



# Survey of Federal Whistleblower and Anti-Retaliation Laws

**(name redacted)**

Legislative Attorney

**(name redacted)**

Legislative Attorney

**(name redacted)**

Law Librarian

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## Summary

This report provides an overview of federal whistleblower and anti-retaliation laws. In general, these laws protect employees who report misconduct by their employers or who engage in various protected activities, such as participating in an investigation or filing a complaint. In recent years, Congress has expanded employee protections for a variety of private-sector workers. Eleven of the forty laws reviewed in this report were enacted after 1999. Among these laws are the Sarbanes-Oxley Act, the FDA Food Safety Modernization Act, and the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The report focuses on key aspects of the federal whistleblower and anti-retaliation laws. For each law, the report summarizes the activities that are protected, how the law's protections are enforced, whether the law provides a private right of action, the remedies prescribed by the law, and the year the law's whistleblower or anti-retaliation provisions were adopted and amended. With regard to amendment dates, the report identifies only dates associated with substantive amendments. For enactments after 2001, the report provides information on congressional sponsorship and votes.

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## **Age Discrimination in Employment Act (ADEA)**

### **Coverage**

The ADEA prohibits an employer from discriminating against an employee or applicant for employment because the individual has opposed any practice made unlawful by section 4 of the ADEA or because the individual has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under the ADEA.<sup>1</sup> The ADEA also prohibits such actions when committed by an employment agency against any individual, and by a labor organization against a member or applicant for membership.

### **Enforcement**

An individual who believes that he or she has been discriminated against in violation of the ADEA's anti-retaliation provisions may file a charge with the Equal Employment Opportunity Commission (EEOC) within 180 days after the alleged unlawful practice occurred.<sup>2</sup> Upon receiving the charge, the EEOC will seek to eliminate any alleged unlawful practices by informal methods of conciliation, conference, and persuasion.<sup>3</sup>

### **Is there a private right of action?**

Yes. If the EEOC does not commence an action to enforce the rights of the aggrieved person, such individual may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of the ADEA.<sup>4</sup>

### **Remedies**

A court may award such legal or equitable relief as may be appropriate to effectuate the purposes of the ADEA, including without limitation judgments compelling employment, reinstatement, or promotion, or enforcing the liability for amounts deemed to be unpaid minimum wages or unpaid overtime compensation.<sup>5</sup>

### **Years of Adoption and Relevant Amendments**

Adopted 1967.

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<sup>1</sup> 29 U.S.C. § 623(d).

<sup>2</sup> 29 U.S.C. § 626(d)(1).

<sup>3</sup> 29 U.S.C. § 626(d)(2).

<sup>4</sup> 29 U.S.C. § 626(c)(1).

<sup>5</sup> 29 U.S.C. § 626(b).

## **American Recovery and Reinvestment Act of 2009 (ARRA)**

### **Coverage**

ARRA prohibits a non-federal employer that receives covered funds from discharging or otherwise discriminating against an employee who discloses to the Recovery Accountability and Transparency Board (Board), an inspector general, a Member of Congress, or specified others, information that the employee reasonably believes is evidence of (1) gross mismanagement of an agency contract or grant related to covered funds; (2) a gross waste of covered funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of covered funds; (4) an abuse of authority related to the implementation or use of covered funds; or (5) a violation of law, rule, or regulation involving an agency contract or grant related to covered funds.<sup>6</sup>

### **Enforcement**

A person who believes that he or she has been subject to a reprisal prohibited by ARRA's whistleblower provisions may submit a complaint to the appropriate inspector general (IG).<sup>7</sup> Although the IG retains discretion to not investigate complaints, it appears that an inspection will be conducted unless the IG determines that the complaint is frivolous, does not relate to covered funds, or another federal or state judicial or administrative proceeding has been invoked to resolve the complaint.<sup>8</sup> Upon completion of the investigation, the IG will submit findings to the complainant, the employer, the head of the appropriate agency, and the Board. Within 30 days of receiving the findings, the head of the agency concerned will determine whether there is sufficient basis to conclude that the non-federal employer has subjected the complainant to a prohibited reprisal. The agency head will either issue an order denying relief, or take one or more of the following actions: (1) order the employer to take affirmative action to abate the reprisal; (2) order reinstatement with back pay; (3) order the employer to pay an amount equal to the aggregate amount of all costs and expenses that were reasonably incurred by the complainant.<sup>9</sup> Any person adversely affected or aggrieved by an order may obtain review in the U.S. court of appeals for the circuit in which the reprisal is alleged to have occurred.<sup>10</sup>

### **Is there a private right of action?**

Yes. If the head of an agency issues an order denying relief, has not issued an order within 210 days after the submission of a complaint, or the IG decides not to investigate or discontinues an investigation, and there is no showing that the delay or decision is because of the bad faith of the

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<sup>6</sup> P.L. 111-5, § 1553(a), 123 Stat. 297 (2009).

<sup>7</sup> P.L. 111-5, § 1553(b)(1), 123 Stat. 297 (2009).

<sup>8</sup> *Id.*

<sup>9</sup> P.L. 111-5, § 1553(c)(2), 123 Stat. 300 (2009).

<sup>10</sup> P.L. 111-5, § 1553(c)(5), 123 Stat. 300 (2009).

complainant, the complainant may bring a de novo action at law or equity against the employer in the appropriate federal district court.<sup>11</sup>

## **Remedies**

In a de novo action, a prevailing employee may be awarded compensatory damages, as well as reinstatement with back pay and an amount equal to the aggregate amount of all costs and expenses that were reasonably incurred.<sup>12</sup>

## **Years of Adoption and Relevant Amendments**

Adopted 2009.

See P.L. 111-5, §1553, 123 Stat. 297 (2009).

Sponsor: Representative David R. Obey

Cosponsors: 9

House: Conference report agreed to in House. Agreed to by the Yeas and Nays: 246 - 183, 1 Present (Roll no. 70).

Senate: Conference report agreed to in Senate. Senate agreed to conference report by Yea-Nay Vote. 60 - 38. Record Vote Number: 64.

## **Americans with Disabilities Act (ADA)**

### **Coverage**

The ADA prohibits discrimination against any individual because he or she has opposed any act or practice made unlawful by the ADA or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the ADA.<sup>13</sup>

### **Enforcement**

A person alleging discrimination under the ADA's anti-retaliation provisions may file a charge with the Equal Employment Opportunity Commission (EEOC) within 180 days after the alleged unlawful employment practice occurred.<sup>14</sup> Upon receipt of the charge, the EEOC will conduct an

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<sup>11</sup> P.L. 111-5, § 1553(c)(3), 123 Stat. 300 (2009).

<sup>12</sup> *Id.*

<sup>13</sup> 42 U.S.C. § 12203(a).

<sup>14</sup> 42 U.S.C. § 2000e-5(b). If an aggrieved person has initially instituted proceedings with a state or local agency with authority to grant or seek relief, the charge will be filed within 300 days after the alleged unlawful employment practice occurred or within 30 days after receiving notice that the state or local agency has terminated the proceedings, (continued...)

investigation. If the EEOC determines after the investigation that there is not reasonable cause to believe that the charge is true, it will dismiss the charge and notify the claimant and respondent of its action. If reasonable cause is found, the EEOC will attempt to eliminate the alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion.<sup>15</sup> The EEOC will make its determination as promptly as possible and, so far as practicable, no later than 120 days from the filing of the charge or, in specified circumstances, the date upon which the EEOC is authorized to take action with respect to the charge. If the EEOC is unable to secure from the respondent an acceptable conciliation agreement, it may bring a civil action against the respondent, so long as the respondent is not a government, governmental agency, or political subdivision. In cases involving such entities, the EEOC will refer the case to the Attorney General, who may bring a civil action in the appropriate federal district court.<sup>16</sup>

### **Is there a private right of action?**

Yes. If the EEOC dismisses a charge, a civil action is not filed by the EEOC or the Attorney General, or if the EEOC has not entered into a conciliation agreement involving the aggrieved party, such person may file a civil action in any judicial district in the state in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the relevant employment records are maintained or administered, or in the judicial district in which the person would have worked but for the alleged practice.<sup>17</sup> If the respondent is not found in any of these districts, the action may be brought in the judicial district in which the respondent has its principal office.

### **Remedies**

If a court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice, it may enjoin the respondent from engaging in such practice and order such affirmative action as may be appropriate, including reinstatement or any other equitable relief.<sup>18</sup> A reasonable attorney's fee, including litigation expenses and costs, may be awarded.<sup>19</sup>

### **Years of Adoption and Relevant Amendments**

Adopted 1990.

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(...continued)

whichever is earlier.

<sup>15</sup> *Id.*

<sup>16</sup> 42 U.S.C. § 2000e-5(f)(1).

<sup>17</sup> 42 U.S.C. § 2000e-5(f)(3).

<sup>18</sup> 42 U.S.C. § 2000e-5(g)(1).

<sup>19</sup> 42 U.S.C. § 12205.

## **Asbestos Hazard Emergency Response Act (AHERA)**

### **Coverage**

The AHERA prohibits an employer, including a state or local education agency, from discharging or otherwise discriminating against an employee for providing information related to a potential violation of its provisions to any other person, including a state or the federal government.<sup>20</sup>

### **Enforcement**

An employee or representative of employees who believes that he or she has been discharged or otherwise discriminated against in violation of the AHERA's whistleblower provisions may apply to the Secretary of Labor for a review of the termination or alleged discrimination within 90 days after the alleged violation occurs.<sup>21</sup> The review will be conducted in accordance with section 660(c) of Title 29, U.S. Code. Under section 660(c), the Secretary will institute an investigation as he deems appropriate. If the Secretary determines that a violation has occurred, he will bring an action in any appropriate federal district court.

### **Is there a private right of action?**

No.

### **Remedies**

A federal district court that finds a violation of the AHERA may order all appropriate relief including reinstatement with back pay.<sup>22</sup>

### **Years of Adoption and Relevant Amendments**

Adopted 1986.

## **Clean Air Act (CAA)**

### **Coverage**

The CAA prohibits an employer from discharging or otherwise discriminating against any employee because the employee (1) commenced or is about to commence a proceeding under the

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<sup>20</sup> 15 U.S.C. § 2651.

<sup>21</sup> 15 U.S.C. § 2651(b).

<sup>22</sup> 29 U.S.C. § 660(c)(2).

CAA or a proceeding for the administration or enforcement of any requirement imposed by the CAA; (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.<sup>23</sup>

## **Enforcement**

Any employee who believes that he or she has been discharged or otherwise discriminated against in violation of the CAA may, within 30 days after such violation occurs, file a complaint with the Secretary of Labor. Upon receipt of the complaint, the Secretary will conduct an investigation and within 30 days of the receiving the complaint, shall notify the complainant and the alleged violator with the results of the investigation. Within 90 days of receipt of the complaint, the Secretary will issue an order either providing relief or denying the complaint.

Any person adversely affected or aggrieved by an order issued under the CAA's whistleblower provisions may obtain review of the order in the U.S. court of appeals for the circuit in which the violation allegedly occurred. The petition for review must be filed within 60 days from the issuance of the Secretary's order, and the commencement of proceedings shall not, unless ordered by the court, operate as a stay of the Secretary's order.

## **Is there a private right of action?**

No.

## **Remedies**

If the Secretary determines that a violation has occurred, the Secretary will order the person who committed such violation to (1) take affirmative action to abate the violation, and (2) reinstate the complainant to his or her former position with compensation, including back pay, terms, conditions, and privileges of employment. The Secretary may order the payment of compensatory damages to the complainant. If an order is issued, at the request of the complainant, the Secretary will assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses, including attorneys' and expert witness fees, reasonably incurred by the complainant in bringing the complaint.<sup>24</sup>

## **Years of Adoption and Relevant Amendments**

Adopted 1977.

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<sup>23</sup> 42 U.S.C. § 7622(a).

<sup>24</sup> 42 U.S.C. § 7622(b).

## **Commercial Motor Vehicle Safety Act (CMVSA)**

### **Coverage**

The CMVSA prohibits an employer from discharging, disciplining, or discriminating against an employee regarding pay, terms, or privileges of employment because the employee (1) filed a complaint or instituted a proceeding related to a violation of a commercial motor vehicle safety or security regulation, standard, or order, or testified or will testify in such a proceeding; (2) is perceived to have filed or instituted a proceeding related to a violation of a commercial motor vehicle safety or security regulation, standard, or order; (3) refuses to operate a vehicle because the operation violates a regulation, standard, or order related to commercial motor vehicle safety, health, or security, or has a reasonable apprehension of serious injury because of the vehicle's hazardous safety or security condition; (4) has accurately reported hours on duty; (5) has cooperated or is perceived as being about to cooperate with a safety or security investigation by the Secretary of Transportation, the Secretary of Homeland Security, or the National Transportation Security Board; or (6) has furnished or is perceived to have furnished specified information to the Secretary of Transportation, the Secretary of Homeland Security, the National Transportation Security Board, or any federal, state, or local regulatory or law enforcement agency.<sup>25</sup>

### **Enforcement**

An employee alleging discharge, discipline, or discrimination in violation of the CMVSA's anti-retaliation provisions may file a complaint with the Secretary of Labor within 180 days after the alleged violation occurred.<sup>26</sup> Within 60 days of receiving the complaint, the Secretary will conduct an investigation, decide whether it is reasonable to believe the complaint has merit, and notify the complainant and the person alleged to have committed the violation of the findings. If the Secretary determines that it is reasonable to believe that the violation occurred, he will include with the decision findings and a preliminary order that provides for affirmative action to abate the violation, reinstatement, and compensatory damages, including back pay.<sup>27</sup>

The parties may object to the findings or order, and request a hearing within 30 days of the date of notification of the findings. If a hearing is not requested, the preliminary order is final and not subject to judicial review. A hearing will be conducted expeditiously, and not later than 120 days after the end of the hearing, the Secretary will issue a final order.<sup>28</sup> A person adversely affected by the order may file a petition for review in the U.S. court of appeals for the circuit in which the violation occurred or the person resided on the date of the violation. The petition for review must be filed no later than 60 days after the order is issued.<sup>29</sup>

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<sup>25</sup> 49 U.S.C. § 31105(a)(1).

