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# Compilation of Federal Whistleblower Protection Statutes

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## Overview

In general, whistleblowers are employees who report misconduct or illegal activity committed by their employers.

This report is a compilation of federal whistleblower and employee protection statutes. In addition to identifying laws that protect whistleblowers from retaliation, this report includes employee protection laws that prohibit retaliation against employees who engage in various protected activities, such as participating in an investigation or filing a complaint. The report also includes each of the statutes' enforcement provisions outlining processes for covered employees seeking relief.

The report provides, for each law, the popular name of the act with a whistleblower or employee protection provision. If the whistleblower protection provision was amended after the original enactment, the date of the change is noted. It also includes the *United States Code* or public law citation for the provision and an excerpt of the text of the provision. It lists, below this text, the protected individuals or classes identified in the provision(s). Lastly, the report identifies the original congressional committee(s) to receive or consider the legislation.

Where statutory text falls outside the scope of the topic, the Congressional Research Service (CRS) has deleted portions of statutory provisions and replaced them with ellipses symbols (...) standing alone within a passage.

## Methodology

CRS identified these statutes by reviewing various internal CRS products and federal government resources, and by searching the *United States Code Service* on Lexis+ and the Statutes at Large on ProQuest Congressional for variations of *whistleblower or (employee w/2 protection) or ((person or employer or employee or applicant or witness) w/20 (fire! or discharg! or discriminat! or demot! or "personnel action" or retaliat!))*.

This report uses the official version of the *United States Code* on the House Law Revision Counsel's website.<sup>1</sup>

The committees identified for each law were found by searching Congress.gov and ProQuest Congressional for the public law number and reviewing committee reports. CRS identified persons or classes covered by the law from the act's text. Persons or classes covered by laws enforced by the Occupational Safety and Health Administration (OSHA) were identified by searching OSHA's website.<sup>2</sup>

## Limitations

CRS searched and reviewed a range of laws to provide an extensive list of statutes. It is nonetheless possible that some relevant laws do not appear in this report for various reasons, including the following:

- Due to variations in database search functionalities, the searches may not have captured all relevant authorities currently in effect.

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<sup>1</sup> The *United States Code* is available through the Office of the Law Revision Counsel's website at <https://uscode.house.gov>.

<sup>2</sup> For a list of OSHA-enforced whistleblower laws and who is covered, see the Department of Labor's "Whistleblower Statutes Summary Chart" at [https://www.whistleblowers.gov/whistleblower\\_acts-desk\\_reference](https://www.whistleblowers.gov/whistleblower_acts-desk_reference).

- Other unofficial versions of the *United States Code* may retrieve different results from various databases.
- The criteria used to identify statutes may have excluded relevant authorities that did not contain terms used in the database search, particularly if they did not expressly refer to *whistleblower*, *discharg!*, *discriminat!*, *demot!*, “*personnel action*” or *retaliat!*.
- This survey may not contain very recent laws passed by Congress or provisions in appropriations bills that are not codified.

CRS excluded provisions where

- protections under a statute listed are extended to an additional group;<sup>3</sup>
- statutes direct funding or appropriations without extending protections to individuals; or
- laws set out anti-retaliation rights but do not specify enforcement mechanisms in statute.<sup>4</sup>

## Age Discrimination in Employment Act of 1967 (ADEA) (as amended)

### Anti-retaliation provision:

#### 29 U.S.C. § 623(d). Prohibition of age discrimination.

(d) Opposition to unlawful practices; participation in investigations, proceedings, or litigation. It shall be unlawful for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because such individual, member or applicant for membership has opposed any practice made unlawful by this section, or because such individual, member or applicant for membership has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this chapter.

### Enforcement provision:

#### 29 U.S.C. § 626(b). Recordkeeping, investigation, and enforcement.

(b) Enforcement; prohibition of age discrimination under fair labor standards; unpaid minimum wages and unpaid overtime compensation; liquidated damages; judicial relief; conciliation, conference, and persuasion.

The provisions of this chapter shall be enforced in accordance with the powers, remedies, and procedures provided in sections 211(b), 216 (except for subsection (a) thereof), and 217 of this title, and subsection (c) of this section. Any act prohibited under section 623 of this title shall be deemed to be a prohibited act under section 215 of this title. Amounts owing to a person as a result of a violation of this chapter shall be deemed to be unpaid minimum wages or unpaid overtime compensation for purposes of sections 216 and 217 of this title: *Provided*, That liquidated damages shall be payable only in cases of willful violations of this chapter. In any action brought to enforce this chapter the court shall have jurisdiction to grant such legal or equitable relief as may be appropriate to effectuate the purposes of this chapter, including without limitation judgments compelling employment, reinstatement or promotion, or enforcing the liability for amounts deemed to be unpaid minimum wages or unpaid overtime compensation under this section. Before instituting any action under this section, the Equal Employment Opportunity Commission shall attempt to eliminate the discriminatory practice or practices alleged, and to effect voluntary compliance with the requirements of this chapter through informal methods of conciliation, conference, and persuasion.

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<sup>3</sup> See, e.g., 2 U.S.C. § 1317, extending prohibition of reprisal under certain acts to employees covered by the Congressional Accountability Act of 1995.

<sup>4</sup> See, e.g., 5 U.S.C. § 7211, the Lloyd-Law Follette Act of 1912, reflecting anti-retaliation rights without specifying means to enforce them, such as processes for filing complaints, or investigation and resolution of complaints.

Protects: Employees age 40 as defined by 29 U.S.C. § 631(a) and federal government employees or applicants age 40 and older as defined by 29 U.S.C. § 631(b).

Original Committee: Senate Committee on Labor and Public Welfare.

## American Recovery and Reinvestment Act of 2009 (ARRA)

### Pub. L. No. 111-5, § 1553(a) and § 1553(b)-(c). Protecting State and Local Government and Contractor Whistleblowers.

#### Anti-retaliation provisions: § 1553(a):

(a) Prohibition of Reprisals.—An employee of any non-Federal employer receiving covered funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of—

- (1) gross mismanagement of an agency contract or grant relating to covered funds;
- (2) a gross waste of covered funds;
- (3) a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- (4) an abuse of authority related to the implementation or use of covered funds; or
- (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

#### Enforcement provisions: § 1553(b)-(c):

##### (b) Investigation of Complaints.--

(1) In general.--A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint regarding the reprisal to the appropriate inspector general. Except as provided under paragraph (3), unless the inspector general determines that the complaint is frivolous, does not relate to covered funds, or another Federal or State judicial or administrative proceeding has previously been invoked to resolve such complaint, the inspector general shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the person's employer, the head of the appropriate agency, and the Board.

...

##### (c) Remedy and Enforcement Authority.--

###### (I) Burden of proof.--

###### (A) Disclosure as contributing factor in reprisal.--

(i) In general.--A person alleging a reprisal under this section shall be deemed to have affirmatively established the occurrence of the reprisal if the person demonstrates that a disclosure described in subsection (a) was a contributing factor in the reprisal.

(ii) Use of circumstantial evidence.—A disclosure may be demonstrated as a contributing factor in a reprisal for purposes of this paragraph by circumstantial evidence, including—(I) evidence that the official undertaking the reprisal knew of the disclosure; or

(II) evidence that the reprisal occurred within a period of time after the disclosure such that a reasonable person could conclude that the disclosure was a contributing factor in the reprisal.

(B) Opportunity for rebuttal.--The head of an agency may not find the occurrence of a reprisal with respect to a reprisal that is affirmatively established under subparagraph (A) if the non-Federal employer demonstrates by clear and convincing evidence that the non-Federal employer would have taken the action constituting the reprisal in the absence of the disclosure.

Protects: State and local government employees of non-Federal employers.

Original Committees: House Appropriations, House Budget, House Transportation and Infrastructure.

## Americans with Disabilities Act of 1990 (ADA)

### Anti-retaliation provisions:

#### 42 U.S.C. § 12203(a)-(b). Prohibition against retaliation and coercion.

(a) Retaliation. No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this Act or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

(b) Interference, coercion, or intimidation. It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

### Enforcement provisions:

#### 42 U.S.C. § 12117(a)-(b). Enforcement.

(a) Powers, remedies, and procedures. The powers, remedies, and procedures set forth in sections 2000e–4, 2000e–5, 2000e–6, 2000e–8, and 2000e–9 of this title shall be the powers, remedies, and procedures this subchapter provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this chapter, or regulations promulgated under section 12116 of this title, concerning employment.

(b) Coordination. The agencies with enforcement authority for actions which allege employment discrimination under this subchapter and under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.] shall develop procedures to ensure that administrative complaints filed under this subchapter and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this subchapter and the Rehabilitation Act of 1973. The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and part 1691 of title 29, Code of Federal Regulations, and the Memorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed. Reg. 7435, January 23, 1981)) in regulations implementing this subchapter and Rehabilitation Act of 1973 not later than 18 months after July 26, 1990.

Protects: Individuals with and without disabilities.

Original Committee: Senate Labor and Human Resources.

## Anti-Money Laundering Act (AMLA) (2021)

*Anti-Money Laundering Act, as passed within the National Defense Authorization Act for Fiscal Year 2021.*

### Anti-retaliation provisions:

#### 31 U.S.C. § 5323(g)(1). Whistleblower incentives and protections.

(g) Protection of whistleblowers.

(1) Prohibition against retaliation. No employer may, directly or indirectly, discharge, demote, suspend, threaten, blacklist, harass, or in any other manner discriminate against a whistleblower in the terms and conditions of employment or post-employment because of any lawful act done by the whistleblower—

(A) in providing information in accordance with this section to—

(i) the Secretary or the Attorney General;

(ii) a Federal regulatory or law enforcement agency;

(iii) any Member of Congress or any committee of Congress; or

(iv) a person with supervisory authority over the whistleblower, or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct; or

(B) in initiating, testifying in, or assisting in any investigation or judicial or administrative action of the Department of the Treasury or the Department of Justice based upon or related to the information described in subparagraph (A); or

(C) in providing information regarding any conduct that the whistleblower reasonably believes constitutes a violation of any law, rule, or regulation subject to the jurisdiction of the Department of the Treasury, or a violation of section 1956, 1957, or 1960 of title 18 (or any rule or regulation under any such provision), to—

- (i) a person with supervisory authority over the whistleblower at the employer of the whistleblower; or
- (ii) another individual working for the employer described in clause (i) who the whistleblower reasonably believes has the authority to—
  - (I) investigate, discover, or terminate the misconduct; or
  - (II) take any other action to address the misconduct.

**Enforcement provisions:**

**31 U.S.C. § 5323(g)(2). Whistleblower incentives and protections.**

(g) Protection of Whistleblowers.-

...

- (2) Enforcement.-Any individual who alleges discharge or other discrimination, or is otherwise aggrieved by an employer, in violation of paragraph (1), may seek relief by-
- (A) filing a complaint with the Secretary of Labor in accordance with the requirements of this subsection; or
  - (B) if the Secretary of Labor has not issued a final decision within 180 days of the filing of a complaint under subparagraph (A), and there is no showing that such a delay is due to the bad faith of the claimant, bringing an action against the employer at law or in equity in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

Protects: Under 31 U.S.C. § 5323(a)(5)(A), any individual, or two or more individuals acting jointly, who provides information relating to a covered violation to their employer (including as part of the job duties of the individual or individuals), or to the Secretary of the Treasury, the Attorney General, a federal regulatory or law enforcement agency, or any member or committee of Congress, or who engage in other protected activity under AMLA.

Original Committee: House Armed Services.

## Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (ACPERA)

*Text added by the Antitrust Criminal Penalty Enhancement and Reform Permanent Extension Act (2020).*

**Anti-retaliation provisions:**

**15 U.S.C. § 7a-3(a). Anti-retaliation protection for whistleblowers.**

(a) Whistleblower protections for employees, contractors, subcontractors, and agents.—

(1) In general.—No employer may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against a covered individual in the terms and conditions of employment of the covered individual because of any lawful act done by the covered individual—

(A) to provide or cause to be provided to the Federal Government or a person with supervisory authority over the covered individual (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct) information relating to—

- (i) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, the antitrust laws; or
- (ii) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, another criminal law committed in conjunction with a potential violation of the antitrust laws or in conjunction with an investigation by the Department of Justice of a potential violation of the antitrust laws; or

(B) to cause to be filed, testify in, participate in, or otherwise assist a Federal Government investigation or a Federal Government proceeding filed or about to be filed (with any knowledge of the employer) relating to—

- (i) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, the antitrust laws; or
- (ii) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, another criminal law committed in conjunction with a potential violation of the antitrust laws or in conjunction with an investigation by the Department of Justice of a potential violation of the antitrust laws.

**Enforcement provisions:**

**15 U.S.C. § 7a-3(b). Anti-retaliation protection for whistleblowers.**

(b) Enforcement action

(1) In general

A covered individual who alleges discharge or other discrimination by any employer in violation of subsection (a) may seek relief under subsection (c) by-

(A) filing a complaint with the Secretary of Labor; or

(B) if the Secretary of Labor has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing 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.

(2) Procedure

(A) In general. A complaint filed with the Secretary of Labor under paragraph (1)(A) shall be governed under the rules and procedures set forth in section 42121(b) of title 49.

(B) Exception. Notification made under section 42121(b)(1) of title 49 shall be made to any individual named in the complaint and to the employer.

(C) Burdens of proof. An action brought under paragraph (1)(B) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49.

(D) Statute of limitations. A complaint under paragraph (1)(A) shall be filed with the Secretary of Labor not later than 180 days after the date on which the violation occurs.

(E) Civil actions to enforce. If a person fails to comply with an order or preliminary order issued by the Secretary of Labor pursuant to the procedures set forth in section 42121(b) of title 49, the Secretary of Labor or the person on whose behalf the order was issued may bring a civil action to enforce the order in the district court of the United States for the judicial district in which the violation occurred.

Protects: Any covered individual, meaning the employee, contractor, subcontractor, or agent of an employer as defined by 15 U.S.C. § 7a-3(a)(3)(B).

Original Committees: House Judiciary and Senate Judiciary.

## Asbestos Hazard Emergency Response Act (AHERA)

**Anti-retaliation provision:**

**15 U.S.C. § 2651(a). Public protection.**

(a) Public protection

No State or local educational agency may discriminate against a person in any way, including firing a person who is an employee, because the person provided information relating to a potential violation of this subchapter to any other person, including a State or the Federal Government.

**Enforcement provisions:**

**15 U.S.C. § 2651(b). Public protection.**

(b) Labor Department review

Any public or private employee or representative of employees who believes he or she has been fired or otherwise discriminated against in violation of subsection (a) may within 90 days after the alleged violation occurs apply to the Secretary of Labor for a review of the firing or alleged discrimination. The review shall be conducted in accordance with section 660(c) of title 29.

**15 U.S.C. § 2652(b). Asbestos Ombudsman.**

(b) Duties. The duties of the Asbestos Ombudsman are—

- (1) to receive complaints, grievances, and requests for information submitted by any person with respect to any aspect of this title [15 U.S.C. §§ 2641 et seq.],
- (2) to render assistance with respect to the complaints, grievances, and requests received, and
- (3) to make such recommendations to the Administrator as the Ombudsman considers appropriate.

Protects: Persons, including private sector employees, or representatives of employees, state and local government employees, and certain DoD and Native American Tribal schools.

Original Committees: Senate Commerce, House Interstate and Foreign Commerce.

## Asbestos School Hazard Detection and Control Act of 1980

**Anti-retaliation provision:**

**20 U.S.C. § 3608. Employee protection.**

No State or local educational agency receiving assistance under this chapter may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee has brought to the attention of the public information concerning any asbestos problem in the school buildings within the jurisdiction of such agency.

**Enforcement provision:**

**20 U.S.C. § 3609. Retained rights.**

Except as otherwise provided in section 3607 of this title, nothing in this chapter shall—

- (1) affect the right of any party to seek legal redress in connection with the purchase or installation of asbestos materials in schools or any claim of disability or death related to exposure to asbestos in a school setting; or
- (2) affect the rights of any party under any other law.

Protects: Any employee of a state or local educational agency.

Original Committee: Senate Labor and Human Resources.

## Central Intelligence Agency Act of 1949 (as amended)<sup>5</sup>

*Text amended by the Intelligence Authorization Act for Fiscal Year 1993, the Intelligence Community Whistleblower Protection Act of 1998 and the Intelligence Authorization Act of 2022.*

**Anti-retaliation provisions:**

**50 U.S.C. § 3517(e)(3). Inspector General for Agency.**

(e) Authorities of Inspector General.

...

- (3) The Inspector General is authorized to receive and investigate complaints or information from any person concerning the existence of an activity constituting a violation of laws, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety. Once such complaint or information has been received from an employee of the Agency—
  - (A) the Inspector General shall not disclose the identity of the employee without the consent of the employee, unless the Inspector General determines that such disclosure is unavoidable during the course of

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<sup>5</sup> For additional information on the whistleblower statutes applying to the intelligence community, please see CRS Report R45345, *Intelligence Community Whistleblower Provisions*, by Michael E. DeVine.

the investigation or the disclosure is made to an official of the Department of Justice responsible for determining whether a prosecution should be undertaken; and  
(B) no action constituting a reprisal, or threat of reprisal, for making such complaint or providing such information may be taken by any employee of the Agency in a position to take such actions, unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity....

**Enforcement provisions:**

**50 U.S.C. § 3033(k)(5)(A)-(C). Inspector General of the Intelligence Community.**

...

(k) Reports

...

(5)(A) An employee of an element of the intelligence community, an employee assigned or detailed to an element of the intelligence community, or an employee of a contractor to the intelligence community who intends to report to Congress a complaint or information with respect to an urgent concern may report such complaint or information to the Inspector General.

...

(D)(i) If the Inspector General does not find credible under subparagraph (B) a complaint or information submitted under subparagraph (A), or does not transmit the complaint or information to the Director in accurate form under subparagraph (B), the employee (subject to clause (ii)) may submit the complaint or information to Congress by contacting either or both of the congressional intelligence committees directly.

(ii) An employee may contact the congressional intelligence committees directly as described in clause (i) only if the employee-

(I) before making such a contact, furnishes to the Director, through the Inspector General, a statement of the employee's complaint or information and notice of the employee's intent to contact the congressional intelligence committees directly; and

(II) obtains and follows from the Director, through the Inspector General, direction on how to contact the congressional intelligence committees in accordance with appropriate security practices.

(iii) A member or employee of one of the congressional intelligence committees who receives a complaint or information under this subparagraph does so in that member or employee's official capacity as a member or employee of such committee.

(E) The Inspector General shall notify an employee who reports a complaint or information to the Inspector General under this paragraph of each action taken under this paragraph with respect to the complaint or information. Such notice shall be provided not later than 3 days after any such action is taken.

...

(ii) Within the executive branch, the Inspector General shall have sole authority to determine whether any complaint or information reported to the Inspector General is a matter of urgent concern under this paragraph.

(H) Nothing in this section shall be construed to limit the protections afforded to an employee under section 3517(d) of this title or section 416 of title 5.

(I) An individual who has submitted a complaint or information to the Inspector General under this section may notify any member of either of the congressional intelligence committees, or a staff member of either of such committees, of the fact that such individual has made a submission to the Inspector General, and of the date on which such submission was made.

(6) In accordance with section 535 of title 28, the Inspector General shall expeditiously report to the Attorney General any information, allegation, or complaint received by the Inspector General relating to violations of Federal criminal law that involves a program or operation of an element of the intelligence community, or in the relationships between the elements of the intelligence community, consistent with such guidelines as may be issued by the Attorney General pursuant to subsection (b)(2) of such section. A copy of each such report shall be furnished to the Director.

**50 U.S.C. § 3033 note. Inspector General of the Intelligence Community.**

(a) System for Notification of Information Relating to Complaints by Whistleblowers Within the Intelligence Community.-Subject to subsection (b), not later than 1 year after the date of the enactment of this Act [Dec. 20, 2019], the Inspector General of the Intelligence Community, in consultation with the Intelligence Community Inspectors General Forum, shall establish a system whereby the Inspector General of the Intelligence Community is notified monthly of the following:

(1) Submission of complaints by whistleblowers to inspectors general of elements of the intelligence community relating to the programs and activities under the jurisdiction of the Director of National Intelligence, and information related to such complaints.

(2) Actions taken by an inspector general of an element of the Intelligence Community relating to such complaints.

(b) Policies for Implementation.-

(1) In general.-The system established under subsection (a) may not be implemented until the Inspector General of the Intelligence Community, in consultation with the Intelligence Community Inspectors General Forum, has developed and released to each of the inspectors general of the elements of the intelligence community written policies regarding the implementation of such subsection.

(2) Requirements.-The policies required by paragraph (1) shall-

"(A) protect the privacy of whistleblowers, including by preventing dissemination without the consent of the whistleblower, of any information submitted previously by a whistleblower to an inspector general of an element of the intelligence community; and

(B) ensure compliance with the requirements of subsection (a), while-

"(i) ensuring that the Inspector General of the Intelligence Community can oversee whistleblower policies and practices and identify matters that, in the judgment of the Inspector General of the Intelligence Community, may be the subject of an investigation, inspection, audit, or review by the Inspector General of the Intelligence Community; and

(ii) avoiding the imposition of inappropriate resource burdens on inspectors general of elements of the intelligence community."

**50 U.S.C. § 3517(d)(5). Inspector General for Agency.**

(d) Semiannual reports; immediate reports of serious or flagrant problems; reports of functional problems; reports to Congress on urgent concerns.

...

(5)

(A) An employee of the Agency, or of a contractor to the Agency, who intends to report to Congress a complaint or information with respect to an urgent concern may report such complaint or information to the Inspector General.

(B)

(i) Not later than the end of the 14-calendar day period beginning on the date of receipt from an employee of a complaint or information under subparagraph (A), the Inspector General shall determine whether the complaint or information appears credible. Upon making such a determination, the Inspector General shall transmit to the Director notice of that determination, together with the complaint or information.

(ii) If the Director determines that a complaint or information transmitted under paragraph (1) would create a conflict of interest for the Director, the Director shall return the complaint or information to the Inspector General with that determination and the Inspector General shall make the transmission to the Director of National Intelligence. In such a case, the requirements of this subsection for the Director of the Central Intelligence Agency apply to the Director of National Intelligence.

(C) Upon receipt of a transmittal from the Inspector General under subparagraph (B), the Director shall, within 7 calendar days of such receipt, forward such transmittal to the intelligence committees, together with any comments the Director considers appropriate.

(D)

(i) If the Inspector General does not find credible under subparagraph (B) a complaint or information submitted under subparagraph (A), or does not transmit the complaint or information to the Director in accurate form under subparagraph (B), the employee (subject to clause (ii)) may submit the complaint or information to Congress by contacting either or both of the intelligence committees directly.

(ii) The employee may contact the intelligence committees directly as described in clause (i) only if the employee—

(I) before making such a contact, furnishes to the Director, through the Inspector General, a statement of the employee's complaint or information and notice of the employee's intent to contact the intelligence committees directly; and

- (II) obtains and follows from the Director, through the Inspector General, direction on how to contact the intelligence committees in accordance with appropriate security practices.
- (iii) A member or employee of one of the intelligence committees who receives a complaint or information under clause (i) does so in that member or employee's official capacity as a member or employee of that committee.
- (E) The Inspector General shall notify an employee who reports a complaint or information to the Inspector General under this paragraph of each action taken under this paragraph with respect to the complaint or information. Such notice shall be provided not later than 3 days after any such action is taken.
- (F) An action taken by the Director or the Inspector General under this paragraph shall not be subject to judicial review.

