

U. S. Department of Commerce  
Annual Report on the No FEAR Act

2021

The Department of Commerce is pleased to submit this annual report in accordance with Section 5, Part 724 of the Code of Federal Regulations (5 C.F.R. § 724), Implementation of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act. The report is divided into seven (7) sections that track the reporting areas required by the regulations: pending and resolved federal court cases; administrative equal employment opportunity complaints; disciplinary actions resulting from violations of nondiscrimination and whistleblower protection statutes; agency disciplinary policies; trend analyses of court cases and administrative complaints; a budgetary impact analysis; and the agency training plan.

This report does not include data or responses from the U.S. Patent and Trademark Office (USPTO). The USPTO is submitting its own report under separate cover.

### **Part 1. The Number of Federal Court Cases Pending and Resolved**

Section 5, Parts 724.302(a)(1) through (3) of the Code of Federal Regulations require agencies to report:

(1) The number of cases in Federal court pending or resolved in each fiscal year and arising under each of the respective provisions of the Federal Antidiscrimination Laws and Whistleblower Protection Laws applicable to them as defined in Sec. 724.102 of subpart A of this part in which an employee, former Federal employee, or applicant alleged a violation(s) of these laws, separating data by the provision(s) of law involved;

(2) In the aggregate, for the cases identified in paragraph (a)(1) of this section and separated by provision(s) of law involved:

(i) The status or disposition (including settlement);

(ii) The amount of money required to be reimbursed to the Judgment Fund by the agency for payments as defined in Sec. 724.102 of subpart A of this part;

(iii) The amount of reimbursement to the Fund for attorney's fees where such fees have been separately designated;

(3) In connection with cases identified in paragraph (a)(1) of this section, the total number of employees in each fiscal year disciplined as defined in Sec. 724.102 of subpart A of this part and the specific nature, e.g., reprimand, etc., of the disciplinary actions taken, separated by the provision(s) of law involved.

Response: The statutes applicable to this report are:

Section 2302(b)(1) of the Civil Service Reform Act, which prohibits discrimination in personnel actions based on: race, color, religion, sex, or national origin (as prohibited by Title VII of the Civil Rights Act of 1964); age (as prohibited by sections 12 and 15 of the Age Discrimination in Employment Act of 1967); sex (as prohibited by section 6(d) of the Fair Labor Standards Act of 1938); handicapping condition (as prohibited by section 501 of the Rehabilitation Act of 1973); and marital status or political affiliation.

Section 2302(b)(9) of the Civil Service Reform Act, which prohibits taking a personnel action based on an employee's exercise of any appeal, complaint, or grievance right; testimony or other lawful assistance in the exercise of any appeal, complaint, or grievance right; cooperation with or disclosure to the agency's Inspector General or the Office of Special Counsel; or refusal to obey an illegal order.

Section 6(d)(1) of the Fair Labor Standards Act of 1938, also known as the Equal Pay Act, which prohibits discrimination "between employees on the basis of sex by paying wages to employees ... at a rate less than the rate [paid] to employees of the opposite sex ... for equal work on jobs the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions..." 29 U.S.C. § 206(d)(1)

The Age Discrimination in Employment Act (ADEA) of 1967, as amended, which states that, "All personnel actions affecting employees or applicants for employment who are at least 40 years of age ... in executive agencies ... shall be made free from any discrimination based on age." 29 U.S.C. § 633a(a).

Section 501 of the Rehabilitation Act of 1973, 29 U.S.C. § 791 et seq., which prohibits discrimination on the basis of disability and requires agencies of the Federal government to make reasonable accommodation to the known physical or mental limitations of qualified employees with disabilities, unless the agency can demonstrate that accommodation would prove to be an "undue hardship."

Section 717 of the Civil Rights Act of 1964 (Title VII), which prohibits discrimination based on race, color, religion, sex, or national origin against federal employees in executive agencies. 42 U.S.C. § 2000e-16(a). Under Title VII, it is also unlawful for an employer to discriminate against any of its employees because [the employee] has opposed any practice made an unlawful employment practice by Title VII, or because [the employee] has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title VII.

