



ADF MANUAL TRANSMITTAL MEMORANDUM

TM No. 137

DATE: May 1, 2012
TO: ADF MANUAL HOLDERS
FROM: Lloyd Pierson, President and CEO
SUBJECT: Manual Section Update Project - Renumbering

BACKGROUND:

One activity of the 2012 Manual Section Update Project will re-group and re-sequence the current Manual Section's numbering convention. The purpose of the re-numbering is to add a level of priority, function, and logical sequence to Manual Section naming convention. The overall structure for the updated and re-ordered Manual is seen in the table below:

New Series Categories	
000	Interim Policy Statements and Manual Content
100	Authorities, Agreements, Organizations
200	Program
300	Human Resources
400	Administration
500	Finance

MANUAL MAINTENANCE:

Change the following 15 Manual Sections to the new numbering convention:

Old Number	New Number	Series Name
MS-201	101	ADF ACT
MS-503	303	Merit Promotion Plan
MS-561	310	Exit Clearance Procedures
MS-550	320	Equal Employment Opportunity Policy & Procedures
MS-557	323	Elimination and Prevention of Workplace Harassment ...
MS-504	324	Admin Grievance Policy - Non-Bargaining Unit Employees

MS-556	325	Workplace Anti-Harassment Policy
MS-553	341	No FEAR Act Policy on Annual Notification
MS-560	351	Reduction in Force Policy
MS-572	363	Federal Career Intern Program
MS-577	365	Recruitment of Attorney, Attorney-Advisor Positions
MS-545	371	Personal Identification Verification Cards
MS-410	410	Use of Binding Arbitration
MS-526	450	Procedures for Public & Confidential Financial Disclosure Systems
MS-558	451	Reporting Allegations of Criminal Offenses, Misuse of Grant & ...

Clearance: 
Doris M. Martin, General Counsel

Date: 05/01/2012

Approved: Lloyd O. Pierson
Lloyd O. Pierson, President

Date: May 1, 2012

ADF MANUAL

SUBJECT: Notification and Federal Employee Anti-Discrimination and Retaliation (No FEAR) Act Policy on Annual Notification

Section: MS-341

Date: May 1, 2012

Responsible Office: Office of the President

Supersedes: MS-553 “Notification and Federal Employee Anti-Discrimination and Retaliation (No FEAR) Act Policy on Annual Notification”

1. AUTHORITY

Federal laws prohibit discrimination in employment due to race, color, religion, sex, national origin, age, physical/mental disability, and genetic information. These laws also prohibit retaliation against any employee or job applicant who opposes an unlawful employment practice or who participates in any procedure alleging a discriminatory practice made unlawful by Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, as amended; the Civil Rights Act of 1991; or the Genetic Information Nondiscrimination Act of 2008.¹ Moreover, Executive Order 13087 and 13152 prohibit discrimination and harassment against federal employees or job applicants on the basis of sexual orientation or parental status. Also, the Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act of 2002 requires agencies to notify its employees of their rights and protections under various discrimination and whistleblower laws. See also the Whistleblower Protection Act of 1989, Pub.L. 101-12 (5U.S.C. §2302(b)(8)). The basic authority for the African Development Foundation is found in the ADF Act, Title V of the International Security and Development Cooperation Act of 1980, Pub.L. 96-533 (22USC §290h).

2. PURPOSE

This Manual Section sets forth the African Development Foundation's (ADF) notification to employees of their rights and protections under various discrimination and whistleblower laws.

¹ Title II of the Genetic Information Nondiscrimination Act (GINA) of 2008 protects applicants and employees from discrimination based on genetic information in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. GINA also restricts employers' acquisition of genetic information and strictly limits disclosure of genetic information. Genetic information includes information about genetic tests of applicants, employees, or their family members; the manifestation of diseases or disorders in family members (family medical history); and requests for or receipt of genetic services by applicants, employees, or their family members.