Protects: Employees or contractors of the Intelligence Community as defined by 50 U.S.C. § 3003(4).  
Original Committee: House Armed Services.

## Civil Rights Act of 1964 (Title VII) (as amended)

### Anti-retaliation provisions:

#### 42 U.S.C. § 2000e-3(a). Other unlawful employment practices.

- (a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings.

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

### Enforcement provisions:

#### 42 U.S.C. § 2000e-5(a)-(b). Enforcement provisions.

- (a) Power of Commission to prevent unlawful employment practices.

The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e-2 or 2000e3 of this title.

- (b) Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause.

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d). If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this

subsection shall be fined not more than \$1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d), from the date upon which the Commission is authorized to take action with respect to the charge.

Protects: Employees and applicants for employment, individuals working for employment agencies, joint labor-management committee apprenticeships, on-the-job training or other training or retraining programs and labor organization members or applicants for labor organization membership.

Original Committees: House Judiciary, House Rules.

## Civil Service Reform Act of 1978 (as amended)

*Text added by the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023.*

### **Anti-retaliation provisions:**

#### **5 U.S.C. § 2303(a). Prohibited personnel practices in the Federal Bureau of Investigation.**

(a) Any employee of the Federal Bureau of Investigation who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or fail to take a personnel action with respect to an employee in, or applicant for, a position in the Bureau as a reprisal for a disclosure of information—

(1) made—

(A) in the case of an employee, to a supervisor in the direct chain of command of the employee, up to and including the head of the employing agency;

(B) to the Inspector General;

(C) to the Office of Professional Responsibility of the Department of Justice;

(D) to the Office of Professional Responsibility of the Federal Bureau of Investigation;

(E) to the Inspection Division of the Federal Bureau of Investigation;

(F) as described in section 7211;

(G) to the Office of Special Counsel; or

(H) to an employee designated by any officer, employee, office, or division described in subparagraphs (A) through (G) for the purpose of receiving such disclosures; and

(2) which the employee or applicant reasonably believes evidences—

(A) any violation of any law, rule, or regulation; or

(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

### **Enforcement provisions:**

#### **5 U.S.C. § 2303(b)-(d). Prohibited personnel practices in the Federal Bureau of Investigation.**

For the purpose of this subsection, “personnel action” means any action described in clauses (i) through (x) of section 2302(a)(2)(A) of this title with respect to an employee in, or applicant for, a position in the Bureau (other than a position of a confidential, policy-determining, policymaking, or policy-advocating character). (b) The Attorney General shall prescribe regulations to ensure that such a personnel action shall not be taken against an employee of the Bureau as a reprisal for any disclosure of information described in subsection (a) of this section.

(c) The President shall provide for the enforcement of this section in a manner consistent with applicable provisions of sections 1214 and 1221 of this title.

(d)(1) An employee of the Federal Bureau of Investigation who makes an allegation of a reprisal under regulations promulgated under this section may appeal a final determination or corrective action order by the Bureau under those regulations to the Merit Systems Protection Board pursuant to section 1221.

(2) If no final determination or corrective action order has been made or issued for an allegation described in paragraph (1) before the expiration of the 180-day period beginning on the date on which the allegation is received by the Federal Bureau of Investigation, the employee described in that paragraph may seek corrective action directly from the Merit Systems Protection Board pursuant to section 1221.

Protects: Employee or applicant of the Federal Bureau of Investigation, and any employee of a contractor, subcontractor, grantee, subgrantee, or personal services contractor of the Federal Bureau of Investigation.

Original Committees: House Public Works and Transportation, Senate Environment and Public Works.

## Clean Air Act (CAA) (as amended)

### Anti-retaliation provisions:

#### 42 U.S.C. § 7622(a). Employee protection.

(a) Discharge or discrimination prohibited. 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)—

- (1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this Act or a proceeding for the administration or enforcement of any requirement imposed under this Act or under any applicable implementation plan,
- (2) testified or is about to testify in any such proceeding, or
- (3) 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 Act.

### Enforcement provisions:

#### 42 U.S.C. § 7622(b)-(f). Employee protection.

(b) Complaint charging unlawful discharge or discrimination; investigation; order

(1) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, within thirty days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection 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.

(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. 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.

(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) Enforcement of order by Secretary

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) Enforcement of order by person on whose behalf order was issued

(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) Mandamus

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

Protects: Private sector employees, and federal state and municipal employees.

Original Committee: House Interstate and Foreign Commerce.

## Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (as amended)

*Text as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007.*

### Anti-retaliation provisions:

#### 49 U.S.C. § 31105(a). Employee protections.

(a) Prohibitions. (1) A person may not discharge an employee, or discipline or discriminate against an employee regarding pay, terms, or privileges of employment, because—

(A) (i) the employee, or another person at the employee's request, has filed a complaint or begun a proceeding related to a violation of a commercial motor vehicle safety or security regulation, standard, or order, or has testified or will testify in such a proceeding; or

(ii) the person perceives that the employee has filed or is about to file a complaint or has begun or is about to begin a proceeding related to a violation of a commercial motor vehicle safety or security regulation, standard, or order;

(B) the employee refuses to operate a vehicle because—

(i) the operation violates a regulation, standard, or order of the United States related to commercial motor vehicle safety, health, or security; or

(ii) the employee has a reasonable apprehension of serious injury to the employee or the public because of the vehicle's hazardous safety or security condition;

(C) the employee accurately reports hours on duty pursuant to chapter 315;

(D) the employee cooperates, or the person perceives that the employee is about to cooperate, with a safety or security investigation by the Secretary of Transportation, the Secretary of Homeland Security, or the National Transportation Safety Board; or

(E) the employee furnishes, or the person perceives that the employee is or is about to furnish, information to the Secretary of Transportation, the Secretary of Homeland Security, the National Transportation Safety Board, or any Federal, State, or local regulatory or law enforcement agency as to the facts relating to any accident or incident resulting in injury or death to an individual or damage to property occurring in connection with commercial motor vehicle transportation.

(2) Under paragraph (1)(B)(ii) of this subsection, an employee's apprehension of serious injury is reasonable only if a reasonable individual in the circumstances then confronting the employee would conclude that the hazardous safety or security condition establishes a real danger of accident, injury, or serious impairment to health. To qualify for protection, the employee must have sought from the employer, and been unable to obtain, correction of the hazardous safety or security condition.

**Enforcement provisions:**

**49 U.S.C. § 31105(b). Employee protections.**

(b) Filing Complaints and Procedures.—(1) An employee alleging discharge, discipline, or discrimination in violation of subsection (a) of this section, or another person at the employee's request, may file a complaint with the Secretary of Labor not later than 180 days after the alleged violation occurred. All complaints initiated under this section shall be governed by the legal burdens of proof set forth in section 42121(b). On receiving the complaint, the Secretary of Labor shall notify, in writing, the person alleged to have committed the violation of the filing of the complaint.

(2)(A) Not later than 60 days after receiving a complaint, the Secretary of Labor shall conduct an investigation, decide whether it is reasonable to believe the complaint has merit, and notify, in writing, the complainant and the person alleged to have committed the violation of the findings. If the Secretary of Labor decides it is reasonable to believe a violation occurred, the Secretary of Labor shall include with the decision findings and a preliminary order for the relief provided under paragraph (3) of this subsection.(B) Not later than 30 days after the notice under subparagraph (A) of this paragraph, the complainant and the person alleged to have committed the violation may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of objections does not stay a reinstatement ordered in the preliminary order. If a hearing is not requested within the 30 days, the preliminary order is final and not subject to judicial review.(C) A hearing shall be conducted expeditiously. Not later than 120 days after the end of the hearing, the Secretary of Labor shall issue a final order. Before the final order is issued, the proceeding may be ended by a settlement agreement made by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

(3)(A) If the Secretary of Labor decides, on the basis of a complaint, a person violated subsection (a) of this section, the Secretary of Labor shall order the person to—

- (i) take affirmative action to abate the violation;
- (ii) reinstate the complainant to the former position with the same pay and terms and privileges of employment; and
- (iii) pay compensatory damages, including backpay with interest and compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

Protects: Employee who is a driver of a commercial motor vehicle (including a contractor when personally operating a commercial motor vehicle), a mechanic, a freight handler, or an individual not an employer who is not an employee of the federal government, a state or a political subdivision of a state acting in the course of employment under 49 U.S.C. § 31105(j).

Original Committees: House Judiciary, Senate Judiciary.

## Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)

**Anti-retaliation provisions:**

**42 U.S.C. § 9610(a). Employee protection.**

(a) Activities of employee subject to protection. No person shall fire or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has provided information to a State or to the Federal Government, filed, instituted, or caused to be filed or instituted any proceeding under this chapter, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this chapter.

**Enforcement provisions:**

**42 U.S.C. § 9610(b), (e). Employee protection.**

(b) Administrative grievance procedure in cases of alleged violations. Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person, who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of

record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions are subject to judicial review under this chapter.

...

(e) ... Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such administration or enforcement, or any representative of such employee, may request the President to conduct a full investigation of the matter and, at the request of any party, shall hold public hearings, require the parties, including the employer involved, to present information relating to the actual or potential effect of such administration or enforcement on employment and any alleged discharge, layoff, or other discrimination, and the detailed reasons or justification therefore. Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the President shall make findings of fact as to the effect of such administration or enforcement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the President or any State to modify or withdraw any action, standard, limitation, or any other requirement of this chapter.

Protects: Private sector employees or any authorized representative of employees, any employee discharged or laid off or otherwise discriminated against and federal, state and municipal employees.

Original Committees: House Interstate and Foreign Commerce, House Ways and Means.

## Congressional Accountability Act (CAA)

### Anti-retaliation provisions:

#### 2 U.S.C. § 1317(a). Prohibition of intimidation or reprisal.<sup>6</sup>

(a) In general

It shall be unlawful for an employing office to intimidate, take reprisal against, or otherwise discriminate against, any covered employee because the covered employee has opposed any practice made unlawful by this chapter, or because the covered employee has initiated proceedings, made a charge, or testified, assisted, or participated in any manner in a hearing or other proceeding under this chapter.

### Enforcement provisions:

#### 2 U.S.C. § 1317(b). Prohibition of intimidation or reprisal.

(b) Remedy

The remedy available for a violation of subsection (a) shall be such legal or equitable remedy as may be appropriate to redress a violation of subsection (a).

Protects: Covered employees are any individual performing tasks related to offering or providing consumer financial products or services as defined by 2 U.S.C. § 1301.

Original Committee: House Judiciary.

## Consumer Financial Protection Act of 2010 (CFPA)

### Anti-retaliation provisions:

#### 12 U.S.C. § 5567(a)(1)-(4). Employee protection.

(a) In general. No covered person or service provider shall terminate or in any other way discriminate against, or cause to be terminated or discriminated against, any covered employee or any authorized representative of covered

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<sup>6</sup> Renumbered § 208, Pub. L. No. 116-92, § 1122(d)(1)(B), 133 Stat. 1608.

employees by reason of the fact that such employee or representative, whether at the initiative of the employee or in the ordinary course of the duties of the employee (or any person acting pursuant to a request of the employee), has—

- (1) provided, caused to be provided, or is about to provide or cause to be provided, information to the employer, the Bureau, or any other State, local, or Federal, government authority or law enforcement agency relating to any violation of, or any act or omission that the employee reasonably believes to be a violation of, any provision of this title or any other provision of law that is subject to the jurisdiction of the Bureau, or any rule, order, standard, or prohibition prescribed by the Bureau;
- (2) testified or will testify in any proceeding resulting from the administration or enforcement of any provision of this title or any other provision of law that is subject to the jurisdiction of the Bureau, or any rule, order, standard, or prohibition prescribed by the Bureau;
- (3) filed, instituted, or caused to be filed or instituted any proceeding under any Federal consumer financial law; or
- (4) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any law, rule, order, standard, or prohibition, subject to the jurisdiction of, or enforceable by, the Bureau.

