

the complainant to his or her former position, if desired, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and, when appropriate, compensatory damages. In cases arising under the Safe Drinking Water Act or the Toxic Substances Control Act, exemplary damages may also be awarded when appropriate.

(2) In cases brought under the Energy Reorganization Act, when an administrative law judge issues a recommended order that the complaint has merit and containing the relief prescribed in paragraph (c)(1) of this section, the administrative law judge shall also issue a preliminary order providing all of the relief specified in paragraph (c)(1) of this section with the exception of compensatory damages. This preliminary order shall constitute the preliminary order of the Secretary and shall be effective immediately, whether or not a petition for review is filed with the Administrative Review Board. Any award of compensatory damages shall not be effective until the final decision is issued by the Administrative Review Board.

(d) The recommended decision of the administrative law judge shall become the final order of the Secretary unless, pursuant to § 24.8, a petition for review is timely filed with the Administrative Review Board.

§ 24.8 Review by the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a recommended decision of the administrative law judge shall file a petition for review with the Administrative Review Board ("the Board"), which has been delegated the authority to act for the Secretary and issue final decisions under this part. To be effective, such a petition must be received within ten business days of the date of the recommended decision of the administrative law judge, and shall be served on all parties and on the Chief Administrative Law Judge. If a timely petition for review is filed, the recommended decision of the administrative law judge shall be inoperative unless and until the Board issues an order adopting the recommended decision, except

that for cases arising under the Energy Reorganization Act of 1974, a preliminary order of relief shall be effective while review is conducted by the Board.

(b) Copies of the petition for review and all briefs shall be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, D.C. 20210.

(c) The final decision shall be issued within 90 days of the receipt of the complaint and shall be served upon all parties and the Chief Administrative Law Judge by mail to the last known address.

(d)(1) If the Board concludes that the party charged has violated the law, the final order shall order the party charged to take appropriate affirmative action to abate the violation, including reinstatement of the complainant to that person's former or substantially equivalent position, if desired, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and, when appropriate, compensatory damages. In cases arising under the Safe Drinking Water Act or the Toxic Substances Control Act, exemplary damages may also be awarded when appropriate.

(2) If such a final order is issued, the Board, at the request of the complainant, shall assess against the respondent a sum equal to the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred by the complainant, as determined by the Board, for, or in connection with, the bringing of the complaint upon which the order was issued.

(e) If the Board determines that the party charged has not violated the law, an order shall be issued denying the complaint.

§ 24.9 Exception.

This part shall have no application to any employee alleging activity prohibited by this part who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of a Federal statute listed in § 24.1(a).

Pt. 24, App. A

APPENDIX A TO PART 24—YOUR RIGHTS UNDER THE ENERGY REORGANIZATION ACT

YOUR RIGHTS UNDER THE ERA

THE ENERGY REORGANIZATION ACT (ERA), MAKES IT ILLEGAL FOR AN EMPLOYER COVERED BY THE ACT -- INCLUDING A LICENSEE OF THE NUCLEAR REGULATORY COMMISSION (NRC) OR AN AGREEMENT STATE, AN APPLICANT FOR A LICENSE, A CONTRACTOR OR SUBCONTRACTOR OF A LICENSEE OR APPLICANT AND A CONTRACTOR OR SUBCONTRACTOR OF THE DEPARTMENT OF ENERGY (DOE) UNDER THE ATOMIC ENERGY ACT (AEA) -- TO DISCHARGE OR OTHERWISE DISCRIMINATE AGAINST AN EMPLOYEE IN TERMS OF COMPENSATION, CONDITIONS OR PRIVILEGES OF EMPLOYMENT BECAUSE THE EMPLOYEE OR ANY PERSON ACTING AT AN EMPLOYEE'S REQUEST PERFORMS A PROTECTED ACTIVITY.

