

U.S. Department of Defense



Department of Defense Fiscal Year 2019 Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR Act Report)

The estimated cost of this report for the Department of Defense is approximately \$53,000 in Fiscal Years 2018-2019. This includes \$450 in expenses and \$53,000 in DoD labor.

Generated on 2020Jan21 Ref ID: E-32BD72B

Table of Contents

List of Acronyms	iii
Introduction.....	1
Legislative Requirement	1
Results and Data	1
The Number of Federal Cases and the Disposition of Such Cases.....	2
Judgment Fund Reimbursement	3
Disciplinary Actions	4
EEO Complaint Data	5
Agency’s Policy	12
Agency’s Training Plan	12
Analysis.....	13
Conclusion	30

LIST OF ACRONYMS

CFR	Code of Federal Regulations
CPP	Civilian Personnel Policy
DEORG	Defense Equal Opportunity Reform Group
DoD	Department of Defense
DoDD	DoD Directive
DoDI	DoD Instruction
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
FY	Fiscal Year
ODEI	Office for Diversity, Equity, and Inclusion
U.S.C.	United States Code
USD(P&R)	Under Secretary of Defense for Personnel and Readiness

INTRODUCTION

Public Law 107-174, “The Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act of 2002,” and its implementing regulation, title 5, Code of Federal Regulations (CFR), section 724.302, require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws. Each fiscal year (FY), Executive agencies must provide an annual report to Congress on the number and severity of discrimination and whistleblower cases brought against them. The No FEAR report for FY 2019 is the second annual No FEAR report providing a composite DoD assessment and an analysis of equal employment opportunity (EEO) complaint data.

LEGISLATIVE REQUIREMENT

The No FEAR Act, enacted on May 15, 2002, directed Federal agencies to post quarterly equal employment opportunity (EEO) complaint data on their public websites, reimburse the Judgment Fund, and submit an annual report to Congress. The reporting obligations of the No FEAR Act¹ and its implementing regulation are:

- Number of Federal cases pending or resolved for each FY arising under each of the respective provisions of the Federal antidiscrimination laws and whistleblower protection laws;
- Amount of money reimbursed to the Judgment Fund by the agency for payments;
- Amount of reimbursement to the Judgment Fund for attorney’s fees where such fees have been separately designated;
- Number of employees disciplined for discrimination, retaliation, harassment, etc., and the disciplinary actions taken, e.g., reprimand, separated by the provision(s) of law involved;
- Final year-end data about discrimination complaints for each FY that was posted;
- Agency policy regarding disciplinary action against employees who violated discrimination laws or committed other prohibited personnel practices;
- Number of employees disciplined with such policy;
- An examination of trends, causal analysis, experiential knowledge, and actions (taken or planned) to improve complaint or civil rights programs;
- Adjustments to the agency’s budget as a result of Judgment Fund reimbursement requirements; and
- The agency’s written plan to train its employees.

RESULTS AND DATA

Section 301 of the No FEAR Act requires each federal agency to post summary statistical data pertaining to complaints of employment discrimination filed against it by employees, former employees, and applicants for employment under section 1614 of Title 29, CFR. Accordingly, DoD Components complete the Equal Employment Opportunity Commission’s (EEOC) Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints (Form

¹ 5 C.F.R. § 724.302.

462). In addition, the Components provide ODEI with additional data required under the No FEAR Act. For FY 2019, ODEI prepared this Composite Report by compiling and analyzing all of the submissions from the Components.

Table 1 indicates the DoD Components who provided data:

TABLE 1: PARTICIPATING COMPONENTS

Military Departments	Department of the Army (Army)
	Department of the Navy (Navy)
	Department of the Air Force (Air Force) ²
DoD Agencies and Field Activities	Army and Air Force Exchange Service (AAFES)
	Defense Commissary Agency (DeCA)
	Defense Contract Audit Agency (DCAA)
	Defense Contract Management Agency (DCMA)
	Defense Counterintelligence and Security Agency (DCSA) ³
	Defense Finance and Accounting Service (DFAS)
	Defense Human Resources Activity (DHRA)
	Defense Intelligence Agency (DIA)
	Defense Information Systems Agency (DISA)
	Defense Logistics Agency (DLA)
	Defense Media Activity (DMA)
	Department of Defense Education Activity (DoDEA) ⁴
	Defense Threat Reduction Agency (DTRA)
	Joint Chiefs of Staff (JCS)
	Missile Defense Agency (MDA)
	National Geospatial-Intelligence Agency (NGA)
	National Security Agency (NSA)
Office of the Inspector General (OIG)	
Uniformed Services University of the Health Sciences (USU)	
Washington Headquarters Service (WHS)	

THE NUMBER OF FEDERAL CASES AND THE DISPOSITION OF SUCH CASES⁵

The first requirement in the No FEAR Act is to provide the number and status of cases in Federal court pending or resolved in each FY that allege a violation of Federal antidiscrimination or whistleblower protection laws. The following table provides the total number of cases for FY 2019:

² The Department of the Air Force provided data for EEO complaints, but not for the other data topics under the No FEAR Act.

³ Formerly Defense Security Service.

⁴ DoDEA provided data for EEO complaints, but not for the other data topics under the No FEAR Act.

⁵ 5 C.F.R. 724.302(a)(1) and 5 C.F.R. 724.302(a)(2)(i).

TABLE 2: FEDERAL COURT CASES⁶

Statute	Cases Opened in FY 2019 ⁷	Cases Resolved in FY 2019 ⁸		Cases Pending at Close of FY 2019 ⁹
		Settled	Other	
Title VII, Civil Rights Act of 1964 42 U.S.C. 2000e-16	185	40	109	292
Age Discrimination in Employment Act 29 U.S.C. 631, 633a	59	11	38	93
Fair Labor Standards Act of 1938 29 U.S.C. 206(d)	4	3	1	10
Section 501 of Rehabilitation Act 29 U.S.C. 791	65	14	35	100
Equal Pay Act 29 U.S.C. 206(d)	3	0	2	3
Whistleblower Protection Act 5 U.S.C. 2302(b)(1)	6	1	4	8
Genetic Information Nondiscrimination Act of 2008 (GINA) 42 U.S.C. 2000ff	0	1	0	0
TOTAL	322	70	189	506

JUDGMENT FUND REIMBURSEMENT¹⁰

The Department of the Treasury, Financial Management Service manages the Judgment Fund, which is available to the Federal government for court judgments and Justice Department compromise settlements of lawsuits against the Federal Government. The No FEAR Act requires that Federal agencies reimburse the Judgment Fund for personnel discrimination payments made in accordance with 28 U.S.C. §§ 2414, 2517, 2672, or 2677.¹¹

For FY 2019, the following DoD Components reimbursed the Judgment Fund as follows:

⁶ Does not include data from Air Force or DoDEA.

⁷ This column includes the total number of cases that were opened in FY 2019. It is not a sum of cases resolved or pending.

⁸ These columns include any case that was resolved in FY 2019. These cases may have been opened in FY 2019 or any previous FY. The case may have been settled (first column), or otherwise resolved, such as withdrawing the complaint (second column).

⁹ This column includes the number of cases that were still pending resolution at the close of FY 2019. These cases may have been opened in FY 2019 or during a previous FY.

¹⁰ 5 C.F.R. 724.302(a)(2)(ii) and 5 C.F.R. 724.302(a)(2)(iii)

¹¹ A payment is a disbursement from the Judgment Fund, on or after October 1, 2003, to an employee, former employee, or applicant for Federal employment, in accordance with 28 U.S.C. §§ 2414, 2517, 2672, 2677 or with 31 U.S.C. § 1304, that involves alleged discriminatory or retaliatory conduct described in 5 U.S.C. § 2302(b)(1) and (b)(8) or (b)(9) as applied to conduct described in 5 U.S.C. § 2302(b)(1) and/or (b)(8) or conduct described in 29 U.S.C. § 206(d), 29 U.S.C. § 631, 29 U.S.C. § 633a, 29 U.S.C. § 791 and 42 U.S.C. § 2000e-16.

TABLE 3: JUDGEMENT FUND REIMBURSEMENT

Component	\$ Reimbursed to Judgment Fund	\$ Attributed to Attorneys' Fees	Adjustment to Agency Budget
Army	\$522,000	\$0	\$0
Navy	\$572,800	\$65,000	\$637,800
DCSA	\$10,000	\$0	\$0
DLA	\$2,464.69	\$0	\$0
DTRA	\$0	\$107,867.20	\$0
OIG	\$23,000	\$23,000	\$23,000
WHS	\$0	\$263,500	\$0
TOTAL	\$1,130,264.69	\$459,367.20	\$660,800

The remaining DoD Components did not indicate that they made any Judgment Fund reimbursements.

DISCIPLINARY ACTIONS¹²

The Department disciplined 121 DoD employees during FY 2019 in connection with Federal court cases or in accordance with agency policies under antidiscrimination or whistleblower protection laws. The breakdown of DoD employees who were disciplined during FY 2019 is as follows:

TABLE 4: DISCIPLINARY ACTIONS

Statute ¹³	# of Employees Disciplined and Type of Discipline		
	DoD Total	DoD Component Breakdown	Nature of Discipline
Title VII, Civil Rights Act of 1964 42 U.S.C. § 2000e-16	5	DTRA (1)	Suspension (1)
		WHS (4)	Disciplinary Warning (1) Termination (1) Removal (1) Suspension (1)
Age Discrimination in Employment Act of 1967 29 U.S.C. §§ 631, 633a	3	WHS (3)	Disciplinary Warning (1) Termination (1) Suspension (1)
Fair Labor Standards Act of 1938 29 U.S.C. § 201, et seq.	0	-	-

¹² 5 C.F.R. 724.302(a)(3) and 5 C.F.R. 724.302(a)(5)

¹³ Most DoD Components discipline their employees due to inappropriate conduct, inappropriate remarks, and/or conduct unbecoming. While, there may be employees that were disciplined for underlying misconduct related to discrimination and/or whistleblower protection, but DoD does not have a tracking mechanism to capture this data. Accordingly, the data listed in Table 4 may not reflect actual DoD employee discipline connected to one of the listed statutes.

Section 501 of the Rehabilitation Act of 1973 29 U.S.C. § 791	4	WHS (4)	Removal (2) Suspension (1) Termination (1)
Equal Pay Act of 1963 29 U.S.C. § 206(d)	0	-	-
Whistleblower Protection Act of 2012 5 U.S.C. § 2302(b)(1)	2	Army (2)	Removal ¹⁴
Genetic Information Nondiscrimination Act of 2008 42 U.S.C. 2000ff	0	-	-
Matters that did <u>NOT</u> result in a Federal court case	107	Army (46)	Removal ¹⁵
		DeCA (39)	Letter of Concern (2) Letter of Warning (1) Removal (5) Suspension (18) Termination (3)
		DFAS (7)	Reduction-in-Grade ¹⁶ Reprimand Suspension Termination
		DLA (11)	Counseling (2) Letter of Warning (1) Removal (2) Suspension (1) Reprimand (4) Suspension (1) Reduction-in-Grade (1)
		DMA (4)	Reprimand (3) Suspension (1)

EEO COMPLAINT DATA¹⁷

Civilian employees who believe they have experienced work-related discrimination have multiple venues to pursue relief, including filing an EEO complaint under the authority of Part 1614 of Title 29, CFR, and as outlined by EEOC Management Directive 110. When an individual first reports a concern to his or her Component’s EEO office, the individual enters the *pre-complaint* phase and is referred to as the *aggrieved*. The pre-complaint phase is an informal phase that allows the EEO professionals to aid the aggrieved in resolving the concern early. This can be done through mediation between the aggrieved and responding management official, or by simply assisting the complainant to identify options to address his or her concern.

