
Tuesday
January 8, 1980

Part V

Department of Labor

Office of the Secretary

**Procedures for the Handling of
Discrimination Complaints Under Federal
Employee Protection Statutes**

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 24

Procedures for the Handling of
Discrimination Complaints Under
Federal Employee Protection Statutes

AGENCY: Department of Labor.

ACTION: Final rule.

SUMMARY: This rule establishes procedures for the handling of employee complaints of discrimination under the employee protection provisions of the following Federal statutes: Safe Drinking Water Act, Water Pollution Control Act, Toxic Substances Control Act, Solid Waste Disposal Act, Clean Air Act, Energy Reorganization Act of 1974.

EFFECTIVE DATE: January 8, 1980.

FOR FURTHER INFORMATION CONTACT: George M. Lilly, Counsel, Employee Benefits Division, Office of the Solicitor, U.S. Department of Labor, Suite N2716, NDOL Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 357-0437.

SUPPLEMENTARY INFORMATION: Recent Congressional concern for the protection of "whistle-blower" employees from discriminatory actions by their employers has led to the enactment of special employee protection provisions in several federal statutes.

Responsibility for the handling of these protections has been lodged with the Secretary of Labor. The Secretary of Labor has determined that uniform procedures are required for the orderly resolution of the complaints now being filed with the Secretary pursuant to these several statutory provisions.

The Department of Labor has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and Department of Labor Guidelines (44 FR 5570). This document was prepared under the supervision of Laurie M. Streeter, Associate Solicitor, Division of Employee Benefits.

Accordingly, since this rule relates only to procedural matters required by statute for which no proposed rulemaking is required, Subtitle A of Title 29 of the Code of Federal Regulations is hereby amended by the addition of the following new Part 24, which provides as follows:

PART 24—PROCEDURES FOR THE
HANDLING OF DISCRIMINATION
COMPLAINTS UNDER FEDERAL
EMPLOYEE PROTECTION STATUTES

- Sec.
24.1 Purpose and scope.
24.2 Obligations and prohibited acts.
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Authority: 42 U.S.C. 300j-9(i); 33 U.S.C. 1367; 15 U.S.C. 2622; 42 U.S.C. 6971; 42 U.S.C. 7622; 42 U.S.C. 5851.

§ 24.1 Purpose and scope.

(a) This part implements the several Federal employee protection provisions for which the Secretary of Labor has been given responsibility pursuant to the following statutes: Safe Drinking Water Act, 42 U.S.C. 300j-9(i); Water Pollution Control Act, 33 U.S.C. 1367; Toxic Substances Control Act, 15 U.S.C. 2622; Solid Waste Disposal Act, 42 U.S.C. 6971; Clean Air Act, 42 U.S.C. 7622; Energy Reorganization Act of 1974, 42 U.S.C. 5851.

(b) Procedures are established by this part pursuant to the federal statutory provisions listed above, for the expeditious handling of complaints by employees, or persons acting on their behalf, of discriminatory action by employers.

§ 24.2 Obligations and prohibited acts.

(a) The several statutory employee protection provisions listed in § 24.1, above, provide that no employer subject to the provisions of the Federal statute of which these protective provisions are a part may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee, or any person acting pursuant to the employee's request, engaged in any of the activities specified in subsection (b) below.

(b) Any person is deemed to have violated the particular federal law and these regulations if such person intimidates, threatens, restrains, coerces, blacklists, discharges, or in any other manner discriminates against any employee who has

(1) commenced, or caused to be commenced, or is about to commence or cause to be commenced a proceeding under one of the Federal statutes listed in § 24.1 or a proceeding for the administration or enforcement of any requirement imposed under such Federal statute;

(2) testified or is about to testify in any such proceeding; or

(3) assisted or participated, or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of such Federal statute.

§ 24.3 Complaint.

(a) *Who may file.* An employee who believes that he or she has been discriminated against by an employer in violation of any of the statutes listed in § 24.1(a) may file, or have another person file on his or her behalf, a complaint alleging such discrimination.