Tables showing the number and disposition of civil actions filed in a United States District Court under any of these statutes appear below:

**Table 1.A: Federal Court Litigation, FY 2021**

Statute	Number of Cases		Final Judgments Against Agency	Settled	Employees Disciplined
	Pending	Resolved			
Civil Service Reform Act 5 U.S.C. 2302(b)(1) Prohibited Personnel Practices	Pending	0	0	0	0
	Resolved	0			
Civil Service Reform Act 5 U.S.C. 2302(b)(9) Whistleblowing	Pending	0	0	0	0
	Resolved	0			
Fair Labor Standards Act 29 U.S.C. 206(d) and Title VII	Pending	0	0	0	0
	Resolved	0			
Age Discrimination in Employment Act of 1967 29 U.S.C. 631 and 633a	Pending	1	0	0	0
	Resolved	0			
Rehabilitation Act of 1973 29 U.S.C. 791	Pending	0	0	0	0
	Resolved	0			
Civil Rights Act of 1964 (Title VII) 42 U.S.C. 2000e-16	Pending	9	0	0	0
	Resolved	1			
Title VII and ADEA	Pending	3	0	0	0
	Resolved	3			
Title VII and ADEA and Rehabilitation Act	Pending	4	0	0	0
	Resolved	0			
Title VII and Rehabilitation Act	Pending	4	0	1	0
	Resolved	1			
ADEA and Rehabilitation Act	Pending	1	0	0	0
	Resolved	0			
Title VII and CSRA (Whistleblowing)	Pending	1	0	0	0
	Resolved	2			
Total	Pending	23	0	0	0
	Resolved	7			

**Table 1.B: Judgment Fund Expenditures, 2021**

Judgment Fund Expenditures 2021			
Judgment Fund Total	Judgments	Settlements	Attorney's Fees
\$80,000	\$0	\$80,000	\$0

**Part 2. Administrative Equal Employment Opportunity Complaint Data**

Section 5, Part 724.302(a)(4) of the Code of Federal Regulations requires agencies to report:

The final year-end data about discrimination complaints for each fiscal year that was posted in accordance with Equal Employment Opportunity Regulations at subpart G of title 29 of the Code of Federal Regulations (implementing section 301(c)(1)(B) of the No FEAR Act).

Response: See the following tables.

**Equal Employment Opportunity Data Posted Pursuant to the No Fear Act:**

**DOC (and below)**

**For 4th Quarter 2021 for period ending September 30, 2021**

Complaint Activity	Comparative Data					
	Previous Fiscal Year Data					2021Thru09-30
	2016	2017	2018	2019	2020	
Number of Complaints Filed	188	178	188	196	531	418
Number of Complainants	178	174	181	186	526	413
Repeat Filers	10	4	7	10	5	5
Complaints by Basis	Comparative Data					
	Previous Fiscal Year Data					2021Thru09-30
	2016	2017	2018	2019	2020	
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>						
Race	80	60	74	72	204	156
Color	24	28	38	40	68	77
Religion	13	7	15	23	42	18
Reprisal	106	100	123	134	255	219
Sex	80	66	78	86	174	145
PDA	1	3	1	0	6	6

National Origin	33	20	27	35	63	49
Equal Pay Act	1	1	0	0	1	1
Age	74	66	71	80	172	138
Disability	64	71	79	93	186	143
Genetics	1	1	2	0	3	1
Non-EEO	6	5	5	3	24	14
<b>Complaints by Issue</b>	<b>Comparative Data</b>					
	<b>Previous Fiscal Year Data</b>					<b>2021 Thru 09-30</b>
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed.</i>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	
Appointment/Hire	10	10	17	11	42	27
Assignment of Duties	39	46	66	57	111	108
Awards	2	6	8	2	1	10
Conversion to Full Time/Perm Status	0	0	0	0	1	0
<b>Disciplinary Action</b>						
Demotion	1	0	0	2	13	7
Reprimand	13	23	9	16	22	16
Suspension	5	14	12	8	7	10
Removal	3	0	0	0	2	0
Other	6	3	1	0	6	1
Duty Hours	1	1	0	1	4	1
Perf. Eval./ Appraisal	42	51	65	43	33	37
Examination/Test	0	1	0	0	1	0
<b>Harassment</b>						
Non-Sexual	101	98	111	109	294	257
Sexual	2	10	4	8	11	16
Medical Examination	0	0	0	0	0	0
Pay including overtime	8	11	1	10	39	47
Promotion/Non-Selection	21	21	28	23	39	38

