

section 10(b) of the Occupational Safety and Health Act of 1970) if the employer fails to notify the Secretary of Labor within 15 days (excluding Saturdays, Sundays, and Federal holidays) after receipt of the notice that the employer intends to contest the citation or notification; or

(B) opportunity for a hearing before the Occupational Safety and Health Review Commission shall be afforded in accordance with section 10(c) of the Occupational Safety and Health Act of 1970, if the employer gives timely notice to the Secretary that he intends to contest the citation or notification.

(4) VARIANCE PROCEDURES.—An employing office may request from the Secretary of Labor an order granting a variance from a standard made applicable by this section, in accordance with sections 6(b)(6) and 6(d) of the Occupational Safety and Health Act of 1970.

(5) JUDICIAL REVIEW.—Any person or employing office aggrieved by a final decision of the Occupational Safety and Health Review Commission under paragraph (3) or the Secretary of Labor under paragraph (4) may file a petition for review with the United States Court of Appeals for the Federal Circuit under section 1296 of title 28.

(6) COMPLIANCE DATE.—If new appropriated funds are necessary to correct a violation of subsection (a) for which a citation is issued, or to comply with an order requiring correction of such a violation, correction or compliance shall take place as soon as possible, but not later than the end of the fiscal year following the fiscal year in which the citation is issued or the order requiring correction becomes final and not subject to further review.

(d) REGULATIONS TO IMPLEMENT SECTION.—

(1) IN GENERAL.—The President, or the designee of the President, shall issue regulations to implement this section.

(2) AGENCY REGULATIONS.—The regulations issued under paragraph (1) shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsections (a) and (b)—

(A) except to the extent that the President or designee may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section; and

(B) except that the President or designee may, at the discretion of the President or designee, issue regulations to implement a provision of section 19 of the Occupational Safety and Health Act of 1970 that applies to agencies or employees of the executive branch of the Federal Government in lieu of an analogous statutory provision referred to in subsection (a) or (b), if the issuance of such regulations—

(i) would be equally effective for the implementation of the rights and protections under this section; and

(ii) would promote uniformity in the application of Federal law to employees in

the executive branch of the Federal Government.

(3) EMPLOYING OFFICE RESPONSIBLE FOR CORRECTION.—The regulations issued under paragraph (1) shall include a method of identifying, for purposes of this section and for different categories of violations of subsection (a), the employing office responsible for correction of a particular violation.

(e) EFFECTIVE DATE.—Subsections (a) through (c) shall take effect on the earlier of—

(1) the effective date of regulations issued under subsection (d); or

(2) October 1, 1998.

(Added Pub. L. 104-331, §2(a), Oct. 26, 1996, 110 Stat. 4062.)

Editorial Notes

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in subsecs. (a) to (c)(4) and (d)(2)(B), is Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590, which is classified principally to chapter 15 (§651 et seq.) of Title 29, Labor. Sections 5, 6, 8 to 10, 13, and 19 of the Act are classified to sections 654, 655, 657 to 659, 662, and 668, respectively, of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Subsec. (d) of this section effective Oct. 26, 1996, see section 471(b) of this title.

PART D—LABOR-MANAGEMENT RELATIONS

§ 431. Application of chapter 71 of title 5, relating to Federal service labor-management relations; procedures for remedy of violations

(a) LABOR-MANAGEMENT RIGHTS.—Subject to subsection (d), chapter 71 of title 5 shall apply to employing offices and to covered employees and representatives of those employees, except that covered employees shall not have a right to reinstatement pursuant to section 7118(a)(7)(C) or 7123 of title 5.

(b) DEFINITION.—For purposes of the application under this section of chapter 71 of title 5, the term “agency” as used in such chapter means an employing office.

(c) REGULATIONS TO IMPLEMENT SECTION.—

(1) IN GENERAL.—The Federal Labor Relations Authority shall issue regulations to implement this section.

(2) AGENCY REGULATIONS.—Except as provided in subsection (d), the regulations issued under paragraph (1) shall be the same as substantive regulations promulgated by the Authority to implement the statutory provisions referred to in subsection (a), except—

(A) to the extent the Authority may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section; or

(B) as the Authority may determine that a modification of such regulations is necessary to avoid a conflict of interest or appearance of a conflict of interest.

