

§ 1982.114

will have jurisdiction to grant all appropriate relief, including, but not limited to, injunctive relief and compensatory damages, including:

(1) Reinstatement with the same seniority status that the employee would have had, but for the retaliation;

(2) The amount of back pay, with interest; and

(3) Compensation for any special damages sustained as a result of the retaliation, including litigation costs, expert witness fees, and reasonable attorney's fees.

§ 1982.114 District Court jurisdiction of retaliation complaints.

(a) If there is no final order of the Secretary, 210 days have passed since the filing of the complaint, and there is no showing that there has been delay due to the bad faith of the complainant, the complainant may bring an action at law or equity for *de novo* review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy.

(b) Fifteen days in advance of filing a complaint in Federal court, a complainant must file with the Assistant Secretary, the ALJ, or the ARB, depending upon where the proceeding is pending, a notice of his or her intention to file such complaint. The notice must be served on all parties to the proceeding. A copy of the notice must be served on the Regional Administrator, the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor. The complainant shall file and serve a copy of the district court complaint on the above as soon as possible after the district court complaint has been filed with the court.

§ 1982.115 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of these rules, or for good cause shown, the ALJ or the ARB on review may, upon application, after three days notice to all parties, waive any rule or issue such orders that justice or the administration of NTSSA or FRSA requires.

29 CFR Ch. XVII (7–1–13 Edition)

PART 1983—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER SECTION 219 OF THE CONSUMER PRODUCT SAFETY IMPROVEMENT ACT OF 2008

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SOURCE: 77 FR 40503, July 10, 2012, unless otherwise noted.

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

§ 1983.100 Purpose and scope.

(a) This part implements procedures of the employee protection provisions of the Consumer Product Safety Improvement Act (CPSIA), 15 U.S.C. 2087.

CPSIA provides for employee protection from retaliation because the employee has engaged in protected activity pertaining to consumer product safety.

(b) This part establishes procedures under CPSIA for the expeditious handling of retaliation complaints filed by employees, or by persons acting on their behalf. These rules, together with those codified at 29 CFR part 18, set forth the procedures under CPSIA for submission of complaints, investigations, issuance of findings and preliminary orders, objections to findings and orders, litigation before administrative law judges (ALJs), post-hearing administrative review, and withdrawals and settlements.

§ 1983.101 Definitions.

As used in this part:

(a) *Assistant Secretary* means the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom he or she delegates authority under CPSIA.

(b) *Business days* means days other than Saturdays, Sundays, and Federal holidays.

(c) *Commission* means the Consumer Product Safety Commission.

(d) *Complainant* means the employee who filed a CPSIA complaint or on whose behalf a complaint was filed.

(e)(1) *Consumer product* means any article, or component part thereof, produced or distributed:

(i) For sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise; or

(ii) For the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise.

(iii) The term "consumer product" includes any mechanical device which carries or conveys passengers along, around, or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, which is customarily controlled or directed by an individual who is employed for that purpose and who is not a consumer with respect to such device, and which is not permanently fixed to a site, but does not in-

clude such a device that is permanently fixed to a site.

(2) The term *consumer product* does not include:

(i) Any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer;

(ii) Tobacco and tobacco products;

(iii) Motor vehicles or motor vehicle equipment (as defined by 49 U.S.C. 30102(a)(6) and (7));

(iv) Pesticides (as defined by the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*));

(v) Any article or any component of any such article which, if sold by the manufacturer, producer, or importer, would be subject to the tax imposed by 26 U.S.C. 4181;

(vi) Aircraft, aircraft engines, propellers, or appliances (as defined in 49 U.S.C. 40102(a));

(vii) Boats which could be subjected to safety regulation under 46 U.S.C. chapter 43; vessels, and appurtenances to vessels (other than such boats), which could be subjected to safety regulation under title 52 of the Revised Statutes or other marine safety statutes administered by the department in which the Coast Guard is operating; and equipment (including associated equipment, as defined in 46 U.S.C. 2101(1)), to the extent that a risk of injury associated with the use of such equipment on boats or vessels could be eliminated or reduced by actions taken under any statute referred to in this definitional section;

(viii) Drugs, devices, or cosmetics (as such terms are defined in 21 U.S.C. 321(g), (h), and (i)); or

(ix) Food (the term "food" means all "food," as defined in 21 U.S.C. 321(f), including poultry and poultry products (as defined in 21 U.S.C. 453(e) and (f)), meat, meat food products (as defined in 21 U.S.C. 601(j)), and eggs and egg products (as defined in 21 U.S.C. 1033)).

(f) *CPSIA* means Section 219 of the Consumer Product Safety Improvement Act of 2008, Public Law 110-314, 122 Stat. 3016 (Aug. 14, 2008) (codified at 15 U.S.C. 2087).

(g) *Distributor* means a person to whom a consumer product is delivered or sold for purposes of distribution in commerce, except that such term does