<sup>26</sup> 49 U.S.C. § 31105(b)(1).

<sup>27</sup> 49 U.S.C. § 31105(b)(2)(A).

<sup>28</sup> 49 U.S.C. § 31105(b)(2)(C).

<sup>29</sup> 49 U.S.C. § 31105(d).

## **Is there a private right of action?**

Yes. If the Secretary has not issued a final decision within 210 days after the filing of a complaint and the delay is not because of the employee's bad faith, the employee may bring an original action at law or equity for de novo review in the appropriate federal district court.<sup>30</sup>

## **Remedies**

A prevailing employee is entitled to affirmative action to abate the violation, reinstatement, and compensatory damages, including back pay.<sup>31</sup> Relief may also include punitive damages in an amount not to exceed \$250,000.<sup>32</sup>

## **Years of Adoption and Relevant Amendments**

Adopted 1994.

Amended 2007.

See P.L. 110-53, § 1536, 121 Stat. 464 (2007).

Sponsor: Representative Bennie G. Thompson

Cosponsors: 205

House: Conference report agreed to in House. Agreed to by the Yeas and Nays: 371 - 40 (Roll no. 757).

Senate: Conference report agreed to in Senate. Senate agreed to conference report by Yea-Nay Vote. 85 - 8. Record Vote Number: 284.

## **Comprehensive Environmental Response Compensation and Liability Act (CERCLA)**

### **Coverage**

CERCLA, also known as the "Superfund" Act, prohibits an employer from firing or in any other way discriminating against, or causing to be fired or discriminated against, any employee because he or she (1) provided information to a state or to the federal government; (2) filed, instituted, or

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<sup>30</sup> 49 U.S.C. § 31105(c).

<sup>31</sup> 49 U.S.C. § 31105(b)(3)(A).

<sup>32</sup> 49 U.S.C. § 31105(b)(3)(C).



caused to be filed or instituted any proceeding under CERCLA; or (3) has testified or will testify in a proceeding resulting from the administration or enforcement of CERCLA.<sup>33</sup>

## **Enforcement**

Any employee who believes that he or she has been terminated or otherwise discriminated against by any person in violation of CERCLA's whistleblower provisions may, within 30 days, apply to the Secretary of Labor for a review of the termination or alleged discrimination. Upon receipt of such application, the Secretary will institute an investigation and upon receiving the investigation report, make findings of fact.

If the Secretary finds that a violation occurred, he will issue a decision, incorporating an order that requires the party committing the violation to take such affirmative action to abate the violation as the Secretary deems appropriate, including reinstatement with compensation.<sup>34</sup> If the Secretary finds no violation, he will issue an order denying the application. An order issued by the Secretary is subject to judicial review.<sup>35</sup>

## **Is there a private right of action?**

No.

## **Remedies**

A prevailing employee is entitled to such affirmative action to abate the violation as the Secretary deems appropriate, including reinstatement with compensation.

## **Years of Adoption and Relevant Amendments**

Adopted 1980.

# **Consumer Financial Protection Act (CFPA)**

## **Coverage**

The CFPA prohibits employers engaged in providing consumer financial products or services, and employers that provide a material service in connection with the provision of such products or services, from terminating or in any other way discriminating against a covered employee because the employee has (1) provided, caused to be provided, or is about to provide or cause to be provided, information relating to a violation of the CFPA or any other provision of law that is subject to the jurisdiction of the Bureau of Consumer Financial Protection (Bureau) to the

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<sup>33</sup> 42 U.S.C. § 9610(a).

<sup>34</sup> 42 U.S.C. § 9610(b).

<sup>35</sup> *Id.*

employer, the Bureau, or a state, local, or federal government authority or law enforcement agency; (2) testified or will testify in any proceeding resulting from the administration or enforcement of the CFPA or any other provision of law that is subject to the jurisdiction of the Bureau; (3) filed, instituted, or caused to be filed or instituted any proceeding under any federal consumer financial law; or (4) objected to or refused to participate in any activity that the employee reasonably believed to be in violation of any law subject to the jurisdiction of, or enforceable by, the Bureau.<sup>36</sup>

## **Enforcement**

An employee who believes that he or she has been discharged or otherwise discriminated against in violation of the CFPA's whistleblower provisions may file a complaint with the Secretary of Labor within 180 days of the alleged violation. Within 60 days after receiving the complaint, the Secretary will initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit. The Secretary will notify the complainant and the person alleged to have committed the violation of his determination in writing. If the Secretary concludes that there is reasonable cause to believe that a violation has occurred, he will also issue a preliminary order that provides for affirmative action to abate the violation, reinstatement with back pay, and compensatory damages.<sup>37</sup> Either party may file objections to the Secretary's findings or order and request a hearing within 30 days after receiving his notification. If a hearing is not requested in the 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.<sup>38</sup>

If a hearing is conducted, the Secretary is required to issue a final order providing relief or denying the complaint within 120 days after the date of the hearing's conclusion. Any person adversely affected or aggrieved by a final order may seek review of the order in the U.S. court of appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of such violation.<sup>39</sup> The petition for review must be filed no later than 60 days after the date of the issuance of the final order.

## **Is there a private right of action?**

Yes. If the Secretary does not issue a final order within 210 days after the date of filing the complaint, or within 90 days after the date of receipt of a written determination, the complainant may bring an action at law or equity for de novo review in the appropriate federal district court having jurisdiction.<sup>40</sup>

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<sup>36</sup> 12 U.S.C. § 5567(a). The term "covered employee" is defined to include "any individual performing tasks related to the offering or provision of a consumer financial product or service."

<sup>37</sup> 12 U.S.C. § 5567(c)(2)(B).

<sup>38</sup> 12 U.S.C. § 5567(c)(2)(C).

<sup>39</sup> 12 U.S.C. § 5567(c)(4)(E).

<sup>40</sup> 12 U.S.C. § 5567(c)(4)(D)(i).

## **Remedies**

An employee who prevails in a private action may be awarded all relief necessary to make the employee whole, including injunctive relief and compensatory damages.<sup>41</sup>

## **Years of Adoption and Relevant Amendments**

Adopted 2010.

See P.L. 111-203, § 1057, 124 Stat. 2031 (2010).

Sponsor: Representative Barney Frank

House: Conference report agreed to in House. On agreeing to the conference report Agreed to by the Yeas and Nays: 237 - 192 (Roll no. 413).

Senate: Conference report agreed to in Senate. Senate agreed to conference report by Yea-Nay Vote. 60 - 39. Record Vote Number: 208.

## **Consumer Product Safety Act (CPSA)**

### **Coverage**

The CPSA prohibits a manufacturer, private labeler, distributor, or retailer from discharging or otherwise discriminating against an employee because he or she (1) provided, caused to be provided, or is about to provide or cause to be provided information related to a violation of the CPSA, any law enforced by the Consumer Product Safety Commission (CPSC), or any related order, rule, regulation, standard, or ban, to the individual's employer, the federal government, or state attorney general; (2) testified or is about to testify in a proceeding concerning a violation of the CPSA; (3) assisted or participated, or is about to assist or participate, in a proceeding concerning a violation of the CPSA; or (4) refused to participate in any activity, policy, or practice that the individual reasonably believed to be in violation of the CPSA, any law enforced by the CPSC, or any related order, rule, regulation, standard, or ban.<sup>42</sup>

### **Enforcement**

A person who believes that he or she was discharged or otherwise discriminated against in violation of the CPSA's whistleblower provisions may file a complaint with the Secretary of Labor no later than 180 days after the date on which the violation occurs.<sup>43</sup> Within 60 days of receiving the complaint, the Secretary will initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit. If reasonable cause is found, the

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<sup>41</sup> 12 U.S.C. § 5567(c)(4)(D)(ii).

<sup>42</sup> 15 U.S.C. § 2087(a).

<sup>43</sup> 15 U.S.C. § 2087(b)(1).

Secretary will issue findings and a preliminary order that provides for affirmative action to abate the violation, reinstatement with back pay, and the payment of compensatory damages to the complainant.<sup>44</sup> The parties may object to the findings or order, and request a hearing within 30 days of the date of notification of the findings. If a hearing is not requested within the 30-day period, the preliminary order will be deemed a final order that is not subject to judicial review.<sup>45</sup> If a hearing is requested, the Secretary will issue a final order no later than 120 days after the date of the hearing.

## **Is there a private right of action?**

Yes. A person may bring an action at law or equity for de novo review in the appropriate federal district court with jurisdiction within 90 days after receiving a written determination, or if the Secretary has not issued a final decision within 210 days after the filing of the complaint.<sup>46</sup>

## **Remedies**

An employee who prevails in a private action may be awarded all relief necessary to make the employee whole, including injunctive relief and compensatory damages.<sup>47</sup>

## **Years of Adoption and Relevant Amendments**

Adopted 2008.

See P.L. 110-314, § 219(a), 122 Stat. 3062 (2008).

Sponsor: Representative Bobby L. Rush

Cosponsors: 106

House: Conference report agreed to in House. On motion to suspend the rules and agree to the conference report Agreed to by the Yeas and Nays: (2/3 required): 424 - 1 (Roll no. 543).

Senate: Conference report agreed to in Senate. Senate agreed to conference report by Yea-Nay Vote. 89 - 3. Record Vote Number: 193.

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<sup>44</sup> 15 U.S.C. § 2087(b)(3)(B).

<sup>45</sup> 15 U.S.C. § 2087(2)(A).

<sup>46</sup> 15 U.S.C. § 2087(b)(4).

<sup>47</sup> *Id.*

# Department of Defense Authorization Act of 1987

## Coverage

The Department of Defense Authorization Act of 1987 prohibits defense contractors and subcontractors from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing to a Member of Congress, an Inspector General (IG), and other specified entities evidence of gross mismanagement or a substantial and specific danger to public health or safety.<sup>48</sup>

## Enforcement

Any person who believes that he or she has been subject to a prohibited reprisal may submit a complaint to the IG, who is required to investigate the complaint unless the IG determines that the complaint is frivolous, fails to allege a violation, or has previously been addressed in another federal or state judicial or administrative proceeding. A complaint may not be brought more than three years after the date on which the alleged reprisal occurred.<sup>49</sup> Upon completion of the investigation, the IG will submit a report of the findings of the investigation to the individual, relevant contractor, and the head of the agency.<sup>50</sup>

If the agency head determines that a contractor has subjected a person to a prohibited reprisal, the agency head may take one or more of the following actions: (1) order the contractor to abate the reprisal; (2) order the contractor to reinstate the person to the position that the person held before the reprisal, together with compensatory damages, employment benefits, and other applicable terms and conditions of employment; (3) order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses, including attorneys' and expert witnesses' fees, that were reasonably incurred by the complainant.<sup>51</sup> Any person adversely affected or aggrieved by an order may obtain review in the U.S. court of appeals for the circuit in which the reprisal occurred.<sup>52</sup>

## Is there a private right of action?

Yes. If the head of an executive agency issues an order denying relief, or does not issue an order within 210 days after the submission of a complaint and the delay is not the result of the complainant's bad faith, the complainant may bring a de novo action at law or equity against the contractor in the appropriate federal district court.<sup>53</sup> An action may not be brought more than two years after the date on which remedies are deemed to be exhausted.

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<sup>48</sup> 10 U.S.C. § 2409(a).

<sup>49</sup> 10 U.S.C. § 2409(b)(4).

<sup>50</sup> 10 U.S.C. § 2409(b)(1).

<sup>51</sup> 10 U.S.C. § 2409(c)(1).

<sup>52</sup> 10 U.S.C. § 2409(c)(3).

<sup>53</sup> 10 U.S.C. § 2409(c)(2).

## **Remedies**

An employee who prevails in a private action may be awarded compensatory damages and other relief available under the whistleblower provisions of the Department of Defense Authorization Act of 1987.<sup>54</sup>

## **Years of Adoption and Relevant Amendments**

Adopted 1986.

Amended 2013.

See P.L. 112-239, § 827(a)-(f), 126 Stat. 1833 (2013).

Sponsor: Representative Howard P. McKeon

Cosponsors: 1

House: Conference report agreed to in House. On agreeing to the conference report Agreed to by the Yeas and Nays: 315 - 107 (Roll no. 645).

Senate: Conference report agreed to in Senate. Senate agreed to conference report by Yea-Nay Vote. 81 - 14. Record Vote Number: 229.

## **Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)**

### **Coverage**

The Dodd-Frank Act established several new whistleblower protections for individuals employed in the financial services industry. Section 748 of the Dodd-Frank Act, for example, amended the Commodity Exchange Act (CEA) to add a new section 23 that prohibits employers from discharging or otherwise discriminating against an individual for providing information related to a violation of the CEA to the Commodity Futures Trading Commission (CFTC) or for assisting in any investigation or judicial or administrative action of the CFTC based upon or related to such information.<sup>55</sup>

Section 922 of the Dodd-Frank Act amended the Securities Exchange Act of 1934 (SEA) to add a new section 21F that prohibits employers from discharging or otherwise discriminating against an individual for (1) providing information related to a violation of the securities laws to the Securities and Exchange Commission (SEC); (2) initiating, testifying in, or assisting in any investigation or judicial or administrative action of the SEC based upon or related to such

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<sup>54</sup> *Id.*

<sup>55</sup> 7 U.S.C. § 26.

information; or (3) making disclosures that are required by SOX, the SEA, or any other law subject to the SEC's jurisdiction.<sup>56</sup>

Section 1057 of the Dodd-Frank Act prohibits employers engaged in providing consumer financial products or services, and employers that provide a material service in connection with the provision of such products or services, from terminating or in any other way discriminating against a covered employee because the employee has (1) provided, caused to be provided, or is about to provide or cause to be provided, information relating to a violation of Title X of the Dodd-Frank Act or any other provision of law that is subject to the jurisdiction of the Bureau of Consumer Financial Protection (Bureau) to the employer, the Bureau, or a state, local, or federal government authority or law enforcement agency; (2) testified or will testify in any proceeding resulting from the administration or enforcement of Title X of the Dodd-Frank Act or any other provision of law that is subject to the jurisdiction of the Bureau; (3) filed, instituted, or caused to be filed or instituted any proceeding under any federal consumer financial law; or (4) objected to or refused to participate in any activity that the employee reasonably believed to be in violation of any law subject to the jurisdiction of, or enforceable by, the Bureau.<sup>57</sup>

## **Enforcement**

An individual who alleges a termination or other discrimination in violation of section 23 of the CEA may bring an action in the appropriate district court of the United States.<sup>58</sup> If the individual is a federal employee, he or she must bring the action in accordance with section 1221 of title 5, U.S. Code. An action may not be brought more than two years after the date on which the violation is committed.