<b>Reassignment</b>						
Denied	3	7	8	1	8	6
Directed	5	2	6	4	7	12
Reasonable Accommodation Disability	27	30	37	35	54	55
Reinstatement	0	0	0	0	0	0
Religious Accommodation	0	2	0	0	3	0
Retirement	1	2	2	4	0	0
Sex-Stereotyping	0	0	0	0	1	0
Telework	20	18	19	9	16	9
Termination	39	24	29	73	261	194
Terms/Conditions of Employment	37	43	49	59	93	80
Time and Attendance	22	40	31	30	53	47
Training	16	15	16	16	40	41
<b>Other</b>						
User Defined - Other 1	1	0	2	1	1	0
User Defined - Other 2	0	0	0	0	0	0
User Defined - Other 3	0	0	0	0	0	0
User Defined - Other 4	0	0	0	0	0	0
Processing Time	Comparative Data					
	Previous Fiscal Year Data					2021Thru09-30
	2016	2017	2018	2019	2020	
Complaints pending during fiscal year						
Average number of days in investigation	183.44	179.64	183.43	213.86	206.42	248.22
Average number of days in final action	25.91	21.78	16.48	26.42	29.53	48.84
Complaint pending during fiscal year where hearing was requested						
Average number of days in investigation	195.67	182.96	193.56	224.13	211.10	246.13
Average number of days in final action	12.06	13.79	8.66	13.28	10.16	35.62

Complaint pending during fiscal year where hearing was not requested												
Average number of days in investigation	172.57	175.31	173.32	206.26	202.25	252.09						
Average number of days in final action	36.27	28.12	29.72	39.10	42.70	64.86						
<b>Complaints Dismissed by Agency</b>	<b>Comparative Data</b>											
	<b>Previous Fiscal Year Data</b>										<b>2021Thru09-30</b>	
	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>							
Total Complaints Dismissed by Agency	0	0	1	13	33	66						
Average days pending prior to dismissal	0	0	13	97.77	76.73	184.92						
<b>Complaints Withdrawn by Complainants</b>												
Total Complaints Withdrawn by Complainants	6	32	13	12	24	32						
<b>Total Final Agency Actions Finding Discrimination</b>	<b>Comparative Data</b>											
	<b>Previous Fiscal Year Data</b>										<b>2021Thru09-30</b>	
	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>							
	#	%	#	%	#	%	#	%	#	%	#	%
Total Number Findings	3		3		2		2		0		2	
Without Hearing	3	100	2	67	2	100	2	100	0	0	2	100
With Hearing	0	0	1	33	0	0	0	0	0	0	0	0
<b>Findings of Discrimination Rendered by Basis</b>	<b>Comparative Data</b>											
	<b>Previous Fiscal Year Data</b>										<b>2021Thru09-30</b>	
	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>							
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>	#	%	#	%	#	%	#	%	#	%	#	%
<b>Total Number Findings</b>	1		3		1		2		0		2	
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0



Reprisal	1	100	1	33	0	0	1	50	0	0	2	100
Sex	0	0	1	33	1	100	1	50	0	0	1	50
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	1	100	1	33	0	0	0	0	0	0	0	0
Disability	0	0	1	33	0	0	1	50	0	0	1	50
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
<b>Findings After Hearing</b>												
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	0	0	1	100	0	0	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0
PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	1	100	0	0	0	0	0	0	0	0
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
<b>Findings Without Hearing</b>												
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	1	100	0	0	0	0	1	50	0	0	2	100
Sex	0	0	1	50	1	100	1	50	0	0	1	50

