

and shall take such action as may be necessary to implement corrective measures with respect to such issues. Such plan shall be submitted to the Congress on or before January 1, 1978 and progress reports shall be included in the annual report of the Commission thereafter.

(Pub. L. 93-438, title II, § 210, as added Pub. L. 95-209, § 3, Dec. 13, 1977, 91 Stat. 1482.)

#### Editorial Notes

##### PRIOR PROVISIONS

Another section 210 of Pub. L. 93-438 was renumbered section 211 and is classified to section 5851 of this title.

#### Executive Documents

##### TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

### § 5851. Employee protection

#### (a) Discrimination against employee

(1) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

(A) notified his employer of an alleged violation of this chapter or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.);

(B) refused to engage in any practice made unlawful by this chapter or the Atomic Energy Act of 1954, if the employee has identified the alleged illegality to the employer;

(C) testified before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of this chapter or the Atomic Energy Act of 1954;

(D) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or the Atomic Energy Act of 1954, as amended, or a proceeding for the administration or enforcement of any requirement imposed under this chapter or the Atomic Energy Act of 1954, as amended;

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

(F) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this chapter or the Atomic Energy Act of 1954, as amended.

(2) For purposes of this section, the term “employer” includes—

(A) a licensee of the Commission or of an agreement State under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021);

(B) an applicant for a license from the Commission or such an agreement State;

(C) a contractor or subcontractor of such a licensee or applicant;

(D) a contractor or subcontractor of the Department of Energy that is indemnified by the Department under section 170 d. of the Atomic

Energy Act of 1954 (42 U.S.C. 2210(d)), but such term shall not include any contractor or subcontractor covered by Executive Order No. 12344;

(E) a contractor or subcontractor of the Commission;

(F) the Commission; and

(G) the Department of Energy.

#### (b) Complaint, filing and notification

(1) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, within 180 days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (in this section referred to as the “Secretary”) alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint, the Commission, and the Department of Energy.

(2)(A) Upon receipt of a complaint filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within thirty days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within ninety days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for public hearing. Upon the conclusion of such hearing and the issuance of a recommended decision that the complaint has merit, the Secretary shall issue a preliminary order providing the relief prescribed in subparagraph (B), but may not order compensatory damages pending a final order. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation to (i) take affirmative action to abate the violation, and (ii) reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, and the Secretary may order such person to provide compensatory damages to the complainant. If an order is issued under this paragraph, the Secretary, at the request of the complainant shall 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, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(3)(A) The Secretary shall dismiss a complaint filed under paragraph (1), and shall not conduct the investigation required under paragraph (2), unless the complainant has made a prima facie showing that any behavior described in subparagraphs (A) through (F) of subsection (a)(1) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(B) Notwithstanding a finding by the Secretary that the complainant has made the showing required by subparagraph (A), no investigation required under paragraph (2) shall be conducted if the employer demonstrates, by clear and convincing evidence, that it would have taken the same unfavorable personnel action in the absence of such behavior.

(C) The Secretary may determine that a violation of subsection (a) has occurred only if the complainant has demonstrated that any behavior described in subparagraphs (A) through (F) of subsection (a)(1) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(D) Relief may not be ordered under paragraph (2) if the employer demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of such behavior.

(4) If the Secretary has not issued a final decision within 1 year after the filing of a complaint under paragraph (1), and there is no showing that such delay is due to the bad faith of the person seeking relief under this paragraph, such person may bring an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

#### **(c) Review**

(1) Any person adversely affected or aggrieved by an order issued under subsection (b) may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(2) An order of the Secretary with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in any criminal or other civil proceeding.

#### **(d) Jurisdiction**

Whenever a person has failed to comply with an order issued under subsection (b)(2), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages.

#### **(e) Commencement of action**

(1) Any person on whose behalf an order was issued under paragraph (2) of subsection (b) may

commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

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

#### **(f) Enforcement**

Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28.

#### **(g) Deliberate violations**

Subsection (a) shall not apply with respect to any employee who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of this chapter or of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.].

#### **(h) Nonpreemption**

This section may not be construed to expand, diminish, or otherwise affect any right otherwise available to an employee under Federal or State law to redress the employee's discharge or other discriminatory action taken by the employer against the employee.

#### **(i) Posting requirement**

The provisions of this section shall be prominently posted in any place of employment to which this section applies.

#### **(j) Investigation of allegations**

(1) The Commission or the Department of Energy shall not delay taking appropriate action with respect to an allegation of a substantial safety hazard on the basis of—

(A) the filing of a complaint under subsection (b)(1) of this section arising from such allegation; or

(B) any investigation by the Secretary, or other action, under this section in response to such complaint.

(2) A determination by the Secretary under this section that a violation of subsection (a) has not occurred shall not be considered by the Commission or the Department of Energy in its determination of whether a substantial safety hazard exists.

(Pub. L. 93-438, title II, §211, formerly §210, as added Pub. L. 95-601, §10, Nov. 6, 1978, 92 Stat. 2951; renumbered §211 and amended Pub. L. 102-486, title XXIX, §2902(a)-(g), (h)(2), (3), Oct. 24, 1992, 106 Stat. 3123, 3124; Pub. L. 109-58, title VI, §629, Aug. 8, 2005, 119 Stat. 785.)