**Enforcement provisions:**

**12 U.S.C. § 5567(c). Employee protection.**

(c) Procedures and timetables

(1) Complaint

(A) In general

A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such alleged violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination and identifying the person responsible for such act.

(B) Actions of Secretary of Labor

Upon receipt of such a complaint, the Secretary of Labor shall notify, in writing, the person named in the complaint who is alleged to have committed the violation, of-

- (i) the filing of the complaint;
- (ii) the allegations contained in the complaint;
- (iii) the substance of evidence supporting the complaint; and
- (iv) opportunities that will be afforded to such person under paragraph (2).

(2) Investigation by Secretary of Labor

(A) In general

Not later than 60 days after the date of receipt of a complaint filed under paragraph (1), and after affording the complainant and the person named in the complaint who is alleged to have committed the violation that is the basis for the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with a representative of the Secretary of Labor to present statements from witnesses, the Secretary of Labor shall-

- (i) initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit; and
- (ii) notify the complainant and the person alleged to have committed the violation of subsection (a), in writing, of such determination.

(B) Notice of relief available

If the Secretary of Labor concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary of Labor shall, together with the notice under subparagraph (A)(ii), issue a preliminary order providing the relief prescribed by paragraph (4)(B).

(C) Request for hearing

Not later than 30 days after the date of receipt of notification of a determination of the Secretary of Labor under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously, and if a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

Protects: Any individual or any authorized representative of individuals performing tasks related to the offering or provision of a consumer financial product or service as defined by 12 U.S.C. § 5567(b).

Original Committees: House Agriculture, House Financial Services, House Energy and Commerce, House Judiciary, House Rules, House Budget, House Oversight and Government Reform, House Ways and Means, Senate Banking, Housing, and Urban Affairs.

## Consumer Product Safety Act (CPSA)

Text added by the Consumer Product Safety Improvement Act of 2008.

### Anti-retaliation provisions:

#### 15 U.S.C. § 2087(a)(1)-(4). Whistleblower protection.

(a) No manufacturer, private labeler, distributor, or retailer, may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee, whether at the employee's initiative or in the ordinary course of the employee's duties (or any person acting pursuant to a request of the employee)—

- (1) provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of any provision of this Act or any other Act enforced by the Commission, or any order, rule, regulation, standard, or ban under any such Acts;
- (2) testified or is about to testify in a proceeding concerning such violation;
- (3) assisted or participated or is about to assist or participate in such a proceeding; or
- (4) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of this Act or any other Act enforced by the Commission, or any order, rule, regulation, standard, or ban under any such Acts.

### Enforcement provisions:

#### 15 U.S.C. § 2087(b)(1). Whistleblower protection.

(b)(1) A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination and identifying the person responsible for such act. Upon receipt of such a complaint, the Secretary shall notify, in writing, the person named in the complaint of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

Protects: Employees of manufacturers, private labelers, distributors or retailers.

Original Committees: House Energy and Commerce, Senate Appropriations.

## Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (2010)<sup>7</sup>

### 7 U.S.C. § 26. Commodity whistleblower incentives and protection. Anti-retaliation provisions:

#### 7 U.S.C. § 26(h)(1)(A). Commodity whistleblower incentives and protection.

(h) Protection of whistleblowers.

(1) Prohibition against retaliation.

(A) In general. No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower—

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<sup>7</sup> For additional information, see CRS Legal Sidebar LSB10015, *Blowing the Whistle Indoors: Can Internal Whistleblowers Sue for Retaliation Under Dodd-Frank?*, by Nicole Vanatko, and CRS Legal Sidebar LSB10093, *Supreme Court Interprets Dodd-Frank Whistleblower Protections: Implications for Securities Law and Beyond*, by Nicole Vanatko.

- (i) in providing information to the Commission in accordance with subsection (b); or
- (ii) in assisting in any investigation or judicial or administrative action of the Commission based upon or related to such information.

**Enforcement provisions:**

**7 U.S.C. § 26(h)(1)(B)-(C). Commodity whistleblower incentives and protection.**

(h) Protection of whistleblowers.

(1) Prohibition against retaliation.

...

(B) Enforcement.

(i) Cause of action. An individual who alleges discharge or other discrimination in violation of subparagraph (A) may bring an action under this subsection in the appropriate district court of the United States for the relief provided in subparagraph (C), unless the individual who is alleging discharge or other discrimination in violation of subparagraph (A) is an employee of the Federal Government, in which case the individual shall only bring an action under section 1221 of title 5, United States Code.

(ii) Subpoenas. A subpoena requiring the attendance of a witness at a trial or hearing conducted under this subsection may be served at any place in the United States.

(iii) Statute of limitations. An action under this subsection may not be brought more than 2 years after the date on which the violation reported in subparagraph (A) is committed.

(C) Relief. Relief for an individual prevailing in an action brought under subparagraph (B) shall include—

(i) reinstatement with the same seniority status that the individual would have had, but for the discrimination;

(ii) the amount of back pay otherwise owed to the individual, with interest; and

(iii) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees.

**7 U.S.C. § 26(h)(3). Commodity whistleblower incentives and protection.**

(h) Protection of whistleblowers.

(1) Prohibition against retaliation.

...

(3) Rights retained. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any whistleblower under any Federal or State law, or under any collective bargaining agreement.

Protects: The individual whistleblower, or 2 or more individuals acting jointly, who provide information relating to a violation of Title 7, Chapter 1 to the Commission as defined by 7 U.S.C. § 26(a)(7).

Original Committees: House Agriculture, House Financial Services, House Energy and Commerce, House Judiciary, House Rules, House Budget, House Oversight and Government Reform, House Ways and Means, Senate Banking, Housing, and Urban Affairs.

**12 U.S.C. § 5567. Employee protection.**

**Anti-retaliation provisions:**

**12 U.S.C. § 5567(a). Employee protection.**

(a) In general. No covered person or service provider shall terminate or in any other way discriminate against, or cause to be terminated or discriminated against, any covered employee or any authorized representative of covered employees by reason of the fact that such employee or representative, whether at the initiative of the employee or in the ordinary course of the duties of the employee (or any person acting pursuant to a request of the employee), has—

- (1) provided, caused to be provided, or is about to provide or cause to be provided, information to the employer, the Bureau, or any other State, local, or Federal, government authority or law enforcement agency relating to any violation of, or any act or omission that the employee reasonably believes to be a violation of, any provision of this title or any other provision of law that is subject to the jurisdiction of the Bureau, or any rule, order, standard, or prohibition prescribed by the Bureau;

- (2) testified or will testify in any proceeding resulting from the administration or enforcement of any provision of this title or any other provision of law that is subject to the jurisdiction of the Bureau, or any rule, order, standard, or prohibition prescribed by the Bureau;
- (3) filed, instituted, or caused to be filed or instituted any proceeding under any Federal consumer financial law; or
- (4) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any law, rule, order, standard, or prohibition, subject to the jurisdiction of, or enforceable by, the Bureau.

**Enforcement provisions:**

**12 U.S.C. § 5567(c). Employee protection.**

(c) Procedures and timetables

(1) Complaint

(A) In general

A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such alleged violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination and identifying the person responsible for such act.

Protects: Individuals performing tasks related to the offering or provision of a consumer financial product or service as defined by 12 U.S.C. § 5567(b).

Original Committees: House Agriculture, House Financial Services, House Energy and Commerce, House Judiciary, House Rules, House Budget, House Oversight and Government Reform, House Ways and Means, Senate Banking, Housing, and Urban Affairs.

**15 U.S.C. § 78u-6. Securities whistleblower incentives and protection.**

**Anti-retaliation provisions:**

**15 U.S.C. § 78u-6(h)(1)(A). Securities whistleblower incentives and protection.**

(h) Protection of whistleblowers.

(1) Prohibition against retaliation.

(A) In general. No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower—

- (i) in providing information to the Commission in accordance with this section;
- (ii) in initiating, testifying in, or assisting in any investigation or judicial or administrative action of the Commission based upon or related to such information; or
- (iii) in making disclosures that are required or protected under the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), including section 10A(m) of such Act (15 U.S.C. 78f(m)), section 1513(e) of title 18, United States Code, and any other law, rule, or regulation subject to the jurisdiction of the Commission.

**Enforcement provisions:**

**15 U.S.C. § 78u-6(h)(1)(B)-(3). Securities whistleblower incentives and protection.**

(B) Enforcement.

- (i) Cause of action. An individual who alleges discharge or other discrimination in violation of subparagraph (A) may bring an action under this subsection in the appropriate district court of the United States for the relief provided in subparagraph (C).
- (ii) Subpoenas. A subpoena requiring the attendance of a witness at a trial or hearing conducted under this section may be served at any place in the United States.
- (iii) Statute of limitations.

(1) In general. An action under this subsection may not be brought—

- (aa) more than 6 years after the date on which the violation of subparagraph (A) occurred;
- or

(bb) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the employee alleging a violation of subparagraph (A).

(II) Required action within 10 years. Notwithstanding subclause (I), an action under this subsection may not in any circumstance be brought more than 10 years after the date on which the violation occurs.

(C) Relief. Relief for an individual prevailing in an action brought under subparagraph (B) shall include—

- (i) reinstatement with the same seniority status that the individual would have had, but for the discrimination;
- (ii) 2 times the amount of back pay otherwise owed to the individual, with interest; and
- (iii) compensation for litigation costs, expert witness fees, and reasonable attorneys' fees.

(2) Confidentiality.

(A) In general. Except as provided in subparagraphs (B) and (C), the Commission and any officer or employee of the Commission shall not disclose any information, including information provided by a whistleblower to the Commission, which could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of section 552a of title 5, United States Code, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Commission or any entity described in subparagraph (C). For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section.

(B) Exempted statute. For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(C) Rule of construction. Nothing in this section is intended to limit, or shall be construed to limit, the ability of the Attorney General to present such evidence to a grand jury or to share such evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

(D) Availability to Government agencies.

(i) In general. Without the loss of its status as confidential in the hands of the Commission, all information referred to in subparagraph (A) may, in the discretion of the Commission, when determined by the Commission to be necessary to accomplish the purposes of this Act and to protect investors, be made available to—

- (I) the Attorney General of the United States;
- (II) an appropriate regulatory authority;
- (III) a self-regulatory organization;
- (IV) a State attorney general in connection with any criminal investigation;
- (V) any appropriate State regulatory authority;
- (VI) the Public Company Accounting Oversight Board;
- (VII) a foreign securities authority; and
- (VIII) a foreign law enforcement authority.

(ii) Confidentiality.

(I) In general. Each of the entities described in subclauses (I) through (VI) of clause (i) shall maintain such information as confidential in accordance with the requirements established under subparagraph (A).

(II) Foreign authorities. Each of the entities described in subclauses (VII) and (VIII) of clause (i) shall maintain such information in accordance with such assurances of confidentiality as the Commission determines appropriate.

(3) Rights retained. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any whistleblower under any Federal or State law, or under any collective bargaining agreement.

Protects: Whistleblowers as defined by 15 U.S.C. § 78u-6(a)(6), any individual who provides, or 2 or more individuals acting jointly who provide, information relating to a violation of the securities laws to the Commission, in a manner established, by rule or regulation, by the Commission.

Original Committees: House Agriculture, House Financial Services, House Energy and Commerce, House Judiciary, House Rules, House Budget, House Oversight and Government Reform, House Ways and Means, Senate Banking, Housing, and Urban Affairs.

# Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 (as amended)

## Anti-retaliation provisions:

### 5 U.S.C. § 2302(b)(14). Prohibited personnel practices.

(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority-

...

(14) access the medical record of another employee or an applicant for employment as a part of, or otherwise in furtherance of, any conduct described in paragraphs (1) through (13).