PDA	0	0	0	0	0	0	0	0	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	1	100	1	50	0	0	0	0	0	0	0	0
Disability	0	0	0	0	0	0	1	50	0	0	1	50
Genetics	0	0	0	0	0	0	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
<b>Findings of Discrimination Rendered by Issue</b>	<b>Comparative Data</b>											
	<b>Previous Fiscal Year Data</b>										<b>2021Thru09-30</b>	
	<b>2016</b>		<b>2017</b>		<b>2018</b>		<b>2019</b>		<b>2020</b>			
	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>
<b>Total Number Findings</b>	1		3		1		2		0		2	
Appointment/Hire	0	0	1	33	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full Time/Perm Status	0	0	0	0	0	0	0	0	0	0	0	0
<b>Disciplinary Action</b>												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Perf. Eval./ Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
<b>Harassment</b>												
Non-Sexual	1	100	1	33	1	100	1	50	0	0	2	100
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0

Pay including overtime	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	1	100	1	33	0	0	1	50	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	0	0	1	33	0	0	1	50	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Sex-Stereotyping	0	0	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	1	50	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	1	33	0	0	0	0	0	0	0	0
Other - User Define												
User Defined - Other 1	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 2	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 3	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 4	0	0	0	0	0	0	0	0	0	0	0	0
<b>Findings After Hearing</b>	0		1		0		0		0		0	
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full Time/Perm Status	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0

Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Perf. Eval./ Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay including overtime	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	0	0	1	100	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Sex-Stereotyping	0	0	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other - User Define												
User Defined - Other 1	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 2	0	0	0	0	0	0	0	0	0	0	0	0

User Defined - Other 3	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 4	0	0	0	0	0	0	0	0	0	0	0	0
<b>Findings Without Hearing</b>	1		2		1		2		0		2	
Appointment/Hire	0	0	1	50	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	0	0
Conversion to Full Time/Perm Status	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action												
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Perf. Eval./ Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment												
Non-Sexual	1	100	1	50	1	100	1	50	0	0	2	100
Sexual	0	0	0	0	0	0	0	0	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay including overtime	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	1	100	1	50	0	0	1	50	0	0	0	0
Reassignment												
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation Disability	0	0	0	0	0	0	1	50	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Religious Accommodation	0	0	0	0	0	0	0	0	0	0	0	0

Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Sex-Stereotyping	0	0	0	0	0	0	0	0	0	0	0	0
Telework	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	1	50	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	0	0	0	0	0	0
Training	0	0	1	50	0	0	0	0	0	0	0	0
Other - User Define												
User Defined - Other 1	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 2	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 3	0	0	0	0	0	0	0	0	0	0	0	0
User Defined - Other 4	0	0	0	0	0	0	0	0	0	0	0	0
<b>Pending Complaints Filed in Previous Fiscal Years by Status</b>	<b>Comparative Data</b>						<b>2021Thru09-30</b>					
	<b>Previous Fiscal Year Data</b>											
	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>							
Total complaints from previous Fiscal Years	144	140	151	143	154	364						
Total Complainants	136	130	142	135	144	354						
<b>Number complaints pending</b>												
Investigation	26	6	3	2	4	15						
ROI issued, pending Complainant's action	0	0	0	0	1	3						
Hearing	104	125	135	123	137	236						
Final Agency Action	10	5	11	15	3	60						
Appeal with EEOC Office of Federal Operations	13	13	13	13	13	13						
<b>Complaint Investigations</b>	<b>Comparative Data</b>						<b>2021Thru09-30</b>					
	<b>Previous Fiscal Year Data</b>											
	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>							
Pending Complaints Where	8	4	2	2	22	139						

Investigations Exceed Required Time Frames						
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### Part 3. Disciplinary Actions

Section 5, Part 724.302(a)(5) of the Code of Federal Regulations requires agencies to report:

Whether or not in connection with cases in Federal court, the number of employees in each fiscal year disciplined as defined in Sec. 724.102 of subpart A of this part in accordance with any agency policy described in paragraph (a)(6) of this section. The specific nature, e.g., reprimand, etc., of the disciplinary actions taken must be identified.

Response: Consistent with the fact that there were no final judgments of discrimination against the Department in Fiscal Year 2021, no employees were disciplined in connection with cases in Federal court.

### Part 4. Disciplinary Policies

Section 5, Part 724.302(a)(6) of the Code of Federal Regulations requires agencies to report:

A detailed description of the agency's policy for taking disciplinary action against Federal 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.