#### **Editorial Notes**

##### **REFERENCES IN TEXT**

This chapter, referred to in subsecs. (a)(1) and (g), was in the original "this Act", meaning Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233, known as the Energy Reorganization Act of 1974, which is classified principally to this chapter. For complete classification of this Act to the

Code, see Short Title note set out under section 5801 of this title and Tables.

The Atomic Energy Act of 1954, referred to in subsecs. (a)(1) and (g), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 919, which is classified principally to chapter 23 (§ 2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification on this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables.

Executive Order No. 12344, referred to in subsec. (a)(2)(D), is Ex. Ord. No. 12344, Feb. 1, 1982, 47 F.R. 4979, which is set out as a note under section 2511 of Title 50, War and National Defense.

#### AMENDMENTS

2005—Subsec. (a)(2)(E) to (G). Pub. L. 109-58, § 629(a), added subpars. (E) to (G).

Subsec. (b)(4). Pub. L. 109-58, § 629(b), added par. (4).

1992—Subsec. (a). Pub. L. 102-486, § 2902(a), designated existing provisions as par. (1) and struck out “, including a Commission licensee, an applicant for a Commission license, or a contractor or a subcontractor of a Commission licensee or applicant,” after “No employer”, added subpars. (A) to (C), redesignated former pars. (1) to (3) as subpars. (D) to (F), respectively, and added par. (2).

Subsec. (b)(1). Pub. L. 102-486, § 2902(b), (h)(2), substituted “180” for “thirty”, “(in this section referred to as the ‘Secretary’)” for “(hereinafter in this subsection referred to as the ‘Secretary’)”, and “, the Commission, and the Department of Energy” for “and the Commission”.

Subsec. (b)(2)(A). Pub. L. 102-486, § 2902(c), inserted before last sentence “Upon the conclusion of such hearing and the issuance of a recommended decision that the complaint has merit, the Secretary shall issue a preliminary order providing the relief prescribed in subparagraph (B), but may not order compensatory damages pending a final order.”

Subsec. (b)(3). Pub. L. 102-486, § 2902(d), added par. (3).

Subsecs. (h) to (j). Pub. L. 102-486, § 2902(e)-(g), added subsecs. (h) to (j).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-486, title XXIX, § 2902(i), Oct. 24, 1992, 106 Stat. 3125, provided that: “The amendments made by this section [amending this section] shall apply to claims filed under section 211(b)(1) of the Energy Reorganization Act of 1974 (42 U.S.C. 5851(b)(1)) on or after the date of the enactment of this Act [Oct. 24, 1992].”

#### Executive Documents

##### TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

#### § 5852. Availability of funds

##### (a) Appropriations for salaries and expenses; additional purposes

Funds appropriated for “Nuclear Regulatory Commission—Salaries and Expenses” shall be available to the Commission for the following additional purposes:

- (1) Employment of aliens.
- (2) Services authorized by section 3109 of title 5.
- (3) Publication and dissemination of atomic information.
- (4) Purchase, repair, and cleaning of uniforms.
- (5) Reimbursements to the General Services Administration for security guard services.

(6) Hire of passenger motor vehicles and aircraft.

(7) Transfers of funds to other agencies of the Federal Government for the performance of the work for which such funds are appropriated, and such transferred funds may be merged with the appropriations to which they are transferred.

(8) Transfers to the Office of Inspector General of the Commission, not to exceed an additional amount equal to 5 percent of the amount otherwise appropriated to the Office for the fiscal year. Notice of such transfers shall be submitted to the Committees on Appropriations.

##### (b) Appropriations for Office of Inspector General; additional purposes

Funds appropriated for “Nuclear Regulatory Commission—Office of Inspector General” shall be available to the Office for the additional purposes described in paragraphs (2) and (7) of subsection (a).

##### (c) Use of program funds for salaries and expenses

Moneys received by the Commission for the cooperative nuclear research program, services rendered to State governments, foreign governments, and international organizations, and the material and information access authorization programs, including criminal history checks under section 2169 of this title<sup>1</sup> may be retained and used for salaries and expenses associated with those activities, notwithstanding section 3302 of title 31, and shall remain available until expended.

##### (d) Use of funds to provide voluntary separation incentive payments

Notwithstanding section 663(c)(2)(D) of Public Law 104-208, and to facilitate targeted workforce downsizing and restructuring, the Chairman of the Nuclear Regulatory Commission may use funds appropriated in this Act to exercise the authority provided by section 663 of that Act with respect to employees who voluntarily separate from October 7, 1998, through December 31, 2000. All of the requirements in section 663 of Public Law 104-208, except for section 663(c)(2)(D), apply to the exercise of authority under this section.

##### (e) Fiscal year applicability

Subsections (a), (b), and (c) of this section shall apply to fiscal year 1999 and each succeeding fiscal year.

(Pub. L. 105-245, title V, § 506, Oct. 7, 1998, 112 Stat. 1856.)

#### Editorial Notes

##### REFERENCES IN TEXT

Section 663 of Public Law 104-208, referred to in subsec. (d), is section 663 of Pub. L. 104-208, div. A, title I, § 101(f) [title VI], Sept. 30, 1996, 110 Stat. 3009-314, 3009-383, which is set out as a note under section 5597 of Title 5, Government Organization and Employees.

This Act, referred to in subsec. (d), is Pub. L. 105-245, Oct. 7, 1998, 112 Stat. 1838, known as the Energy and Water Development Appropriations Act, 1999. For complete classification of this Act to the Code, see Tables.

<sup>1</sup> So in original. Probably should be followed by a comma.