An individual who alleges a termination or other discrimination in violation of section 21F of the SEA may bring an action in the appropriate district court of the United States.<sup>59</sup> An action may not be brought more than six years after the date on which the violation occurred or more than three years after the date when facts material to the right of action are known or reasonably should have been known by the complainant.<sup>60</sup>

An employee who believes that he or she has been discharged or otherwise discriminated against in violation of the section 1057 whistleblower provisions may file a complaint with the Secretary of Labor within 180 days of the alleged violation.<sup>61</sup> Within 60 days after receiving the complaint, the Secretary will initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit. The Secretary will notify the complainant and the person alleged to have committed the violation of her determination in writing. If the Secretary concludes that there is reasonable cause to believe that a violation has occurred, she will also issue a preliminary order that provides affirmative action to abate the violation, reinstatement with back pay, and compensatory damages.<sup>62</sup>

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<sup>56</sup> 15 U.S.C. § 78u-6(h)(1)(A).

<sup>57</sup> 12 U.S.C. § 5567(a).

<sup>58</sup> 7 U.S.C. § 26(h)(1)(B).

<sup>59</sup> 15 U.S.C. § 78u-6(h)(1)(B)(i).

<sup>60</sup> 15 U.S.C. § 78u-6(h)(1)(B)(iii).

<sup>61</sup> 12 U.S.C. § 5567(c)(1)(A).

<sup>62</sup> 12 U.S.C. § 5567(c)(2)(B).

Either party may file objections to the Secretary's findings or order and request a hearing within 30 days after receiving her notification. If a hearing is not requested in the 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.<sup>63</sup> Any person adversely affected or aggrieved by a final order may seek review of the order in the U.S. court of appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of such violation.<sup>64</sup> A petition for review must be filed no later than 60 days after the date of the issuance of the final order.

## **Is there a private right of action?**

Yes. Under section 23 of the CEA and section 21F of the SEA, an individual may bring an action in the appropriate district court of the United States. Under section 1057 of the Dodd-Frank Act, the complainant may bring an action at law or equity for de novo review in the appropriate federal district court having jurisdiction if the Secretary has not issued a final order within 210 days after the date the complaint was filed, or within 90 days after the date of receipt of a written determination.<sup>65</sup>

## **Remedies**

An individual who prevails in an action under section 23 of the CEA is entitled to reinstatement, back pay with interest, and compensation for any special damages sustained as result of the discharge or discrimination, including litigation costs and reasonable attorney's fees.<sup>66</sup>

An individual who prevails in an action under section 21F of the SEA is entitled to reinstatement, two times the amount of back pay otherwise owed to the individual, including interest, and compensation for litigation costs, expert witness fees, and reasonable attorneys' fees.<sup>67</sup>

An individual who prevails in a private action under section 1057 of the Dodd-Frank Act may be awarded all relief necessary to make the person whole, including injunctive relief and compensatory damages.<sup>68</sup>

## **Years of Adoption and Relevant Amendments**

Adopted 2010.

See P.L. 111-203, §§ 748, 922, 1057, 124 Stat. 1376 (2010).

Sponsor: Representative Barney Frank

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<sup>63</sup> 12 U.S.C. § 5567(c)(2)(C).

<sup>64</sup> 12 U.S.C. § 5567(c)(3)(E).

<sup>65</sup> 12 U.S.C. § 5567(c)(4)(D)(i).

<sup>66</sup> 7 U.S.C. § 26(h)(1)(C).

<sup>67</sup> 15 U.S.C. § 78u-6(h)(1)(C).

<sup>68</sup> 12 U.S.C. § 5567(c)(4)(D)(ii).



House: Conference report agreed to in House. On agreeing to the conference report Agreed to by the Yeas and Nays: 237 - 192 (Roll no. 413).

Senate: Conference report agreed to in Senate. Senate agreed to conference report by Yea-Nay Vote. 60 – 39. Record Vote Number: 208.

## **Employee Polygraph Protection Act (EPPA)**

### **Coverage**

The EPPA prohibits an employer from discharging or otherwise discriminating against an employee or prospective employee because such individual (1) has filed a complaint, or instituted or caused to be instituted any proceeding under or related to the EPPA; (2) has testified or is about to testify in any such proceeding; or (3) has exercised any right afforded by the EPPA.<sup>69</sup>

### **Enforcement**

The Secretary of Labor may bring an action to restrain violations of the EPPA.<sup>70</sup>

### **Is there a private right of action?**

Yes. An aggrieved employee or prospective employee may bring an action in any federal or state court of competent jurisdiction no later than three years after the date of the alleged violation.<sup>71</sup>

### **Remedies**

An employer that violates the EPPA's anti-retaliation provisions will be liable for such legal or equitable relief as may be appropriate, including reinstatement and the payment of lost wages and benefits.<sup>72</sup>

### **Years of Adoption and Relevant Amendments**

Adopted 1988.

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<sup>69</sup> 29 U.S.C. § 2002(4).

<sup>70</sup> 29 U.S.C. § 2005(b).

<sup>71</sup> 29 U.S.C. § 2005(c)(2).

<sup>72</sup> 29 U.S.C. § 2005(c)(1).

# **Employee Retirement Income Security Act (ERISA)**

## **Coverage**

ERISA prohibits any person from discharging, fining, suspending, expelling, disciplining, or discriminating against a participant or beneficiary for (1) exercising any right to which he or she is entitled under the provisions of an employee benefit plan, section 1201 of title 29, U.S. Code, or the Welfare and Pension Plans Disclosure Act; or (2) giving information, testifying, or being about to testify in any inquiry or proceeding related to ERISA or the Welfare and Pension Plans Disclosure Act.<sup>73</sup> In the case of a multiemployer plan, it is unlawful for the plan sponsor or any other person to discriminate against any contributing employer for exercising rights under ERISA or for giving information or testifying in any inquiry or proceeding before Congress related to ERISA.<sup>74</sup>

## **Enforcement**

A civil action may be brought by the Secretary of Labor to enjoin any act or practice which violates ERISA's anti-retaliation provisions, or to obtain other appropriate equitable relief to redress the violation or enforce ERISA's anti-retaliation provisions.<sup>75</sup> The federal district courts have exclusive jurisdiction for these actions.

## **Is there a private right of action?**

Yes. A civil action may be brought by a participant or beneficiary to enjoin any act or practice which violates ERISA's anti-retaliation provisions, or to obtain other appropriate equitable relief to redress the violation or enforce ERISA's anti-retaliation provisions.<sup>76</sup> The federal district courts have exclusive jurisdiction for these actions.

## **Remedies**

If a court concludes that a violation of ERISA's anti-retaliation provisions has occurred, it may enjoin the offending act or practice, or order other appropriate equitable relief to redress the violation or enforce ERISA's anti-retaliation provisions. A court, in its discretion, may allow a reasonable attorney's fee and costs of action.<sup>77</sup>

## **Years of Adoption and Relevant Amendments**

Adopted 1974.

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<sup>73</sup> 29 U.S.C. § 1140.

<sup>74</sup> *Id.*

<sup>75</sup> 29 U.S.C. § 1132(a)(5).

<sup>76</sup> 29 U.S.C. § 1132(a)(3).

<sup>77</sup> 29 U.S.C. § 1132(g)(1).

Amended 2006.

See P.L. 109-280, § 205, 120 Stat. 889 (2006).

Sponsor: Representative John Boehner

Cosponsors: 4

House: Passed by recorded vote: 279 - 131, 1 Present (Roll no. 422).

Senate: Passed without amendment by Yea-Nay Vote. 93 - 5. Record Vote Number: 230.

## **Energy Reorganization Act of 1974 (ERA)**

### **Coverage**

The ERA prohibits an employer from discharging or otherwise discriminating against any employee who (1) notified his or her employer of an alleged violation of the ERA or the Atomic Energy Act of 1954 (AEA); (2) refused to engage in any unlawful practice under the ERA or AEA, if the employee identified the alleged illegality to the employer; (3) testified before Congress or at any federal or state proceeding regarding any provision of the ERA or AEA; (4) commenced a proceeding under the ERA or AEA; (5) testified or is about to testify in any such proceeding; or (6) assisted or participated or is about to assist or participate in a proceeding to carry out the purposes of the ERA or AEA.<sup>78</sup>

### **Enforcement**

Any employee who believes that he or she has been discharged or otherwise discriminated against in violation of the ERA's whistleblower provisions may, within 180 days after such violation occurs, file a complaint with the Secretary of Labor alleging such discharge or discrimination.<sup>79</sup> Upon receipt of a complaint, the Secretary will complete an investigation within 30 days. Within 90 days of receiving the complaint, the Secretary will, unless the proceeding is terminated due to a settlement, issue an order either denying the complaint or providing for affirmative action to abate the violation and reinstatement with back pay.<sup>80</sup> If the Secretary determines that a violation has occurred, he will issue a final order. Any person adversely affected or aggrieved by an order may obtain review in the U.S. Court of appeals for the circuit in which the violation allegedly occurred.<sup>81</sup> A petition for review must be filed within 60 days from the issuance of the order.

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<sup>78</sup> 42 U.S.C. § 5851(a)(1).

<sup>79</sup> 42 U.S.C. § 5851(b)(1).

<sup>80</sup> 42 U.S.C. § 5851(b)(2)(A).

<sup>81</sup> 42 U.S.C. § 5851(c)(1).

## **Is there a private right of action?**

Yes. If the Secretary has not issued a final decision within one year after the filing of a complaint and there is no showing that the delay is because of the complainant's bad faith, the complainant may bring an action at law or equity for de novo review in the appropriate federal district court.<sup>82</sup>

## **Remedies**

A prevailing employee is entitled to affirmative action to abate the violation and reinstatement with back pay. Compensatory damages may also be awarded.

## **Years of Adoption and Relevant Amendments**

Adopted 1974.

Amended 2005.

See P.L. 109-58, § 629, 119 Stat. 785 (2005).

Sponsor: Representative Joe Barton

Cosponsors: 2

House: Conference report agreed to in House. On agreeing to the conference report Agreed to by the Yeas and Nays: 275 - 156 (Roll no. 445).

Senate: Conference report agreed to in Senate. Senate agreed to conference report by Yea-Nay Vote. 74 - 26. Record Vote Number: 213.

## **Fair Labor Standards Act (FLSA)**

### **Coverage**

The FLSA prohibits an employer from discharging or otherwise discriminating against an employee because such employee filed a complaint or instituted any proceeding under the statute, testified or is about to testify in any such proceeding, or served or is about to serve on an industry committee.<sup>83</sup>

### **Enforcement**

An action may be maintained against any employer, including a public agency, in any federal or state court of competent jurisdiction by any one or more employees. An employee loses his or her

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<sup>82</sup> 42 U.S.C. § 5851(b)(4).

<sup>83</sup> 29 U.S.C. § 215(a)(3).

right to file a complaint under the FLSA's anti-retaliation provisions once the Secretary of Labor files a complaint against the employer.<sup>84</sup>

## **Is there a private right of action?**

Yes.

## **Remedies**

Employers who willfully violate the FLSA's anti-retaliation provisions may be fined up to \$10,000 and imprisoned up to six months. Employers who retaliate against employees in violation of this provision shall be liable for legal and equitable relief, including, without limitation, reinstatement, the payment of lost wages, and an additional equal amount as liquidated damages.

The court will, in addition to any judgment awarded, allow reasonable attorneys' fees to be paid to the plaintiff, as well as the costs of the action.

## **Years of Adoption and Relevant Amendments**

Adopted 1938.

## **Family and Medical Leave Act (FMLA)**

### **Coverage**

The FMLA prohibits an employer from discharging or otherwise discriminating against any individual because he or she (1) has opposed any practice made unlawful by the FMLA; (2) has filed a charge, or instituted or caused to be instituted any proceeding under or related to the FMLA; (3) has given or is about to give any information in connection with any inquiry or proceeding related to any right provided under the FMLA; or (4) has testified or is about to testify in any inquiry or proceeding related to any right provided under the FMLA.<sup>85</sup>

### **Enforcement**

The Secretary of Labor will receive, investigate, and attempt to resolve complaints that allege violations of the FMLA's anti-retaliation provisions, and may bring an action in any court of competent jurisdiction.<sup>86</sup>

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<sup>84</sup> 29 U.S.C. § 216(b).

<sup>85</sup> 29 U.S.C. § 2615.

<sup>86</sup> 29 U.S.C. § 2617(b).

## **Is there a private right of action?**

Yes. An aggrieved employee may bring an action to recover damages or obtain equitable relief in any federal or state court of competent jurisdiction.<sup>87</sup> In cases other than those involving a willful violation, an action must be brought within two years of the date of the last event constituting the alleged violation.<sup>88</sup> In cases involving a willful violation, an action must be brought within three years of the date of the last event constituting the alleged violation.<sup>89</sup>

## **Remedies**

An employer that violates the FMLA's anti-retaliation provisions will be liable for damages equal to the following: (1) the amount of any wages, salary, benefits, or other compensation lost because of the violation, or, if there has been no such loss, the amount of any actual monetary losses sustained as a direct result of the violation, such as the cost of providing care, up to a sum equal to 12 weeks of wages or salary; (2) the interest on the aforementioned amount; and (3) an additional amount as liquidated damages.<sup>90</sup> The employer will also be liable for such equitable relief as may be appropriate, including reinstatement.