(d) SPECIFIC REGULATIONS REGARDING APPLICATIONS TO CERTAIN EMPLOYING OFFICES.—

(1) REGULATIONS REQUIRED.—The Authority shall issue regulations on the manner and the extent to which the requirements and exemptions of chapter 71 of title 5 should apply to covered employees who are employed in the offices listed in paragraph (2). The regulations shall, to the greatest extent practicable, be consistent with the provisions and purposes of chapter 71 of title 5 and of this chapter, and shall be the same as the substantive regulations issued by the Authority under such chapter, except—

(A) to the extent the Authority may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section; and

(B) that the Authority shall exclude from coverage under this section any covered employees who are employed in offices listed in paragraph (2) if the Authority determines that such exclusion is required because of—

(i) a conflict of interest or appearance of a conflict of interest; or

(ii) the President's or Vice President's constitutional responsibilities.

(2) OFFICES REFERRED TO.—The offices referred to in paragraph (1) include—

(A) the White House Office;

(B) the Executive Residence at the White House;

(C) the Office of the Vice President;

(D) the Office of Policy Development;

(E) the Council of Economic Advisers;

(F) the National Security Council;

(G) the Office of Management and Budget; and

(H) the Office of National Drug Control Policy.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), subsections (a) and (b) shall take effect on the earlier of—

(A) the effective date of regulations issued under subsection (c); or

(B) October 1, 1998.

(2) CERTAIN EMPLOYING OFFICES.—Subsections (a) and (b) shall take effect, with respect to employing offices, and employees of employing offices, referred to in subsection (d)(2), on the earlier of—

(A) the effective date of regulations issued under subsection (d); or

(B) October 1, 1998.

(Added Pub. L. 104-331, §2(a), Oct. 26, 1996, 110 Stat. 4064.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Subsecs. (c) and (d) of this section effective Oct. 26, 1996, see section 471(b) of this title.

PART E—GENERAL

§ 435. Generally applicable remedies and limitations

(a) ATTORNEY'S FEES.—If a covered employee, with respect to any claim under this chapter, or

a qualified person with a disability, with respect to any claim under section 421, is a prevailing party in any proceeding under section 453(1), the administrative agency may award attorney's fees, expert fees, and any other costs as would be appropriate if awarded under section 706(k) of the Civil Rights Act of 1964.

(b) INTEREST.—In any proceeding under section 453(1), the same interest to compensate for delay in payment shall be made available as would be appropriate if awarded under section 717(d) of the Civil Rights Act of 1964.

(c) CIVIL PENALTIES AND PUNITIVE DAMAGES.—Except as otherwise provided in this chapter, no civil penalty or punitive damages may be awarded with respect to any claim under this chapter.

(d) EXCLUSIVE PROCEDURE.—

(1) IN GENERAL.—Except as provided in paragraph (2), no person may commence an administrative or judicial proceeding to seek a remedy for the rights and protections afforded by this chapter except as provided in this chapter and in sections 1296 and 1346(g) and chapter 179 of title 28.

(2) VETERANS.—A covered employee under section 416 may also utilize any provisions of chapter 43 of title 38 that are applicable to that employee.

(e) SCOPE OF REMEDY.—Only a covered employee who has undertaken and completed the procedures described in section 452 may be granted a remedy under part A of this subchapter.

(f) CONSTRUCTION.—

(1) DEFINITIONS AND EXEMPTIONS.—Except where inconsistent with definitions and exemptions provided in this chapter, the definitions and exemptions in the laws made applicable by this chapter shall apply under this chapter.

(2) SIZE LIMITATIONS.—Notwithstanding paragraph (1), provisions in the laws made applicable under this chapter (other than paragraphs (2) and (3) of section 2(a) of the Worker Adjustment and Retraining Notification Act) determining coverage based on size, whether expressed in terms of numbers of employees, amount of business transacted, or other measure, shall not apply in determining coverage under this chapter.

(g) POLITICAL AFFILIATION.—It shall not be a violation of any provision of this chapter to consider, or make any employment decision based on, the party affiliation, or political compatibility with the employing office, of an employee who is a covered employee.

(Added Pub. L. 104-331, §2(a), Oct. 26, 1996, 110 Stat. 4066.)

Editorial Notes

REFERENCES IN TEXT

Sections 706 and 717 of the Civil Rights Act of 1964, referred to in subsecs. (a) and (b), are classified to sections 2000e-5 and 2000e-16, respectively, of Title 42, The Public Health and Welfare.

Section 2 of the Worker Adjustment and Retraining Notification Act, referred to in subsec. (f)(2), is classified to section 2101 of Title 29, Labor.