Act data, it is required by the act to prepare and post its own reports on EEO hearings and appeals on its website.

Agencies must stick to the required data, as listed in 29 CFR 1614.704 and the EEOC uniform format and may not add additional data or other material. However, they do have the option of posting additional statistics and analysis on separate Web pages.

WHAT SHOULD THE UNION DO?

The Union should consistently monitor the agency's MD-715 activity with respect to the following:

NOTICE:

- Is the No FEAR Act Notice on the Agency website and revised regularly?
- Is the No FEAR Act Notice published in the Federal Register annually?
- Do notices include the model text provided in the regulation under 5 CFR Part 724?
- Is notification given to new employees within 90 calendar days of being on duty?

TRAINING:

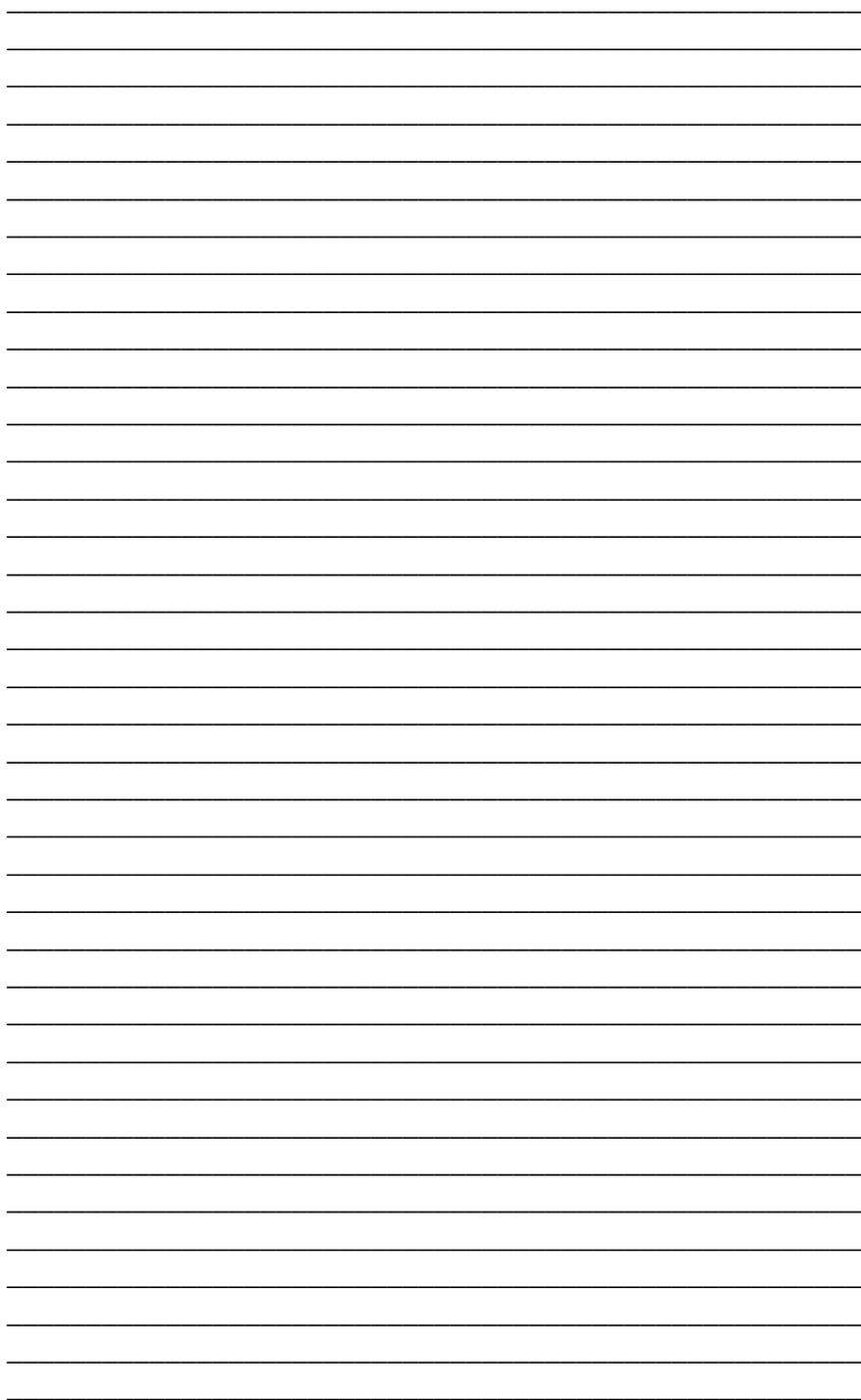
- Does the Agency have a written training plan to train all employees, including supervisors and managers, in their rights and obligations under antidiscrimination and whistleblower protection laws?
- Are all employees trained in a training cycle of no longer than two years?

THE NO FEAR ACT REPORT:

- Did the Agency produce The No Fear Act Report within 6 months of the end of the fiscal year?
- Does the No Fear Act Report include a policy for taking disciplinary action against employees in connection with agency investigations and the aggregate number of employees disciplined each year?
- Does the No Fear Act Report includes adjustments needed to the budget of the Agency to comply with its Judgment Fund reimbursement?
- Does the No Fear Act Report identify trends, knowledge gained, and actions planned for elimination of discrimination and retaliation?

POSTING:

- Is data accessible from the agency website home page through a link reading "No FEAR Act data?"
- Is the data accessible through one or more commercial search engines?
- Did larger agencies publish both aggregate data and data for each subordinate component?
- Did subordinate components link their data from their own websites?





AFGE Women's & Fair Practices Departments

www.afge.org/wfp
202-639-4006 (Phone)
202-347-4235 (Fax)
(2019)