3. POLICY AND SCOPE

The ADF is firmly committed to equal employment opportunity and the promotion of a diverse and civil work environment. It is the policy of the ADF to ensure that its employees are free from discrimination and retaliation in all policies, procedures, and terms and conditions of employment. Equal employment opportunity principles govern all aspects of the ADF's personnel policies, program practices, and operations.

All managers and supervisors will be held responsible for ensuring that the workplace is free from discrimination and that all employment decisions reflect the highest standards of merit principles. The ADF will not tolerate any retaliation against an individual who initiates a discrimination complaint or who provides information related to a complaint. The ADF also will not tolerate whistleblower reprisal. Legitimate disclosure of information by employees is an invaluable resource for the oversight of government operations.

ADF employees will be subject to the appropriate disciplinary action if they are found to have engaged in workplace discrimination or retaliation against another employee who:

- (1) exercises his or her rights under any of the Federal civil rights laws or Executive Orders (outlined below); or
- (2) makes protected disclosures under any of the whistleblower protection laws.

ADF will ensure protection of the rights of current and former Federal employees and job applicants to raise legitimate concerns without fear of reprisal.

4. RESPONSIBILITIES

4.1 **ADF EEO Officer** has oversight responsibility for the entire EEO program of the Foundation; provides or assures the provision of adequate and timely training for Foundation supervisors and managers; ensures that all EEO policies are updated and disseminated annually or in accordance with federal regulations; and provides advice and guidance to agency officials to ensure that compliance with all provisions of law and regulation are met in the day-to-day operations of the Foundation.

4.2 **The ADF** is responsible for updating, posting, and/or disseminating this Manual Section on an annual basis, and for taking disciplinary action against any employee who engages in discrimination or reprisal against another employee, a former employee, or an applicant for employment.

5. RELEVANT LAWS

5.1 The laws and executive orders protecting employees from employment discrimination are:

5.1.1 Title VII of the Civil Rights Act of 1964

Prohibits discrimination on the basis of race, color, religion, sex, national origin, and prohibits retaliation for participating in the EEO process or for opposing a discriminatory practice. Title VII also requires that employers reasonably accommodate applicants' and employees' sincerely held religious practices, unless doing so would impose an undue hardship on the operation of the employer's business.

5.1.2 The Pregnancy Discrimination Act

This law amended Title VII to make it illegal to discriminate against a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. The law also makes it illegal to retaliate against a person because the person complained about discrimination.

5.1.3 Age Discrimination in Employment Act of 1967

Prohibits discrimination on the basis of age against individuals over the age of 40. An individual may bypass the administrative complaint process and file a civil action directly in the appropriate U.S. District Court.

5.1.4 Rehabilitation Act of 1973, as amended in 1992 – Sections 501 & 504

Prohibits discrimination against Federal employees on the basis of disability; prohibits discrimination on the basis of being associated with someone with a disability; and provides for reasonable accommodations for persons with disabilities.

5.1.5 Americans With Disabilities Act of 1990

Prohibits discrimination on the basis of disability in all employment practices. The passage of this Act provided protections for individuals with disabilities in the private sector; federal employees were already covered by Sections 501 and 504 of the Rehabilitation Act which was amended to incorporate some of the requirements of the ADA.

5.1.6 The Americans With Disabilities Amendments Act of 2008 (ADAAA)

Mandates a broader interpretation of “disability” to the maximum extent possible; provides coverage of an impairment that is episodic or in remission if the disability would limit a major life activity when active; expanded the definition of “major life activities” including but not limited to: caring for oneself, performing manual tasks, eating, sleeping, walking, standing, lifting, bending, speaking, reading, and working; and it expands coverage of “major bodily functions.”

5.1.7 Equal Pay Act of 1963

Prohibits sex-based wage discrimination. A violation is established if it is shown that unequal wages are paid to individuals of different genders doing substantially equal work under similar conditions for the same agency. An aggrieved individual does not have to file an administrative complaint but has the right to bring suit directly in court in EPA allegations.

5.1.8 Civil Rights Act of 1991

Amends and strengthens the Civil Rights Act of 1964 by affording the complainant jury trials and also compensatory damages in cases of intentional employment discrimination.

