

(i) in an administrative or executive position; and

(ii) appointed under section 7306(a) or section 7401(1) of this title.

(3) The term “career appointee” has the meaning given that term in section 3132(a) of title 5.

(Added Pub. L. 115–182, title V, §501(a), June 6, 2018, 132 Stat. 1474; amended Pub. L. 115–251, title II, §211(a)(1), Sept. 29, 2018, 132 Stat. 3174.)

Editorial Notes

CODIFICATION

Section 501(a) of Pub. L. 115–182, which directed that this section be added at the end of this chapter, was executed by adding this section at the end of this subchapter, to reflect the probable intent of Congress.

AMENDMENTS

2018—Subsec. (c)(3). Pub. L. 115–251 struck out “, United States Code” after “of title 5”.

§ 727. Reassignment of senior executives

(a) APPROVAL OF REASSIGNMENTS.—No individual employed in a senior executive position at the Department may be reassigned to another such position at the Department unless such reassignment is approved in writing and signed by the Secretary.

(b) SEMIANNUAL REPORTS REQUIRED.—(1) Not later than June 30 and December 31 of each year, the Secretary shall submit to Congress a report on the reassignment of individuals employed in senior executive positions at the Department to other such positions at the Department during the period covered by the report.

(2) Each report submitted under paragraph (1) shall describe the purpose of each reassignment and the costs associated with such reassignment.

(3) For purposes of paragraph (2), costs associated with a reassignment may only include the following:

- (A) A salary increase.
- (B) Temporary travel expenses for the individual or the family of the individual.
- (C) Moving expenses.
- (D) A paid incentive.

(c) SENIOR EXECUTIVE POSITION DEFINED.—In this section, the term “senior executive position” has the meaning given such term in section 713(d) of this title.

(Added Pub. L. 115–188, §2(a), June 21, 2018, 132 Stat. 1490.)

§ 728. Misuse of Department purchase cards

(a) IN GENERAL.—(1) The Secretary shall prohibit any employee of the Department who the Secretary or the Inspector General of the Department determines has knowingly misused a purchase card from serving as a purchase card holder or approving official.

(2) Such a prohibition shall be in addition to any other applicable penalty.

(b) MISUSE.—For purposes of this section, the term “misuse” means—

- (1) splitting purchases;
- (2) exceeding applicable purchase card limits or purchase thresholds;

- (3) purchasing any unauthorized item;
- (4) using a purchase card without being an authorized purchase card holder; or
- (5) violating ethics standards.

(Added Pub. L. 115–407, title V, §501(a), Dec. 31, 2018, 132 Stat. 5376.)

SUBCHAPTER II—WHISTLEBLOWER COMPLAINTS

§ 731. Adverse actions against supervisory employees who commit prohibited personnel actions relating to whistleblower complaints

(a) IN GENERAL.—(1) In accordance with paragraph (2), the Secretary shall carry out the following adverse actions against supervisory employees (as defined in section 7103(a) of title 5) whom the Secretary, an administrative judge, the Merit Systems Protection Board, the Office of Special Counsel, an adjudicating body provided under a union contract, a Federal judge, or the Inspector General of the Department determines committed a prohibited personnel action described in subsection (c):

(A) With respect to the first offense, an adverse action that is not less than a 12-day suspension and not more than removal.

(B) With respect to the second offense, removal.

(2)(A) An employee against whom an adverse action under paragraph (1) is proposed is entitled to written notice.

(B)(i) An employee who is notified under subparagraph (A) of being the subject of a proposed adverse action under paragraph (1) is entitled to 10 days following such notification to answer and furnish evidence in support of the answer.

(ii) If the employee does not furnish any such evidence as described in clause (i) or if the Secretary determines that such evidence is not sufficient to reverse the determination to propose the adverse action, the Secretary shall carry out the adverse action following such 10-day period.

(C) Paragraphs (1) and (2) of subsection (b) of section 7513 of title 5, subsection (c) of such section, paragraphs (1) and (2) of subsection (b) of section 7543 of such title, and subsection (c) of such section shall not apply with respect to an adverse action carried out under paragraph (1).

(b) LIMITATION ON OTHER ADVERSE ACTIONS.—With respect to a prohibited personnel action described in subsection (c), if the Secretary carries out an adverse action against a supervisory employee, the Secretary may carry out an additional adverse action under this section based on the same prohibited personnel action if the total severity of the adverse actions do not exceed the level specified in subsection (a).

(c) PROHIBITED PERSONNEL ACTION DESCRIBED.—A prohibited personnel action described in this subsection is any of the following actions:

(1) Taking or failing to take a personnel action in violation of section 2302 of title 5 against an employee relating to the employee—

- (A) making a whistleblower disclosure to the Assistant Secretary for Accountability and Whistleblower Protection, the Inspector General of the Department, the Special Counsel, or Congress;

(B) providing information or participating as a witness in an investigation of a whistleblower disclosure made to the Assistant Secretary for Accountability and Whistleblower Protection, the Inspector General of the Department, the Special Counsel, or Congress;

(C) participating in an audit or investigation by the Comptroller General of the United States;

(D) refusing to perform an action that is unlawful or prohibited by the Department; or

(E) engaging in communications that are related to the duties of the position or are otherwise protected.

(2) Preventing or restricting an employee from making an action described in any of subparagraphs (A) through (E) of paragraph (1).

