

(2) If an employee, former employee, or applicant for employment is the prevailing party before the Merit Systems Protection Board, and the decision is based on a finding of a prohibited personnel practice, the agency involved shall be liable to the employee, former employee, or applicant for reasonable attorney's fees and any other reasonable costs incurred.

(3) If an employee, former employee,¹ or applicant for employment is the prevailing party in an appeal from the Merit Systems Protection Board, the agency involved shall be liable to the employee, former employee, or applicant for reasonable attorney's fees and any other reasonable costs incurred, regardless of the basis of the decision.

(4) Any corrective action ordered under this section to correct a prohibited personnel practice may include fees, costs, or damages reasonably incurred due to an agency investigation of the employee, if such investigation was commenced, expanded, or extended in retaliation for the disclosure or protected activity that formed the basis of the corrective action.

(h)(1) An employee, former employee, or applicant for employment adversely affected or aggrieved by a final order or decision of the Board under this section may obtain judicial review of the order or decision.

(2) A petition for review under this subsection shall be filed with such court, and within such time, as provided for under section 7703(b).

(i) Subsections (a) through (h) shall apply in any proceeding brought under section 7513(d) if, or to the extent that, a prohibited personnel practice as defined in section 2302(b)(8) or section 2302(b)(9)(A)(i), (B), (C), or (D) is alleged.

(j) In determining the appealability of any case involving an allegation made by an individual under the provisions of this chapter, neither the status of an individual under any retirement system established under a Federal statute nor any election made by such individual under any such system may be taken into account.

(k) If the Board grants a stay under subsection (c) and the employee who is the subject of the action is in probationary status, the head of the agency employing the employee shall give priority to a request for a transfer submitted by the employee.

(Added Pub. L. 101-12, §3(a)(13), Apr. 10, 1989, 103 Stat. 29; amended Pub. L. 103-424, §§4, 8(b), Oct. 29, 1994, 108 Stat. 4363, 4365; Pub. L. 112-199, title I, §§101(b)(1)(A), (2)(A), 104(c)(2), 107(b), 114(b), Nov. 27, 2012, 126 Stat. 1465, 1468, 1469, 1472; Pub. L. 115-73, title I, §102(b), Oct. 26, 2017, 131 Stat. 1236; Pub. L. 115-91, div. A, title X, §1097(c)(3)(B), Dec. 12, 2017, 131 Stat. 1619.)

Editorial Notes

AMENDMENTS

2017—Subsec. (k). Pub. L. 115-91 added subsec. (k) and struck out former subsec. (k) which read as follows: “If the Merit Systems Protection Board grants a stay to an employee in probationary status under subsection (c), the head of the agency employing the employee shall give priority to a request for a transfer submitted by the employee.”

¹ So in original. Probably should be “employee.”

Pub. L. 115-73 added subsec. (k).

2012—Subsec. (a). Pub. L. 112-199, §101(b)(1)(A), inserted “or section 2302(b)(9)(A)(i), (B), (C), or (D)” after “section 2302(b)(8)”.

Subsec. (e)(1). Pub. L. 112-199, §101(b)(1)(A), (2)(A), inserted “or section 2302(b)(9)(A)(i), (B), (C), or (D)” after “section 2302(b)(8)” in two places and inserted “or protected activity” after “disclosure” wherever appearing.

Subsec. (e)(2). Pub. L. 112-199, §114(b), inserted “, after a finding that a protected disclosure was a contributing factor,” after “ordered if”.

Subsec. (g)(1)(A)(ii). Pub. L. 112-199, §107(b), substituted “any other reasonable and foreseeable consequential damages, and compensatory damages (including interest, reasonable expert witness fees, and costs).” for “and any other reasonable and foreseeable consequential changes.”

Subsec. (g)(4). Pub. L. 112-199, §104(c)(2), added par. (4).

Subsec. (i). Pub. L. 112-199, §101(b)(1)(A), inserted “or section 2302(b)(9)(A)(i), (B), (C), or (D)” after “section 2302(b)(8)”.

1994—Subsec. (d)(1). Pub. L. 103-424, §4(a), added par. (1) and struck out former par. (1) which read as follows: “At the request of an employee, former employee, or applicant for employment seeking corrective action under subsection (a), the Board may issue a subpoena for the attendance and testimony of any person or the production of documentary or other evidence from any person if the Board finds that such subpoena is necessary for the development of relevant evidence.”

Subsec. (e)(1). Pub. L. 103-424, §4(b), which directed the amendment of section 1221(e)(1), without specifying the Code title to be amended, by inserting at end “The employee may demonstrate that the disclosure was a contributing factor in the personnel action through circumstantial evidence, such as evidence that—

“(A) the official taking the personnel action knew of the disclosure; and

“(B) 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.”, was executed to subsec. (e)(1) of this section to reflect the probable intent of Congress.

Subsec. (f)(3). Pub. L. 103-424, §4(c), added par. (3).

Subsec. (g). Pub. L. 103-424, §8(b), added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-199 effective 30 days after Nov. 27, 2012, see section 202 of Pub. L. 112-199, set out as a note under section 1204 of this title.

EFFECTIVE DATE

Subchapter effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101-12, set out as an Effective Date of 1989 Amendment note under section 1201 of this title.