¹⁴ Data distinguishing the number of removals was not available.

¹⁵ Data distinguishing the number of removals was not available.

¹⁶ Data distinguishing the number of terminations, suspensions, reductions-grade, or reprimands was not available.

¹⁷ 5 C.F.R. 724.302(a)(4)

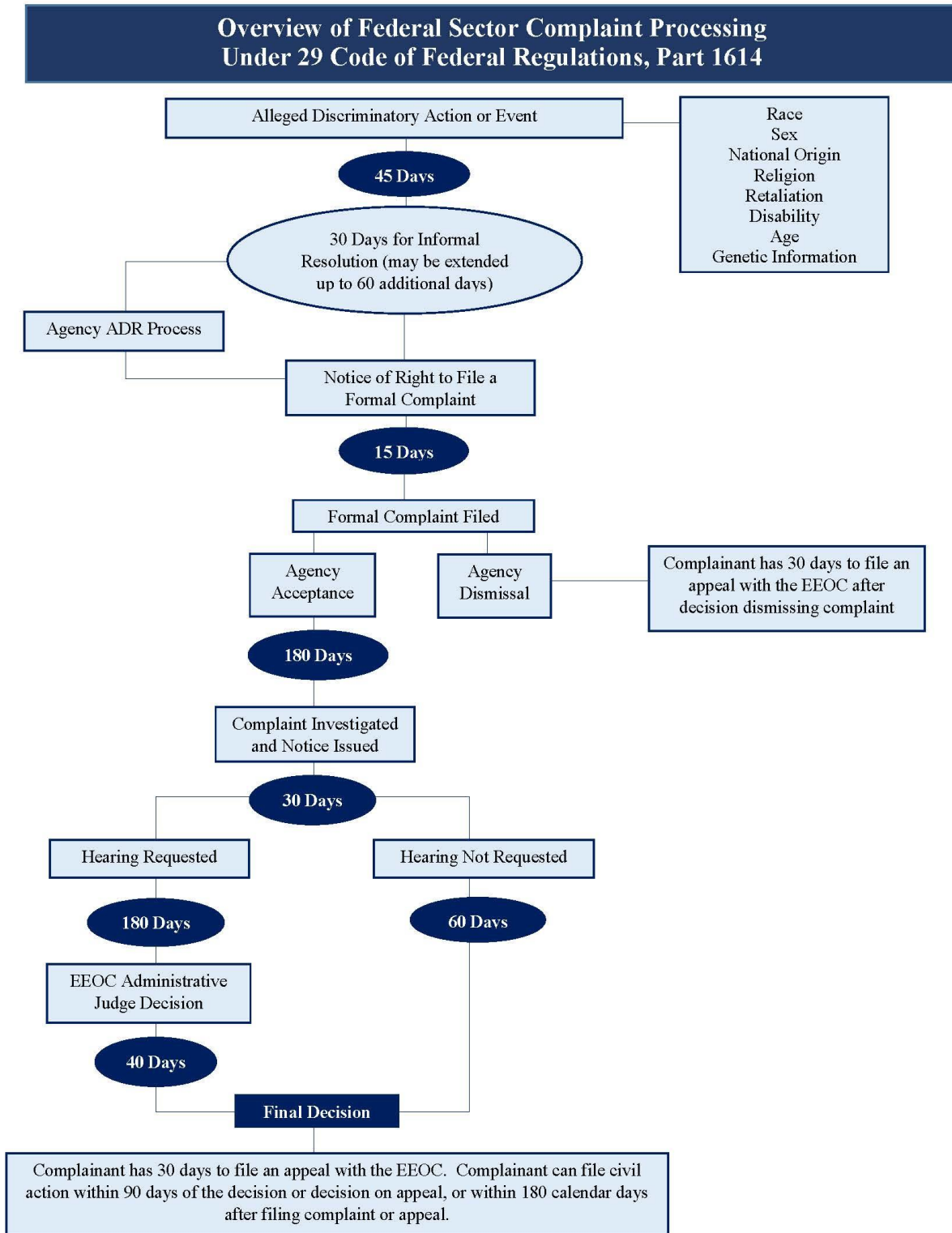
If the issue is not resolved during the informal pre-complaint phase, the individual has the option to pursue a formal complaint process. If the individual elects to file a formal EEO complaint he or she becomes the *complainant*, and the accepted allegations undergo an investigation to develop a complete factual record which will be used by a trier of fact to determine whether the allegations are substantiated. The Defense Civilian Personnel Advisory Service Investigations and Resolutions Directorate conducts EEO investigations for DoD.

An EEO complainant must identify the **basis**¹⁸ and **issue**¹⁹ when bringing forward a complaint of discrimination. A complainant may allege multiple bases and issues in one complaint. A Final Agency Decision (FAD) or Final Order is issued by the Component after reviewing the investigative summary and report of investigation. A Final Order occurs after an Administrative Judge issues a decision followed by the Component's decision on whether it will adopt the decision of the Administrative Judge.

¹⁸ The *basis* of complaints is the reason the complainant believes he or she was discriminated against based on a protected class (e.g., race, sex, disability) relating to a term, condition, or benefit of employment.

¹⁹ The *issue* is the adverse employment action alleged by the complainant. For example, a complainant may allege she was denied a promotion because of her gender. The denial of the promotion is the issue and her gender is the basis.

FIGURE 1: EEO COMPLAINT PROCESS



According to the Forms 462 filed by the DoD Components for FY 2019, DoD counseled 4,912 individuals in connection with 5,020 pre-complaints in FY 2019. Of the FY 2019 pre-complaints, 2,140 were either settled or withdrawn and 1,821 moved into the formal complaint phase. The remaining pre-complaints were either pending a decision to file formal or pending at another step of the pre-complaint phase.

TABLE 5: PRE-COMPLAINT COUNSELINGS

Pre-Complaint Counselings	
Total Pre-Complaints	5,020
On hand at beginning of FY	823
Initiated during FY	4,197
Total Completed during FY	4,073
Settled	418
Withdrawn	1,722
Filed formal	1,821
Decision to file formal pending	112
Pending	947

In FY 2019, DoD had 6,086 total formal complaints. These were either formal complaints that rolled over from previous fiscal years, were initiated during the fiscal year, or were remanded to the agency for further processing. At the end of the fiscal year, 2,698 had been closed, with 3,388 pending.

TABLE 6: FORMAL COMPLAINTS TOP LINE RESULTS

Formal Complaints	
Top-line Totals	6,086
On hand at beginning of FY	4,098
Filed during FY	1,972
Remanded (not on hand or filed during FY)	16
Closed during FY	2,698
Withdrawn	246
Settled	718
Final Agency Action (FAD or Final Order)	1,734
Pending at end of FY	3,388

In the 1,972 formal complaints newly filed in FY 2019, 10,896 allegations were made. A complainant may allege multiple bases for each allegation in a single complaint. The top two identified bases of FY 2019 allegations were reprisal (2,405 allegations or 22.1 percent of all allegations) and disability (2,180 allegations or 20.0 percent of all allegations). Race (1,821 allegations or 16.7 percent of all allegations) and sex (1,758 allegations or 16.1 percent of all allegations) were in the next tier of common bases cited in FY 2019 formal complaints. Table 7 lists all the allegations by basis.

TABLE 7: FY 2019 FORMAL COMPLAINT ALLEGATIONS BY BASIS

Formal Complaints	
Basis	# of Allegations
Race	1,821
Color	689
Religion	188
Reprisal	2,405
Sex	1,758
National Origin	515
Disability	2,180
Age	1,326
GINA ²⁰	14

A complainant may also allege multiple issues in a single complaint. The most frequent issue identified in the FY 2019 allegations was non-sexual harassment (3,192 allegations, or 29.3 percent of all allegations). Non-sexual harassment was alleged nearly 3.5 times more frequently than the next most common issue, which was promotion/non-selection (877 allegations, or 8.1 percent of all allegations). Table 8 lists all the allegations by issue.

TABLE 8: FY 2019 FORMAL COMPLAINT ALLEGATIONS BY ISSUE

Formal Complaints			
Issue	# of Allegations	Issue	# of Allegations
Appointment/Hire	533	Pay (Including Overtime)	144
Assignment of Duties	776	Promotion/Non-Selection	877
Awards	155	Reassignment – Denied	120
Conversion to Full-Time	6	Reassignment – Directed	240
Discipline – Demotion	65	Reasonable Accommodation	632
Discipline – Reprimand	326	Reinstatement	0
Discipline – Suspension	365	Religious Accommodation	8
Discipline – Removal	268	Retirement	46
Discipline – Other	374	Sex-Stereotyping	3
Duty Hours	155	Telework	117
Evaluation/Appraisal	694	Termination	592
Examination/Test	33	Terms/Conditions of Employment	502
Harassment – Non-Sexual	3,192	Time and Attendance	495
Harassment – Sexual	146	Training	263
Medical Examination	29	Other	10

²⁰ Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits genetic information discrimination in employment.

As shown in Table 6, there were 718 settlements during FY 2019. There were 4,130 allegations resolved in those 718 settlements. Tables 9 and 10 identify the bases and issues of those resolutions, respectively.

TABLE 9: FY 2019 FORMAL COMPLAINT SETTLED ALLEGATIONS BY BASIS

Formal Complaints	
Basis	# of Allegations Settled
Race	698
Color	241
Religion	79
Reprisal	880
Sex	712
National Origin	220
Age	790
Disability	503
GINA	7

TABLE 10: FY 2019 FORMAL COMPLAINT SETTLED ALLEGATIONS BY ISSUE

Formal Complaints			
Issue	# of Allegations Settled	Issue	# of Allegations Settled
Appointment/Hire	148	Pay (Including Overtime)	49
Assignment of Duties	299	Promotion/Non-Selection	284
Awards	57	Reassignment – Denied	31
Conversion to Full-Time	0	Reassignment – Directed	60
Discipline – Demotion	7	Reasonable Accommodation	169
Discipline – Reprimand	158	Reinstatement	1
Discipline – Suspension	138	Religious Accommodation	3
Discipline – Removal	63	Retirement	17
Discipline – Other	105	Sex-Stereotyping	11
Duty Hours	58	Telework	62
Evaluation/Appraisal	298	Termination	145
Examination/Test	10	Terms/Conditions of Employment	205
Harassment – Non-Sexual	1,364	Time and Attendance	196
Harassment – Sexual	75	Training	98
Medical Examination	14	Other	5

The DoD Components’ Forms 462 identified that there were 28 findings of discrimination in the Department in FY 2019. As previously stated, a complaint may have multiple bases or issues. It is important to understand that findings are counted per complaint, not per allegation. There

were 73 allegations in those 28 findings. Tables 11 and 12 identify the bases and issues of those findings, respectively.