(b) *Time of filing.* Any complaint shall be filed within 30 days after the occurrence of the alleged violation. For the purpose of determining timeliness of filing, a complaint filed by mail shall be deemed filed as of the date of mailing.

(c) *Form of complaint.* No particular form of complaint is required, except that a complaint must be in writing and should include a full statement of the acts and omissions, with pertinent dates, which are believed to constitute the violation.

(d) *Place of filing.* A complaint may be filed in person or by mail with the Office of the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The address of the Administrator's office is Room S3502, 200 Constitution Avenue NW., Washington, D.C. 20210. A complaint may also be filed at any local office of the Wage and Hour Division. The address of such local offices may be found in local telephone directories.

§ 24.4 Investigations

(a) Upon receipt of a complaint under this part, the Administrator shall notify the person named in the complaint, and the appropriate office of the Federal agency charged with the administration of the affected program of its filing.

(b) The Administrator shall, on a priority basis, investigate and gather data concerning such case, and as part of the investigation may enter and inspect such places and records (and make copies thereof), may question persons being proceeded against and other employees of the charged employer, and may require the production of any documentary or other evidence deemed necessary to determine whether a violation of the law involved has been committed.

(c) Investigations under this part shall be conducted in a manner which protects the confidentiality of any person other than the complainant who provides information on a confidential

basis, in accordance with Part 70 of this title.

(d)(1) Within 30 days of the receipt of a complaint, the Administrator shall complete the investigation, determine whether the alleged violation has occurred, and give notice of the determination which shall contain a statement of reasons for the findings and conclusions therein. Notice of the determination shall be given by certified mail to the complainant, the respondent, and to their representatives. At the same time the Administrator shall file with the Chief Administrative Law Judge, U.S. Department of Labor, the original complaint and a copy of the notice of determination.

(2)(i) If on the basis of the investigation the Administrator determines that the complaint is without merit, the notice of determination shall include, or be accompanied by notice to the complainant that the notice of determination shall become the final order of the Secretary denying the complaint unless within five calendar days of its receipt the complainant files with the Chief Administrative Law Judge a request by telegram for a hearing on the complaint. The notice shall give the address of the Chief Administrative Law Judge.

(ii) Copies of any request for a hearing shall be sent by the complainant to the respondent (employer) and to the Administrator.

(3)(i) If on the basis of the investigation the Administrator determines that the alleged violation has occurred, the notice of determination shall include an appropriate order to abate the violation, and notice to the respondent that the order shall become the final order of the Secretary unless within five calendar days of its receipt the respondent files with the Chief Administrative Law Judge a request by telegram for a hearing. An order issued pursuant to this subsection shall be in accordance with the relevant provisions of the statute violated. The notice shall give the address of the Chief Administrative Law Judge.

(ii) Copies of any request for a hearing shall be sent by the respondent (employer) to the complainant and to the Administrator.

§ 24.5 Hearings.

(a) *Notice of Hearing.* The administrative law judge to whom the case is assigned shall within seven calendar days following receipt of the request for hearing, notify the parties by certified mail, directed to the last known address of the parties, of a day, time and place for hearing. All parties shall be given at least five days notice of such

hearing. However, because of the time constraints imposed upon the Secretary by the above statutes, no requests for postponement shall be granted except for compelling reasons.

(b) *Consolidated Hearings.* When two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters at issue at each such hearing, the Chief Administrative Law Judge may, upon motion by any party or on his own or her own motion, order that a consolidated hearing be conducted. Where consolidated hearings are held, a single record of the proceedings shall be made and the evidence introduced in one case may be considered as introduced in the others, and a separate or joint decision shall be made, as appropriate.

(c) *Place of Hearing.* The hearing shall, where possible, be held at a place within 75 miles of the complainant's residence.

(d) *Right to Counsel.* In all proceedings under this part, the parties shall have the right to be represented by counsel.