## **Years of Adoption and Relevant Amendments**

Adopted 1993.

## **FBI Employee Whistleblower Protections**

### **Coverage**

Applicants and employees of the Federal Bureau of Investigation (FBI) are protected from retaliatory personnel actions taken because the employee disclosed information to the Attorney General that the employee reasonably believes evidences a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.<sup>91</sup>

### **Enforcement**

According to regulations promulgated under the statute, an FBI employee who believes that a retaliatory personnel action has been taken may report the alleged reprisal to the FBI's Investigative Offices. Within 15 calendar days of receipt, the office conducting the investigation (Conducting Office) shall provide written notice of receipt of the allegation to the person who made it (the complainant) and shall conduct an investigation to determine whether there are

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<sup>87</sup> 29 U.S.C. § 2617(a)(2).

<sup>88</sup> 29 U.S.C. § 2617(c)(1).

<sup>89</sup> 29 U.S.C. § 2617(c)(2).

<sup>90</sup> 29 U.S.C. § 2617(a)(1).

<sup>91</sup> 5 U.S.C. § 2303(a).

reasonable grounds to believe that a reprisal has been or will be taken. Within 90 days of providing such notice to the complainant, and at least every 60 calendar days thereafter, the Conducting Office shall notify the complainant of the status of the investigation. Within 240 days of receiving the allegation, the office will determine whether there are reasonable grounds to believe that a retaliatory personnel action has been or will be taken, unless the complainant agrees to an extension.<sup>92</sup>

## **Is there a private right of action?**

No.

## **Remedies**

If the Conducting Office determines there are reasonable grounds to believe that a reprisal has been taken, it will report this to the Director of the Office of Attorney Recruitment and Management, Department of Justice (Director) along with recommendations for corrective action. The Conducting Office may request the Director to order a stay of any personnel action for 45 calendar days, which may be extended.

Within 60 days of being notified that an investigation has ended—or at any time after 120 days from the date that the complainant first reported the alleged reprisal, if the complainant has not been notified by the Conducting Office that it will seek corrective action—the complainant may request corrective action directly to the Director. In such cases, the complainant may request the Director to order a stay of any personnel action allegedly taken or to be taken in reprisal for a protected disclosure.

Based upon all the evidence,<sup>93</sup> the Director will determine whether a protected disclosure was a contributing factor in a personnel action. If the Director makes such a determination, the Director will order corrective action unless the FBI demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of the disclosure. Corrective action may include placing the complainant, as nearly as possible, in the position he would have been in had the reprisal not taken place; reimbursement for attorney's fees, reasonable costs, medical costs incurred, and travel expenses; back pay and related benefits; and any other reasonable and foreseeable consequential damages.<sup>94</sup>

## **Years of Adoption and Relevant Amendments**

Adopted 1978.

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<sup>92</sup> 28 C.F.R. § 27.3.

<sup>93</sup> The Director may conclude that the disclosure was a contributing factor in the personnel action based upon circumstantial evidence, such as evidence that the employee taking the personnel action knew of the disclosure and that the personnel action occurred within a period of time such that a reasonable person could conclude that the disclosure was a contributing factor in the personnel action. 28 C.F.R. § 27.4(e).

<sup>94</sup> 28 C.F.R. § 27.4.

## **FDA Food Safety Modernization Act (FDA Modernization Act)**

### **Coverage**

The FDA Modernization Act amended the Federal Food, Drug, and Cosmetic Act to prohibit an entity engaged in the manufacture, processing, packing, transporting, distribution, reception, holding, or importation of food from discharging or otherwise discriminating against an employee with respect to the individual's compensation, terms, conditions, or privileges of employment because the employee (1) provided, caused to be provided, or is about to provide or cause to be provided information relating to a violation of the Federal Food, Drug, and Cosmetic Act to the employer, the federal government, or the attorney general of a state; (2) testified or is about to testify in a proceeding concerning the violation; (3) assisted or participated or is about to assist or participate in a proceeding concerning the violation; or (4) objected to, or refused to participate in any activity that the employee believed to be in violation of the Federal Food, Drug, and Cosmetic Act.<sup>95</sup>

### **Enforcement**

An individual who believes that he or she has been discharged or otherwise discriminated against in violation of the relevant whistleblower provisions may file a complaint with the Secretary of Labor within 180 days after the date on which the violation occurs.<sup>96</sup> Within 60 days of receiving the complaint, the Secretary will initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit. If the Secretary determines that reasonable cause exists, he will accompany his findings with a preliminary order that requires the person who committed the violation to take affirmative action to abate the violation, to reinstate the complainant with back pay, and to provide compensatory damages. The person alleged to have committed the violation or the complainant may file objections to the findings or the order and request a hearing. A final order must be issued by the Secretary within 120 days after the date of the hearing's conclusion. Any person adversely affected or aggrieved by a final order may obtain review in the U.S. court of appeals for the circuit in which the violation occurred or the circuit in which the complainant resided on the date of the violation.<sup>97</sup> A petition for review must be filed no later than 60 days after the date of the issuance of the final order.

### **Is there a private right of action?**

Yes. If the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination, the complainant may bring an action at law or equity for de novo review in the appropriate federal district court having jurisdiction.<sup>98</sup>

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<sup>95</sup> 21 U.S.C. § 399d(a).

<sup>96</sup> 21 U.S.C. § 399d(b)(1).

<sup>97</sup> 21 U.S.C. § 399d(b)(5)(A).

<sup>98</sup> 21 U.S.C. § 399d(b)(4)(A).



## **Remedies**

An employee who prevails in a private action may be awarded all relief necessary to make the individual whole, including injunctive relief and compensatory damages.<sup>99</sup>

## **Years of Adoption and Relevant Amendments**

Adopted 2011.

See P.L. 111-353, § 402, 124 Stat. 3968 (2011).

Sponsor: Representative Betty Sutton

Cosponsors: 59

House: Resolving differences - On motion that the House agree to the Senate amendments Agreed to by the Yeas and Nays: 215 - 144 (Roll no. 661).

Senate: Passed Senate with an amendment and an amendment to the Title by Voice Vote.

## **Federal Mine Safety and Health Act (FMSHA)**

### **Coverage**

The FMSHA prohibits an employer from discharging an employee or applicant for employment because the individual (1) filed or made a complaint under or related to the FMSHA; (2) is the subject of medical evaluations and potential transfer; (3) instituted or testified in any proceeding under or related to the FMSHA; or (4) exercised any statutory right afforded by the FMSHA.<sup>100</sup>

### **Enforcement**

Employees and applicants who believe that they have been discharged, interfered with, or otherwise discriminated against in violation of this prohibition may file a complaint with the Secretary of Labor within 60 days after the alleged violation. Upon receipt of the complaint, the Secretary will forward a copy to the respondent and within 15 days of receiving the complaint, the Secretary will institute an investigation as he deems appropriate. If the Secretary determines that the complaint was not brought frivolously, the Federal Mine Safety and Health Review Commission (Commission) will order the immediate reinstatement of the miner pending a final order. If the Secretary determines that the FMSHA's whistleblower provisions have been violated, he will immediately file a complaint with the Commission, with service upon the alleged violator and miner, proposing an order granting appropriate relief. The Commission shall afford an

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<sup>99</sup> 21 U.S.C. § 399d(b)(4)(B).

<sup>100</sup> 30 U.S.C. § 815(c)(1).

opportunity for a hearing and shall issue an order affirming, modifying, or vacating the Secretary's proposed order, or directing other appropriate relief.<sup>101</sup>

## **Is there a private right of action?**

Yes. Within 90 days of receiving a complaint, the Secretary will notify the miner about whether a violation occurred. If the Secretary determines that the FMSHA's whistleblower provisions were not violated, the complainant will have the right, within 30 days of notice of the Secretary's determination, to file an action in his or her own behalf before the Commission. The Commission shall afford an opportunity for a hearing and shall issue an order, granting such relief as it deems appropriate. Whenever an order is issued sustaining a complainant's charges, a sum equal to the aggregate amount of all costs and expenses, including attorneys' fees, will be assessed against the person who committed the violation. Any person adversely affected by such an order may obtain review in any U.S. court of appeals for the circuit in which the violation is alleged to have occurred or in the U.S. Court of Appeals for the D.C. Circuit.<sup>102</sup>

## **Remedies**

The Commission may require a person committing a violation to abate the violation as the Commission deems appropriate, including reinstatement with back pay and interest. When the Commission issues an order that sustains a complainant's charges, a sum equal to the aggregate amount of all costs and expenses, including attorneys' fees, will be assessed against the person who committed the violation.

## **Years of Adoption and Relevant Amendments**

Adopted 1969.

Amended 1977, 1984.

## **Federal Railroad Safety Act (FRSA)**

### **Coverage**

The FRSA prohibits a railroad carrier engaged in interstate or foreign commerce, a contractor or subcontractor of such a carrier, or an officer or employee of such a carrier, from discharging or otherwise discriminating against an employee because he or she (1) provides or is about to provide information, or otherwise directly assists in an investigation regarding conduct that the individual believes is a violation of a federal law, rule, or regulation relating to railroad safety or security, or constitutes gross fraud, waste, or abuse of a federal grant or other public funds intended to be used for railroad safety or security, if the information or assistance is provided to specified government entities or a person with supervisory authority over the employee; (2)

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<sup>101</sup> 30 U.S.C. § 815(c)(2).

<sup>102</sup> 30 U.S.C. § 816.

refuses to violate or assist in the violation a federal law, rule, or regulation related to railroad safety or security; (3) files a complaint, causes a proceeding to enforce the FRSA or railroad safety or security, or testifies in that proceeding; (4) notifies or attempts to notify the railroad carrier or the Secretary of Transportation of a work-related personal injury or work-related illness of an employee; (5) cooperates with a safety or security investigation by the Secretary of Transportation, the Secretary of Homeland Security, or the National Transportation Safety Board; (6) furnishes information to specified entities related to an railroad accident or incident resulting in injury or death to an individual or damage to property; or (7) accurately reports hours on duty pursuant to the Hours of Service Act.<sup>103</sup>

In addition, a railroad carrier engaged in interstate or foreign commerce, or an officer or employee of such a carrier, may not discharge or otherwise discriminate against an employee for (1) reporting, in good faith, a hazardous safety or security condition; (2) refusing to work when confronted by a hazardous safety or security issue, if certain conditions exist; or (3) refusing to authorize the use of safety-related equipment, track, or structures, if the employee is responsible for the inspection or repair of such items and believes that they are in a hazardous safety or security state.<sup>104</sup>

## **Enforcement**

A person who believes that he or she has been discharged or otherwise discriminated against in violation of the FRSA's whistleblower provisions may file a complaint with the Secretary of Labor no later than 180 days after the date on which the violation occurs.<sup>105</sup> Within 60 days of receiving the complaint, the Secretary of Labor will conduct an investigation and determine whether there is reasonable cause to believe that the case has merit. If reasonable cause is found, the Secretary will issue findings and a preliminary order that provides for affirmative action to abate the violation, reinstatement with back pay, and the payment of compensatory damages to the complainant.<sup>106</sup> The parties may object to the findings or order, and request a hearing within 30 days of the date of notification of the findings. If a hearing is not requested within the 30-day period, the preliminary order will be deemed a final order that is not subject to judicial review. If a hearing is requested, the Secretary will issue a final order no later than 120 days after the date of the hearing.<sup>107</sup> Any person adversely affected or aggrieved by the Secretary's final order may obtain review of the order in the U.S. 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.<sup>108</sup>

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<sup>103</sup> 49 U.S.C. § 20109(a).

<sup>104</sup> 49 U.S.C. § 20109(b).

<sup>105</sup> 49 U.S.C. § 42121(b). The Federal Railroad Safety Act indicates that whistleblower claims will be governed by the rules and procedures established by 49 U.S.C. § 42121(b). *But see* 49 U.S.C. § 20109(d)(2)(A)(ii) (prescribing a 180 day filing period rather than 90 days).

<sup>106</sup> 49 U.S.C. § 42121(b)(2).

<sup>107</sup> 49 U.S.C. § 42121(b)(3).

<sup>108</sup> 49 U.S.C. § 20109(d)(4).

## **Is there a private right of action?**

Yes. If the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint and if the delay is not because of the employee's bad faith, the employee may bring an original action at law or equity for de novo review in the appropriate federal district court.<sup>109</sup>

## **Remedies**

A prevailing employee is entitled to all relief necessary to make the employee whole, including reinstatement with back pay and compensatory damages.<sup>110</sup> Punitive damages in an amount not to exceed \$250,000 may also be awarded.<sup>111</sup>

## **Years of Adoption and Relevant Amendments**

Adopted 1994.

Amended 2007.

See P.L. 110-53, § 1521, 121 Stat. 444 (2007).

Sponsor: Representative Bennie G. Thompson

Cosponsors: 205

House: Conference report agreed to in House. On agreeing to the conference report Agreed to by the Yeas and Nays: 371 - 40 (Roll no. 757).

Senate: Conference report agreed to in Senate. Senate agreed to conference report by Yea-Nay Vote. 85 - 8. Record Vote Number: 284.

## **Federal Water Pollution Control Act (Clean Water Act)**

### **Coverage**

The Clean Water Act prohibits an employer from firing or otherwise discriminating against an employee, or causing such firing or discrimination, because the employee has filed, instituted, or caused to be filed or instituted any proceeding under the Clean Water Act, or has testified or is

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<sup>109</sup> 49 U.S.C. § 20109(d)(3).

<sup>110</sup> 49 U.S.C. § 20109(e).

<sup>111</sup> 49 U.S.C. § 20109(e)(3).

about to testify in any proceeding resulting from the administration or enforcement of the Clean Water Act.<sup>112</sup>

## **Enforcement**

Any employee who believes that he or she has been fired or discriminated against in violation of the Clean Water Act's anti-retaliation provisions may, within 30 days after such alleged violation occurs, apply to the Secretary of Labor for a review. Upon receipt of such application, the Secretary will institute an investigation as he or she deems appropriate. Upon receiving the report of such investigation, the Secretary will make findings of fact; if he finds that such violation did occur, the Secretary will issue a decision, incorporating an order and findings, requiring the party committing such violation to take such affirmative action to abate the violation, including the rehiring or reinstatement of the employee with compensation. If the Secretary finds that there was no such violation, she will issue an order denying the application; such order shall be subject to judicial review in the same manner as orders and decisions are subject to judicial review under the Clean Water Act. Whenever an order is issued, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses, including attorneys' fees, determined to have been reasonably incurred by the applicant, will be assessed against the person committing the violation.<sup>113</sup>

## **Is there a private right of action?**

No.