TABLE 11: FY 2019 FORMAL COMPLAINT ALLEGATIONS RECEIVING A FINDING BY BASIS

Formal Complaints	
Basis	# of Allegations Receiving a Finding
Race	14
Color	1
Religion	2
Reprisal	19
Sex	5
National Origin	0
Age	29
Disability	3
GINA	0

TABLE 12: FY 2019 FORMAL COMPLAINT ALLEGATIONS RECEIVING A FINDING BY ISSUE

Formal Complaints			
Issue	# of Allegations Receiving a Finding	Issue	# of Allegations Receiving a Finding
Appointment/Hire	1	Pay (Including Overtime)	2
Assignment of Duties	0	Promotion/Non-Selection	10
Awards	2	Reassignment – Denied	1
Conversion to Full-Time	1	Reassignment – Directed	2
Discipline – Demotion	1	Reasonable Accommodation	7
Discipline – Reprimand	2	Reinstatement	0
Discipline – Suspension	0	Religious Accommodation	0
Discipline – Removal	9	Retirement	0
Discipline – Other	0	Sex-Stereotyping	0
Duty Hours	2	Telework	0
Evaluation/Appraisal	1	Termination	2
Examination/Test	0	Terms/Conditions of Employment	4
Harassment – Non-Sexual	19	Time and Attendance	1
Harassment – Sexual	4	Training	0
Medical Examination	2	Other	0

AGENCY'S POLICY²¹

The Department has multiple policies and offices providing oversight to protect against unlawful employment discrimination. Specifically, ODEI has two policies within its purview that address these issues:

- Department of Defense Directive (DoDD) 1020.02e, “Diversity Management and Equal Opportunity in the DoD,” June 8, 2015, incorporating Change 2, effective June 1, 2019:
 - Establishes an accountability framework, based on federal laws, regulations, and other applicable guidance, that evaluates DoD Components’ efforts to identify and eliminate barriers and gaps that inhibit progress of the implementation of diversity and inclusion efforts.
 - Prohibits unlawful employment discrimination based on race, sex (including pregnancy, gender identity, and sexual orientation when based on sex stereotyping), color, national origin, age, religion, disability, genetic information or reprisal for previous EEO activity.
 - Identifies and eliminates barriers and practices that impede equal opportunity for all employees and applicants for employment including harassment in the workforce.
- DoDD 1440.1, “DoD Civilian Equal Employment Opportunity (EEO) Program,” May 21, 1987, certified current November 21, 2003, instructs that the Department:
 - Prohibits discrimination based on race, color, religion, sex, national origin, age, mental or physical disability, or age.
 - Eliminates barriers and practices that impede equal employment opportunity for all employees...including sexual harassment in the workforce and at work sites and architectural, transportation, and other barriers affecting people with disabilities.

In addition to the DoD policies, 21 of the responding Components reported having their own policies addressing these topics.

AGENCY'S TRAINING PLAN²²

The Department also has two policies that provide oversight for training. ODEI has DoDD 1440.1, “DoD Civilian Equal Employment Opportunity (EEO) Program,” May 21, 1987, certified current November 21, 2003, which instructs the Department to establish a continuing EEO educational program (including training in the prevention of sexual harassment) for civilian and military personnel who supervise civilian employees.

The Office of Civilian Personnel Policy (CPP) has oversight for training specifically related to the No FEAR Act. CPP’s Department of Defense Instruction (DoDI) 1400.25, Volume 771, “DoD Civilian Personnel Management System: Administrative Grievance System,” December 26, 2013, directs the DoD Components to “train all of their employees (including supervisors and managers) about the rights and remedies available under antidiscrimination laws and

²¹ 5 C.F.R. 724.302(a)(6)

²² 5 C.F.R. 724.302(a)(9)

whistleblower protection laws.” The policy instructs that employees are trained at a new employee orientation program, or within 90 days of the employee’s start date. The policy then states that the training will be consistent with section 202 of Public Law 107-174. In addition, DoDI 1400.25, Volume 771, instructs the DoD Components to “provide training programs to teach employees at all levels how to identify and prevent sexual harassment.”

In addition, 20 of the responding Components reported having their own training plans.

ANALYSIS

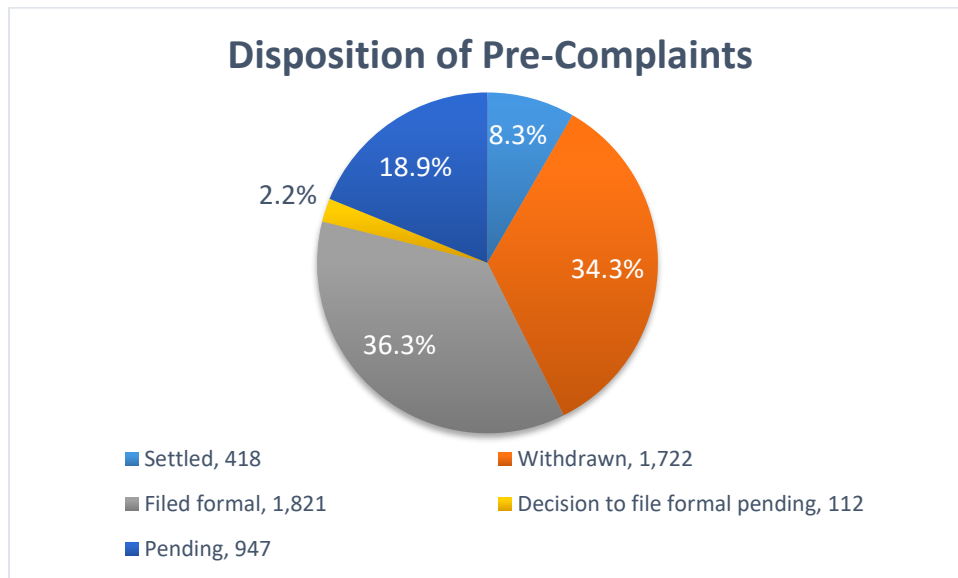
A) Examination of Trends

This FY 2019 Composite report is the first time DoD is able to trend its complaint data.

1) Pre-Complaints

As previously identified, the Department had 5,020 pre-complaints, settled or had withdrawn 2,140, and moved 1,821 into the formal complaint phase. The remaining pre-complaints were either pending a decision to file formal or pending at another stage of the pre-complaint process at the close of the fiscal year. The number of FY 2019 pre-complaints decreased from FY 2018 by approximately 30.7 percent.

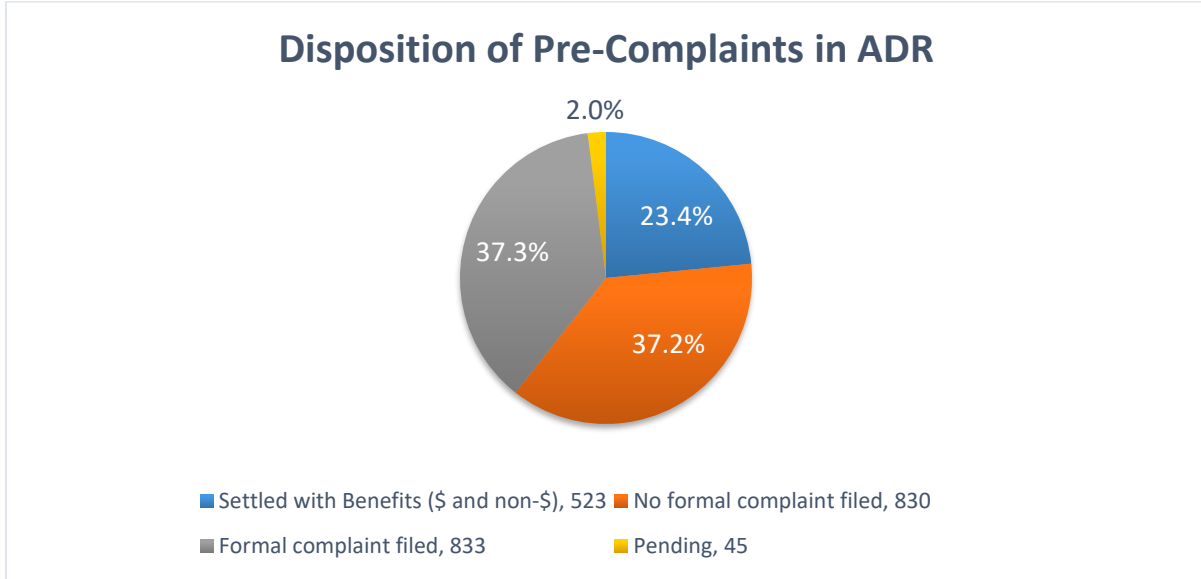
FIGURE 2: DISPOSITION OF PRE-COMPLAINTS



The Department encourages resolution at the lowest level and the first opportunity for the Department to resolve EEO complaints is through an alternative dispute resolution (ADR) process during the pre-complaint phase. For FY 2019, 3,709 pre-complaints were offered ADR and 1,467 were accepted. Between FY 2018 and FY 2019, a larger percentage of pre-complaints were offered ADR, from 53.7 percent of pre-complaints in FY 2018 to 73.9 percent of pre-complaints in FY 2019. However, the percentage of those accepted into the ADR process

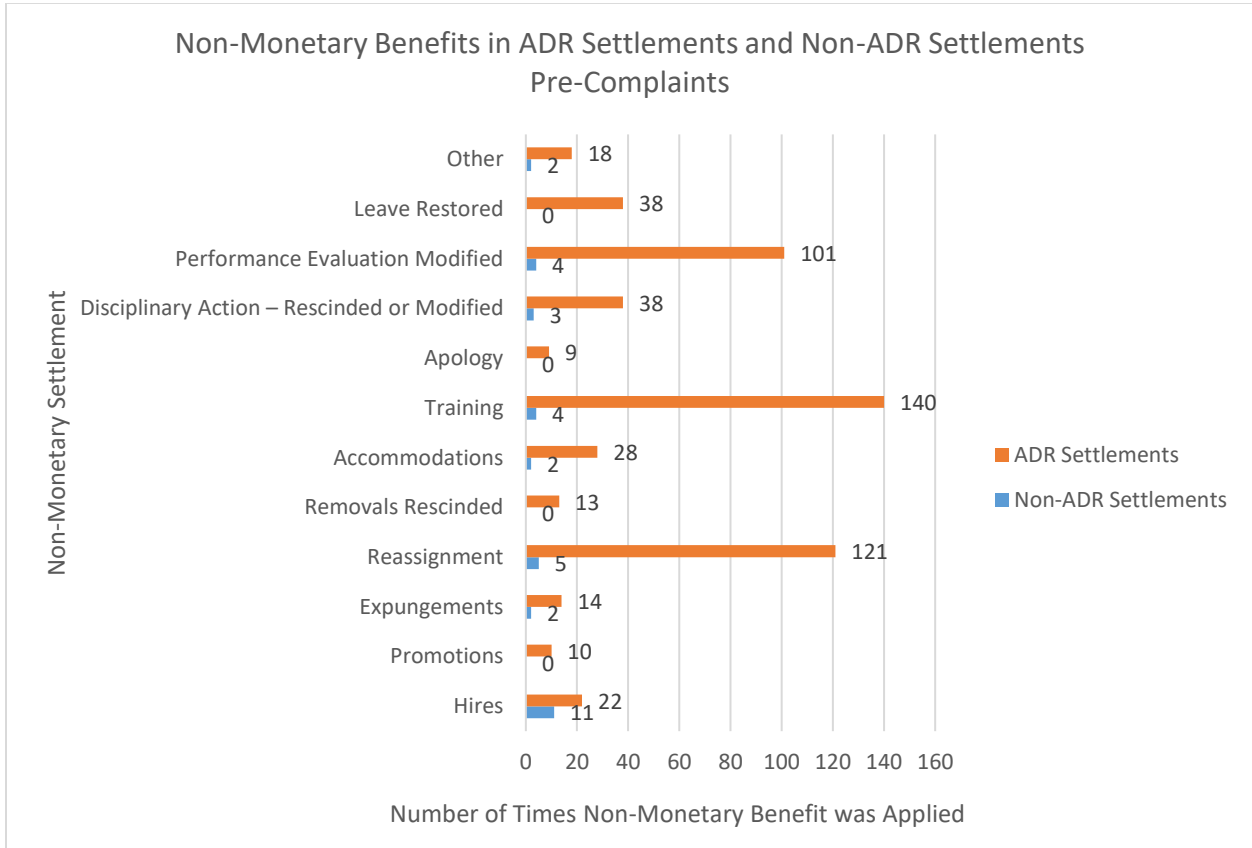
decreased from 62.8 percent in FY 2018 to 39.6 percent. Figure 3 shows the disposition of the pre-complaints that were accepted into the ADR process:

FIGURE 3: DISPOSITION OF PRE-COMPLAINTS IN ADR



Using ADR allowed the Department to provide 552 non-monetary benefits to resolve pre-complaints. Conversely, there were 33 non-monetary benefits provided to resolve pre-complaints that were resolved without ADR. This trend is similar to FY 2018, which also demonstrated ADR resolving matters with more non-monetary benefits in the pre-complaint process than resolving without ADR. A non-monetary benefit generally consists of the organization taking steps to reverse or mitigate an adverse employment action. It does not necessarily mean that there was no monetary payment; just that other reparation was provided to the aggrieved. Figure 4 shows the differences in the non-monetary benefits between those FY 2019 settlements that occurred with ADR versus those that did not use ADR.

FIGURE 4: NON-MONETARY BENEFITS IN ADR SETTLEMENTS AND NON-ADR SETTLEMENTS - PRE-COMPLAINTS



Of course, not all settlements resolve without a monetary payment. In FY 2019, 63 pre-complaint settlements resulted in the payout of \$332,139.42 in compensatory damages, backpay/frontpay, lump sum payments, and attorney fees for the aggrieved. This is less than the \$1,039,485.58 paid in monetary settlements during FY 2018. Again, the ADR process resolved significantly more pre-complaints than the non-ADR processes, and also paid out more in dollars. Figure 5 and Figure 6 show the breakdown of monetary benefits in ADR settlements, first by the number of occurrence, then by amount of dollars.

FIGURE 5: MONETARY BENEFITS IN ADR SETTLEMENTS AND NON-ADR SETTLEMENTS - PRE-COMPLAINTS (NUMBER)

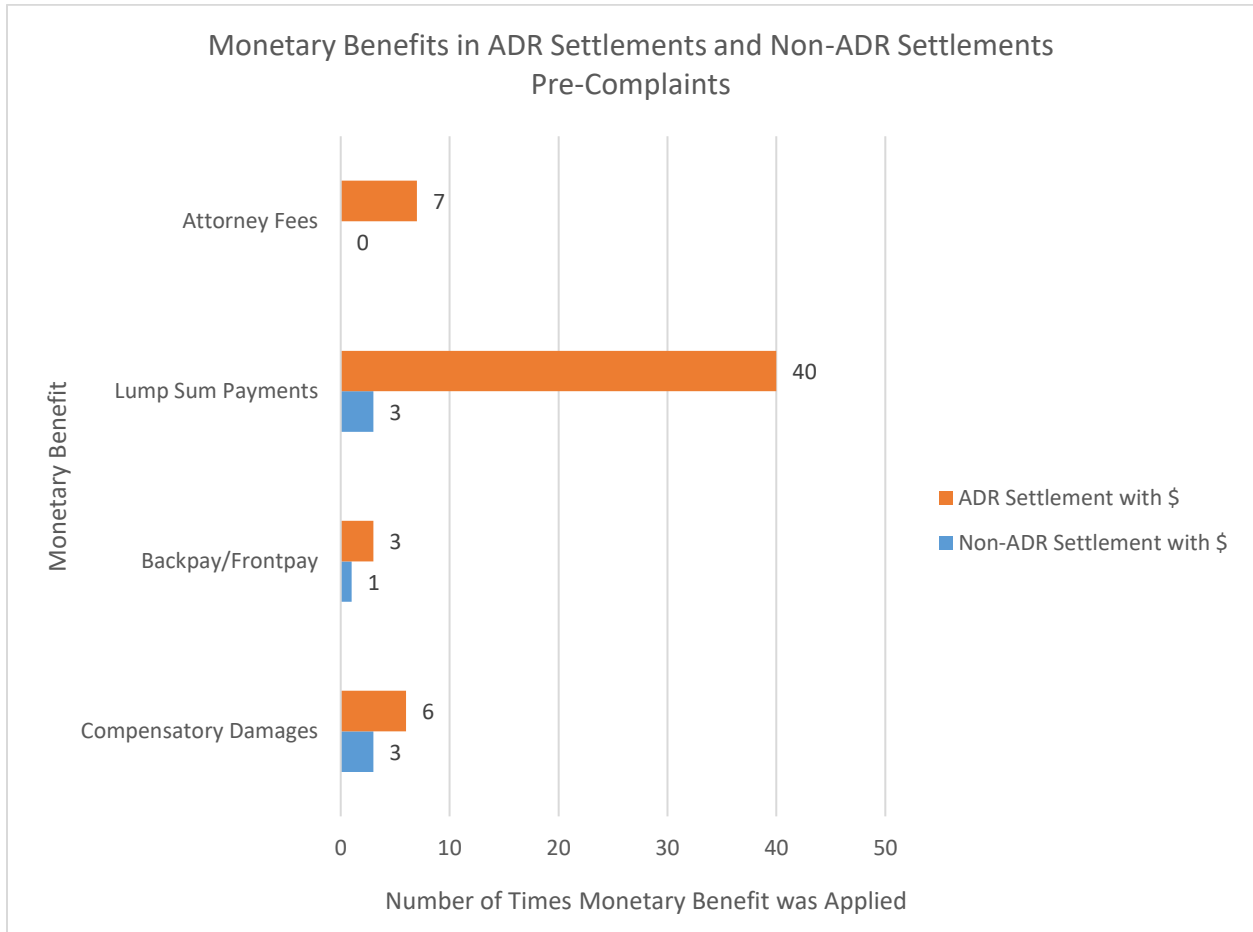
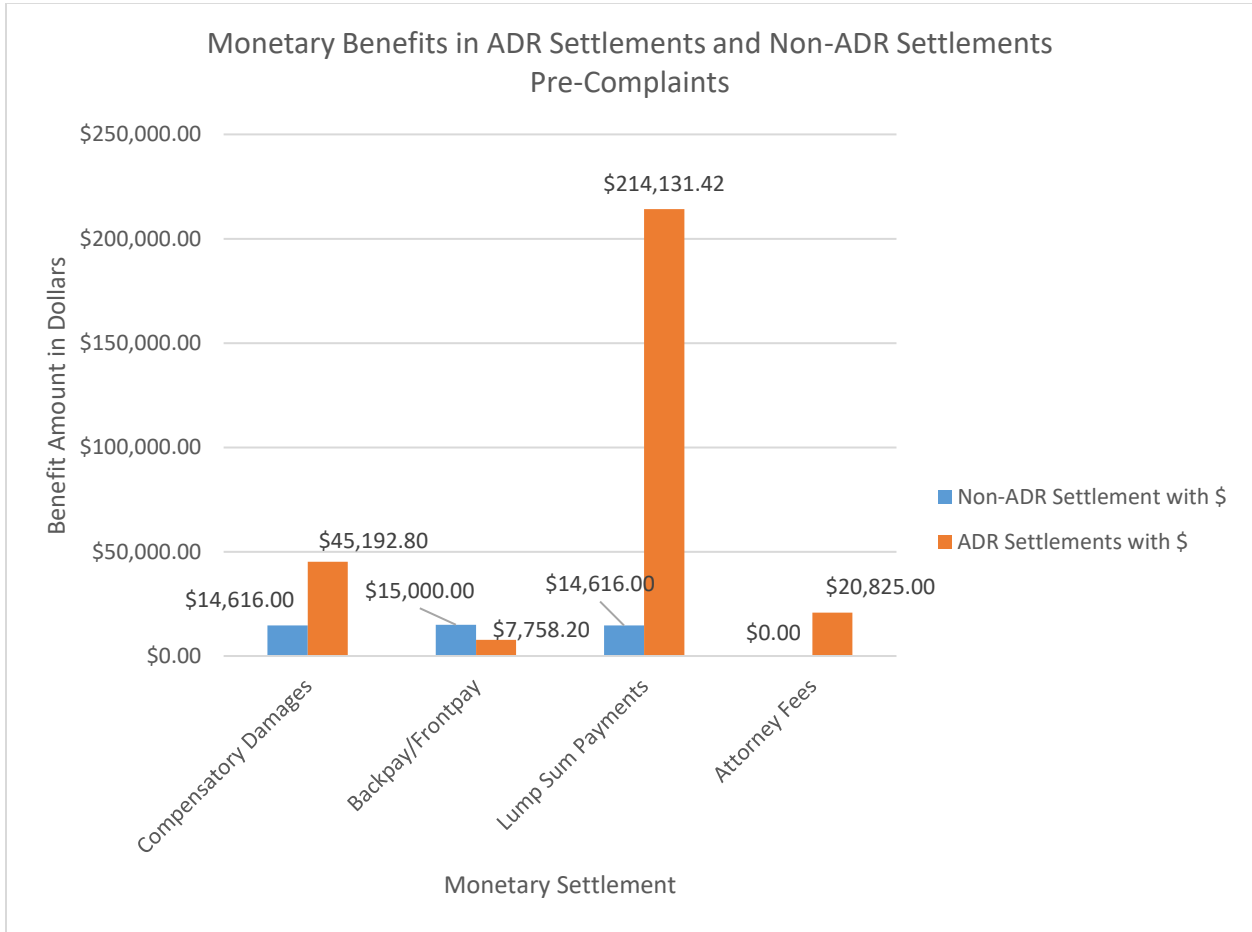


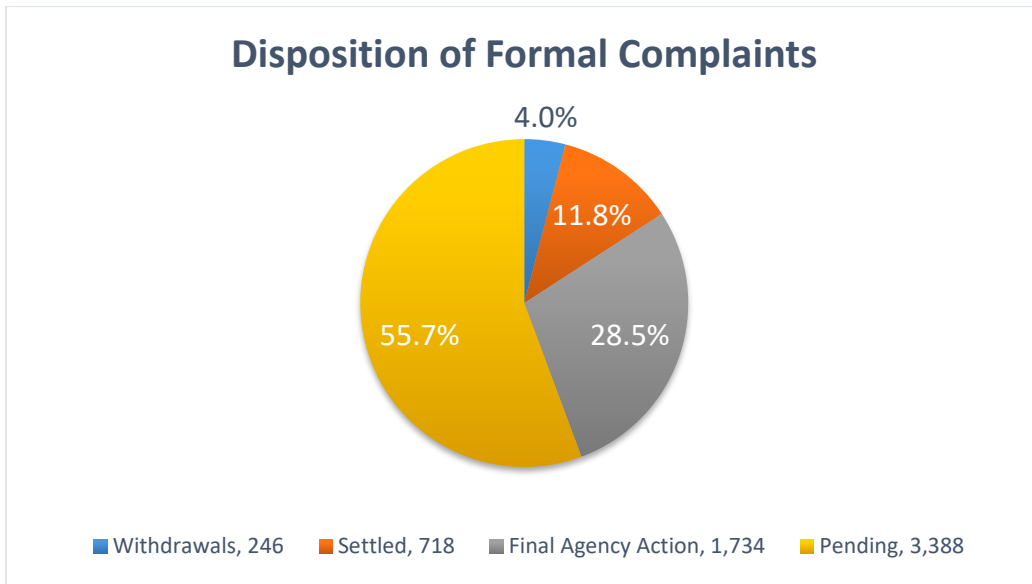
FIGURE 6: MONETARY BENEFITS IN ADR SETTLEMENTS AND NON-ADR SETTLEMENTS - PRE-COMPLAINTS (DOLLARS)