## Enforcement provisions:

### 5 U.S.C. § 1214(b)(1). Investigation of prohibited personnel practices.

(b)(1)(A)(i) The Special Counsel may request any member of the Merit Systems Protection Board to order a stay of any personnel action for 45 days if the Special Counsel determines that there are reasonable grounds to believe that the personnel action was taken, or is to be taken, as a result of a prohibited personnel practice.

(ii) Any member of the Board requested by the Special Counsel to order a stay under clause (i) shall order such stay unless the member determines that, under the facts and circumstances involved, such a stay would not be appropriate.

(iii) Unless denied under clause (ii), any stay under this subparagraph shall be granted within 3 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date of the request for the stay by the Special Counsel.

(B)(i) The Board may extend the period of any stay granted under subparagraph (A) for any period which the Board considers appropriate.

(ii) If the Board lacks the number of members appointed under section 1201 required to constitute a quorum, any remaining member of the Board may, upon request by the Special Counsel, extend the period of any stay granted under subparagraph (A).

(C) The Board shall allow any agency which is the subject of a stay to comment to the Board on any extension of stay proposed under subparagraph (B).

(D) A stay may be terminated by the Board at any time, except that a stay may not be terminated by the Board-

(i) on its own motion or on the motion of an agency, unless notice and opportunity for oral or written comments are first provided to the Special Counsel and the individual on whose behalf the stay was ordered;

or

(ii) on motion of the Special Counsel, unless notice and opportunity for oral or written comments are first provided to the individual on whose behalf the stay was ordered.

(E) If the Board grants a stay under subparagraph (A), the head of the agency employing the employee who is the subject of the action shall give priority to a request for a transfer submitted by the employee.

(2)(A)(i) Except as provided under clause (ii), no later than 240 days after the date of receiving an allegation of a prohibited personnel practice under paragraph (1), the Special Counsel shall make a determination whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.

(ii) If the Special Counsel is unable to make the required determination within the 240-day period specified under clause (i) and the person submitting the allegation of a prohibited personnel practice agrees to an extension of time, the determination shall be made within such additional period of time as shall be agreed upon between the Special Counsel and the person submitting the allegation.

*Text added by the National Defense Authorization Act for Fiscal Year 2018.*

### 5 U.S.C. § 7515. Discipline of supervisors based on retaliation against whistleblowers.

(b) Proposed Disciplinary Actions.-

(1) In general.-Subject to section 1214(f), if the head of the agency in which a supervisor is employed, an administrative law judge, the Merit Systems Protection Board, the Special Counsel, a judge of the United States, or the Inspector General of the agency in which a supervisor is employed has determined that the supervisor committed a prohibited personnel action, the head of the agency in which the supervisor is employed, consistent with the procedures required under paragraph (2)-

(A) for the first prohibited personnel action committed by the supervisor-

(i) shall propose suspending the supervisor for a period that is not less than 3 days; and

- (ii) may propose an additional action determined appropriate by the head of the agency, including a reduction in grade or pay; and
- (B) for the second prohibited personnel action committed by the supervisor, shall propose removing the supervisor.

Protects: Employees and probationary employees of agencies.

Original Committees: Senate Homeland Security and Governmental Affairs.

## Education for Economic Security Act (1984)

### Anti-retaliation provisions:

#### 20 U.S.C. § 4018. Employee protection.

No State or local educational agency receiving assistance under this subchapter may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee has brought to the attention of the public information concerning any asbestos problem in the school buildings within the jurisdiction of such agency.

### Enforcement provisions:

#### 20 U.S.C. §4019. Affect on rights under other laws

Except as otherwise provided in section 4017 of this title, nothing in this subchapter shall-

- (1) affect the right of any party to seek legal redress in connection with the purchase or installation of asbestos materials in schools or any claim of disability or death related to exposure to asbestos in a school setting; or
- (2) affect the rights of any party under any other law.

Protects: Any employee of a state or local educational agency.

Original Committees: House Education and Labor, House Science and Technology, Senate Labor and Human Resources.

## Emergency Paid Sick Leave Act

*Text added by the Families First Coronavirus Response Act (2020).*

### Anti-retaliation provisions:

#### Pub. L. No. 116-127, § 5104. Prohibited Acts.

It shall be unlawful for any employer to discharge, discipline, or in any other manner discriminate against any employee who—

- (1) takes leave in accordance with this Act; and
- (2) has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act (including a proceeding that seeks enforcement of this Act), or has testified or is about to testify in any such proceeding.

### Enforcement provisions:

#### Pub. L. No. 116-127, § 5105, 134 Stat. 197. Enforcement.

(b) Unlawful Termination.--An employer who willfully violates section 5104 shall--

- (1) be considered to be in violation of section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)); and
- (2) be subject to the penalties described in sections 16 and 17 of such Act (29 U.S.C. 216; 217) with respect to such violation.

Protects: Any full-time or part-time employee who takes leave under the Emergency Paid Sick Leave Act.

Original Committees: House Appropriations, House Budget, House Ways and Means.

# Employee Polygraph Protection Act of 1988 (EPPA)

## Anti-retaliation provisions:

### 29 U.S.C. § 2002(4). Prohibitions on lie detector use.

Except as provided in sections 2006 and 2007 of this title, it shall be unlawful for any employer engaged in or affecting commerce or in the production of goods for commerce—

...

(4) to discharge, discipline, discriminate against in any manner, or deny employment or promotion to, or threaten to take any such action against, any employee or prospective employee because—

(A) such employee or prospective employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter,

(B) such employee or prospective employee has testified or is about to testify in any such proceeding, or

(C) of the exercise by such employee or prospective employee, on behalf of such employee or another person, of any right afforded by this chapter.

## Enforcement provisions:

### 29 U.S.C. § 2005(a)-(c). Prohibitions on lie detector use.

#### (a) Civil penalties

##### (1) In general

Subject to paragraph (2), any employer who violates any provision of this chapter may be assessed a civil penalty of not more than \$10,000.

##### (2) Determination of amount

In determining the amount of any penalty under paragraph (1), the Secretary shall take into account the previous record of the person in terms of compliance with this chapter and the gravity of the violation.

##### (3) Collection

Any civil penalty assessed under this subsection shall be collected in the same manner as is required by subsections (b) through (e) of section 1853 of this title with respect to civil penalties assessed under subsection (a) of such section.

#### (b) Injunctive actions by Secretary

The Secretary may bring an action under this section to restrain violations of this chapter. The Solicitor of Labor may appear for and represent the Secretary in any litigation brought under this chapter. In any action brought under this section, the district courts of the United States shall have jurisdiction, for cause shown, to issue temporary or permanent restraining orders and injunctions to require compliance with this chapter, including such legal or equitable relief incident thereto as may be appropriate, including, but not limited to, employment, reinstatement, promotion, and the payment of lost wages and benefits.

#### (c) Private civil actions

##### (1) Liability

An employer who violates this chapter shall be liable to the employee or prospective employee affected by such violation. Such employer shall be liable for such legal or equitable relief as may be appropriate, including, but not limited to, employment, reinstatement, promotion, and the payment of lost wages and benefits.

##### (2) Court

An action to recover the liability prescribed in paragraph (1) may be maintained against the employer in any Federal or State court of competent jurisdiction by an employee or prospective employee for or on behalf of such employee, prospective employee, and other employees or prospective employees similarly situated. No such action may be commenced more than 3 years after the date of the alleged violation.

##### (3) Costs

The court, in its discretion, may allow the prevailing party (other than the United States) reasonable costs, including attorney's fees.

Protects: The employee or prospective employee.

Original Committee: House Education and Labor.

## Employee Retirement Income Security Act of 1974 (ERISA) (as amended)

### Anti-retaliation provisions:

#### 29 U.S.C. § 1140. Interference with protected rights.

It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan, this subchapter, section 1201 of this title, or the Welfare and Pension Plans Disclosure Act, or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this title, or the Welfare and Pension Plans Disclosure Act. It shall be unlawful for any person to discharge, fine, suspend, expel, or discriminate against any person because he has given information or has testified or is about to testify in any inquiry or proceeding relating to this Act or the Welfare and Pension Plans Disclosure Act. In the case of a multiemployer plan, it shall be unlawful for the plan sponsor or any other person to discriminate against any contributing employer for exercising rights under this Act or for giving information or testifying in any inquiry or proceeding relating to this Act before Congress. The provisions of section 1132 of this title shall be applicable in the enforcement of this section.

### Enforcement provisions:

#### 29 U.S.C. § 1132. Civil enforcement.

##### (a) Persons empowered to bring a civil action

A civil action may be brought-

##### (1) by a participant or beneficiary-

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan; ...

...

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;

...

(5) except as otherwise provided in subsection (b), by the Secretary (A) to enjoin any act or practice which violates any provision of this subchapter, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this subchapter;

(6) by the Secretary to collect any civil penalty under paragraph (2), (4), (5), (6), (7), (8), or (9) of subsection (c) or under subsection (i) or (l) ....

Protects: A participant or beneficiary of the employee benefit plan and employers contributing to a multiemployer plan.

Original Committee: House Education and Labor.

## Energy Reorganization Act of 1974 (ERA) (as amended)

### Anti-retaliation provisions:

#### 42 U.S.C. § 5851 (a). 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 person acting pursuant to a request of the employee)—

- (A) notified his employer of an alleged violation of this Act 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 Act 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 Act 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 Act or the Atomic Energy Act of 1954, as amended, or a proceeding for the administration or enforcement of any requirement imposed under this Act 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 manner in such a proceeding or in any other action to carry out the purposes of this Act 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.

**Enforcement provisions:**

**42 U.S.C. § 5851(b)-(c). Employee protection.**

(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.

Protects: Employees of the Department of Energy, the Nuclear Regulatory Commission, a contractor or subcontractor of the Commission, an applicant for a license from the Commission or such an agreement State, a contractor or subcontractor of such a licensee or applicant, 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) and 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 employees do not include any contractor or subcontractor covered by Executive Order No. 12344.

Original Committee: Senate Environment and Public Works.

## Empowering Olympic, Paralympic, and Amateur Athletes Act of 2020

### Anti-retaliation provisions:

#### 36 U.S.C. § 220509(a)-(c)(1). Resolution of disputes.

(a) General.-The corporation shall establish and maintain provisions in its constitution and bylaws for the swift and equitable resolution of disputes involving any of its members and relating to complaints of retaliation or the opportunity of an amateur athlete, coach, trainer, manager, administrator, or official to participate in the Olympic Games, the Paralympic Games, the Pan-American Games, the Parapan American Games, world championship competition, or other protected competition as defined in the constitution and bylaws of the corporation. In any lawsuit relating to the resolution of a dispute involving the opportunity of an amateur athlete to participate in the Olympic Games, the Paralympic Games, the Pan-American Games, or the Parapan American Games, a court shall not grant injunctive relief against the corporation within 21 days before the beginning of such games if the corporation, after consultation with the chair of the Athletes' Advisory Council, has provided a sworn statement in writing executed by an officer of the corporation to such court that its constitution and bylaws cannot provide for the resolution of such dispute prior to the beginning of such games.