## **Remedies**

A prevailing employee is entitled to such affirmative action to abate the violation as the Secretary deems appropriate, including rehiring or reinstatement with compensation. When an order is issued, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses, including attorneys' fees, determined to have been reasonably incurred, will be assessed against the person committing the violation.

## **Years of Adoption and Relevant Amendments**

Adopted 1972.

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<sup>112</sup> 33 U.S.C. § 1367(a).

<sup>113</sup> 33 U.S.C. § 1367(c).

## **International Safe Container Act (ISCA)**

### **Coverage**

The ISCA prohibits a person from discharging or discriminating against an employee because the employee has reported the existence of an unsafe container, a violation of the ISCA, or a regulation prescribed under the ISCA.<sup>114</sup>

### **Enforcement**

An employee who believes that he or she has been discharged or discriminated against in violation of the ISCA's whistleblower provisions may file a complaint with the Secretary of Labor within 60 days of the violation.<sup>115</sup> The Secretary may investigate the complaint and bring a civil action in an appropriate federal district court if he finds that there has been a violation.

### **Is there a private right of action?**

No.

### **Remedies**

A court may restrain violations and order appropriate relief, including reinstatement of the employee with back pay.<sup>116</sup>

### **Years of Adoption and Relevant Amendments**

Adopted 2006.

See P.L. 109-304, § 11, 120 Stat. 1697 (2006).

Sponsor: Representative F. James Sensenbrenner, Jr.

Cosponsors: 1

House: On motion to suspend the rules and pass the bill, as amended Agreed to by voice vote.

Senate: Passed Senate without amendment by Unanimous Consent.

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<sup>114</sup> 46 U.S.C. § 80507(a).

<sup>115</sup> 46 U.S.C. § 80507(b).

<sup>116</sup> 46 U.S.C. § 80507(c).

# **Longshore and Harbor Workers' Compensation Act (LHWCA)**

## **Coverage**

The LHWCA prohibits an employer from discharging or otherwise discriminating against an employee who claims or attempts to claim compensation from the employer, or testifies or is about to testify against the employer in a proceeding under the statute.<sup>117</sup>

## **Enforcement**

An employee who believes that he or she has been discharged or otherwise discriminated against in violation of the LHWCA's anti-retaliation provisions may file a complaint with a district director of the Office of Workers' Compensation Programs. Within five days of receiving such a complaint, the district director will initiate specific inquiry to determine all the facts and circumstances pertaining to the complaint.<sup>118</sup> If the district director determines that the employee has been discharged or suffered discrimination and is able to resume his or her duties, the district director will recommend reinstatement and/or restitution as is indicated by the circumstances of the case.<sup>119</sup> If the employer and the employee accept the district director's recommendation, it will be incorporated in an order and sent to each party. If the parties do not agree to the recommendation, the district director will prepare a memorandum summarizing the disagreement and refer the case to the Office of the Chief Administrative Law Judge, Department of Labor, for hearing.<sup>120</sup> The Office of Administrative Law Judges is responsible for final determinations of all disputed issues connected with the discrimination complaint.<sup>121</sup>

## **Is there a private right of action?**

No.

## **Remedies**

Any employee that is discriminated against will be restored to his or her employment and shall be compensated for any loss of wages arising from the discrimination, provided that if the employee ceases to be qualified to perform the duties of employment, he or she will not be entitled to such restoration and compensation. The employer and not his insurance carrier will be liable for such penalties and payments, and any provision in an insurance policy undertaking to relieve the employer from the liability for such penalties and payments shall be void.<sup>122</sup>

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<sup>117</sup> 33 U.S.C. § 948a.

<sup>118</sup> 20 C.F.R. § 702.271(b).

<sup>119</sup> 20 C.F.R. § 702.272(a).

<sup>120</sup> 20 C.F.R. § 702.272(b).

<sup>121</sup> 20 C.F.R. § 702.273.

<sup>122</sup> 33 U.S.C. § 948a.

## **Years of Adoption and Relevant Amendments**

Adopted 1972.

Amended 1984.

## **Migrant and Seasonal Agricultural Worker Protection Act (MSAWPA)**

### **Coverage**

The MSAWPA prohibits an employer from intimidating, threatening, restraining, coercing, blacklisting, discharging, or in any manner discriminating against any migrant or seasonal agricultural worker because such worker has, with just cause, filed a complaint or instituted, or caused to be instituted, any proceeding under the statute's anti-retaliation provisions.<sup>123</sup> Any employee who has testified or is about to testify in any such proceeding or justifiably exercises any right or protection afforded by MSAWPA is also protected from retaliatory action.

### **Enforcement**

An employee who believes, with just cause, that he or she has been discriminated against in violation of the MSAWPA's anti-retaliation provisions may file a complaint with the Secretary of Labor within 180 days of the violation. As he deems appropriate, the Secretary will institute an investigation and, upon determining that a violation has occurred, will bring an action in any appropriate federal district court.<sup>124</sup>

### **Is there a private right of action?**

No.

### **Remedies**

In an action brought by the Secretary, the federal district court has jurisdiction, for cause shown, to restrain the violation and order all appropriate relief, including reinstatement with back pay or damages.<sup>125</sup>

## **Years of Adoption and Relevant Amendments**

Adopted 1983.

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<sup>123</sup> 29 U.S.C. § 1855(a).

<sup>124</sup> 29 U.S.C. § 1855(b).

<sup>125</sup> *Id.*



## **Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21)**

### **Coverage**

MAP-21 prohibits a motor vehicle manufacturer, part supplier, or dealership from discharging or otherwise discriminating against an employee because he or she (1) provided, caused to be provided, or is about to provide or cause to be provided to his or her employer or the Secretary of Transportation information related to a motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of chapter 301, title 49, U.S. Code; (2) filed, caused to be filed, or is about to file or cause to be filed a proceeding related to any violation or alleged violation of any notification or reporting requirement of chapter 301, title 49, U.S. Code; (3) testified or is about to testify in such a proceeding; (4) assisted, participated in, or is about to assist or participate in such a proceeding; or (5) objected or refused to participate in an activity that he or she reasonably believed to be in violation of any provision of chapter 301, title 49, U.S. Code, or any order, rule, regulation, standard, or ban under such provision.<sup>126</sup>

### **Enforcement**

A person who believes that he or she has been discharged or otherwise discriminated against in violation of MAP-21's anti-retaliation provisions may file a complaint with the Secretary of Labor no later than 180 days after the date on which the violation occurs.<sup>127</sup> Within 60 days of receiving the complaint, the Secretary will conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit. If the Secretary concludes that there is reasonable cause to believe that a violation has occurred, he will accompany his findings with a preliminary order that provides for affirmative action to abate the violation, reinstatement with back pay, and compensatory damages.<sup>128</sup> The parties may object to the findings or order, and request a hearing within 30 days of the date of notification of the findings. If a hearing is not requested within the 30-day period, the preliminary order will be deemed a final order that is not subject to judicial review. If a hearing is requested, the Secretary will issue a final order no later than 120 days after the date of the hearing.<sup>129</sup> Any person adversely affected or aggrieved by the Secretary's final order may obtain review of the order in the U.S. 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.<sup>130</sup> The petition for review must be filed no later than 60 days after the date of issuance of the final order.

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<sup>126</sup> 49 U.S.C. § 30171(a).

<sup>127</sup> 49 U.S.C. § 30171(b)(1).

<sup>128</sup> 49 U.S.C. § 30171(b)(2).

<sup>129</sup> 49 U.S.C. § 30171(b)(3)(A).

<sup>130</sup> 49 U.S.C. § 30171(b)(4)(A).

## **Is there a private right of action?**

Yes. If the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint and if the delay is not because of the employee's bad faith, the employee may bring an original action at law or equity for de novo review in the appropriate federal district court.<sup>131</sup>

## **Remedies**

If the Secretary determines that a violation has occurred, he will order affirmative action to abate the violation, reinstatement with back pay, and compensatory damages.<sup>132</sup>

## **Years of Adoption and Relevant Amendments**

Adopted 2012.

See P.L. 112-141, § 31307(a), 126 Stat. 765 (2012).

Sponsor: Representative John L. Mica

Cosponsors: 2

House: Conference report agreed to in House. On agreeing to the conference report Agreed to by the Yeas and Nays: 373 - 52 (Roll no. 451).

Senate: Conference report agreed to in Senate. Senate agreed to conference report by Yea-Nay Vote. 74 - 19. Record Vote Number: 172.

## **National Labor Relations Act (NLRA)**

### **Coverage**

Under section 8(a)(4) of the NLRA, it is an unfair labor practice for an employer to discharge or otherwise discriminate against an employee because he or she has filed charges or given testimony under the NLRA.<sup>133</sup>

### **Enforcement**

An employee alleging an employer's unfair labor practice may file a charge with the National Labor Relations Board's regional director for the region in which the alleged unfair labor practice has occurred or is occurring.<sup>134</sup> If it appears that formal proceedings should be instituted, the

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<sup>131</sup> 49 U.S.C. § 30171(b)(3)(E).

<sup>132</sup> 49 U.S.C. § 30171(b)(3)(B).

<sup>133</sup> 29 U.S.C. § 158(a)(4).

<sup>134</sup> 29 C.F.R. § 102.10.

regional director will issue a formal complaint that includes a notice of hearing before an administrative law judge (ALJ).<sup>135</sup> Following the hearing, the ALJ will issue a decision, with findings of fact, conclusions, and recommendations about the disposition of the case. Exceptions to the ALJ's decision or to any other part of the record or proceedings may be filed with the National Labor Relations Board (NLRB). If such exceptions are not filed in a timely or proper manner, the ALJ's decision will become the decision of the NLRB. If further review is conducted by the NLRB and it is determined that the employer has committed an unfair labor practice, it will issue an order requiring the employer to cease and desist from the unfair labor practice and to take such affirmative action as will effectuate the policies of the NLRA, including reinstatement with or without back pay. Any person aggrieved by a final order of the NLRB may obtain review of the order in any U.S. court of appeals in the circuit where the unfair labor practice was alleged to have been committed or where the person resides or transacts business, or in the U.S. Court of Appeals for the District of Columbia Circuit.<sup>136</sup>

## **Is there a private right of action?**

No.

## **Remedies**

An employer found to have committed an unfair labor practice will be ordered to cease and desist from such practice and to take such affirmative action as will effectuate the policies of the NLRA, including reinstatement with or without back pay.<sup>137</sup>

## **Years of Adoption or Relevant Amendments**

Adopted 1935.

## **National Transit Systems Security Act (NTSSA)**

### **Coverage**

The NTSSA prohibits a public transportation agency, a contractor or subcontractor of such an agency, or an officer or employee of such an agency from discharging or otherwise discriminating against an employee if such action is because of the employee's lawful, good faith act done, or perceived by the employer to have been done or about to be done to (1) provide or cause to provide information, or assist in an investigation regarding conduct that the employee believes to be a violation of any federal law, rule, or regulation related to public transportation safety or security, or fraud, waste, or abuse of public funds intended for public transportation, if the information or assistance is provided to specified individuals or government entities; (2) refuse to violate or assist in the violation of any federal law, rule, or regulation related to public

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<sup>135</sup> 29 C.F.R. § 102.15.

<sup>136</sup> 29 U.S.C. § 160(f).

<sup>137</sup> 29 U.S.C. § 160(c).

transportation safety or security; (3) file a complaint or cause a proceeding related to the enforcement of the NTSSA's whistleblower provisions, or testify in such proceeding; (4) cooperate with a safety or security investigation by the Secretary of Transportation, the Secretary of Homeland Security, or the National Transportation Safety Board (NTSB); or (5) furnish information to the Secretary of Transportation, the Secretary of Homeland Security, the NTSB, or any federal, state, or local regulatory or law enforcement agency about the facts related to an accident or incident resulting in the injury or death of an individual or damage to property that occurs in connection with public transportation.<sup>138</sup>

A public transportation agency, a contractor or subcontractor of such an agency, or an officer or employee of such an agency is also prohibited from discharging or otherwise discriminating against an employee for reporting a hazardous safety or security condition, refusing to work when confronted by a hazardous safety or security condition, or refusing to authorize the use of any safety- or security-related equipment, track, or structures, if the employee is responsible for the inspection or repair of such items and believes that the items are in a hazardous condition.<sup>139</sup> Refusals to work or authorize the use of safety- or security-related equipment, track, or structures, are protected only if made in good faith, no reasonable alternative to a refusal is available, and other specified requirements are satisfied.<sup>140</sup>

## **Enforcement**

A person who believes that he or she has been discharged or otherwise discriminated against in violation of the NTSSA's whistleblower provisions may file a complaint with the Secretary of Labor no later than 180 days after the date on which the violation occurs.<sup>141</sup> Within 60 days of receiving the complaint, the Secretary will conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit. If the Secretary concludes that there is reasonable cause to believe that a violation has occurred, he will accompany his findings with a preliminary order that provides for affirmative action to abate the violation, reinstatement with back pay, and compensatory damages.<sup>142</sup> The parties may object to the findings or order, and request a hearing within 30 days of the date of notification of the findings. If a hearing is not requested within the 30-day period, the preliminary order will be deemed a final order that is not subject to judicial review.<sup>143</sup> If a hearing is requested, the Secretary will issue a final order no later than 120 days after the date of the hearing. Any person adversely affected or aggrieved by the Secretary's final order may obtain review of the order in the U.S. 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.<sup>144</sup> The petition for review must be filed no later than 60 days after the date of issuance of the final order.

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<sup>138</sup> 6 U.S.C. § 1142(a).