2) Formal Complaints

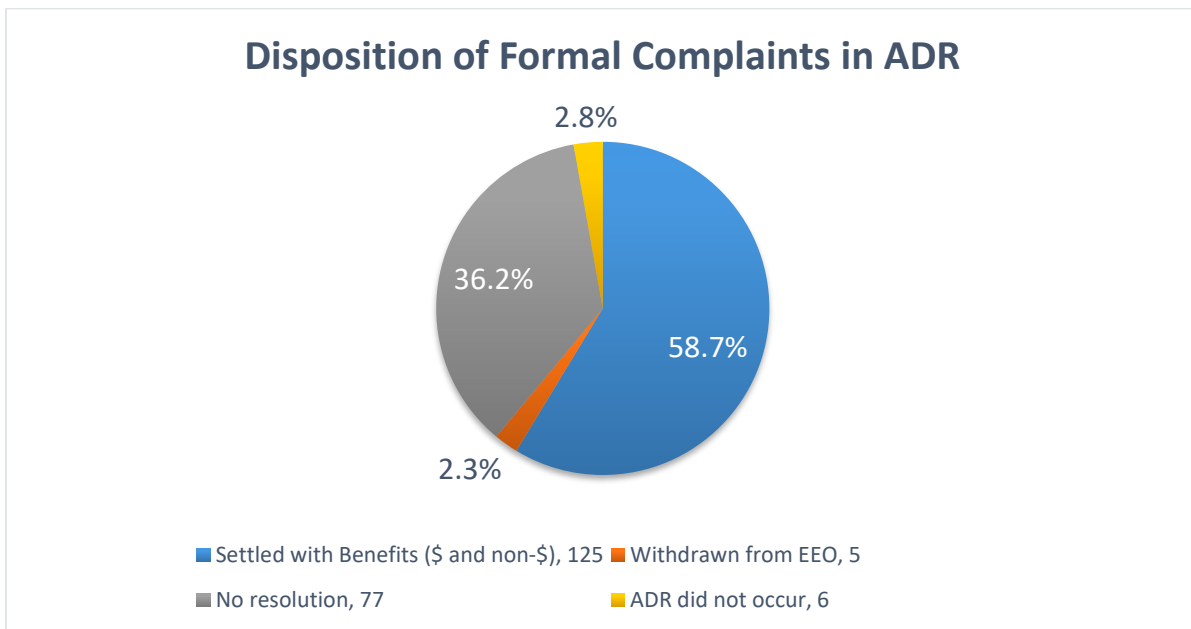
As previously identified, the Department had 6,086 active formal complaints, and closed 2,698 during the fiscal year. The remaining 3,388 formal complaints were pending at the close of the fiscal year. The number of FY 2019 formal complaints decreased from FY 2018 by 33.4 percent. While there were fewer complaints that carried over from FY 2018 to FY 2019 (4,098 complaints) than there were from FY 2017 to FY 2018 (5,933), there were also fewer complaints formally filed in FY 2019 (1,972 complaints) than FY 2018 (3,170 complaints). The disposition of the FY 2019 formal complaints is demonstrated in Figure 7.

FIGURE 7: DISPOSITION OF FORMAL COMPLAINTS



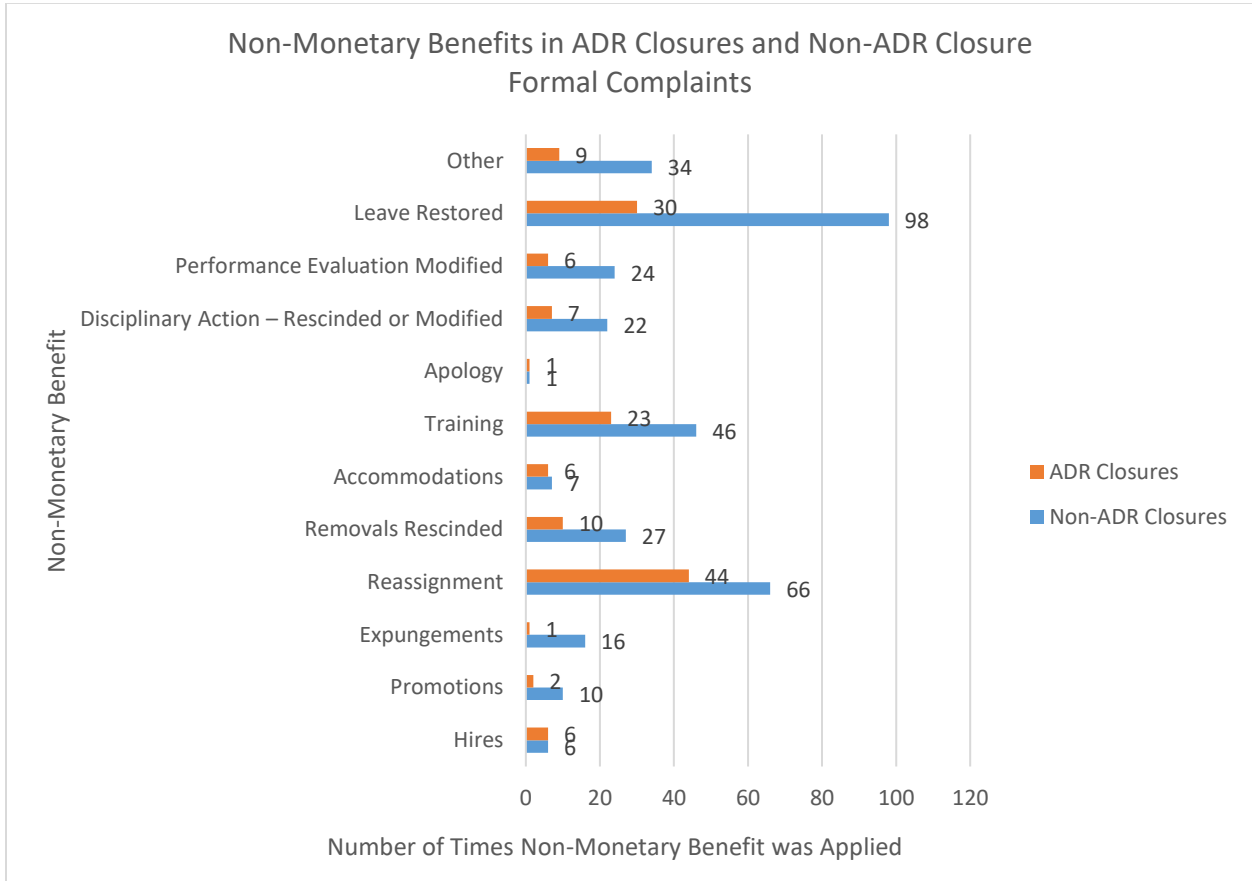
A complainant may also resolve a formal complaint by employing ADR methods during the formal complaint phase. For FY 2019, 360 formal complaints were offered ADR and 213 were accepted (59.1 percent). Of those 213, 130 (61.0 percent) were settled or withdrawn. While these numbers are less than those in FY 2018, the percentages are similar, with 60.4 percent of the complaints offered ADR being accepted and a 61.8 percent of accepted complaints settling or being withdrawn. Figure 8 shows the disposition of the FY 2019 formal complaints that were accepted into the ADR process.

FIGURE 8: DISPOSITION OF FORMAL COMPLAINTS IN ADR



Using ADR allowed the Department to provide 145 non-monetary benefits to formal complaints outside of monetary payments. There were 357 non-monetary benefits to formal complaints that were closed without employing ADR. Figure 9 shows the differences in the non-monetary benefits between those closures that occurred with ADR versus those that did not use ADR.

FIGURE 9: NON-MONETARY BENEFITS IN ADR CLOSURES AND NON-ADR CLOSURE - FORMAL COMPLAINTS



Of course, not all complaints close without a monetary payment. In FY 2019, 671 occurrences of monetary benefits paid out in the closure of a formal complaint, resulting in a total payout of \$18,755,370.27 in compensatory damages, backpay/frontpay, lump sum payments, and attorney fees for the complainant. While the number of occurrences of monetary benefits paid out in FY 2019 is smaller than that of FY 2018 (828 occurrences), the dollar amount paid in FY 2019 is greater than the \$17,638,868.61 paid in FY 2018.

FIGURE 10: MONETARY BENEFITS IN ADR CLOSURES AND NON-ADR CLOSURES - FORMAL COMPLAINTS (NUMBER)

