

## Department of Energy

## § 708.5

contracts for the operation, maintenance, or support of a Government-owned or -leased research, development, special production, or testing establishment that is wholly or principally devoted to one or more of the programs of DOE.

*Mediation* means an informal, confidential process in which a neutral third person assists the parties in reaching a mutually acceptable resolution of their dispute; the neutral third person does not render a decision.

*OHA Director* means the Director of the Office of Hearings and Appeals, or any official to whom the Director delegates his or her functions under this part.

*Party* means an employee, contractor, or other party named in a proceeding under this part.

*Retaliation* means an action (including intimidation, threats, restraint, coercion or similar action) taken by a contractor against an employee with respect to employment (*e.g.*, discharge, demotion, or other negative action with respect to the employee's compensation, terms, conditions or privileges of employment) as a result of the employee's disclosure of information, participation in proceedings, or refusal to participate in activities described in § 708.5 of this subpart.

*You* means the employee who files a complaint under this part, or the complainant.

### § 708.3 What employee complaints are covered?

This part applies to a complaint of retaliation filed by an employee of a contractor that performs work on behalf of DOE, directly related to activities at a DOE-owned or -leased site, if the complaint stems from a disclosure, participation, or refusal described in § 708.5.

### § 708.4 What employee complaints are not covered?

If you are an employee of a contractor, you may not file a complaint against your employer under this part if:

(a) The complaint is based on race, color, religion, sex, age, national origin, or other similar basis; or

(b) The complaint involves misconduct that you, acting without direction from your employer, deliberately caused, or in which you knowingly participated; or

(c) Except as provided in § 708.15(a), the complaint is based on the same facts for which you have chosen to pursue a remedy available under:

(1) Department of Labor regulations at 29 CFR part 24, "Procedures for the Handling of Discrimination Complaints under Federal Employee Protection Statutes;"

(2) Federal Acquisition Regulations, 48 CFR part 3, "Federal Acquisition Regulation; Whistleblower Protection for Contractor Employees (Ethics);" or

(3) State or other applicable law, including final and binding grievance-arbitration, as described in § 708.15 of subpart B; or

(d) The complaint is based on the same facts in which you, in the course of a covered disclosure or participation, improperly disclosed Restricted Data, national security information, or any other classified or sensitive information in violation of any Executive Order, statute, or regulation. This part does not override any provision or requirement of any regulation pertaining to Restricted Data, national security information, or any other classified or sensitive information; or

(e) The complaint deals with "terms and conditions of employment" within the meaning of the National Labor Relations Act, except as provided in § 708.5.

### § 708.5 What employee conduct is protected from retaliation by an employer?

If you are an employee of a contractor, you may file a complaint against your employer alleging that you have been subject to retaliation for:

(a) Disclosing to a DOE official, a member of Congress, any other government official who has responsibility for the oversight of the conduct of operations at a DOE site, your employer, or any higher tier contractor, information that you reasonably believe reveals—

(1) A substantial violation of a law, rule, or regulation;