5.1.9 Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR), 2002

Requires Federal agencies to keep their employees, former employees, and applicants for employment informed of their antidiscrimination and whistleblower rights and protections *at least annually*; to post statistics on their Web sites *quarterly*; and to train all employees *at least every two (2) years* regarding the rights and remedies to which they are entitled under the law.

5.1.10 Executive Order 11478 (and the Civil Service Reform Act of 1978)

Both prohibit discrimination on the basis of sexual orientation within the federal government.

5.1.11 The Civil Service Reform Act (CSRA) of 1978

Prohibits discrimination against a federal employee or job applicant on the bases of marital status, political association, and sexual orientation. The CSRA also makes it illegal to fire, demote, or otherwise "retaliate" against a federal employee or job applicant for whistle-blowing or for exercising the right to file a complaint, grievance, or an appeal. The Office of Special Counsel (OSC) and the Merit Systems Protection Board (MSPB) enforce the CSRA.

5.1.12 Genetic Information Nondiscrimination Act of 2008

Prohibits the use of genetic information when making employment decisions.

5.1.13 Executive Orders 13087 (signed 1998) and 13152 (signed 2000)

Prohibits discrimination on the basis of sexual orientation and parental status, respectively.

5.2 The laws protecting employees from whistleblower reprisal are:

5.2.1 Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR), 2002: (See definition in Section 5.1 above)

5.2.2 The Whistleblower Protection Act of 1989 protects current and former Federal employees and job applicants from interference and retaliation when making protected disclosures, or "whistleblowing" which includes providing information related to a violation of law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or a substantial and specific danger to public health or safety. The Whistleblower Protection Act protects individuals who report Federal agency misconduct.

5.3 Employee Rights

5.3.1 Employees have a right to report whistleblower matters confidentially to the ADF Office of General Counsel, the U.S. Office of Special Counsel, or to the appropriate management officials.

5.3.2 Employees have the right to initiate a complaint of discrimination on an employment matter with the ADF EEO Officer. Each Federal agency is required to post information about the Federal EEO process in a prominent and/or accessible area, and include information about how to contact the agency's EEO Office. The Federal EEO process is enforced by the U. S. Equal Employment Opportunity Commission (EEOC).

5.3.3 There are Federal laws, regulations, and Executive Orders (which are not enforced by the EEOC) that prohibit discrimination on other bases, such as sexual orientation, marital status, parental status, or political affiliation. Employees can seek guidance from the ADF EEO Officer on the internal and external procedures for initiating a complaint on any one of these bases.

5.3.4 Other rights that are available to employees under the Federal regulation governing the processing of EEO complaints (29 C.F.R. 1614) are:

- the right to bring forth issues of concern and remain anonymous during the informal stage of the administrative process;
- the right to representation throughout the process;
- the right to go to U.S. District Court 180 calendar days after filing a formal complaint of discrimination, even if the agency's investigation is incomplete;
- the right to bypass the administrative process altogether and proceed directly into U.S. District Court to file suit if a complaint alleges age or equal pay as the basis of discrimination;
- the right to a reasonable amount of official time, and reasonable use of government equipment, to prepare your complaint; and
- the right to be free from reprisal during the processing of your complaint, or anytime thereafter.

6. PROCEDURES

6.1 ADF employees should contact the ADF EEO Officer within 45 calendar days from the date on which they believe discrimination occurred, and follow all the regulatory guidelines for the initiation of EEO complaints.

- 6.2** For all EEO matters, ADF employees have the responsibility to: meet all deadlines in the process; cooperate with the EEO counselor and investigator; participate in good faith in the process and in any attempts to resolve your issue; keep the agency apprised of your contact information should you change jobs, phone numbers, or home addresses; and continue to perform your duties as assigned.
- 6.3** For whistleblower allegations, ADF employees should contact the U. S. Office of Special Counsel Disclosure Unit, 1730 M Street, N.W., Suite 218, Washington, D.C. 20236, or on the Whistleblower Hotline (800) 572-2249.