(b) Office of the Athlete Ombuds.-

- (1) In general.-The corporation shall hire and provide salary, benefits, and administrative expenses for an ombudsman and support staff for athletes.
- (2) Duties.-The Office of the Athlete Ombuds shall-
- (A) provide independent advice to athletes at no cost about the applicable provisions of this chapter and the constitution and bylaws of the corporation, national governing bodies, international sports federations, the International Olympic Committee, the International Paralympic Committee, and the Pan-American Sports Organization, and with respect to the resolution of any dispute involving the opportunity of an amateur athlete to participate in the Olympic Games, the Paralympic Games, the Pan-American Games, the Parapan American Games, world championship competition or other protected competition as defined in the constitution and bylaws of the corporation;
  - (B) assist in the resolution of athlete concerns;
  - (C) provide independent advice to athletes with respect to-
    - (i) the role, responsibility, authority, and jurisdiction of the Center; and
    - (ii) the relative value of engaging legal counsel; and
  - (D) report to the Athletes' Advisory Council on a regular basis.
- (3) Hiring procedures; vacancy; termination.-
- (A) Hiring procedures.-The procedure for hiring the ombudsman for athletes shall be as follows:
    - (i) The Athletes' Advisory Council shall provide the corporation's executive director with the name of 1 qualified person to serve as ombudsman for athletes.
    - (ii) The corporation's executive director shall immediately transmit the name of such person to the corporation's executive committee.
    - (iii) The corporation's executive committee shall hire or not hire such person after fully considering the advice and counsel of the Athletes' Advisory Council.
  - (B) Vacancy.-If there is a vacancy in the position of the ombudsman for athletes, the nomination and hiring procedure set forth in this paragraph shall be followed in a timely manner.
  - (C) Termination.-The corporation may terminate the employment of an individual serving as ombudsman for athletes only if-
    - (i) the termination is carried out in accordance with the applicable policies and procedures of the corporation;
    - (ii) the termination is initially recommended to the corporation's executive committee by either the corporation's executive director or by the Athletes' Advisory Council; and
    - (iii) the corporation's executive committee fully considers the advice and counsel of the Athletes' Advisory Council prior to deciding whether or not to terminate the employment of such individual.
- (4) Confidentiality.-
- (A) In general.-The Office of the Athlete Ombuds shall maintain as confidential any information communicated or provided to the Office of the Athlete Ombuds in confidence in any matter involving the exercise of the official duties of the Office of the Athlete Ombuds.
  - (B) Exception.-The Office of the Athlete Ombuds may disclose information described in subparagraph (A) as necessary to resolve or mediate a dispute, with the permission of the parties involved.
  - (C) Judicial and administrative proceedings.-
    - (i) In general.-The ombudsman and the staff of the Office of the Athlete Ombuds shall not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to any matter involving the exercise of the duties of the Office of the Athlete Ombuds.
    - (ii) Work product.-Any memorandum, work product, notes, or case file of the Office of the Athlete Ombuds-
      - (I) shall be confidential; and
      - (II) shall not be-
        - (aa) subject to discovery, subpoena, or any other means of legal compulsion; or
        - (bb) admissible as evidence in a judicial or administrative proceeding.
  - (D) Applicability.-The confidentiality requirements under this paragraph shall not apply to information relating to-
    - (i) applicable federally mandated reporting requirements;

- (ii) a felony personally witnessed by a member of the Office of the Athlete Ombuds;
- (iii) a situation, communicated to the Office of the Athlete Ombuds, in which an individual is at imminent risk of serious harm; or
- (iv) a congressional subpoena.

(E) Development of policy.-

(i) In general.-Not later than 180 days after the date of the enactment of the Empowering Olympic, Paralympic, and Amateur Athletes Act of 2020, the Office of the Athlete Ombuds shall develop and publish in the Federal Register a confidentiality and privacy policy consistent with this paragraph.

(ii) Distribution.-The Office of the Athlete Ombuds shall distribute a copy of the policy developed under clause (i) to-

- (I) employees of the national governing bodies; and
- (II) employees of the corporation.

(iii) Publication by national governing bodies.-Each national governing body shall-

- (I) publish the policy developed under clause (i) on the internet website of the national governing body; and
- (II) communicate to amateur athletes the availability of the policy.

(5) Prohibition on retaliation.-No employee, contractor, agent, volunteer, or member of the corporation shall take or threaten to take any action against an athlete as a reprisal for disclosing information to or seeking assistance from the Office of the Athlete Ombuds.

(6) Independence in carrying out duties.-The board of directors of the corporation or any other member or employee of the corporation shall not prevent or prohibit the Office of the Athlete Ombuds from carrying out any duty or responsibility under this section.

(c) Retaliation.-

(1) In general.-The corporation, the national governing bodies, or any officer, employee, contractor, subcontractor, or agent of the corporation or a national governing body may not retaliate against any protected individual as a result of any communication, including the filing of a formal complaint, by a protected individual or a parent or legal guardian of the protected individual relating to an allegation of physical abuse, sexual harassment, or emotional abuse.

**Enforcement provisions:**

**36 U.S.C. § 220509(c)(2)-(3). Resolution of disputes.**

...

(2) Disciplinary action.-If the corporation finds that an employee of the corporation or a national governing body has retaliated against a protected individual, the corporation or national governing body, as applicable, shall immediately terminate the employment of, or suspend without pay, such employee.

(3) Damages.-

(A) In general.-With respect to a protected individual the corporation finds to have been subject to retaliation, the corporation may award damages, including damages for pain and suffering and reasonable attorney fees.

(B) Reimbursement from national governing body. In the case of a national governing body found to have retaliated against a protected individual, the corporation may demand reimbursement from the national governing body for damages paid by the corporation under subparagraph (A).

Protects: Protected individuals and a parent or legal guardian of the protected individual, and athletes.

Original Committees: House Judiciary, Senate Judiciary.

## Fair Labor Standards Act of 1938 (FLSA)

**Anti-retaliation provisions:**

**29 U.S.C. § 215(a)(3). Prohibited acts; prima facie evidence.**

(a) After the expiration of one hundred and twenty days from June 25, 1938, it shall be unlawful for any person—

...

(3) to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to chapter, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee; ...

*Text added by the Patient Protection and Affordable Care Act (2009).*

**29 U.S.C. § 218c(a). Protections for employees.**

(a) Prohibition. No employer shall discharge or in any manner discriminate against any employee with respect to his or her compensation, terms, conditions, or other privileges of employment because the employee (or an individual acting at the request of the employee) has—

- (1) received a credit under section 36B of the Internal Revenue Code of 1986 or a subsidy under section 1402 of this Act;
- (2) provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of, any provision of this title (or an amendment made by this title);
- (3) testified or is about to testify in a proceeding concerning such violation;
- (4) assisted or participated, or is about to assist or participate, in such a proceeding; or
- (5) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of this title (or amendment), or any order, rule, regulation, standard, or ban under this title (or amendment).

**Enforcement provisions:**

**29 U.S.C. § 218c(b)(1)-(2). Protections for employees.**

(b) Complaint procedure

(1) In general

An employee who believes that he or she has been discharged or otherwise discriminated against by any employer in violation of this section may seek relief in accordance with the procedures, notifications, burdens of proof, remedies, and statutes of limitation set forth in section 2087(b) of title 15.

(2) No limitation on rights

Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

Protects: The employee or an individual acting at the request of the employee.

Original Committees: House Labor, Senate Education and Labor.

## Family and Medical Leave Act of 1993 (FMLA)

**Anti-retaliation provisions:**

**29 U.S.C. § 2615(a)-(b). Prohibited acts.**

(a) Interference with rights.

(1) Exercise of rights. It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this subchapter.

(2) Discrimination. It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this subchapter.

(b) Interference with proceedings or inquiries. It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because such individual—

(1) has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this subchapter;

(2) has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this subchapter; or

(3) has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this subchapter.

*Text added by the Congressional Accountability Act of 1995, the GAO Human Capital Reform Act of 2004 and the National Defense Authorization Act for Fiscal Year 2008.*

**Enforcement provisions:**

**29 U.S.C. § 2617(a)-(f). Enforcement.**

(a) Civil action by employees

(1) Liability. Any employer who violates section 2615 of this title shall be liable to any eligible employee affected-

(A) for damages equal to-

(i) the amount of-

(I) any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation; or

(II) in a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to 12 weeks (or 26 weeks, in a case involving leave under section 2612(a)(3) of this title) of wages or salary for the employee;

(ii) the interest on the amount described in clause (i) calculated at the prevailing rate; and

(iii) an additional amount as liquidated damages equal to the sum of the amount described in clause (i) and the interest described in clause (ii), except that if an employer who has violated section 2615 of this title proves to the satisfaction of the court that the act or omission which violated section 2615 of this title was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of section 2615 of this title, such court may, in the discretion of the court, reduce the amount of the liability to the amount and interest determined under clauses (i) and (ii), respectively; and

(B) for such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(2) Right of action. An action to recover the damages or equitable relief prescribed in paragraph (1) may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of-

(A) the employees; or

(B) the employees and other employees similarly situated.

(3) Fees and costs

The court in such an action shall, in addition to any judgment awarded to the plaintiff, allow a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

(4) Limitations. The right provided by paragraph (2) to bring an action by or on behalf of any employee shall terminate-

(A) on the filing of a complaint by the Secretary in an action under subsection (d) in which restraint is sought of any further delay in the payment of the amount described in paragraph (1)(A) to such employee by an employer responsible under paragraph (1) for the payment; or

(B) on the filing of a complaint by the Secretary in an action under subsection (b) in which a recovery is sought of the damages described in paragraph (1)(A) owing to an eligible employee by an employer liable under paragraph (1), unless the action described in subparagraph (A) or (B) is dismissed without prejudice on motion of the Secretary.

(b) Action by Secretary

(1) Administrative action. The Secretary shall receive, investigate, and attempt to resolve complaints of violations of section 2615 of this title in the same manner that the Secretary receives, investigates, and attempts to resolve complaints of violations of sections 206 and 207 of this title.

(2) Civil action

The Secretary may bring an action in any court of competent jurisdiction to recover the damages described in subsection (a)(1)(A).

(3) Sums recovered

Any sums recovered by the Secretary pursuant to paragraph (2) shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to each employee affected. Any such sums not paid to an employee because of inability to do so within a period of 3 years shall be deposited into the Treasury of the United States as miscellaneous receipts.

(c) Limitation

(1) In general. Except as provided in paragraph (2), an action may be brought under this section not later than 2 years after the date of the last event constituting the alleged violation for which the action is brought.

(2) Willful violation

In the case of such action brought for a willful violation of [section 2615 of this title](#), such action may be brought within 3 years of the date of the last event constituting the alleged violation for which such action is brought.

(3) Commencement

In determining when an action is commenced by the Secretary under this section for the purposes of this subsection, it shall be considered to be commenced on the date when the complaint is filed.

(d) Action for injunction by Secretary. The district courts of the United States shall have jurisdiction, for cause shown, in an action brought by the Secretary-

(1) to restrain violations of section 2615 of this title, including the restraint of any withholding of payment of wages, salary, employment benefits, or other compensation, plus interest, found by the court to be due to eligible employees; or

(2) to award such other equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(e) Solicitor of Labor. The Solicitor of Labor may appear for and represent the Secretary on any litigation brought under this section.

(f) Government Accountability Office and Library of Congress. In the case of the Government Accountability Office and the Library of Congress, the authority of the Secretary of Labor under this subchapter shall be exercised respectively by the Comptroller General of the United States and the Librarian of Congress.

Protects: The employee, and other employees similarly situated.

Original Committees: House Education and Labor, House Post Office and Civil Service, House Administration.

## FDA Food Safety Modernization Act (FDA Modernization Act) (2011)

### Anti-retaliation provisions:

#### 21 U.S.C. § 399d(a)(1)-(4). Employee protections.

(a) In general. No entity engaged in the manufacture, processing, packing, transporting, distribution, reception, holding, or importation of food may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee, whether at the employee's initiative or in the ordinary course of the employee's duties (or any person acting pursuant to a request of the employee)—

(1) provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of any provision of this chapter or any order, rule, regulation, standard, or ban under this chapter, or any order, rule, regulation, standard, or ban under this chapter;

(2) testified or is about to testify in a proceeding concerning such violation;

(3) assisted or participated or is about to assist or participate in such a proceeding; or

(4) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of this chapter, or any order, rule, regulation, standard, or ban under this chapter.

**Enforcement provisions:**

**21 U.S.C. § 399d(b), (d-e). Employee protections.**

(b) Process

(1) In general

A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor (referred to in this section as the "Secretary") alleging such discharge or discrimination and identifying the person responsible for such act. Upon receipt of such a complaint, the Secretary shall notify, in writing, the person named in the complaint of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

(2) Investigation

(A) In general

Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the complainant and the person named in the complaint an opportunity to submit to the Secretary a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary shall initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary's findings.