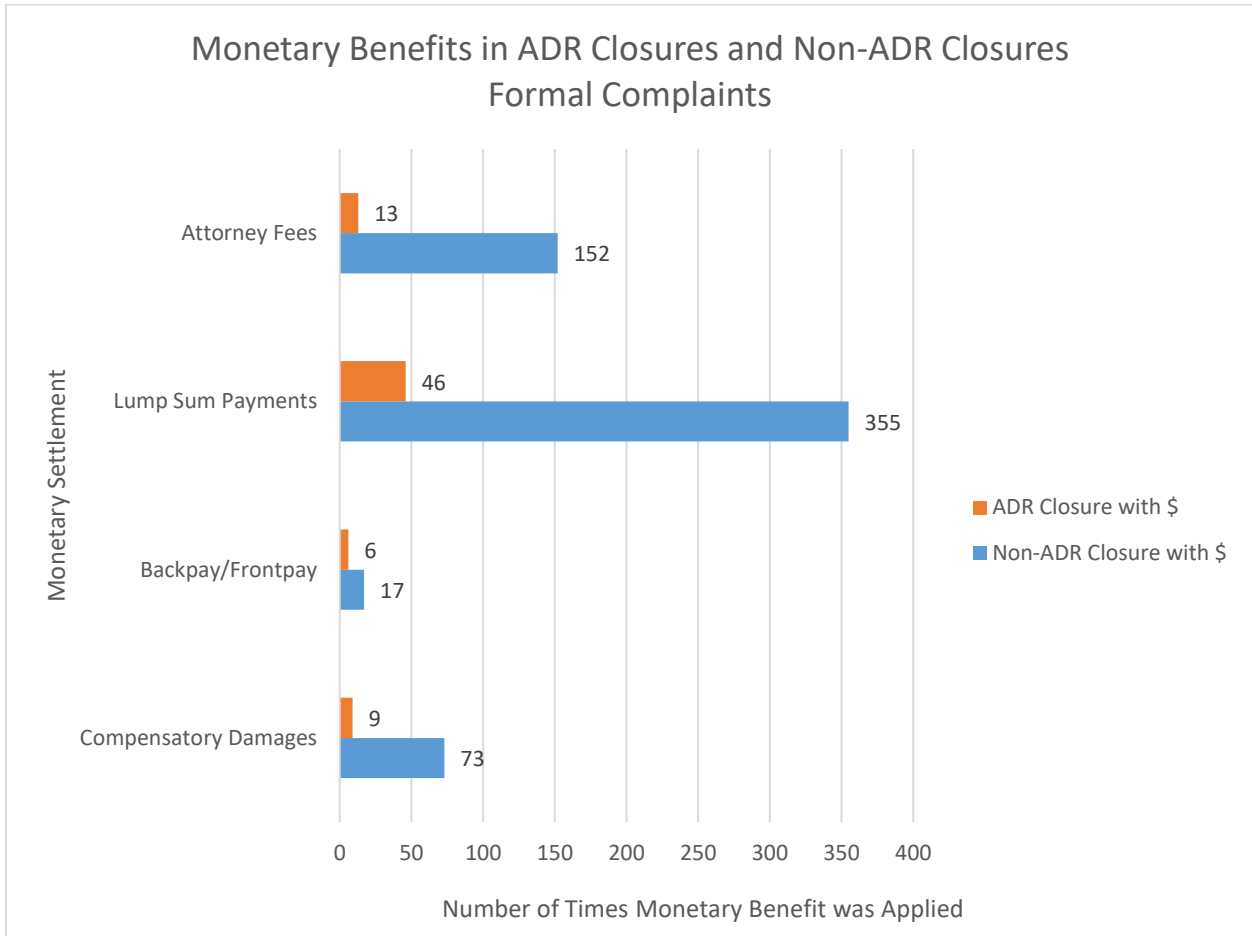
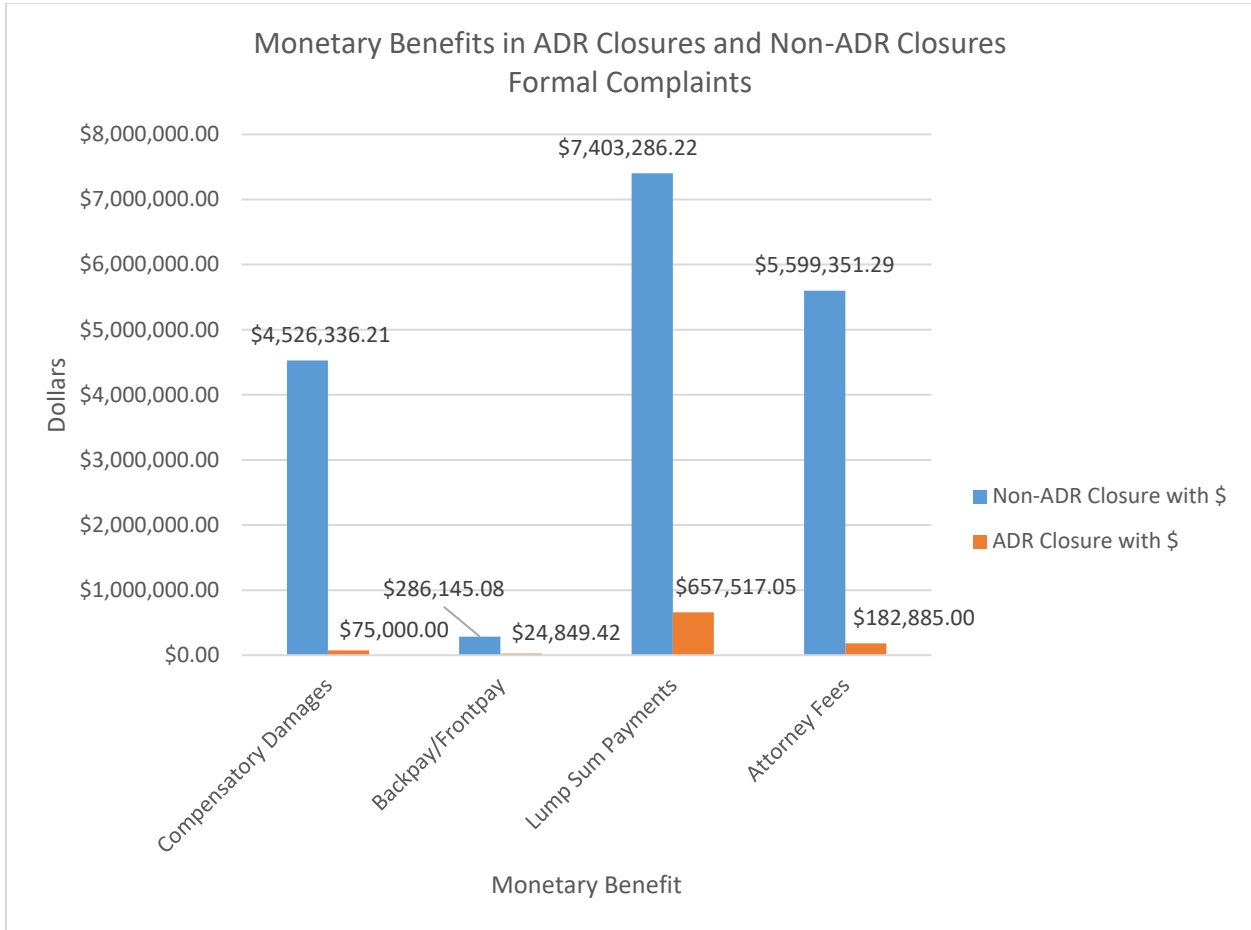


FIGURE 11: MONETARY BENEFITS IN ADR CLOSURES AND NON-ADR CLOSURES - FORMAL COMPLAINTS (DOLLARS)

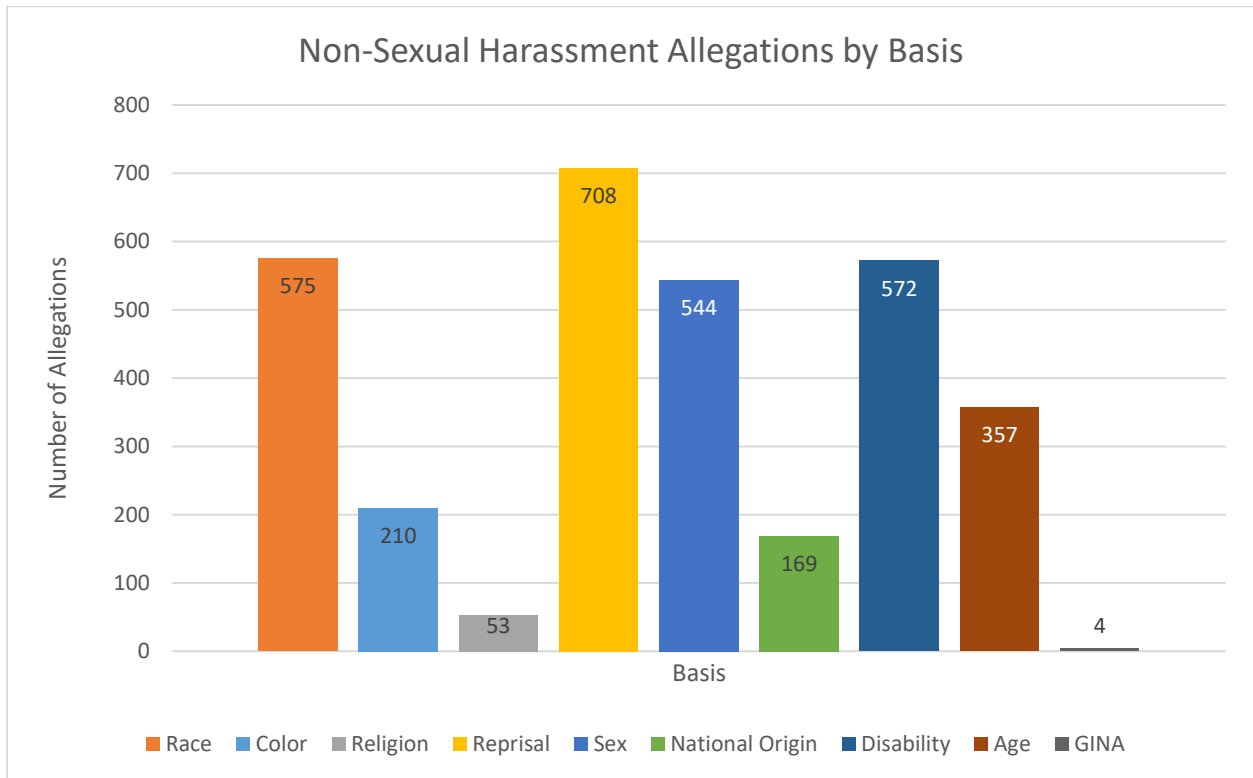


(a) Common Issue Allegations

DoD had 1,972 formal complaints filed during FY 2019, containing 10,896 allegations. As previously mentioned, the top two identified bases of FY 2019 allegations were reprisal (2,405 allegations or 22.1 percent of all allegations) and disability (2,180 allegations or 20.0 percent of all allegations). Race (1,821 allegations or 16.7 percent of all allegations) and sex (1,758 allegations or 16.1 percent of all allegations) were in the next tier of common bases cited in FY 2019 formal complaints. These common basis are the same as FY 2018, with reprisal and disability as the top two identified bases (21.9 percent and 18.6 percent, respectively), with race (17.2 percent) and sex (17.1 percent) in the next tier.

The most frequent allegation across all bases was non-sexual harassment, with a total of 3,192 allegations (29.3 percent of all allegations). Figure 12 shows the breakdown of how many non-sexual harassment allegations were made by basis.