Response: The Department's policy for taking disciplinary action against Federal 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 is set forth in Department Administrative Order 202-751 (DAO 202-751), a copy of which is available at [http://www.osec.doc.gov/opog/dmp/daos/dao202\\_751.html](http://www.osec.doc.gov/opog/dmp/daos/dao202_751.html)

The relevant offenses appear at Numbers 36, 42, 45, and 46 on the Table of Offenses and Penalties:

- Harassing, threatening or taking reprisal action against an employee as a result of or in anticipation of a grievance, appeal, complaint, or other exercise of rights (5 days suspension to removal);
- Misrepresentation, falsification, or omission of material fact in connection with application, employment or any record, report, investigation or other proceeding (written reprimand to removal);
- Discrimination. As used in the Table of Offenses and Penalties, discrimination refers to specific acts taken by an employee in the performance of his/her official

duties which discriminate against one or more individuals on the basis of race, sex, religion, color, age, national origin, disability, marital status, or political affiliation. (5 day suspension to removal); and

- Refusal to answer appropriate interrogation in a properly authorized inquiry (written reprimand to removal).

Departmental Administrative Order 202-955, a copy of which is available at [http://www.osec.doc.gov/opog/dmp/daos/dao202\\_955.html](http://www.osec.doc.gov/opog/dmp/daos/dao202_955.html), also provides an expedited process for reviewing allegations of harassment, terminating actual incidents of harassment, and taking disciplinary actions as appropriate, which includes stopping any ongoing harassment and initiating disciplinary or adverse action when an inquiry results in a finding that misconduct has occurred.

## **Part 5. Trend Analyses**

Section 5, Part 724.302(a)(7) of the Code of Federal Regulations requires agencies to report:

An analysis of the information provided in paragraphs (a)(1) through (6) of this section in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with 29 CFR part 1614 subpart F of the Code of Federal Regulations. Such analysis must include:

- (i) An examination of trends;
- (ii) Causal analysis;
- (iii) Practical knowledge gained through experience; and
- (iv) Any actions planned or taken to improve complaint or civil rights programs of the agency with the goal of eliminating discrimination and retaliation in the workplace;

### **Part 5.a: Civil Actions Filed in Federal Court**

For Fiscal Year 2021, the Department of Commerce litigated 23 cases in Federal district and appellate courts. Seven (7) of those cases have been resolved, leaving 16 cases pending.

Of the cases resolved, there were no final judgments of discrimination against the Department. Consequently, there was no case resulting in the discipline of any Department employee.



Analysis of Trends:

During the reporting period, there were no lawsuits brought against the Department based on a violation of 5 U.S.C. 2302(b)(1) (Civil Service Reform Act) or 29 U.S.C. 206(d) (pay discrimination). The majority of lawsuits against the Department are based on an alleged violation of Title VII of the Civil Rights Act of 1964.

As shown in the table below, there is an uneven, but fairly steady, trend in the number of new antidiscrimination and whistleblower protection lawsuits brought against the Department over the last twelve years.

As shown in the table below, the number of new antidiscrimination complaints stayed about the same over the past year.

Fiscal Year	# of New Suits
2010	11
2011	13
2012	25
2013	23
2014	6
2015	11
2016	5
2017	7
2018	11
2019	7
2020	8
2021	9

**Part 5.b: Administrative EEO Complaints**

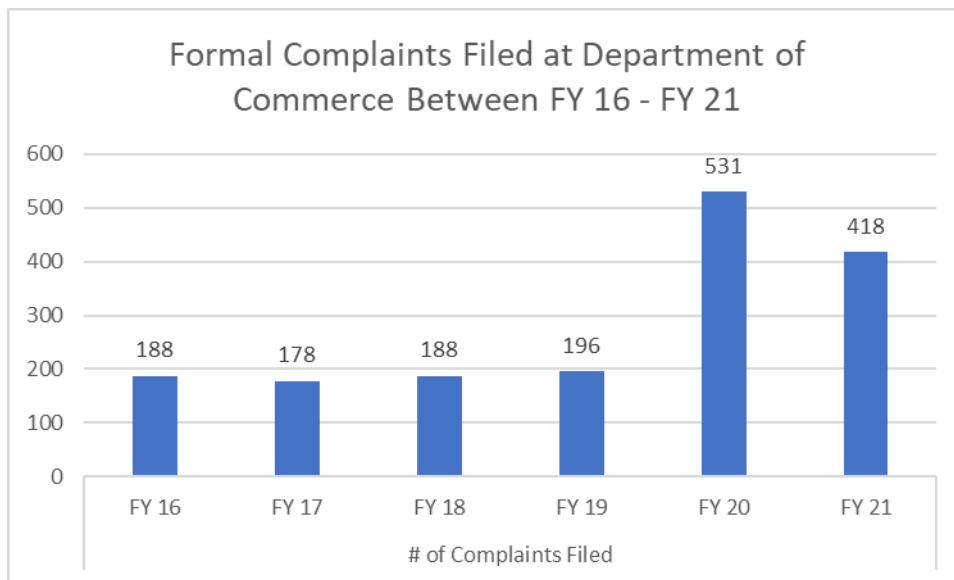
Number of filings:

Formal EEO complaint filings at the Department of Commerce (excluding PTO) decreased by 21% in FY 21, declining from 531 in FY 20 to 418. This decrease was due to fewer 2020 Decennial Census complaints being filed as some operations in the 2020 Decennial Census began winding down. This is consistent with historical data. For example, during the period of

the 2010 Decennial Census, 1253 formal complaints were received. Excluding the Decennial Census complaints filed in FY 21, 144 formal EEO complaints were filed at the Department, representing a drop from FY 20's 132 non-Decennial formal complaints.

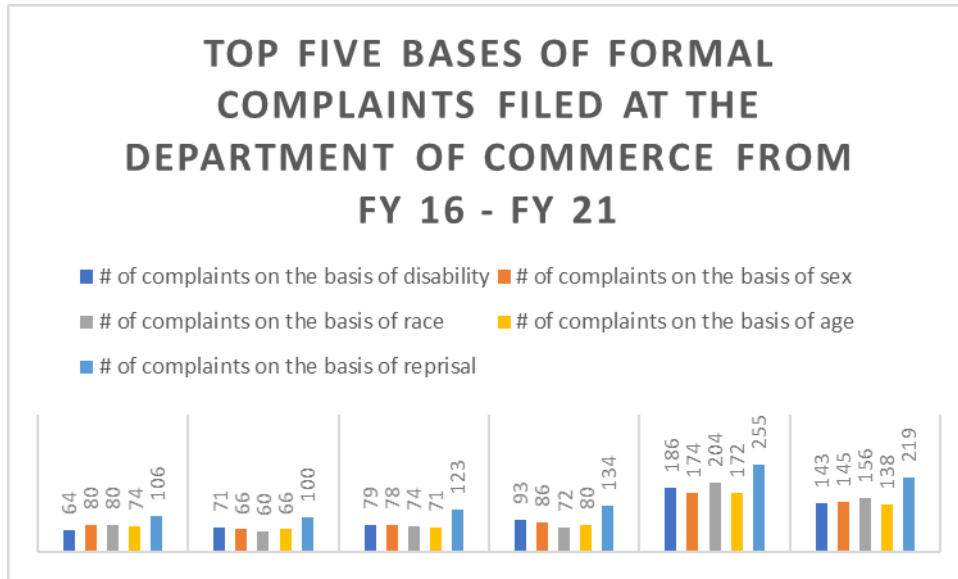
Formal complaint activity at the Department fluctuates. Not factoring in Decennial complaints, FY 21 would still have resulted in a slight increase in complaints than FY 20. Also, the prior five (5) years showed an upward trend in the total number of formal complaints filed at the Department, except for FY 17, which experienced a 5% drop from FY 16.

Upon review of the number of formal complaints filed over the last ten years, the total number of formal complaints never generally exceeds 200 (excluding PTO). However, the years when there were more than 200 complaints (FY 20 – 531 and FY 21 – 418), the high number of complaints were attributable to formal EEO complaints filed by Decennial Census employees/applicants. Similarly, in FY 19 the increase in the number of formal complaints is attributable to the increase in the number of Decennial 2020 related complaints. There will continue to be Decennial formal complaints filed at the Department over the next year, but we do not expect it to be significant, and the total number of formal complaints should start to decline.