<sup>139</sup> 6 U.S.C. § 1142(b)(1).

<sup>140</sup> 6 U.S.C. § 1142(b)(2).

<sup>141</sup> 6 U.S.C. § 1142(c)(1).

<sup>142</sup> 6 U.S.C. § 1142(c)(2)(A).

<sup>143</sup> *Id.*

<sup>144</sup> 6 U.S.C. § 1142(c)(4)(A).

## **Is there a private right of action?**

Yes. If the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint and if the delay is not because of the employee's bad faith, the employee may bring an original action at law or equity for de novo review in the appropriate federal district court.<sup>145</sup>

## **Remedies**

A prevailing employee is entitled to all relief necessary to make the employee whole, including reinstatement with back pay and compensatory damages.<sup>146</sup> Relief may also include punitive damages in an amount not to exceed \$250,000.<sup>147</sup>

## **Years of Adoption and Relevant Amendments**

Adopted 2007.

See P.L. 110-53, § 1413, 121 Stat. 414 (2007).

Sponsor: Representative Bennie G. Thompson

Cosponsors: 205

House: Conference report agreed to in House. On agreeing to the conference report Agreed to by the Yeas and Nays: 371 - 40 (Roll no. 757).

Senate: Conference report agreed to in Senate. Senate agreed to conference report by Yea-Nay Vote. 85 - 8. Record Vote Number: 284.

## **Occupational Safety and Health Act of 1970 (OSH Act)**

### **Coverage**

The OSH Act prohibits an employer from discharging or in any manner discriminating against an employee because such employee filed a complaint or instituted or caused to be instituted a proceeding under the OSH Act, or is about to testify in any such proceeding.<sup>148</sup> Any employee who has testified or is about to testify in any such proceeding or exercises any right or protection afforded by the OSH Act is also protected from retaliatory action.

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<sup>145</sup> 6 U.S.C. § 1142(c)(7).

<sup>146</sup> 6 U.S.C. §§ 1142(d)(1), (d)(2).

<sup>147</sup> 6 U.S.C. § 1142(d)(3).

<sup>148</sup> 29 U.S.C. § 660(c)(1).

## **Enforcement**

An employee who believes that he or she has been discharged or otherwise discriminated against in violation of the OSH Act may file a complaint with the Secretary of Labor alleging such discrimination within 30 days after the violation occurs.<sup>149</sup> Upon receipt of the complaint, the Secretary will institute an investigation as he deems appropriate. If the Secretary determines that a violation has occurred, he will bring an action in any appropriate U.S. district court.<sup>150</sup> The Secretary must notify the complainant of his determination within 90 days of receiving the complaint.

## **Is there a private right of action?**

No.

## **Remedies**

In an action brought by the Secretary, the federal district court has jurisdiction, for cause shown, to restrain the violation and order all appropriate relief, including reinstatement with back pay.<sup>151</sup>

## **Years of Adoption and Relevant Amendments**

Adopted 1970.

# **Patient Protection and Affordable Care Act (ACA)**

## **Coverage**

The ACA amended the Fair Labor Standards Act (FLSA) to provide additional protections for employees. Under the new section 18c of the FLSA, an employer is prohibited from discharging or otherwise discriminating against any employee because he or she has (1) received a premium tax credit or cost-sharing subsidy under the ACA; (2) provided, caused to be provided, or is about to provide or cause to be provided to the employer, the federal government, or a state attorney general information related to any violation of, or any act or omission the employee reasonably believes to be a violation of, any provision of title 29, U.S. Code; (3) testified or is about to testify in a proceeding concerning such a violation; (4) assisted or participated in, or is about to assist or participate in, such a proceeding; or (5) objected to, or refused to participate in any activity, policy, practice, or assigned task that employee reasonably believed to be in violation or any provision of title 29, U.S. Code, or any order, rule, regulation, standard, or ban under such title.<sup>152</sup>

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<sup>149</sup> 29 U.S.C. § 660(c)(2).

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> 29 U.S.C. § 218c(a).

## **Enforcement**

An employee who believes that he or she has been discharged or otherwise discriminated against in violation of section 18c of the FLSA may seek relief in accordance with the enforcement procedures established by the Consumer Protection Safety Act (CPSA). See discussion above.

## **Is there a private right of action?**

Yes. In accordance with the enforcement procedures established by the CPSA, a person may bring an action at law or equity for de novo review in the appropriate federal district court with jurisdiction within 90 days after receiving a written determination, or if the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint.<sup>153</sup>

## **Remedies**

In accordance with the enforcement procedures established by the CPSA, a court may grant all relief necessary to make employee whole, including injunctive relief and compensatory damages.<sup>154</sup>

## **Years of Adoption and Relevant Amendments**

Adopted 2010.

See P.L. 111-148, § 1558, 124 Stat. 261 (2010).

Sponsor: Representative Charles B. Rangel

Cosponsors: 40

House: Resolving differences - On motion that the House agree to the Senate amendments Agreed to by recorded vote: 219 - 212 (Roll no. 165).

Senate: Passed Senate with an amendment and an amendment to the Title by Yea-Nay Vote. 60 - 39. Record Vote Number: 396.

## **Pipeline Safety Improvement Act (PSIA)**

### **Coverage**

The PSIA prohibits an owner or operator of a pipeline facility, or a contractor or subcontractor of such an owner or operator, from discharging or otherwise discriminating against an employee because he or she (1) provided, caused to be provided, or is about to provide or cause to be

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<sup>153</sup> See 15 U.S.C. § 2087(b)(4).

<sup>154</sup> See *id.*

provided to the employer or the federal government information related to any violation or alleged violation of an order, regulation, or standard under chapter 601, title 49, U.S. Code or any federal law related to pipeline safety; (2) refused to engage in any practice made unlawful by chapter 601, title 49, U.S. Code or any federal law related to pipeline safety, if the employee has identified the alleged illegality to the employer; (3) provided, caused to be provided, or is about provide or cause to be provided, testimony before Congress or at any federal or state proceeding involving chapter 601, title 49, U.S. Code or any federal law related to pipeline safety; (4) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under chapter 601, title 49, U.S. Code or any federal law related to pipeline safety; (5) provided, caused to be provided, or is about to provide or cause to be provided, testimony in such a proceeding; or (6) assisted or participated in, or is about to assist or participate in, a proceeding or action related to chapter 601, title 49, U.S. Code or any federal law related to pipeline safety.<sup>155</sup>

## **Enforcement**

A person who believes that he or she was discharged or otherwise discriminated against in violation of the PSIA's whistleblower provisions may file a complaint with the Secretary of Labor no later than 180 days after the date on which the violation occurs.<sup>156</sup> Within 60 days of receiving the complaint, the Secretary will conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit. If the Secretary concludes that there is reasonable cause to believe that a violation has occurred, he will accompany his findings with a preliminary order that provides for affirmative action to abate the violation, reinstatement with back pay, and compensatory damages.<sup>157</sup> The parties may object to the findings or order, and request a hearing within 60 days of the date of notification of the findings. If a hearing is not requested within the 60-day period, the preliminary order will be deemed a final order that is not subject to judicial review.<sup>158</sup> If a hearing is requested, the Secretary will issue a final order no later than 90 days after the date of the hearing. Any person adversely affected or aggrieved by the Secretary's final order may obtain review of the order in the U.S. 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.<sup>159</sup> The petition for review must be filed no later than 60 days after the date of issuance of the final order.

## **Is there a private right of action?**

Yes. Under section 60121(a) of title 49, U.S. Code, a person may bring a civil action in an appropriate federal district court for an injunction against another person for a violation of chapter 601, title 49, U.S. Code.<sup>160</sup> The PSIA's whistleblower provisions are codified in chapter 601.

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<sup>155</sup> 49 U.S.C. § 60129(a)(1).

<sup>156</sup> 49 U.S.C. § 60129(b)(1).

<sup>157</sup> 49 U.S.C. § 60129(b)(2)(A).

<sup>158</sup> *Id.*

<sup>159</sup> 49 U.S.C. § 60129(b)(4)(A).

<sup>160</sup> *See* 49 U.S.C. § 60121.



## **Remedies**

Under the PSIA's whistleblower provisions, a prevailing employee is entitled to affirmative action to abate the violation, reinstatement with back pay, and compensatory damages.<sup>161</sup> Injunctive relief is available for actions brought under section 60121(a) of title 49, U.S. Code.

## **Years of Adoption and Relevant Amendments**

Adopted 2002.

See P.L. 107-355, § 6(a), 116 Stat. 2989 (2002).

Sponsor: Representative Don Young

Cosponsors: 43

House: Resolving differences—On motion that the House agree to the Senate amendment Agreed to without objection.

Senate: Passed Senate with an amendment by Unanimous Consent.

## **Safe Drinking Water Act (SDWA)**

### **Coverage**

The SDWA prohibits an employer from firing, or in any other way discriminating against, or causing to be fired or discriminated against, any employee because such employee filed, instituted, or caused to be filed or instituted any proceeding under the SDWA or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the SDWA.<sup>162</sup>

### **Enforcement**

Any employee who believes that he or she has been fired or otherwise discriminated against in violation of the SDWA's anti-retaliation provisions may, within 30 days after such alleged violation occurs, file a complaint with the Secretary of Labor.<sup>163</sup> Upon receiving the complaint, the Secretary will conduct an investigation and notify the complainant and the person alleged to have committed the violation of the investigation results. Within 90 days of receiving the complaint, the Secretary will issue an order that either denies the complaint or provides affirmative action to abate the violation, reinstatement with back pay, compensatory damages, and, where appropriate, exemplary damages.<sup>164</sup> An order will be made on the record after notice

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<sup>161</sup> 49 U.S.C. § 60129(b)(3)(B).

<sup>162</sup> 42 U.S.C. § 300j-9(i)(1).

<sup>163</sup> 42 U.S.C. § 300j-9(i)(2)(A).

<sup>164</sup> 42 U.S.C. § 300j-9(i)(2)(B)(i).

and an opportunity for agency hearing. Any person adversely affected or aggrieved by an order may obtain review in the U.S. court of appeals for the circuit in which the violation allegedly occurred.<sup>165</sup> A petition for review must be filed within 60 days from the issuance of the order.

## **Is there a private right of action?**

No.

## **Remedies**

A prevailing employee is entitled to affirmative action to abate the violation, reinstatement with back pay, compensatory damages, and, where appropriate, exemplary damages. At the request of the complainant, the Secretary will assess against the person who committed the violation a sum equal to the aggregate amount of all costs and expenses, including attorneys' fees, reasonably incurred by the complainant in connection with the complaint.<sup>166</sup>

## **Years of Adoption and Relevant Amendments**

Adopted 1974.

## **Sarbanes-Oxley Act of 2002 (SOX)**

### **Coverage**

SOX prohibits publicly traded companies, including any subsidiaries or affiliates whose financial information is included in the consolidated financial statements of such companies, and nationally recognized statistical rating organizations from discharging, demoting, suspending, threatening, harassing, or in any other manner discriminating against an employee because such employee provided information, caused information to be provided, otherwise assisted in an investigation, or filed, testified, or participated in a proceeding regarding any conduct that the employee reasonably believes is a violation of SOX, any SEC rule or regulation, or any federal statute relating to fraud against shareholders, when the information or assistance is provided to a federal regulatory or law enforcement agency, any Member or committee of Congress, or a person with supervisory authority over the employee or investigative authority for the employer, regarding any violation of 18 U.S.C. §§ 1341 (mail fraud), 1343 (wire fraud), 1344 (bank fraud), 1348 (securities fraud against shareholders), or any SEC rule or regulation, or of any federal law regarding fraud against shareholders.<sup>167</sup>

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<sup>165</sup> 42 U.S.C. § 300j-9(i)(3)(A).

<sup>166</sup> 42 U.S.C. § 300j-9(i)(2)(B)(ii).

<sup>167</sup> 18 U.S.C. § 1514A(a).

## **Enforcement**

Any employee who alleges discharge or other discrimination in violation of SOX's whistleblower provisions may file a complaint with the Secretary of Labor, using procedures set forth in section 42121(b) of title 49, U.S. Code.<sup>168</sup> (These procedures are discussed below in the Enforcement section for the Wendell H. Ford Aviation Investment and Reform Act of the 21<sup>st</sup> Century.) SOX indicates, however, that a complaint must be filed within 180 days after the date on which the violation occurs, or 180 days after the date on which the employee became aware of the violation.<sup>169</sup>

## **Is there a private right of action?**

Yes. If the Secretary has not issued a final decision within 180 days of the filing of a complaint and there is no showing that the delay is because of the claimant's bad faith, the claimant may bring an action at law or equity for de novo review in the appropriate federal district court.<sup>170</sup>

## **Remedies**

A prevailing employee may be awarded all relief necessary to make the individual whole, including reinstatement with back pay and interest, and compensation for any special damages sustained as a result of the discrimination.<sup>171</sup>

## **Years of Adoption and Relevant Amendments**

Adopted 2002.

See P.L. 107-204, Title VIII, Sec. 806(a), 116 Stat. 802 (2002).

Sponsor: Representative Michael G. Oxley

Cosponsors: 30

House: Conference report agreed to in House. On agreeing to the conference report Agreed to by the Yeas and Nays: 423 - 3 (Roll no. 348).

Senate: Conference report agreed to in Senate. Senate agreed to conference report by Yea-Nay Vote. 99 - 0. Record Vote Number: 192.

Amended 2010.

See also Dodd-Frank Wall Street Reform and Consumer Protection Act, *supra*.

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<sup>168</sup> 18 U.S.C. § 1514A(b)(2)(A).

<sup>169</sup> 18 U.S.C. § 1514A(b)(2)(D).

<sup>170</sup> 18 U.S.C. § 1514A(b)(1)(B).

<sup>171</sup> 18 U.S.C. § 1514A(c).