§ 1222. Availability of other remedies

Except as provided in section 1221(i), nothing in this chapter or chapter 23 shall be construed to limit any right or remedy available under a provision of statute which is outside of both this chapter and chapter 23.

(Added Pub. L. 101-12, §3(a)(13), Apr. 10, 1989, 103 Stat. 31.)

CHAPTER 13—SPECIAL AUTHORITY

Sec.	
1301.	Rules.
1302.	Regulations.

Sec.	
1303.	Investigations; reports.
1304.	Loyalty investigations; reports; revolving fund.
1305.	Administrative law judges.
1306.	Oaths to witnesses.
1307.	Minutes.
[1308.	Repealed.]

Editorial Notes

AMENDMENTS

1998—Pub. L. 105-362, title XIII, §1302(b)(2)(A), Nov. 10, 1998, 112 Stat. 3293, struck out item 1308 “Annual reports”.

1978—Pub. L. 95-251, §2(c)(1), Mar. 27, 1978, 92 Stat. 183, substituted “Administrative law judges” for “Hearing examiners” in item 1305.

§ 1301. Rules

The Office of Personnel Management shall aid the President, as he may request, in preparing the rules he prescribes under this title for the administration of the competitive service.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 401; Pub. L. 95-454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 633(1) (function of Civil Service Commission).	Jan. 16, 1883, ch. 27, §2(1) (function of Civil Service Commission), 22 Stat. 403.

The authority of the President to prescribe rules is carried into sections 2951, 3302, 3304(a), 3306(a), 3321, 7152, 7153, 7321, and 7322 of this title.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Editorial Notes

AMENDMENTS

1978—Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 1302. Regulations

(a) The Office of Personnel Management, subject to the rules prescribed by the President under this title for the administration of the competitive service, shall prescribe regulations for, control, supervise, and preserve the records of, examinations for the competitive service.

(b) The Office shall prescribe and enforce regulations for the administration of the provisions of this title, and Executive orders issued in furtherance thereof, that implement the Congressional policy that preference shall be given to preference eligibles in certification for appointment, and in appointment, reinstatement, reemployment, and retention, in the competitive service in Executive agencies, permanent or temporary, and in the government of the District of Columbia.

(c) The Office shall prescribe regulations for the administration of the provisions of this title that implement the Congressional policy that preference shall be given to preference eligibles in certification for appointment, and in appointment, reinstatement, reemployment, and retention, in the excepted service in Executive agencies, permanent or temporary, and in the government of the District of Columbia.

(d) The Office may prescribe reasonable procedure and regulations for the administration of its functions under chapter 15 of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 401; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	5 U.S.C. 633(2)7 (last 17 words), (3) (less last 10 words).	Jan. 16, 1883, ch. 27, §§2(2)7 (last 17 words), (3) (less last 10 words), 22 Stat. 404.
(b)	5 U.S.C. 851 (1st 76 words), 868 (less proviso).	June 27, 1944, ch. 287, §§2 (1st 76 words), 19, 58 Stat. 387, 391.
(c)	5 U.S.C. 851 (1st 76 words), 860.	June 27, 1944, ch. 287, §§2 (1st 76 words), 11, 58 Stat. 387, 390.
(d)	5 U.S.C. 118k(d) (1st sentence).	July 19, 1940, ch. 640 §4 “Sec. 12(d) (1st sentence)”, 54 Stat. 769.

Subsection (a) is based on former section 633(3) (less last 10 words). The regulation-making power conferred by that section covers the power conferred by former section 633(2)7 (last 17 words) which is, therefore, omitted. The requirement of notice is preserved in section 3304. The words “through its members or the examiners” are omitted as unnecessary in view of section 1104. The authority of the President to prescribe rules, based on former section 633(1) is carried into sections 2951, 3302, 3304(a), 3306(a), 3321, 7152, 7153, 7321, and 7322 of this title.

In subsections (b)–(d), the word “rules” is omitted as included in “regulations”.

The provisions of the Veterans’ Preference Act of 1944 (former sections 851–869) to which the regulation-making authority of subsections (b) and (c) apply are carried into sections 2108, 3305(b), 3306(a)(2), 3308–3320, 3351, 3363, 3364, and 7701, subchapter I of chapter 35, and subchapter II of chapter 75 of this title. The first 76 words of former section 851 are added here to preserve the general statement of policy in the light of which the substantive provisions that formerly comprised the Veterans’ Preference Act of 1944 are to be interpreted. See *Elder v. Brannan*, 241 U.S. 277, 286. In subsection (b), the words “in the competitive service in Executive agencies, permanent or temporary, and in the government of the District of Columbia”, and in subsection (c) the words “in the excepted service in Executive agencies, permanent or temporary, and in the government of the District of Columbia” are coextensive with and substituted for “in civilian positions in all establishments, agencies, bureaus, administrations, projects, and departments of the Government, permanent or temporary, and in either (a) the classified civil service; (b) the unclassified civil service; (c) any temporary or emergency establishment, agency, bureau, administration, project, and department created by Acts of Congress or Presidential Executive order”, in view of the exclusion of positions in the legislative and judicial branches by former section 869.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.