RIGHT TO RAISE A SAFETY CONCERN: YOU ARE ENGAGED IN PROTECTED ACTIVITY WHEN YOU:

- (1) NOTIFY YOUR EMPLOYER OF AN ALLEGED VIOLATION OF THE ERA OR THE AEA;
- (2) REFUSE TO ENGAGE IN ANY PRACTICE MADE UNLAWFUL BY THE ERA OR THE AEA, IF YOU HAVE IDENTIFIED THE ALLEGED ILLEGALITY TO THE EMPLOYER;
- (3) TESTIFY BEFORE CONGRESS OR AT ANY FEDERAL OR STATE PROCEEDING REGARDING ANY PROVISION OR PROPOSED PROVISION OF THE ERA OR THE AEA;
- (4) COMMENCE OR CAUSE TO BE COMMENCED A PROCEEDING UNDER THE ERA, OR A PROCEEDING FOR THE ADMINISTRATION OR ENFORCEMENT OF ANY REQUIREMENT IMPOSED UNDER THE ERA;
- (5) TESTIFY OR ARE ABOUT TO TESTIFY IN ANY SUCH PROCEEDING; OR
- (6) ASSIST OR PARTICIPATE IN SUCH A PROCEEDING OR IN ANY OTHER ACTION TO CARRY OUT THE PURPOSES OF THE ERA OR THE AEA.

UNLAWFUL ACTS BY EMPLOYERS: IT IS UNLAWFUL FOR AN EMPLOYER TO INTIMIDATE, THREATEN, RESTRAIN, COERCE, BLACKLIST, DISCHARGE OR IN ANY OTHER MANNER DISCRIMINATE AGAINST ANY EMPLOYEE BECAUSE THE EMPLOYEE HAS ENGAGED IN PROTECTED ACTIVITY.

COMPLAINT: AN EMPLOYEE OR EMPLOYEE REPRESENTATIVE MAY FILE A COMPLAINT CHARGING DISCRIMINATION IN VIOLATION OF THE ERA WITHIN 180 DAYS OF THE DISCRIMINATORY ACTION. A COMPLAINT MUST BE IN WRITING AND SHOULD INCLUDE A FULL STATEMENT OF FACTS, INCLUDING THE PROTECTED ACTIVITY ENGAGED IN BY THE EMPLOYEE, KNOWLEDGE BY THE EMPLOYER OF THE PROTECTED ACTIVITY, AND THE BASIS FOR BELIEVING THAT THE ACTIVITY RESULTED IN DISCRIMINATION AGAINST THE EMPLOYEE BY THE EMPLOYER. A COMPLAINT MAY BE FILED IN PERSON OR BY MAIL AT THE NEAREST LOCAL OFFICE OF THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA), U.S. GOVERNMENT, DEPARTMENT OF LABOR, OR WITH THE OFFICE OF THE ASSISTANT SECRETARY, OSHA, U.S. DEPARTMENT OF LABOR, WASHINGTON, D.C. 20210.

ENFORCEMENT: OSHA WILL REVIEW THE COMPLAINT TO ENSURE THAT IT MAKES AN INITIAL SHOWING OF DISCRIMINATION. IF NOT, OR IF THE EMPLOYER PROVIDES CLEAR AND CONVINCING EVIDENCE THAT THERE WAS NO DISCRIMINATION, THERE WILL BE NO INVESTIGATION. IF THE REQUIRED SHOWING IS MADE, OSHA WILL NOTIFY THE EMPLOYER AND CONDUCT AN INVESTIGATION TO DETERMINE WHETHER A VIOLATION HAS OCCURRED. EITHER THE EMPLOYEE OR THE EMPLOYER MAY REQUEST A HEARING BEFORE AN ALJ.

RELIEF: IF DISCRIMINATION IS FOUND, THE EMPLOYER WILL BE REQUIRED TO PROVIDE APPROPRIATE RELIEF, INCLUDING REINSTATEMENT (EVEN FOR THE PERIOD BETWEEN THE ALJ DECISION AND APPEAL), BACK WAGES OR COMPENSATION FOR INJURY SUFFERED FROM THE DISCRIMINATION, AND ATTORNEY'S FEES AND COSTS.

CAUTION: THE PRECEDING PROTECTIONS AND REMEDIES ARE NOT AVAILABLE TO EMPLOYEES WHO ENGAGE IN DELIBERATE VIOLATIONS OF THE ERA OR THE AEA.

FOR ADDITIONAL INFORMATION: CONTACT THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, U.S. GOVERNMENT, DEPARTMENT OF LABOR (LISTED IN TELEPHONE DIRECTORIES), OR SEE THE DEPARTMENT OF LABOR'S WEB SITE AT: WWW.OSHA.GOV

EMPLOYERS ARE REQUIRED TO DISPLAY THIS POSTER WHERE EMPLOYEES CAN READILY SEE IT.