(B) Reasonable cause found; preliminary order

If the Secretary concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(C) Dismissal of complaint

(i) Standard for complainant

The Secretary shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(ii) Standard for employer

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

(iii) Violation standard

The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(iv) Relief standard

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

(3) Final order

(A) In general

Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the Secretary shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary, the complainant, and the person alleged to have committed the violation.

(B) Content of order

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-

- (i) to take affirmative action to abate the violation;
- (ii) to reinstate the complainant to his or her former position together with compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and
- (iii) to provide compensatory damages to the complainant.

(C) Penalty

If such 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.

(D) Bad faith claim

If the Secretary finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary may award to the prevailing employer a reasonable attorneys' fee, not exceeding \$1,000, to be paid by the complainant.

(4) Action in court

(A) In general

If the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States with jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury. The proceedings shall be governed by the same legal burdens of proof specified in paragraph (2)(C).

(B) Relief

The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including-

- (i) reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;
- (ii) the amount of back pay, with interest; and
- (iii) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees.

(5) Review

(A) In general

Unless the complainant brings an action under paragraph (4), any person adversely affected or aggrieved by a final order issued under paragraph (3) 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 or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary. 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 order.

(B) No judicial review

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

(6) Failure to comply with order

Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur, or in the United States district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

(7) Civil action to require compliance

(A) In general

A person on whose behalf an order was issued under paragraph (3) 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.

(B) Award

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

...

(d) Enforcement

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

(e) Limitation

Subsection (a) shall not apply with respect to an employee of an entity engaged in the manufacture, processing, packing, transporting, distribution, reception, holding, or importation of food who, acting without direction from such entity (or such entity's agent), deliberately causes a violation of any requirement relating to any violation or alleged violation of any order, rule, regulation, standard, or ban under this chapter.

Protects: Employees of entities engaged in manufacturing, processing, packing, transporting, distribution, reception, holding, or importation of food.

Original Committees: House Energy and Commerce, House Ways and Means.

## Federal Mine Safety and Health Act of 1977 (FMSHA) (as amended)

### Anti-retaliation provisions:

#### 30 U.S.C. § 815(c)(1). Discrimination or interference prohibited; complaint; investigation; determination; hearing.

(c) Discrimination or interference prohibited; complaint; investigation; determination; hearing.

(1) No person shall discharge or in any manner discriminate against or cause to be discharged or cause discrimination against or otherwise interfere with the exercise of the statutory rights of any miner, representative of miners or applicant for employment in any coal or other mine subject to this Act because such miner, representative of miners or applicant for employment has filed or made a complaint under or related to this Act, including a complaint notifying the operator or the operator's agent, or the representative of the miners at the coal or other mine of an alleged danger or safety or health violation in a coal or other mine, or because such miner, representative of miners or applicant for employment is the subject of medical evaluations and potential transfer under a standard published pursuant to section 811 of this title or because such miner, representative of miners or applicant for employment has instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding, or because of the exercise by such miner, representative of miners or applicant for employment on behalf of himself or others of any statutory right afforded by this chapter.

### Enforcement provisions:

#### 30 U.S.C. § 815(c)(2)-(d). Discrimination or interference prohibited; complaint; investigation; determination; hearing.

(2) Any miner or applicant for employment or representative of miners who believes that he has been discharged, interfered with, or otherwise discriminated against by any person in violation of this subsection may, within 60 days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall forward a copy of the complaint to the respondent and shall cause such investigation to be made as he deems appropriate. Such investigation shall commence within 15 days of the Secretary's receipt of the complaint, and if the Secretary finds that such complaint was not frivolously brought, the Commission, on an expedited basis upon application of the Secretary, shall order the immediate reinstatement of the miner pending final order on the complaint. If upon such investigation, the Secretary determines that the provisions of this subsection have been violated, he shall immediately file a complaint with

the Commission, with service upon the alleged violator and the miner, applicant for employment, or representative of miners alleging such discrimination or interference and propose an order granting appropriate relief. The Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5 but without regard to subsection (a)(3) of such section) and thereafter shall issue an order, based upon findings of fact, affirming, modifying, or vacating the Secretary's proposed order, or directing other appropriate relief. Such order shall become final 30 days after its issuance. The Commission shall have authority in such proceedings to require a person committing a violation of this subsection to take such affirmative action to abate the violation as the Commission deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner to his former position with back pay and interest. The complaining miner, applicant, or representative of miners may present additional evidence on his own behalf during any hearing held pursuant to his <sup>1</sup> paragraph.

(3) Within 90 days of the receipt of a complaint filed under paragraph (2), the Secretary shall notify, in writing, the miner, applicant for employment, or representative of miners of his determination whether a violation has occurred. If the Secretary, upon investigation, determines that the provisions of this subsection have not been violated, the complainant shall have the right, within 30 days of notice of the Secretary's determination, to file an action in his own behalf before the Commission, charging discrimination or interference in violation of paragraph (1). The Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5 but without regard to subsection (a)(3) of such section), and thereafter shall issue an order, based upon findings of fact, dismissing or sustaining the complainant's charges and, if the charges are sustained, granting such relief as it deems appropriate, including, but not limited to, an order requiring the rehiring or reinstatement of the miner to his former position with back pay and interest or such remedy as may be appropriate. Such order shall become final 30 days after its issuance. Whenever an order is issued sustaining the complainant's charges under this subsection, a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) as determined by the Commission to have been reasonably incurred by the miner, applicant for employment or representative of miners for, or in connection with, the institution and prosecution of such proceedings shall be assessed against the person committing such violation. Proceedings under this section shall be expedited by the Secretary and the Commission. Any order issued by the Commission under this paragraph shall be subject to judicial review in accordance with section 816 of this title. Violations by any person of paragraph (1) shall be subject to the provisions of sections 818 and 820(a) of this title.

(d) Contest proceedings; hearing; findings of fact; affirmance, modification, or vacatur of citation, order, or proposed penalty; procedure before Commission.

If, within 30 days of receipt thereof, an operator of a coal or other mine notifies the Secretary that he intends to contest the issuance or modification of an order issued under section 814 of this title, or citation or a notification of proposed assessment of a penalty issued under subsection (a) or (b) of this section, or the reasonableness of the length of abatement time fixed in a citation or modification thereof issued under section 814 of this title, or any miner or representative of miners notifies the Secretary of an intention to contest the issuance, modification, or termination of any order issued under section 814 of this title, or the reasonableness of the length of time set for abatement by a citation or modification thereof issued under section 814 of this title, the Secretary shall immediately advise the Commission of such notification, and the Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5, but without regard to subsection (a)(3) of such section), and thereafter shall issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's citation, order, or proposed penalty, or directing other appropriate relief. Such order shall become final 30 days after its issuance. The rules of procedure prescribed by the Commission shall provide affected miners or representatives of affected miners an opportunity to participate as parties to hearings under this section. The Commission shall take whatever action is necessary to expedite proceedings for hearing appeals of orders issued under section 814 of this title.

Protects: The miner, representative of miners, or applicant for employment in any coal or other mine.

Original Committees: House on Education and Labor, House Science and Technology, Senate Labor and Public Welfare.

## Federal Railroad Safety Act of 1970<sup>8</sup> (FRSA)

*Text added by the Implementing Recommendations of the 9/11 Commission Act of 2007.*

### **Anti-retaliation provisions:**

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<sup>8</sup> For additional information on the FRSA, see CRS Legal Sidebar LSB10835, *Courts Clarify Federal Railroad Safety Act Employee Protection for "Good Faith" Safety Reports*, by Alexander H. Pepper.

**49 U.S.C. § 20109(a)-(b). Employee protections.**

(a) In general. A railroad carrier engaged in interstate or foreign commerce, a contractor or a subcontractor of such a railroad carrier, or an officer or employee of such a railroad carrier, may not discharge, demote, suspend, reprimand, or in any other way discriminate against an employee if such discrimination is due, in whole or in part, to the employee's lawful, good faith act done, or perceived by the employer to have been done or about to be done—

(1) to provide information, directly cause information to be provided, or otherwise directly assist in any investigation regarding any conduct which the employee reasonably believes constitutes a violation of any Federal law, rule, or regulation relating to railroad safety or security, or gross fraud, waste, or abuse of Federal grants or other public funds intended to be used for railroad safety or security, if the information or assistance is provided to or an investigation stemming from the provided information is conducted by—

(A) a Federal, State, or local regulatory or law enforcement agency (including an office of the Inspector General under the Inspector General Act of 1978 (5 U.S.C. App.; Public Law 95-452);

(B) any Member of Congress, any committee of Congress, or the Government Accountability Office; or

(C) a person with supervisory authority over the employee or such other person who has the authority to investigate, discover, or terminate the misconduct;

(2) to refuse to violate or assist in the violation of any Federal law, rule, or regulation relating to railroad safety or security;

(3) to file a complaint, or directly cause to be brought a proceeding related to the enforcement of this part or, as applicable to railroad safety or security, chapter 51 or 57 of this title, or to testify in that proceeding;

(4) to notify, or attempt to notify, the railroad carrier or the Secretary of Transportation of a work-related personal injury or work-related illness of an employee;

(5) to cooperate with a safety or security investigation by the Secretary of Transportation, the Secretary of Homeland Security, or the National Transportation Safety Board;

(6) to furnish information to the Secretary of Transportation, the Secretary of Homeland Security, the National Transportation Safety Board, or any Federal, State, or local regulatory or law enforcement agency as to the facts relating to any accident or incident resulting in injury or death to an individual or damage to property occurring in connection with railroad transportation; or

(7) to accurately report hours on duty pursuant to chapter 211.

(b) Hazardous safety or security conditions.

(1) A railroad carrier engaged in interstate or foreign commerce, or an officer or employee of such a railroad carrier, shall not discharge, demote, suspend, reprimand, or in any other way discriminate against an employee for—

(A) reporting, in good faith, a hazardous safety or security condition;

(B) refusing to work when confronted by a hazardous safety or security condition related to the performance of the employee's duties, if the conditions described in paragraph (2) exist; or

(C) refusing to authorize the use of any safety-related equipment, track, or structures, if the employee is responsible for the inspection or repair of the equipment, track, or structures, when the employee believes that the equipment, track, or structures are in a hazardous safety or security condition, if the conditions described in paragraph (2) exist.

(2) A refusal is protected under paragraph (1)(B) and (C) if—

(A) the refusal is made in good faith and no reasonable alternative to the refusal is available to the employee;

(B) a reasonable individual in the circumstances then confronting the employee would conclude that—

(i) the hazardous condition presents an imminent danger of death or serious injury; and

(ii) the urgency of the situation does not allow sufficient time to eliminate the danger without such refusal; and

(C) the employee, where possible, has notified the railroad carrier of the existence of the hazardous condition and the intention not to perform further work, or not to authorize the use of the hazardous equipment, track, or structures, unless the condition is corrected immediately or the equipment, track, or structures are repaired properly or replaced.

(3) In this subsection, only paragraph (1)(A) shall apply to security personnel employed by a railroad carrier to protect individuals and property transported by railroad.

**Enforcement provisions:**

**49 U.S.C. § 20109(d). Employee protections.**

(d) Enforcement Action.-

(1) In general.-An employee who alleges discharge, discipline, or other discrimination in violation of subsection (a), (b), or (c) of this section, may seek relief in accordance with the provisions of this section, with any petition or other request for relief under this section to be initiated by filing a complaint with the Secretary of Labor.

(2) Procedure.-

(A) In general.-Any action under paragraph (1) shall be governed under the rules and procedures set forth in section 42121(b), including:

(i) Burdens of proof.-Any action brought under (d)(1) <sup>2</sup> shall be governed by the legal burdens of proof set forth in section 42121(b).