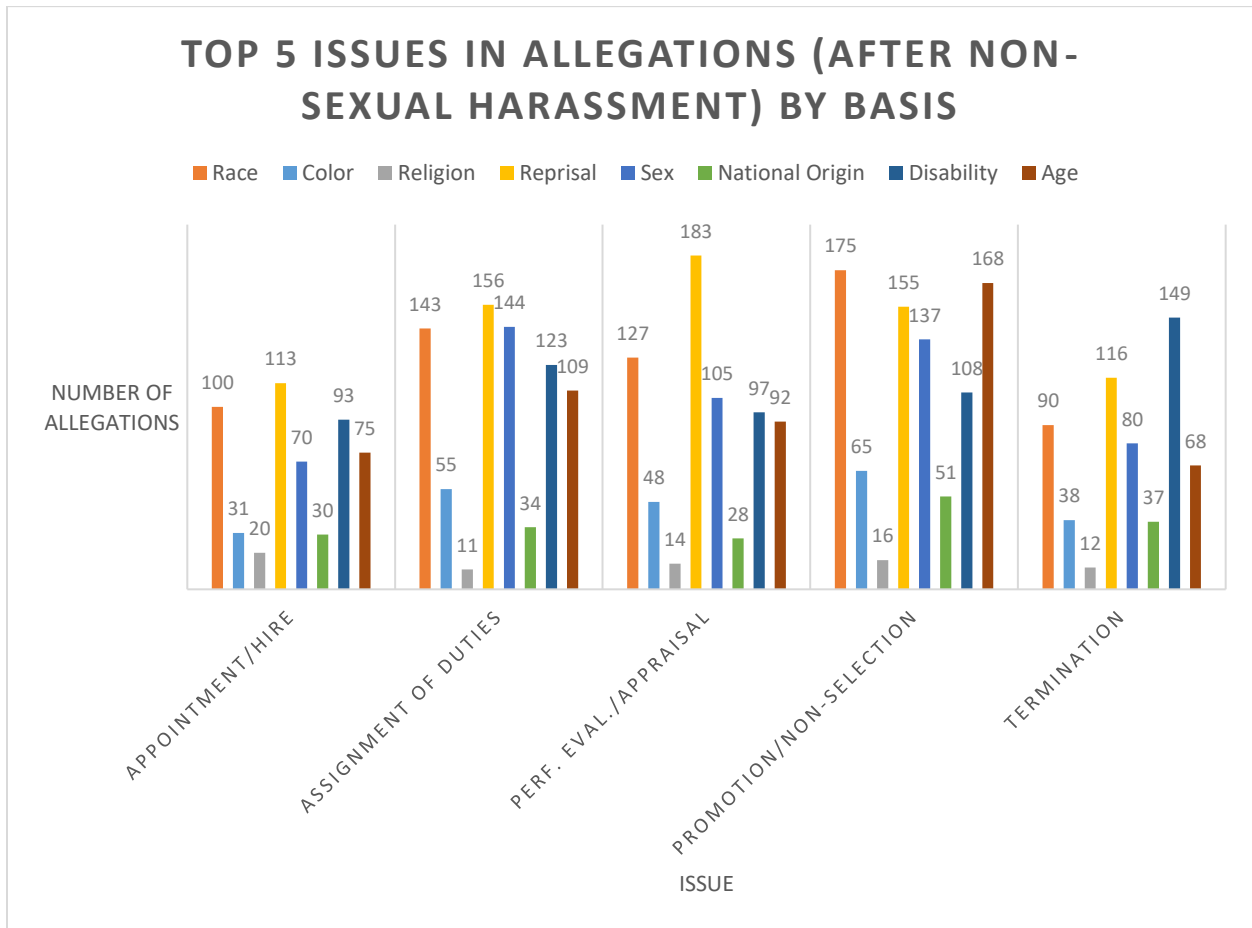
FIGURE 12: NON-SEXUAL HARASSMENT ALLEGATIONS BY BASIS



This is similar to FY 2018, which also had non-sexual harassment as the most frequent allegations (29.7 percent of FY 2018 allegations). There were also similar patterns in the basis of these non-sexual harassment allegations between FY 2018 and FY 2019.

Other top issues identified in allegations were assignment of duties, evaluation/appraisal, promotion/non-selection, reasonable accommodation, and terms/conditions of employment. Figure 13 shows the breakout of the next five top allegations per basis (not including non-sexual harassment).

FIGURE 13: TOP 5 ISSUES (AFTER NON-SEXUAL HARASSMENT) BY BASIS²³



These were similar to those identified in FY 2018, with one exception: FY 2018 included terms/conditions of employment instead of termination.

Figure 13 demonstrates the top allegations (other than non-sexual harassment) from the total allegations. However, allegations based on color, reprisal, sex, or disability, when viewed independently, had a significant number of other allegations for different issues than those identified in Figure 13.

Specifically, the list of the top five issues based on color outside non-sexual harassment does not include appointment/hire. The top five issues based on color outside non-sexual harassment are:²⁴

- Assignment of Duties (55 allegations)
- Evaluation/Appraisal (48 allegations)

²³ Figure 14 excludes GINA as a basis because the number of allegations was too few to show up on a chart, receiving no more than 2 allegations on an issue, at most.

²⁴ The bolded issues in the bulleted lists are the issues that were not in the top five most common issues for DoD as a whole.

- Promotion/Non-Selection (56 allegations)
- Termination (38 allegations)
- **Time and Attendance (35 allegations)**

The list of the top five issues based on reprisal outside non-sexual harassment does not include appointment/hire or termination. The top five issues based on reprisal outside non-sexual harassment are:²⁵

- Assignment of Duties (156 allegations)
- Evaluation/Appraisal (183 allegations)
- Promotion/Non-Selection (155 allegations)
- **Terms/Conditions of Employment (120 allegations)**
- **Time and Attendance (120 allegations)**

The list of the top five issues based on sex outside non-sexual harassment does not include appointment/hire. The top five issues based on sex outside non-sexual harassment are:²⁶

- Assignment of Duties (144 allegations)
- Evaluation/Appraisal (105 allegations)
- **Harassment – Sexual (121 allegations)**
- Promotion/Non-Selection (137 allegations)
- Termination (80 allegations)

The list of the top five issues based on disability outside non-sexual harassment does not include appointment/hire. The top five issues based on disability outside non-sexual harassment are:²⁷

- **Assignment of Duties (123 allegations)**
- Evaluation/Appraisal (97 allegations)
- Promotion/Non-Selection (108 allegations)
- **Reasonable Accommodation (267 allegations)**
- Termination (147 allegations)

(b) Common Issue Settlements

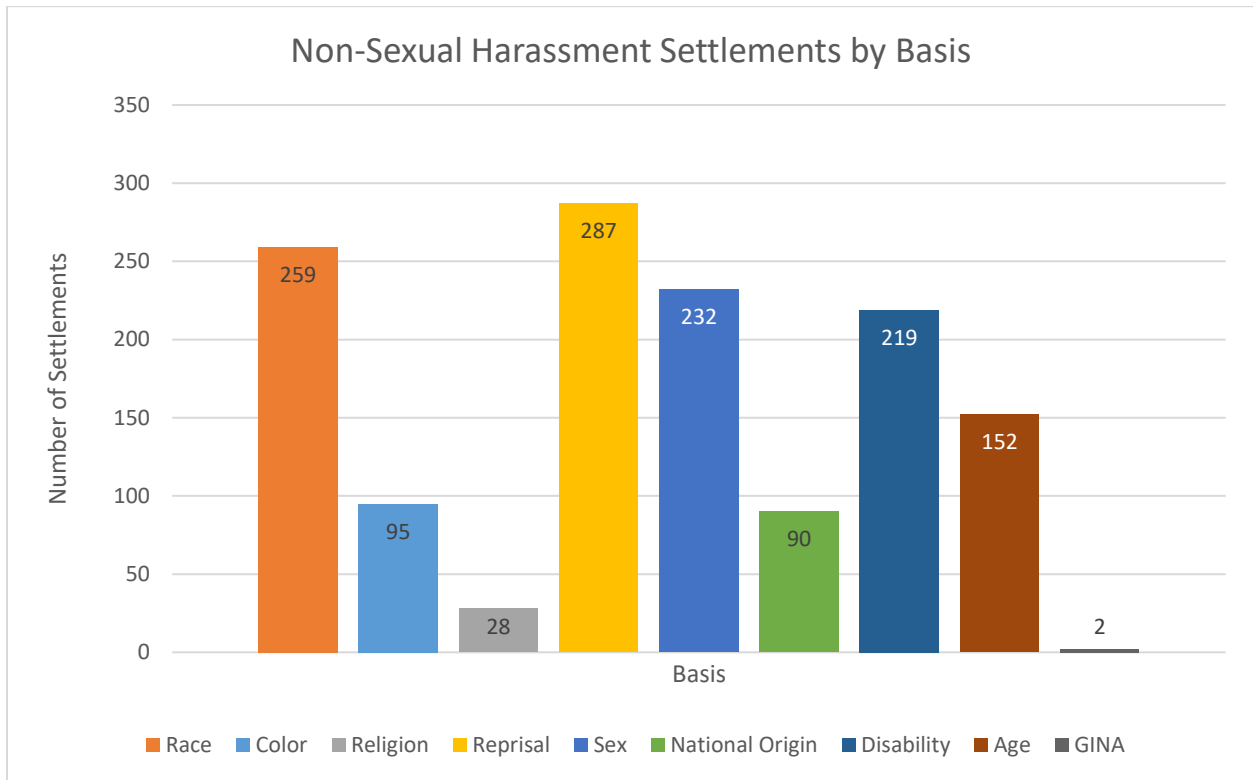
In FY 2019, there were 4,130 allegations settled in 718 settlements. The most frequent allegation settled across all bases was non-sexual harassment, with a total of 1,675 allegations settled (40.6 percent of all settled allegations). Figure 15 shows the breakdown of how many non-sexual harassment allegations were made by basis.

²⁵ The bolded issues in the bulleted lists are the issues that were not in the top five most common issues for DoD as a whole.

²⁶ The bolded issues in the bulleted lists are the issues that were not in the top five most common issues for DoD as a whole.

²⁷ The bolded issues in the bulleted lists are the issues that were not in the top five most common issues for DoD as a whole.

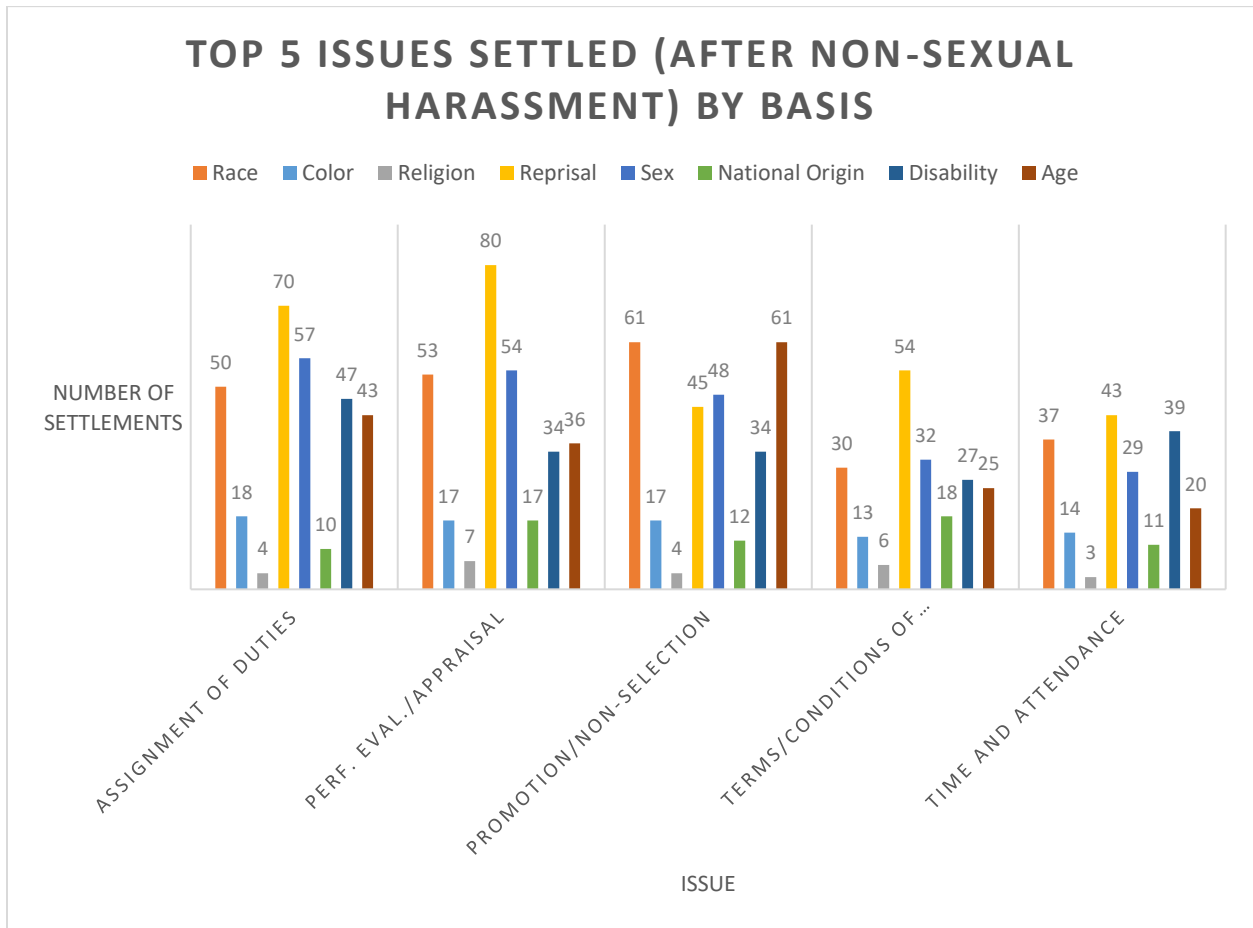
FIGURE 14: NON-SEXUAL HARASSMENT SETTLEMENTS BY BASIS



This is similar to FY 2018, which also had non-sexual harassment as the most frequent allegation in settlements (31.8 percent of FY 2018 settled allegations). There were also similar patterns in the basis of these non-sexual harassment allegations between FY 2018 and FY 2019.