Bases of Complaints:

The top bases of complaints filed in FY 21 were reprisal (52%), race (37%), disability (34%), followed by sex (34%) and age (34%). The top bases of complaints filed in FY 20 were reprisal (48%), race (38%), disability (35%), sex (33%), followed by age (32%).



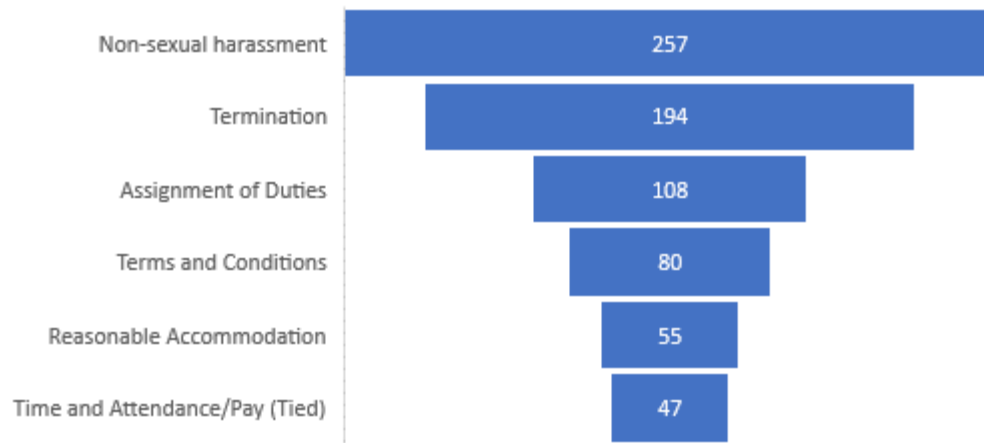
Reprisal (52%), race (37%), disability (34%), sex (34%), and age (33%) have consistently been the top bases in formal EEO Complaints filed at the Department of Commerce last year, as well as over the last five years prior. Reprisal remained the top basis for the seventh consecutive year. Race has replaced disability as the second most common basis the past two (2) years.

Issues in Complaints:

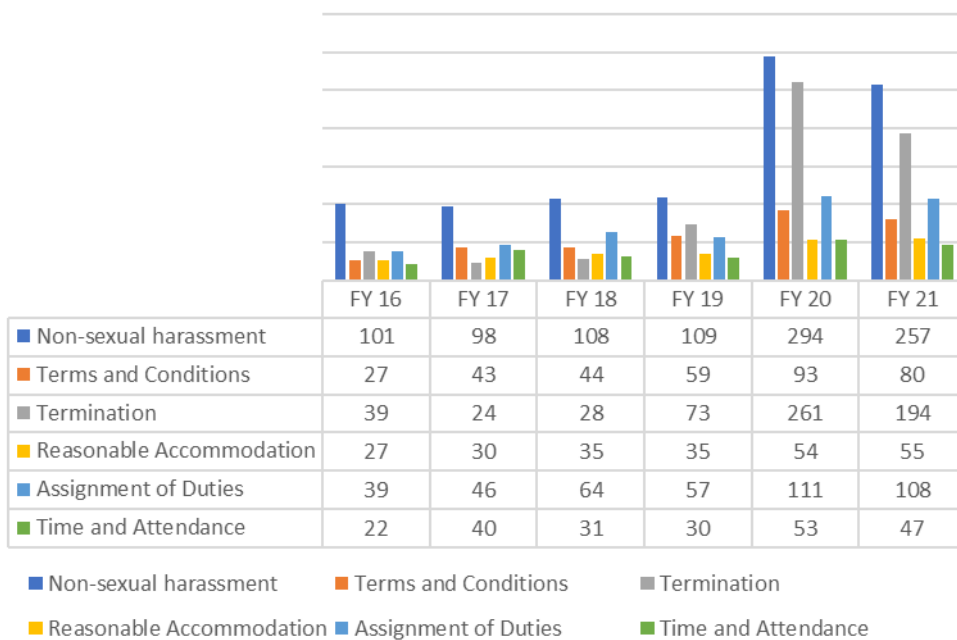
In FY 2021, the top six (6) issues were non-sexual harassment (61%), termination (46%), assignment of duties (26%), terms/conditions of employment (18%), reasonable accommodation (13%) and time and attendance (11%). With the exception of time and attendance issues, all of these issues have been consistently in ranked in the top six (6) in the last several years, with non-sexual harassment consistently ranking first. The other issues have fluctuated in ranking.