(3) Conducting a negative peer review or opening a retaliatory investigation because of an activity of an employee that is protected by section 2302 of title 5.

(4) Requesting a contractor to carry out an action that is prohibited by section 4705(b) or section 4712(a)(1) of title 41, as the case may be.

(d) **WHISTLEBLOWER DISCLOSURE DEFINED.**—In this section, the term “whistleblower disclosure” has the meaning given such term in section 323(g) of this title.

(Added Pub. L. 114-223, div. A, title II, § 247(a)(1), Sept. 29, 2016, 130 Stat. 887, § 733; renumbered § 731 and amended Pub. L. 115-41, title I, § 102(a)(2), (c), title II, § 206, June 23, 2017, 131 Stat. 865, 867, 877.)

Editorial Notes

PRIOR PROVISIONS

A prior section 731, added Pub. L. 114-223, div. A, title II, § 247(a)(1), Sept. 29, 2016, 130 Stat. 884, defined whistleblower complaint, prior to repeal by Pub. L. 115-41, title I, § 102(a)(1), June 23, 2017, 131 Stat. 865.

AMENDMENTS

2017—Pub. L. 115-41, § 102(a)(2), renumbered section 733 of this title as this section.

Subsec. (a)(2)(B). Pub. L. 115-41, § 206, substituted “10 days” for “14 days” in cl. (i) and “10-day period” for “14-day period” in cl. (ii).

Subsec. (c)(1)(A). Pub. L. 115-41, § 102(c)(1)(A)(i), added subpar. (A) and struck out former subpar. (A) which read as follows: “filing a whistleblower complaint in accordance with section 732 of this title;”.

Subsec. (c)(1)(B). Pub. L. 115-41, § 102(c)(1)(A), redesignated subpar. (C) as (B), substituted “disclosure made to the Assistant Secretary for Accountability and Whistleblower Protection,” for “complaint in accordance with section 732 or with”, and struck out former subpar. (B) which read as follows: “filing a whistleblower complaint with the Inspector General of the Department, the Special Counsel, or Congress;”.

Subsec. (c)(1)(C) to (F). Pub. L. 115-41, § 102(c)(1)(A)(ii), redesignated subpars. (C) to (F) as (B) to (E), respectively.

Subsec. (c)(2). Pub. L. 115-41, § 102(c)(1)(B), substituted “through (E)” for “through (F)”.

Subsec. (d). Pub. L. 115-41, § 102(c)(2), added subsec. (d).

Statutory Notes and Related Subsidiaries

IMPROVEMENT OF TRAINING FOR SUPERVISORS

Pub. L. 115-41, title II, § 209, June 23, 2017, 131 Stat. 879, provided that:

“(a) **IN GENERAL.**—The Secretary of Veterans Affairs shall provide to each employee of the Department of Veterans Affairs who is employed as a supervisor periodic training on the following:

“(1) The rights of whistleblowers and how to address a report by an employee of a hostile work environment, reprisal, or harassment.

“(2) How to effectively motivate, manage, and reward the employees who report to the supervisor.

“(3) How to effectively manage employees who are performing at an unacceptable level and access assistance from the human resources office of the Department and the Office of the General Counsel of the Department with respect to those employees.

“(b) **DEFINITIONS.**—In this section:

“(1) **SUPERVISOR.**—The term ‘supervisor’ has the meaning given such term in section 7103(a) of title 5, United States Code.

“(2) **WHISTLEBLOWER.**—The term ‘whistleblower’ has the meaning given such term in section 323(g) of title 38, United States Code, as added by section 101.”

§ 732. Protection of whistleblowers as criteria in evaluation of supervisors

(a) **DEVELOPMENT AND USE OF CRITERIA REQUIRED.**—The Secretary, in consultation with the Assistant Secretary of Accountability and Whistleblower Protection, shall develop criteria that—

(1) the Secretary shall use as a critical element in any evaluation of the performance of a supervisory employee; and

(2) promotes the protection of whistleblowers.

(b) **PRINCIPLES FOR PROTECTION OF WHISTLEBLOWERS.**—The criteria required by subsection (a) shall include principles for the protection of whistleblowers, such as the degree to which supervisory employees respond constructively when employees of the Department report concerns, take responsible action to resolve such concerns, and foster an environment in which employees of the Department feel comfortable reporting concerns to supervisory employees or to the appropriate authorities.

(c) **SUPERVISORY EMPLOYEE AND WHISTLEBLOWER DEFINED.**—In this section, the terms “supervisory employee” and “whistleblower” have the meanings given such terms in section 323 of this title.

(Added Pub. L. 115-41, title I, § 102(a)(3), June 23, 2017, 131 Stat. 865.)

Editorial Notes

PRIOR PROVISIONS

A prior section 732, added Pub. L. 114-223, div. A, title II, § 247(a)(1), Sept. 29, 2016, 130 Stat. 884, related to treatment of whistleblower complaints, prior to repeal by Pub. L. 115-41, title I, § 102(a)(1), June 23, 2017, 131 Stat. 865.

§ 733. Training regarding whistleblower disclosures

(a) **TRAINING.**—Not less frequently than once every two years, the Secretary, in coordination with the Whistleblower Protection Ombudsman designated under section 3(d)(1)(C) of the Inspector General Act of 1978 (5 U.S.C. App.),¹ shall provide to each employee of the Department

¹ See References in Text note below.