Other top issues identified in settlements were assignment of duties, evaluation/appraisal, promotion/non-selection, terms/conditions of employment, and time and attendance. Figure 15 show the breakout of the next five top allegations per basis (not including non-sexual harassment).

FIGURE 15: TOP 5 ISSUES SETTLED (AFTER NON-SEXUAL HARASSMENT) BY BASIS²⁸



In FY 2018, the top five issues settled (after non-sexual harassment) included were appointment/hire, assignment of duties; evaluation/appraisal, promotion/non-selection, and terms/conditions of employment.

Figure 15 demonstrates the top settled allegations from the total allegations. However, allegations based on race, religion, reprisal, sex, or disability, when viewed independently, had a significant number of other allegations for different issues than those identified in Figure 15.

Specifically, the list of the top five issues based on race outside non-sexual harassment that were settled also includes appointment/hire. The top five issues based on race outside non-sexual harassment that were allegations involved in settlements are:²⁹

- **Appointment/Hire (30 allegations)**
- Assignment of Duties (50 allegations)

²⁸ Figure 16 excludes GINA as a basis because the number of allegations was too few to show up on a chart, receiving no more than 2 settled allegations on an issue, at most.

²⁹ The bolded issues in the bulleted lists are the issues that were not in the top five most common issues for DoD as a whole.

- Evaluation/Appraisal (53 allegations)
- Promotion/Non-Selection (61 allegations)
- Terms/Conditions of Employment (30 allegations)
- Time and Attendance (37 allegations)

The list of the top five issues based on religion outside non-sexual harassment that were settled does not include time and attendance. The top five issues based on religion outside non-sexual harassment that were allegations involved in settlements are:³⁰

- Assignment of Duties (4 allegations)
- **Discipline-Suspension (4 allegations)**
- **Duty Hours (6 allegations)**
- Evaluation/Appraisal (7 allegations)
- Promotion/Non-Selection (4 allegations)
- Terms/Conditions of Employment (6 allegations)

The list of the top five issues based on reprisal outside non-sexual harassment that were allegations involved in settlements does not include time and attendance. The top five issues based on sex outside non-sexual harassment that were allegations involved in settlements are:³¹

- Assignment of Duties (70 allegations)
- **Discipline-Reprimand (44 allegations)**
- Evaluation/Appraisal (80 allegations)
- Promotion/Non-Selection (45 allegations)
- Terms/Conditions of Employment (54 allegations)

The list of the top five issues based on sex outside non-sexual harassment that were allegations involved in settlements does not include time and attendance. The top five issues based on sex outside non-sexual harassment that were allegations involved in settlements are:³²

- Assignment of Duties (57 allegations)
- Evaluation/Appraisal (54 allegations)
- **Harassment-Sexual (59 allegations)**
- Promotion/Non-Selection (48 allegations)
- Terms/Conditions of Employment (32 allegations)

The list of the top five issues based on national origin outside non-sexual harassment that were allegations involved in settlements does not include time and attendance. The top five issues

³⁰ The bolded issues in the bulleted lists are the issues that were not in the top five most common issues for DoD as a whole.

³¹ The bolded issues in the bulleted lists are the issues that were not in the top five most common issues for DoD as a whole.

³² The bolded issues in the bulleted lists are the issues that were not in the top five most common issues for DoD as a whole.

based on national origin outside non-sexual harassment that were allegations involved in settlements are:³³

- Assignment of Duties (10 allegations)
- **Discipline-Reprimand (11 allegations)**
- Evaluation/Appraisal (17 allegations)
- Promotion/Non-Selection (12 allegations)
- Terms/Conditions of Employment (18 allegations)
- Time and Attendance (11 allegations)

The list of the top five issues based on disability outside non-sexual harassment that were allegations involved in settlements does not include terms/conditions of employment. The top five issues based on disability outside non-sexual harassment that were allegations involved in settlements are:³⁴

- Assignment of Duties (47 allegations)
- Evaluation/Appraisal (34 allegations)
- Promotion/Non-Selection (34 allegations)
- **Reasonable Accommodation (135 allegations)**
- Time and Attendance (39 allegations)

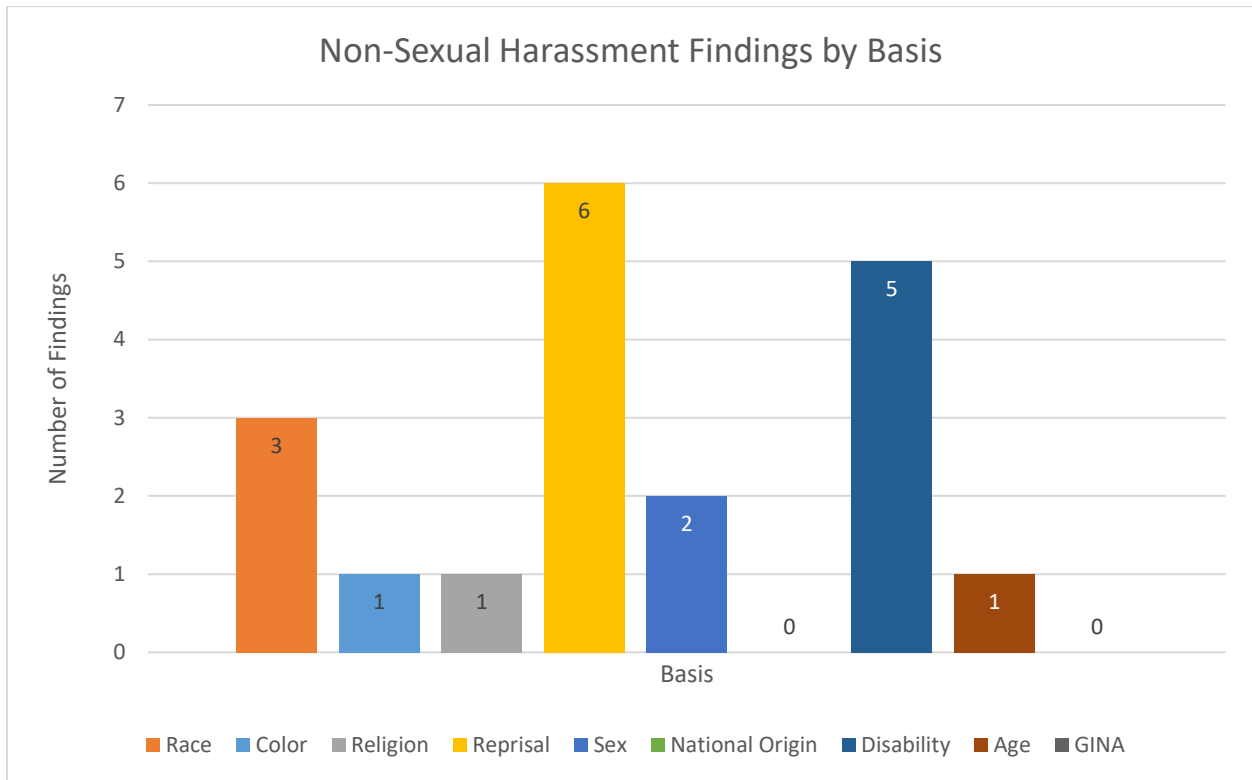
(c) Common Issue Findings

In FY 2019, there were 28 findings in FADs or final orders involving 73 allegations, which is a decrease from the 30 findings in FADs or final orders in FY 2018, but an increase from the 51 allegations in the findings from FY 2018. The most frequent finding across all bases was for non-sexual harassment, with a total of 19 allegations receiving a finding (26.0 percent of all allegations in findings). Non-sexual harassment was also the most frequent allegation with a finding in FY 2018, with it being 31.4 percent of all allegations in findings. Figure 16 shows the breakdown of how many non-sexual harassment allegations were addressed in a finding by basis.

³³ The bolded issues in the bulleted lists are the issues that were not in the top five most common issues for DoD as a whole.

³⁴ The bolded issues in the bulleted lists are the issues that were not in the top five most common issues for DoD as a whole.

FIGURE 16: NON-SEXUAL HARASSMENT FINDINGS BY BASIS³⁵



Reprisal was the most frequent basis of a finding of non-sexual harassment in both FY 2019 and FY 2018, with a decrease from FY 2018 (9 out of 16) to FY 2019 (6 out of 19). There was, however, an increase in disability as a basis in a finding of non-sexual harassment from FY 2018 (1 out of 16) to FY 2019 (5 out of 19).

Due to the small number of findings, the actual findings per basis vary greatly in the issue, but generally only receiving 1 or 2 findings. The two non-sexual harassment issues that were addressed in a finding that stand out are sexual harassment (6 allegations) and reasonable accommodation (7 allegations). In addition, the basis that received the most findings for discrimination was disability (29 allegations)

B) Actions Planned or Taken for Improvement Measures

The disparity between non-sexual harassment allegations and all the other allegations remains a topic of interest to the Department. The Department is aware of harassment concerns among its Total Force and considers prevention and response of all harassment a priority. Accordingly, as stated in DoD’s FY 2018 report, the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) established the Defense Equal Opportunity Reform Group (DEORG) and assigned the Executive Director of the Office of Force Resiliency as its chair in July of 2018. The DEORG consists of representatives from all DoD stakeholders, including the Military

³⁵ There were no findings for allegations of non-sexual harassment based on religion, national origin, or GINA in FY 2018.

Departments, ODEI, and CPP. This collaborative approach aids in developing strategies to identify, report, and resolve harassment.

The DEORG established two working groups, one to focus on harassment occurring in the DoD civilian employee population, and the other focusing on Service members. In July of 2019, each working group proposed solutions to the DEORG which were then reviewed. The Department is currently refining these proposed solutions and preparing them for implementation.

CONCLUSION

This FY 2019 No FEAR Act report is the first time the Department is able to trend its complaint data. The Department aims to achieve unity of effort and purpose across DoD in the execution of unlawful discrimination and harassment prevention initiatives and activities. The Department will continue to incorporate insights from its prevention subject matter experts who have experience in developing evidence-based prevention methods. The Department will also continue to track complaint data to evaluate the effectiveness of current policies and processes in addition to making recommendations for the future to ensure a climate of diversity and inclusion founded on dignity and respect.