The increase in the number of cases with termination as an issue and it being the second most common issue these past two (2) years is attributed to the number of terminations relating to the Census Bureau’s 2020 Decennial Census, which hires temporary employees for its regular survey work and preparatory operations.

### Top Six Issues Raised In Formal Complaints at the Department of Commerce in FY 21



### Top Issues Raised in Formal Complaints at Department of Commerce Between FY 16 - FY 21



## Findings of Discrimination

There were two (2) findings of discrimination in FY 21 rendered in Final Agency Decisions. There were no findings of discrimination in FY 20. In FY 19, there were two (2) findings of discrimination rendered in Final Agency Decisions. In FY 18, one (1) finding of discrimination was rendered in a Final Agency Decision. In FY 17, three (3) findings of discrimination were rendered. One (1) finding was rendered following a hearing before the EEOC. Two (2) findings were rendered through Final Agency Decisions.

Any actions planned or taken to improve complaint or civil rights programs of the agency with the goal of eliminating discrimination and retaliation in the workplace.

In FY 21, the Department's Office of Civil Rights (OCR) continued to monitor EEO complaint activity and trends. Further, OCR continued its work on proactive prevention of discrimination, consistent with the EEOC's Management Directive 715 requirements.

- Under the umbrella of the *Inclusion is on Us* initiative, OCR has continued to make available instructor-led trainings to employees and supervisors on Civil Treatment, Cross-Cultural Awareness and Diversity, Emotional Intelligence, BiasSync and Multi-generations in the 21<sup>st</sup> Century Workplace.
- OCR coordinated additional educational sessions relating to reasonable accommodation for supervisors and managers (Pitfalls to Avoid).
- OCR provided EEO Rights and Complaint Process training for managers, supervisors and employees.
- OCR partnered with the Department's Office of Human Resources Management to provide listening sessions and information on helping organizations/offices to Employee Resource Groups.
- OCR collaborated with the LGBTQ Commerce Pride Employee Resource Group to develop the Gender Protection Policy.
- OCR co-sponsored and participated in 35 events and programs geared toward educating the workforce on EEO Groups and EEO related topics that reached over 9,800 employees across the Department.
- OCR continues to partner with the Office of Human Resources Management to offer new supervisors training on EEO/the Disability Program and to monitor/analyze data relating to the Federal Employee Viewpoint Survey and the workforce.

## **Part 6. Budgetary Adjustments**

Section 5, Part 724.302(a)(8) requires agencies to report:

For each fiscal year, any adjustment needed or made to the budget of the agency to comply with its Judgment Fund reimbursement obligation(s) incurred under 5 C.F.R. § 724.103.

Response: The Department of Commerce has not made or needed to make adjustments to its budget to comply with its Judgment Fund reimbursement obligation(s) incurred under 5 C.F.R. § 724.103.

## **Part 7. Training Plan**

Section 5, Part 724.302(a)(9) requires agencies to report:

The agency's written plan developed under 5 C.F.R. § 724.203(a) to train its employees.

Response:

Just as the Department of Commerce was preparing to update and disseminate its No FEAR Act training module for the 2021-2022 cycle, the Department's Office of Civil Rights staff was impacted by turnover in key staff (those responsible for the No FEAR training module) and new COVID requirements. Remaining staff were re-aligned to focus on the COVID mandates and filling in the gap for missing personnel. As a result, the Department's Office of Civil Rights kept its 2019-2020 version of the No FEAR Act training available and accessible for employees to take, via the Commerce Learning Center (CLC) training mechanism. During FY 21, 5,065 employees throughout the Department took the No FEAR Act training. This total represents both new employees, required to get the training within their first 90-days on board and those who took it to meet their biennial requirement, as well as some who took the course on their own, without any official notification or reminder. A majority of DOC employees completed the training during the first year of the training cycle, in FY 19. An updated version of the No FEAR Act training will be assigned to all Department employees in FY 22 through the CLC and a Department-wise advanced notice of the training requirement was recently sent to all employees.

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