

complainant demonstrates the Assistant Secretary's consent and achieves the consent of all three parties.

(2) *Adjudicatory settlements.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ if the case is before the ALJ, or by the ARB if the ARB has accepted the case for review. A copy of the settlement will be filed with the ALJ or the ARB, as the case may be.

(e) Any settlement approved by the Assistant Secretary, the ALJ, or the ARB will constitute the final order of the Secretary and may be enforced in United States district court pursuant to §1983.113.

§ 1983.112 Judicial review.

(a) Within 60 days after the issuance of a final order under §§1983.109 and 1983.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

(b) A final order is not subject to judicial review in any criminal or other civil proceeding.

(c) If a timely petition for review is filed, the record of a case, including the record of proceedings before the ALJ, will be transmitted by the ARB or the ALJ, as the case may be, to the appropriate court pursuant to the Federal Rules of Appellate Procedure and the local rules of such court.

§ 1983.113 Judicial enforcement.

Whenever any person has failed to comply with a preliminary order of reinstatement, or a final order, including one approving a settlement agreement, issued under CPSIA, the Secretary or a person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred. The Secretary also may file a civil action seeking enforcement of the order in the United States district court for the District of Columbia. In

civil actions under this section, the district court will have jurisdiction to grant all appropriate relief, including, but not limited to, injunctive relief and compensatory damages, including:

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

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

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

§ 1983.114 District court jurisdiction of retaliation complaints.

(a) 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, either:

(1) Within 90 days after receiving a written determination under §1983.105(a) provided that there has been no final decision of the Secretary; or

(2) If there has been no final decision of the Secretary within 210 days of the filing of the complaint.

(3) At the request of either party, the action shall be tried by the court with a jury.

(b) Within seven days after filing a complaint in federal court, a complainant must file with the Assistant Secretary, the ALJ, or the ARB, depending on where the proceeding is pending, a copy of the file-stamped complaint. A copy of the complaint also must be served on the OSHA official who issued the findings and/or preliminary order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

§ 1983.115 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 CPSIA requires.

PART 1984—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER SECTION 1558 OF THE AFFORDABLE CARE ACT

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

Sec.

- 1984.100 Purpose and scope.
- 1984.101 Definitions.
- 1984.102 Obligations and prohibited acts.
- 1984.103 Filing of retaliation complaint.
- 1984.104 Investigation.
- 1984.105 Issuance of findings and preliminary orders.

Subpart B—Litigation

- 1984.106 Objections to the findings and the preliminary order and requests for a hearing.
- 1984.107 Hearings.
- 1984.108 Role of Federal agencies.
- 1984.109 Decision and orders of the administrative law judge.
- 1984.110 Decision and orders of the Administrative Review Board.

Subpart C—Miscellaneous Provisions

- 1984.111 Withdrawal of complaints, findings, objections, and petitions for review; settlement.
- 1984.112 Judicial review.
- 1984.113 Judicial enforcement.
- 1984.114 District court jurisdiction of retaliation complaints.
- 1984.115 Special circumstances; waiver of rules.

AUTHORITY: 29 U.S.C. 218C; Secretary's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary's Order 1–2010 (Jan. 15, 2010), 75 FR 3924 (Jan. 25, 2010).

SOURCE: 78 FR 13231, Feb. 27, 2013, unless otherwise noted.

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

§ 1984.100 Purpose and scope.

(a) This part implements procedures under section 1558 of the Patient Protection and Affordable Care Act, Public Law 111–148, 124 Stat. 119, which was signed into law on March 23, 2010 and was amended by the Health Care and

Education Reconciliation Act of 2010, Public Law 111–152, 124 Stat. 1029, signed into law on March 30, 2010. The terms “Affordable Care Act” or “the Act” are used in this part to refer to the final, amended version of the law. Section 1558 of the Act amended the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.* (FLSA) by adding new section 18C. 29 U.S.C. 218C. Section 18C of the FLSA provides protection for an employee from retaliation because the employee has received a credit under section 36B of the Internal Revenue Code of 1986, 26 U.S.C. 36B, or a cost-sharing reduction (referred to as a “subsidy” in section 18C) under the Affordable Care Act section 1402, 42 U.S.C. 18071, or because the employee has engaged in protected activity pertaining to title I of the Affordable Care Act or any amendment made by title I of the Affordable Care Act.

(b) This part establishes procedures under section 18C of the FLSA 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 section 18C of the FLSA 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.

§ 1984.101 Definitions.

As used in this part:

(a) *Affordable Care Act* or “the Act” means The Patient Protection and Affordable Care Act, Public Law 111–148, 124 Stat. 119 (Mar. 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111–152.

(b) *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 section 18C of the FLSA.

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