

106TH CONGRESS
1ST SESSION

S. 652

To amend the Occupational Safety and Health Act of 1970 to protect employees against reprisals from employers based on certain employee conduct concerning safe and healthy working conditions.

IN THE SENATE OF THE UNITED STATES

MARCH 17, 1999

Mr. WELLSTON (for himself and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Occupational Safety and Health Act of 1970 to protect employees against reprisals from employers based on certain employee conduct concerning safe and healthy working conditions.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Safety and Health
5 Whistleblower Protection Act”.

6 **SEC. 2. EMPLOYEE ACTIONS.**

7 Section 11(c)(1) of the Occupational Safety and
8 Health Act of 1970 (29 U.S.C. 660(c)(1)) is amended by

1 inserting before the period the following: “including re-
2 porting any injury, illness or unsafe condition”.

3 **SEC. 3. PROHIBITION OF DISCRIMINATION.**

4 Section 11(c) of the Occupational Safety and Health
5 Act of 1970 (29 U.S.C. 660(c)) is amended by striking
6 paragraph (2) and inserting the following:

7 “(2) No person shall discharge or in any manner dis-
8 criminate against an employee for refusing to perform the
9 employee’s duties when the employee has a reasonable ap-
10 prehension that performing such duties would result in se-
11 rious injury or serious impairment of health to the em-
12 ployee or other employees. The circumstances causing the
13 employee’s apprehension of serious injury must be of such
14 a nature that a reasonable person would conclude that
15 there is a danger of serious injury or serious impairment
16 of health. This paragraph shall only apply to an employee
17 to the extent that the employee, if possible, communicated
18 to the employer the danger perceived.”.

19 **SEC. 4. PROCEDURE.**

20 Section 11(c) of the Occupational Safety and Health
21 Act of 1970 (29 U.S.C. 660(c)) is amended by striking
22 paragraph (3) and inserting the following:

23 “(3) Any employee who believes that he or she has
24 been discharged, disciplined, or otherwise discriminated
25 against in violation of paragraph (1) or (2) may, within

1 180 days after the date on which such alleged violation
2 occurs, file (or have filed by any person on the employee's
3 behalf) a complaint with the Secretary alleging such dis-
4 charge, discipline, or discrimination. Upon receipt of such
5 a complaint, the Secretary shall notify the person named
6 in the complaint of the filing of the complaint.

7 “(4)(A) Within 90 days of the receipt of a complaint
8 filed under paragraph (3), the Secretary shall conduct an
9 investigation and determine whether there is reasonable
10 cause to believe that the complaint has merit and shall
11 notify the complainant and the person alleged to have
12 committed the violation of paragraph (1) or (2) of the Sec-
13 retary's findings. Where the Secretary has determined
14 that there is reasonable cause to believe that a violation
15 has occurred, the Secretary's findings shall be accom-
16 panied by a preliminary order providing the relief pre-
17 scribed by subparagraph (E).

18 “(B)(i) After a preliminary order is issued under sub-
19 paragraph (A), the person alleged to have committed the
20 violation involved or the complainant may, within 30 days,
21 file objections to the findings or preliminary order, or
22 both, and request a hearing on the record, except that the
23 filing of such objections shall not operate to stay any rein-
24 statement remedy contained in the preliminary order; and

1 “(ii) If a hearing described in clause (i) is not re-
2 quested in a timely manner as provided for under such
3 clause, the preliminary order involved shall be deemed a
4 final order and not be subject to judicial review.

5 “(C) If the Secretary has not issued findings under
6 subparagraph (A) within the 90-day period described in
7 such subparagraph, and the employee or representative of
8 the employee files a request for a hearing with the Sec-
9 retary, the Secretary shall afford an opportunity for a
10 hearing on the record.

11 “(D) If requested under subparagraph (C), a hearing
12 shall be conducted by an administrative law judge and a
13 recommended decision and order issued expeditiously. The
14 legal burdens of proof that prevail under section 1221 of
15 title 5, United States Code, shall govern adjudication of
16 violations under this subsection. The Secretary shall issue
17 a final order within 120 days of the issuance of the rec-
18 ommended decision. In the interim, such proceedings may
19 be terminated at any time on the basis of a settlement
20 agreement entered into by the Secretary, the complainant,
21 and the person alleged to have committed the violation.

22 “(E) If, in response to a complaint filed under para-
23 graph (3), the Secretary determines that a violation of
24 paragraph (1) or (2) has occurred, the Secretary shall
25 order as appropriate—

1 “(i) the person who committed such violation to
2 correct the violation;

3 “(ii) the person to reinstate the complainant to
4 the complainant’s former position together with the
5 compensation (including back pay), terms, condi-
6 tions, and privileges of the position;

7 “(iii) compensatory damages; and

8 “(iv) exemplary damages.

9 Upon issuance of such an order, the Secretary may assess
10 against the person against whom the order is issued a sum
11 equal to the aggregate amount of all costs and expenses
12 (including attorney’s fees and expert witness fees) reason-
13 ably incurred, as determined by the Secretary, by the com-
14 plainant for, or in connection with, the bringing of the
15 complaint upon which the order was issued, including
16 costs and expenses incurred upon review before a court
17 of appeals.

18 “(F) In conducting an investigation or adjudication
19 under this paragraph, the provisions of section 8(b) shall
20 apply.

21 “(5)(A) Any person adversely affected or aggrieved
22 by a final order issued under paragraph (4)(D) may obtain
23 review of the order before the United States court of ap-
24 peals for the circuit in which the violation, with respect
25 to which the order was issued, occurred, or the circuit in

1 which such person resided on the date of such violation.
 2 The petition for review must be filed within 60 days from
 3 the date on which the Secretary's order was issued. Such
 4 review shall be in accordance with the provisions of chap-
 5 ter 7 of title 5, United States Code. An order of the Sec-
 6 retary subject to review under this subsection is not sub-
 7 ject to judicial review in a criminal or other civil pro-
 8 ceeding. The commencement of proceedings under this
 9 subsection shall not, unless ordered by the court, operate
 10 as a stay of the order of the Secretary.

11 “(B) When a person has failed to comply with a final
 12 order or an order of reinstatement issued under paragraph
 13 (4), the Secretary or the person on behalf of whom the
 14 order was issued may file a civil action in the United
 15 States district court for the district in which the violation
 16 was found to occur in order to enforce such order. In ac-
 17 tions brought under this subparagraph, the district court
 18 shall have jurisdiction to grant additional appropriate re-
 19 lief in light of the noncompliance.”.

20 **SEC. 5. RELATION TO ENFORCEMENT.**

21 Section 17(j) of the Occupational Safety and Health
 22 Act of 1970 (29 U.S.C. 666(j)) is amended by inserting
 23 before the period the following: “, including the history
 24 of violation under section 11(c)”.

1 **SEC. 6. EFFECTIVE DATE.**

2 The amendments made by this Act shall take effect
3 90 days after the date of enactment of this Act.

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