## Seaman's Protection Act (SPA)

### Coverage

The SPA prohibits a person from discharging or otherwise discriminating against a seaman because the individual (1) in good faith, reported or is about to report to the Coast Guard or another appropriate federal agency or department the belief that a violation of a maritime safety law or regulation has occurred; (2) refused to perform duties because of a reasonable apprehension or expectation that performing such duties would result in serious injury; (3) testified in a proceeding to enforce a maritime safety law or regulation; (4) notified or attempted to notify the vessel owner or the Secretary of the department in which the Coast Guard is operating (Secretary) of a work-related personal injury or work-related illness; (5) cooperated with a safety investigation by the Secretary or the National Transportation Safety Board (NTSB); (6) furnished information to the Secretary, the NTSB, or any other public official about the facts related to any marine casualty resulting in injury or death, or damage to property occurring in connection with vessel transportation; or (7) accurately reported hours of duty.<sup>172</sup>

### Enforcement

A seaman may file a complaint in the same manner as a complaint may be filed under section 31105(b) of title 49, U.S. Code.<sup>173</sup> The procedures, requirements, and rights described in section 31105, including those providing for the judicial review of final orders, also apply to whistleblower claims under the SPA.<sup>174</sup> (Section 31105 is discussed in the Enforcement section for the Commercial Motor Vehicle Safety Act.)

### Is there a private right of action?

Yes. Pursuant to section 31105(c) of title 49, U.S. Code, a seaman may bring an original action at law or equity for de novo review in an appropriate federal district court if the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint and if the delay is not the result of the seaman's bad faith.

### Remedies

Pursuant to section 31105(b) of title 49, U.S. Code, a prevailing seaman is entitled to affirmative action to abate the violation, reinstatement with back pay, and compensatory damages. Relief may also include punitive damages in an amount not to exceed \$250,000.

### Years of Adoption and Relevant Amendments

Adopted 1984.

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<sup>172</sup> 46 U.S.C. § 2114(a)(1).

<sup>173</sup> 46 U.S.C. § 2114(b).

<sup>174</sup> *Id.*

Amended 2002.

See P.L. 107-295, § 428, 116 Stat. 2127 (2002).

Sponsor: Senator Ernest F. Hollings

Cosponsors: 14

House: Conference report agreed to in House. On agreeing to the conference report Agreed to by voice vote.

Senate: Conference report agreed to in Senate. Senate agreed to conference report by Yea-Nay Vote. 95 - 0. Record Vote Number: 243.

Amended 2010.

See P.L. 111-281, § 611(a), 124 Stat. 2969 (2010).

Sponsor: Representative James L. Oberstar

Cosponsor: 1

House: Resolving differences - On motion that the House agree to the Senate amendments to the House amendment to the Senate amendment Agreed to without objection.

Senate: Resolving differences - Senate agreed to the House Amendment to the title by Unanimous Consent.

## **Solid Waste Disposal Act (SWDA)**

### **Coverage**

The SWDA prohibits an employer from firing, or in any other way discriminating against, or causing to be fired or discriminated against, any employee because such employee filed, instituted, or caused to be filed or instituted any proceeding under the SWDA, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the SWDA.<sup>175</sup>

### **Enforcement**

Any employee who believes that he or she has been fired or otherwise discriminated against in violation of the SWDA's anti-retaliation provisions may, within 30 days after such alleged violation occurs, apply to the Secretary of Labor for a review of the firing or alleged discrimination.<sup>176</sup> Upon receipt of such application, the Secretary will institute an investigation as

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<sup>175</sup> 42 U.S.C. § 6971(a).

<sup>176</sup> 42 U.S.C. § 6971(b)

he deems appropriate. Following the receipt of the investigation report, the Secretary will make findings of fact. If he finds that a violation did occur, the Secretary will issue a decision, incorporating an order and findings, and require the party committing the violation to take such affirmative action to abate the violation as the Secretary deems appropriate, including the rehiring or reinstatement of the employee with compensation. If the Secretary finds no violation, he will issue an order denying the application; such order shall be subject to judicial review in the same manner as orders and decisions are subject to judicial review under the SWDA.<sup>177</sup>

## **Is there a private right of action?**

No.

## **Remedies**

A prevailing employee is entitled to such affirmative action to abate the violation as the Secretary deems appropriate, including rehiring or reinstatement with compensation. Whenever an order is issued, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses, including attorneys' fees, to have been reasonably incurred by the applicant, will be assessed against the person who committed the violation.<sup>178</sup>

## **Years of Adoption and Relevant Amendments**

Adopted 1976.

# **Surface Mining Control and Reclamation Act (SMCRA)**

## **Coverage**

The SMCRA prohibits an employer from discharging or in any other way discriminating against or causing to be fired or discriminated against any employee because such employee has filed, instituted, or caused to be filed or instituted any proceeding under the SMCRA.<sup>179</sup> Any employee who has testified or is about to testify in any such proceedings is also protected from such retaliatory action.

## **Enforcement**

An employee who believes that he or she has been fired or otherwise discriminated against in violation of the SMCRA's anti-retaliation provisions may, within 30 days, apply to the Secretary

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<sup>177</sup> *Id.*

<sup>178</sup> 42 U.S.C. § 6971(e).

<sup>179</sup> 30 U.S.C. § 1293(a).

of Labor for a review of such firing or alleged discrimination.<sup>180</sup> Upon receipt of the complaint, the Secretary will initiate an investigation as he deems appropriate. The Secretary will make findings of act after receiving a report of the investigation. If the Secretary determines that a violation occurred, he will issue a decision incorporating the findings and an order that requires the party committing the violation to take such affirmative action to abate the violation as the Secretary deems appropriate, including the rehiring or reinstatement of the employee with compensation. If the Secretary finds that no violation occurred, he will issue a finding. Orders issued by the Secretary are subject to judicial review in the same manner as other orders and decisions of the Secretary are subject to judicial review under the SMCRA.<sup>181</sup>

## **Is there a private right of action?**

No.

## **Remedies**

A prevailing employee is entitled to such affirmative action to abate the violation as the Secretary deems appropriate, including the rehiring or reinstatement of the employee with compensation. Whenever an order is issued to abate a violation, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses, including attorney's fees, determined to have been reasonably incurred by the applicant in connection with the institution and prosecution of such proceedings, will be assessed against the person who committed the violation.<sup>182</sup>

## **Years of Adoption and Relevant Amendments**

Adopted 1977.

## **Title VII of the Civil Rights Act of 1964 (Title VII)**

### **Coverage**

Title VII prohibits an employer from discriminating against any employee or applicant for employment because he or she has (1) opposed any practice made an unlawful employment practice by Title VII; or (2) made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title VII.<sup>183</sup> Title VII also prohibits such actions when committed by an employment agency or joint labor-management committee against an individual, or labor organization against a member or applicant for membership.

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<sup>180</sup> 30 U.S.C. § 1293(b).

<sup>181</sup> 30 U.S.C. § 1293(b).

<sup>182</sup> 30 U.S.C. § 1293(e).

<sup>183</sup> 42 U.S.C. § 2000e-3(a).

## **Enforcement**

A person alleging discrimination under Title VII's anti-retaliation provisions may file a charge with the Equal Employment Opportunity Commission (EEOC) within 180 days after the alleged unlawful employment practice occurred.<sup>184</sup> Upon receipt of the charge, the EEOC will conduct an investigation. If the EEOC determines after the investigation that there is not reasonable cause to believe that the charge is true, it will dismiss the charge and notify the claimant and respondent of its action. If reasonable cause is found, the EEOC will attempt to eliminate the alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion.<sup>185</sup> The EEOC will make its determination as promptly as possible and, so far as practicable, no later than 120 days from the filing of the charge or, in specified circumstances, the date upon which the EEOC is authorized to take action with respect to the charge. If the EEOC is unable to secure from the respondent an acceptable conciliation agreement, it may bring a civil action against the respondent, so long as the respondent is not a government, governmental agency, or political subdivision. In cases involving such entities, the EEOC will refer the case to the Attorney General, who may bring a civil action in the appropriate federal district court.<sup>186</sup>

## **Is there a private right of action?**

Yes. If the EEOC dismisses a charge, a civil action is not filed by the EEOC or the Attorney General, or if the EEOC has not entered into a conciliation agreement involving the aggrieved party, such person may file a civil action in any judicial district in the state in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the relevant employment records are maintained or administered, or in the judicial district in which the person would have worked but for the alleged practice.<sup>187</sup> If the respondent is not found in any of these districts, the action may be brought in the judicial district in which the respondent has its principal office.

## **Remedies**

If a court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice, it may enjoin the respondent from engaging in such practice and order such affirmative action as may be appropriate, including reinstatement or any other equitable relief.<sup>188</sup> A reasonable attorney's fee, including litigation expenses and costs, may be awarded.<sup>189</sup>

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<sup>184</sup> 42 U.S.C. § 2000e-5(b). If an aggrieved person has initially instituted proceedings with a state or local agency with authority to grant or seek relief, the charge will be filed within 300 days after the alleged unlawful employment practice occurred or within 30 days after receiving notice that the state or local agency has terminated the proceedings, whichever is earlier.

<sup>185</sup> *Id.*

<sup>186</sup> 42 U.S.C. § 2000e-5(f)(1).

<sup>187</sup> 42 U.S.C. § 2000e-5(f)(3).

<sup>188</sup> 42 U.S.C. § 2000e-5(g)(1).

<sup>189</sup> 42 U.S.C. § 12205.



## **Years of Adoption and Relevant Amendments**

Adopted 1964.

Amended 1972.

## **Toxic Substances Control Act (TSCA)**

### **Coverage**

The TSCA prohibits an employer from discharging or otherwise discriminating against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee has (1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under the TSCA; (2) testified or is about to testify in any such proceeding; or (3) assisted or participated or is about to assist or participate in such a proceeding or in any other action to carry out the purposes of the TSCA.<sup>190</sup>

### **Enforcement**

Any employee who believes that he or she has been discharged or otherwise discriminated against by any person in violation of the TSCA's anti-retaliation provisions may, within 30 days after such alleged violation occurs, file a complaint with the Secretary of Labor.<sup>191</sup> Within 30 days of receiving the complaint, the Secretary will complete an investigation. Within 90 days of receiving the complaint, the Secretary will, unless the proceeding is terminated due to a settlement, issue an order either denying the complaint or providing for affirmative action to abate the violation, reinstatement with compensation, compensatory damages, and, where appropriate, exemplary damages.<sup>192</sup> The order will be made on the record after notice and an opportunity for agency hearing. Any person adversely affected or aggrieved by the order may obtain review in the U.S. court of appeals for the circuit in which the violation allegedly occurred.<sup>193</sup> A petition for review must be filed within 60 days from the issuance of the order.

### **Is there a private right of action?**

No.

### **Remedies**

A prevailing employee is entitled to affirmative action to abate the violation, reinstatement with compensation, compensatory damages, and, where appropriate, exemplary damages. Whenever an order is issued, at the request of the applicant, a sum equal to the aggregate amount of all costs

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<sup>190</sup> 15 U.S.C. § 2622(a).

<sup>191</sup> 15 U.S.C. § 2622(b)(1).

<sup>192</sup> 15 U.S.C. § 2622(b)(2)(A).

<sup>193</sup> 15 U.S.C. § 2622(c)(1).

and expenses, including attorneys' fees, will be assessed against the person who committed the violation.<sup>194</sup>

## **Years of Adoption and Relevant Amendments**

Adopted 1976.

# **Uniformed Services Employment and Reemployment Rights Act (USERRA)**

## **Coverage**

USERRA prohibits an employer from discriminating or taking any adverse employment action against any person because such person has (1) taken an action to enforce a protection afforded by the statute; (2) testified or otherwise made a statement in or in connection with any proceeding under USERRA; (3) has assisted or otherwise participated in an investigation under USERRA; or (4) has exercised a right provided by USERRA.<sup>195</sup>

## **Enforcement**

A person who claims to be entitled to employment or reemployment rights under USERRA may file a complaint with the Secretary of Labor, who will investigate the complaint.<sup>196</sup> If the Secretary determines that the action alleged in the complaint occurred, he will attempt to resolve the complaint by making reasonable efforts to ensure compliance.<sup>197</sup> If the Secretary's efforts do not resolve the complaint, he will notify the complainant of the results of the Secretary's investigation and the ability to have the request referred to the Attorney General, if the employer is a state or private employer, or the Office of Special Counsel, if the employer is a federal executive agency or the Office of Personnel Management (OPM).<sup>198</sup>

If the Attorney General is reasonably satisfied that the person on whose behalf the complaint is referred is entitled to relief, the Attorney General may appear on behalf of the person and commence an action.<sup>199</sup> In an action against a state employer, the action will be brought in the name of the United States.<sup>200</sup>

If the Special Counsel is reasonably satisfied that the person on whose behalf the complaint is referred is entitled to relief, the Special Counsel, upon the request of the complainant, may appear

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<sup>194</sup> 15 U.S.C. § 2622(b)(2)(B).

<sup>195</sup> 38 U.S.C. § 4311(b).

<sup>196</sup> 38 U.S.C. § 4322.

<sup>197</sup> 38 U.S.C. § 4317(d).

<sup>198</sup> 38 U.S.C. § 4322(e).

<sup>199</sup> 38 U.S.C. § 4323(a).

<sup>200</sup> *Id.*

on behalf of the person and initiate an action before the Merit Systems Protection Board.<sup>201</sup> A person may submit directly a complaint against a federal executive agency or OPM to the Merit Systems Protection Board (MSPB) if that person has chosen not to apply to the Secretary for assistance, has received notification from the Secretary, has chosen not to be represented by the Special Counsel, or has received notification of a decision from the Special Counsel declining to initiate an action and represent the person before the MSPB.<sup>202</sup> If the MSPB determines that a federal executive agency or OPM has not complied with USERRA's employment or reemployment provisions, it will enter an order requiring the agency or OPM to comply with such provisions and to compensate the complainant for lost wages or benefits.<sup>203</sup> A person adversely affected or aggrieved by a final MSPB order or decision may petition the U.S. Court of Appeals for the Federal Circuit for review.