(e) *Procedures, evidence and record.*

(1) *Evidence.* Formal rules of evidence shall not apply, but rules or principles designed to assure production of the most probative evidence available shall be applied. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitious.

(2) *Record of Hearing.* All hearings shall be open to the public and shall be mechanically or stenographically reported. All evidence upon which the administrative law judge relies for decision shall be contained in the transcript of testimony, either directly or by appropriate reference. All exhibits and other pertinent documents or records, either in whole or in material part, introduced as evidence, shall be marked for identification and incorporated into the record.

(3) *Oral argument; briefs.* Any party, upon request, may be allowed a reasonable time for presentation of oral argument and to file a prehearing brief or other written statement of fact or law. A copy of any such prehearing brief or other written statement shall be filed with the Chief Administrative Law Judge or the administrative law judge assigned to the case before or during the proceeding at which evidence is submitted to the administrative law judge and shall be served upon each other party. Post-hearing briefs will not be permitted except at the request of the administrative law judge. When permitted, any such brief shall be limited to the issue or issues specified

by the administrative law judge and shall be due within the time prescribed by the administrative law judge.

(4) *Dismissal for Cause.* (i) The administrative law judge may, at the request of any party, or on his or her own motion, dismiss a claim

(A) Upon the failure of the complainant or his or her representative to attend a hearing without good cause;

(B) Upon the failure of the complainant to comply with a lawful order of the administrative law judge.

(ii) In any case where a dismissal of a claim, defense, or party is sought, the administrative law judge shall issue an order to show cause why the dismissal should not be granted and afford all parties a reasonable time to respond to such order. After the time for response has expired, the administrative law judge shall take such action as is appropriate to rule on the dismissal, which may include an order dismissing the claim, defense or party.

§ 24.6 Decisions and orders.

(a) *Recommended Decision.* The administrative law judge shall issue a recommended decision within 20 days after the termination of the proceeding at which evidence was submitted. The recommended decision shall contain appropriate findings, conclusions and a recommended order and be forwarded, together with the record, to the Secretary of Labor for a final order. The recommended decision shall be served upon all parties to the proceeding.

(b) *Final Order.* (1) Within 90 days after receipt of a complaint, the Secretary of Labor shall issue a final order, based on the record and the recommended decision of the administrative law judge, which shall be served upon all of the parties.

(2) If the Secretary 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. The Secretary may, where deemed appropriate, order the party charged to provide compensatory damages to the complainant.

(3) *Costs.* If such a final order is issued, the Secretary, 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 Secretary, for, or in connection with, the

bringing of the complaint upon which the final order was issued.

(4) *Dismissals.* If the Secretary determines that the party charged has not violated the law, an order shall be issued denying the complaint.

§ 24.7 Judicial review.

(a) Within 60 days after the issuance of a final order under § 24.6, above, any person adversely affected or aggrieved by such order may file a petition for review of the order in the United States court of appeals for the circuit in which the violation with respect to which the order was issued allegedly occurred. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(b) An order of the Secretary with respect to which review could have been obtained under subsection (a) shall not be subject to judicial review in any criminal or other civil proceeding.

(c) *Certification of Record for Judicial Review.* The record of a case, including the record of proceedings before the administrative law judge, shall be transmitted by the Secretary to the appropriate court pursuant to the rules of such court.

§ 24.8 Enforcement proceedings.

(a) Whenever a person has failed to comply with a final order issued by the Secretary of Labor under § 24.6, above, the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this section, the district courts shall have jurisdiction to grant to all appropriate relief including, but not limited to, injunctive relief, compensatory and exemplary damages.

(b)(1) Any person on whose behalf a final order was issued by the Secretary of Labor under § 24.6, above, may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(2) The court, in issuing any final order under this section may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

(c) Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of Title 28 of the United States Code.

§ 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, above.

Signed this 2nd day of January, 1980, at Washington, D.C.

Ray Marshall,
Secretary of Labor.

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