## **Is there a private right of action?**

Yes. A person may commence an action with respect to a complaint against a state or private employer if the person has chosen not to apply to the Secretary for assistance, has chosen not to request referral of the complaint to the Attorney General, or has been refused representation by the Attorney General.<sup>204</sup> In the case of an action against a state employer, the action may be brought in a state court of competent jurisdiction.<sup>205</sup> In the case of an action against a private employer, the action may be brought in the federal district court for any district in which the employer maintains a place of business.<sup>206</sup>

## **Remedies**

A person who prevails in a claim against a state or private employer may be awarded lost wages or benefits.<sup>207</sup> If a court determines that the employer's failure to comply with USERRA's employment and reemployment provisions was willful, it may require the employer to pay an equal amount as liquidated damages.<sup>208</sup> In addition, the court will use, where it finds appropriate, its full equity powers, including temporary or permanent injunctions, temporary restraining orders, and contempt orders.<sup>209</sup>

## **Year of Adoption**

Adopted 1994.

Amended 1998.

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<sup>201</sup> 38 U.S.C. § 4324(a)(2)(A).

<sup>202</sup> 38 U.S.C. § 4324(b).

<sup>203</sup> 38 U.S.C. § 4324(c)(2).

<sup>204</sup> 38 U.S.C. § 4323(a)(3).

<sup>205</sup> 38 U.S.C. § 4323(b)(2).

<sup>206</sup> 38 U.S.C. § 4323(c)(2).

<sup>207</sup> 38 U.S.C. § 4323(d)(1)(B).

<sup>208</sup> 38 U.S.C. § 4323(d)(1)(C).

<sup>209</sup> 38 U.S.C. § 4323(e).

See P.L. 105-368, § 211, 112 Stat. 3329 (1998).

Sponsor: Representative Bob Stump

Cosponsors: 18

House: Resolving differences - House agreed to Senate amendment with amendments pursuant to H.Res. 592.

Senate: Resolving differences - Senate agreed to the House amendments to Senate amendment by Unanimous Consent.

Amended 2008.

See P.L. 110-389, § 311, 122 Stat. 4162 (2008).

Sponsor: Senator Daniel K. Akaka

Cosponsors: 1

House: On motion to suspend the rules and pass the bill, as amended Agreed to by voice vote.

Senate: Resolving differences - Senate agreed to the House amendment to the bill by Unanimous Consent.

## **Wendell H. Ford Aviation Investment and Reform Act of the 21<sup>st</sup> Century (AIR21)**

### **Coverage**

AIR21 prohibits an air carrier, or a contractor or subcontractor of an air carrier, from discharging or otherwise discriminating against an employee because he or she (1) provided, caused to be provided, or is about to provide or cause to be provided to the employer or the federal government information related to a violation or alleged violation of an order, regulation, or standard of the Federal Aviation Administration (FAA) or any other provision of federal law involving air carrier safety; (2) filed, caused to be filed, or is about to file or cause to be filed a proceeding related to a violation or alleged violation of any order, regulation, or standard of the FAA or any other provision of federal law involving air carrier safety; (3) testified or is about to testify in such a proceeding; or (4) assisted or participated in, or is about to assist or participate in such a proceeding.<sup>210</sup>

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<sup>210</sup> 49 U.S.C. § 42121(a).

## **Enforcement**

A person who believes that he or she has been discharged or otherwise discriminated against in violation of AIR21's anti-retaliation provisions may file a complaint with the Secretary of Labor no later than 90 days after the date on which the violation occurs.<sup>211</sup> Within 60 days of receiving the complaint, the Secretary will conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit. If the Secretary concludes that there is reasonable cause to believe that a violation has occurred, he will accompany the findings with a preliminary order that provides for affirmative action to abate the violation, reinstatement with back pay, and compensatory damages.<sup>212</sup>

The parties may object to the findings or order, and request a hearing within 30 days of the date of notification of the findings. If a hearing is not requested within the 30-day period, the preliminary order will be deemed a final order that is not subject to judicial review.<sup>213</sup> If a hearing is requested, the Secretary will issue a final order no later than 120 days after the date of the hearing. Any person adversely affected or aggrieved by the Secretary's final order may obtain review of the order in the U.S. 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.<sup>214</sup> The petition for review must be filed no later than 60 days after the date of issuance of the final order.

## **Is there a private right of action?**

No.

## **Remedies**

A prevailing employee is entitled to affirmative action to abate the violation, reinstatement with back pay, and compensatory damages.<sup>215</sup>

## **Years of Adoption and Relevant Amendments**

Adopted 2000.

# **Whistleblower Protection Act (WPA)**

## **Coverage**

Generally, the WPA<sup>216</sup> provides protections for many federal employees who make disclosures evidencing illegal or improper government activities. In order to trigger the protections of the

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<sup>211</sup> 49 U.S.C. § 42121(b)(1).

<sup>212</sup> 49 U.S.C. § 42121(b)(2)(A).

<sup>213</sup> *Id.*

<sup>214</sup> 49 U.S.C. § 42121(b)(4)(A).

<sup>215</sup> 49 U.S.C. § 42121(b)(3)(B).

WPA, a case must contain the following elements: a “personnel action” that was taken because of a “protected disclosure” made by a “covered employee.”<sup>217</sup>

## Enforcement

Within 240 days of receipt of a complaint, the Office of Special Counsel (OSC) must make a determination as to whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.<sup>218</sup> If a positive determination is made and the information was sent to the Special Counsel by an employee, former employee, applicant for employment, or an employee who obtained the information acting within the scope of employment,<sup>219</sup> the Special Counsel must transmit the information to the appropriate agency head and require that the agency head conduct an investigation and submit a written report.<sup>220</sup> The identity of the complaining employee may not be disclosed without such individual’s consent, unless the Special Counsel determines that disclosure is necessary to avoid imminent danger to health and safety or an imminent criminal violation.<sup>221</sup> The Special Counsel then reviews the reports as to their completeness and the reasonableness of the findings<sup>222</sup> and submits the reports to Congress, the President, the Comptroller General,<sup>223</sup> and the complainant.<sup>224</sup>

If the Special Counsel does not make a positive determination, however, he or she may only transmit the information to the agency head with the consent of the individual.<sup>225</sup> Further, if the Special Counsel receives the information from some source other than the ones described above, he or she may transmit the information to the appropriate agency head, who shall inform the Special Counsel of any action taken.<sup>226</sup> In any case where the subject of the whistleblowing disclosure evidences a criminal violation, however, all information is referred to the Attorney General and no report is transmitted to the complainant.<sup>227</sup> At least every 60 days throughout its investigation, the OSC must give notice of the status of the investigation to the individual who brought the allegation.<sup>228</sup> In addition, no later than 10 days before the termination of an investigation, a written status report including the proposed findings and legal conclusions must be made to the individual who made the allegation of wrongdoing.<sup>229</sup>

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(...continued)

<sup>216</sup> P.L. 101-12, 103 Stat. 16; P.L. 103-424, 108 Stat. 4361; P.L. 112-199, 126 Stat. 1465 (codified, as amended, in various sections of Title 5 U.S.C.).

<sup>217</sup> For further discussion of the coverage and scope of WPA protections, see CRS Report R42727, *Whistleblower Protections Under Federal Law: An Overview*, by (name redacted) and (name redacted).

<sup>218</sup> 5 U.S.C. § 1214(b)(2)(A)(i).

<sup>219</sup> 5 U.S.C. § 1213(c)(2).

<sup>220</sup> 5 U.S.C. § 1213(c)(1).

<sup>221</sup> 5 U.S.C. § 1213(h).

<sup>222</sup> 5 U.S.C. § 1213(e)(2).

<sup>223</sup> 5 U.S.C. § 1213(e)(3).

<sup>224</sup> 5 U.S.C. § 1213(e)(1).

<sup>225</sup> 5 U.S.C. § 1213(g)(2).

<sup>226</sup> 5 U.S.C. § 1213(g)(1).

<sup>227</sup> 5 U.S.C. § 1213(f).

<sup>228</sup> 5 U.S.C. § 1214(a)(1)(C)(ii).

<sup>229</sup> 5 U.S.C. § 1214(a)(1)(D).

## **Is there a private right of action?**

Yes. The WPA provides that an employee, former employee, or applicant for employment has the independent right to seek review of whistleblower reprisal cases by the MSPB no more than 60 days after notification is provided to such employee that the investigation was closed or 120 days after filing a complaint with the OSC.<sup>230</sup>

## **Remedies**

If in any investigation the Special Counsel determines that there are “reasonable grounds to believe” a prohibited personnel practice exists or has occurred, the Special Counsel must report findings and recommendations, and may include recommendations for corrective action, to the Merit Systems Protection Board (MSPB), the agency involved, the Office of Personnel Management (OPM) and, optionally, to the President.<sup>231</sup> If the agency does not act to correct the prohibited personnel practice, the Special Counsel may petition the MSPB for corrective action.<sup>232</sup> The MSPB, before rendering its decision, is required to provide an opportunity for oral or written comments by the Special Counsel, the agency involved, and the OPM, and for written comments by any individual who alleges to be the victim of the prohibited personnel practices.<sup>233</sup>

Proceedings for disciplinary action against an officer or employee who commits a prohibited personnel practice may be instituted by the Special Counsel by filing a written complaint with the MSPB.<sup>234</sup> After proceedings before the MSPB or an administrative law judge,<sup>235</sup> if violations are found, the MSPB may impose (i) disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed five years, suspension, or reprimand; (ii) an assessment of a civil penalty not to exceed \$ 1,000; or (iii) any combination of disciplinary actions described under clause (i) and an assessment described under clause (ii).<sup>236</sup> In addition, the agency where the prevailing party was employed or had applied for employment may be held responsible for reasonable attorney’s fees.<sup>237</sup> In the case of presidentially appointed and Senate confirmed employees in “confidential, policy-making, policy-determining, or policy-advocating” positions, the complaint and the statement of facts, along with any response from the employee, are to be presented to the President for disposition in lieu of the presentation to the Board.<sup>238</sup>

## **Years of Adoption and Relevant Amendments**

Adopted 1989.

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<sup>230</sup> 5 U.S.C. §§ 1221, 1214(a)(3).

<sup>231</sup> 5 U.S.C. § 1214(b)(2)(B).

<sup>232</sup> 5 U.S.C. § 1214(b)(2)(C).

<sup>233</sup> 5 U.S.C. § 1214(b)(3).

<sup>234</sup> 5 U.S.C. § 1215(a)(1).

<sup>235</sup> 5 U.S.C. § 1215(a)(2)(C).

<sup>236</sup> 5 U.S.C. § 1215(a)(3)(A).

<sup>237</sup> 5 U.S.C. § 1204(m)(1).

<sup>238</sup> 5 U.S.C. § 1215(b).

Amended 1994, 2012.

See P.L. 112-199, §§ 101(a), (b)(1)(B), (2)(B), (C), 102-104(b)(1), 105, 112, 126 Stat. 1465 (2012).

Sponsor: Senator Daniel K. Akaka

Cosponsors: 14

House: On passage Passed without objection

Senate: Resolving differences - Senate agreed to House amendment to the bill (S. 743) by Unanimous Consent.



**Table I. Comparison of Selected Provisions in Federal Whistleblower and Anti-Retaliation Laws**

Whistleblower/Anti-Retaliation Law	Years of Adoption and Relevant Amendments	Private Right of Action Provided	Reinstatement Permitted in Preliminary Order
Age Discrimination in Employment Act	1967	•	
American Recovery and Reinvestment Act	2009	•	
Americans with Disabilities Act	1990	•	
Asbestos Hazard Emergency Response Act	1986		
Clean Air Act	1977		
Commercial Motor Vehicle Safety Act	1994, amended 2007	•	•
Comprehensive Environmental Response Compensation and Liability Act	1980		
Consumer Financial Protection Act	2010	•	•
Consumer Product Safety Act	2008	•	•
Department of Defense Authorization Act of 1987	1986, amended 2013	•	
Dodd-Frank Wall Street Reform and Consumer Protection Act	2010	•	•
Employee Polygraph Protection Act	1988	•	
Employee Retirement Income Security Act	1974, amended 2006	•	
Energy Reorganization Act of 1974	1974, amended 2005	•	•
Fair Labor Standards Act	1938	•	
Family and Medical Leave Act	1993	•	
FBI Employee Whistleblower Protections	1978		
FDA Food Safety Modernization Act	2011	•	•
Federal Mine Safety and Health Act	1969, amended 1977, 1984	•	•
Federal Railroad Safety Act	1994, amended 2007	•	•
Federal Water Pollution	1972		

<b>Whistleblower/Anti-Retaliation Law</b>	<b>Years of Adoption and Relevant Amendments</b>	<b>Private Right of Action Provided</b>	<b>Reinstatement Permitted in Preliminary Order</b>
<b>Control Act</b>			
International Safe Container Act	2006		
Longshore and Harbor Workers' Compensation Act	1972, amended 1984		
Migrant and Seasonal Agricultural Worker Protection Act	1983		
Moving Ahead for Progress in the 21 <sup>st</sup> Century Act	2012	•	•
National Labor Relations Act	1935		
National Transit Systems Security Act	2007	•	•
Occupational Safety and Health Act	1970		
Patient Protection and Affordable Care Act	2010	•	•
Pipeline Safety Improvement Act	2002	•	•
Safe Drinking Water Act	1974		
Sarbanes-Oxley Act of 2002	2002	•	•
Seaman's Protection Act	1984, amended 2002, 2010	•	•
Solid Waste Disposal Act	1976		
Surface Mining Control and Reclamation Act	1977		
Title VII of the Civil Rights Act	1964, amended 1972	•	
Toxic Substances Control Act	1976		
Uniformed Services Employment and Reemployment Rights Act	1994, amended 1998, 2008	•	
Wendell H. Ford Aviation Investment and Reform Act of the 21 <sup>st</sup> Century	2000		•
Whistleblower Protection Act	1989, amended 1994, 2012	•	

**Source:** CRS

## **Author Contact Information**

(name redacted)  
Legislative Attorney  
/redacted/@crs.loc.gov, 7-....

(name redacted)  
Law Librarian  
/redacted/@crs.loc.gov, 7-....

(name redacted)  
Legislative Attorney  
/redacted/@crs.loc.gov, 7-....

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