(ii) Statute of limitations.-An action under paragraph (1) shall be commenced not later than 180 days after the date on which the alleged violation of subsection (a), (b), or (c) of this section occurs.

(iii) Civil actions to enforce.-If a person fails to comply with an order issued by the Secretary of Labor pursuant to the procedures in section 42121(b), the Secretary of Labor may bring a civil action to enforce the order in the district court of the United States for the judicial district in which the violation occurred, as set forth in 42121.<sup>3</sup>

(B) Exception.-Notification made under section 42121(b)(1) shall be made to the person named in the complaint and the person's employer.

(3) De novo review.-With respect to a complaint under paragraph (1), if the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint and if the delay is not due to the bad faith of the employee, the employee may bring an original 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, and which action shall, at the request of either party to such action, be tried by the court with a jury.

(4) Appeals.-Any person adversely affected or aggrieved by an order issued pursuant to the procedures in section 42121(b),<sup>4</sup> 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 or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary of Labor. The review shall conform to [chapter 7 of title 5](#). The commencement of proceedings under this paragraph shall not, unless ordered by the court, operate as a stay of the order.

Protects: Employees of a railroad carrier and employees of a contractor or subcontractor for a railroad carrier and security personnel employed by a railroad carrier, under FRSA, 49 U.S.C. § 20109(b)(3).

Original Committees: House Judiciary, House Homeland Security, House Energy and Commerce, House Intelligence, House Foreign Affairs, House Transportation and Infrastructure, House Oversight and Government Reform, House Ways and Means, Senate Homeland Security and Governmental Affairs, Senate Commerce, Science, and Transportation, Senate Judiciary.

## Federal Water Pollution Control Act (Clean Water Act)

*Text as added by the Federal Water Pollution Control Act Amendments of 1972.*

**Anti-retaliation provisions:**

**33 U.S.C. § 1367(a). Employee protection.**

(a) Discrimination against persons filing, instituting, or testifying in proceedings under this chapter prohibited. No person shall fire, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this chapter, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this chapter.

**Enforcement provisions:**

**33 U.S.C. § 1367(b). Employee protection.**

(b) Application for review; investigation; hearing; review. Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this

section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions of the Administrator are subject to judicial review under this chapter.

Protects: Private sector employees or any authorized representative of employees, state and municipal employees and Native American tribes.

Original Committees: Senate Environment and Public Works, House Public Works, Senate Appropriations, House Transportation.

## Foreign Intelligence Surveillance Act of 1978

*Text added by the FISA Amendments Reauthorization Act of 2017.*

**Pub. L. No. 115-118, § 110. Whistleblower Protections for Contractors of the Intelligence Community.**

### **Anti-retaliation provisions:**

#### **(b) FEDERAL BUREAU OF INVESTIGATION.—**

(1) IN GENERAL.—Any employee of a contractor, subcontractor, grantee, subgrantee, or personal services contractor, of the Federal Bureau of Investigation who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or fail to take a personnel action with respect to a contractor employee as a reprisal for a disclosure of information—

#### **(A) made—**

- (i) to a supervisor in the direct chain of command of the contractor employee;
- (ii) to the Inspector General;
- (iii) to the Office of Professional Responsibility of the Department of Justice;
- (iv) to the Office of Professional Responsibility of the Federal Bureau of Investigation;
- (v) to the Inspection Division of the Federal Bureau of Investigation;
- (vi) to the Office of Special Counsel; or (vii) to an employee designated by any officer, employee, office, or division described in clauses (i) through
- (vii) for the purpose of receiving such disclosures..

### **Enforcement provisions:**

...

(4) ENFORCEMENT.—The President shall provide for the enforcement of this subsection.

Protects: Employees of a contractor, subcontractor, grantee, subgrantee, or personal services contractor of the FBI.

Original Committee: Senate Judiciary.

# Homeland Security Act of 2002 (as amended)

Text added by the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014.

## Anti-retaliation provisions:

### 6 U.S.C. § 625(a)(1)-(2), (6). Whistleblower protections.

#### (a) Procedure for reporting problems.

(1) Establishment of a reporting procedure. Not later than 180 days after the date of enactment of the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 [enacted Dec. 18, 2014], the Secretary shall establish, and provide information to the public regarding, a procedure under which any employee or contractor of a chemical facility of interest may submit a report to the Secretary regarding a violation of a requirement under this title [6 USCS §§ 621 et seq.].

(2) Confidentiality. The Secretary shall keep confidential the identity of an individual who submits a report under paragraph (1) and any such report shall be treated as a record containing protected information to the extent that the report does not consist of publicly available information.

...

#### (6) Retaliation prohibited.

(A) In general. An owner or operator of a chemical facility of interest or agent thereof may not discharge an employee or otherwise discriminate against an employee with respect to the compensation provided to, or terms, conditions, or privileges of the employment of, the employee because the employee (or an individual acting pursuant to a request of the employee) submitted a report under paragraph (1).

(B) Exception. An employee shall not be entitled to the protections under this section if the employee—

- (i) knowingly and willfully makes any false, fictitious, or fraudulent statement or representation; or
- (ii) uses any false writing or document knowing the writing or document contains any false, fictitious, or fraudulent statement or entry.

## Enforcement provisions:

### 6 U.S.C. § 625(4). Whistleblower protections.

...

#### (4) Steps to address problems

The Secretary-

(A) shall review and consider the information provided in any report submitted under paragraph (1); and

(B) may take action under section 624 of this title if necessary to address any substantiated violation of a requirement under this subchapter identified in the report.

Protects: Employees of a chemical facility and employees who are contractors of a chemical facility.

Original Committees: House Homeland Security, House Energy and Commerce, Senate Homeland Security and Governmental Affairs.

# Inspector General Act of 1978 (as amended)

Text added by Pub. L. No. 117-286, §3(b) and amended by the James M. Inhofe National Defense Authorization Act of Fiscal Year 2023.

## Anti-retaliation provisions:

### 5 U.S.C. § 405(b)(19)-(20), (f)(5). Reports.

(b) Semiannual Reports.-Each Inspector General shall, not later than April 30 and October 31 of each year, prepare semiannual reports summarizing the activities of the Office during the immediately preceding 6-month periods ending March 31 and September 30. The reports shall include, but need not be limited to-

...

(19) a report on each investigation conducted by the Office involving a senior Government employee where allegations of misconduct were substantiated, including the name of the senior government official (as defined by the department or agency) if already made public by the Office, and a detailed description of-

(A) the facts and circumstances of the investigation; and

...

(20)

(A) a detailed description of any instance of whistleblower retaliation, including information about the official found to have engaged in retaliation; and

(B) what, if any, consequences the establishment actually imposed to hold the official described in subparagraph (A) accountable; ...

...

(f) Limitation on public disclosure of information.

...

(5) Protection of personally identifiable information of whistleblowers. An Office may not provide to Congress or the public any information that reveals the personally identifiable information of a whistleblower under this section unless the Office first obtains the consent of the whistleblower.

**5 U.S.C. § 407(b)-(c). Complaints by employees.**

(b) Prohibition on Disclosure of Identity.-The Inspector General shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

(c) Prohibition on Reprisal.-Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to an Inspector General, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

**Enforcement provisions:**

**5 U.S.C. § 407(a)-(c). Complaints by employees.**

(a) Receipt and Investigation.-The Inspector General may receive and investigate complaints or information from an employee of the establishment concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety.

(b) Prohibition on Disclosure of Identity.-The Inspector General shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, unless the Inspector General determines the disclosure is unavoidable during the course of the investigation.

(c) Prohibition on Reprisal.-Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to that authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to an Inspector General, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

Protects: Federal agency employees.

Original Committees: House Government Operations, Senate Governmental Affairs.

## Intelligence Reform and Terrorism Prevention Act of 2004 (as amended)

*Text as amended by the Intelligence Authorization Act for Fiscal Year 2014 and the Intelligence Authorization Act for Fiscal Year 2022.*

**Anti-retaliation provisions:**

**50 U.S.C. § 3341(j)(1). Retaliatory revocation of security clearances and access determinations.**

(1) In general

Agency personnel with authority to take, direct others to take, recommend, or approve personnel security clearance or access determinations shall not take or fail to take, or threaten to take or fail to take, any action with respect to any employee's security clearance or access determination in retaliation for-

- (A) any lawful disclosure of information to the Director of National Intelligence (or an employee designated by the Director of National Intelligence for such purpose) or a supervisor in the employee's direct chain of command, or a supervisor of the employing agency with responsibility for the subject matter of the disclosure, up to and including the head of the employing agency (or employee designated by the head of that agency for such purpose) by an employee that the employee reasonably believes evidences-
  - (i) a violation of any Federal law, rule, or regulation; or
  - (ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;
- (B) any lawful disclosure to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee reasonably believes evidences-
  - (i) a violation of any Federal law, rule, or regulation; or
  - (ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;
- (C) any lawful disclosure that complies with-
  - (i) subsections (a)(1), (d), and (h) of section 8H of the Inspector General Act of 1978 (5 U.S.C. App.);
  - (ii) subparagraphs (A), (D), and (H) of section 3517(d)(5) of this title; or
  - (iii) subparagraphs (A), (D), and (I) of section 3033(k)(5) of this title; and
- (D) if the actions do not result in the employee or applicant unlawfully disclosing information specifically required by Executive order to be kept classified in the interest of national defense or the conduct of foreign affairs, any lawful disclosure in conjunction with-
  - (i) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;
  - (ii) testimony for or otherwise lawfully assisting any individual in the exercise of any right referred to in clause (i); or
  - (iii) cooperation with or disclosing information to the Inspector General of an agency, in accordance with applicable provisions of law in connection with an audit, inspection, or investigation conducted by the Inspector General.

**Enforcement provisions:**

*Text added by the FISA Amendments Reauthorization Act of 2017.*

**50 U.S.C. § 3341(j)(4)-(8). Retaliatory revocation of security clearances and access determinations.**

...

(4) Agency adjudication

(A) Remedial procedure

An employee or former employee who believes that he or she has been subjected to a reprisal prohibited by paragraph (1) may, within 90 days (except as provided by subparagraph (D)) after the issuance of notice of such decision, appeal that decision within the agency of that employee or former employee through proceedings authorized by subsection (b)(7), except that there shall be no appeal of an agency's suspension of a security clearance or access determination for purposes of conducting an investigation, if that suspension lasts not longer than 1 year (or a longer period in accordance with a certification made under subsection (b)(7)).

(B) Corrective action

If, in the course of proceedings authorized under subparagraph (A), it is determined that the adverse security clearance or access determination violated paragraph (1), the agency shall take specific corrective action to return the employee or former employee, as nearly as practicable and reasonable, to the position such employee or former employee would have held had the violation not occurred. Such corrective action may include back pay and related benefits, travel expenses, and compensatory damages not to exceed \$300,000.

(5) Appellate review of security clearance access determinations by Director of National Intelligence

(A) Appeal

Within 60 days after receiving notice of an adverse final agency determination under a proceeding under paragraph (4), an employee or former employee may appeal that determination in accordance with the procedures established under subparagraph (B).

(B) Policies and procedures

The Director of National Intelligence, in consultation with the Attorney General and the Secretary of Defense, shall develop and implement policies and procedures for adjudicating the appeals authorized by subparagraph (A).

(C) Congressional notification

Consistent with the protection of sources and methods, at the time the Director of National Intelligence issues an order regarding an appeal pursuant to the policies and procedures established by this paragraph, the Director of National Intelligence shall notify the congressional intelligence committees.

(6) Judicial review

Nothing in this section shall be construed to permit or require judicial review of any-

- (A) agency action under this section; or
- (B) action of the appellate review procedures established under paragraph (5).

(7) Private cause of action

Nothing in this section shall be construed to permit, authorize, or require a private cause of action to challenge the merits of a security clearance determination.

(8) Enforcement

Except as otherwise provided in this subsection, the President shall provide for the enforcement of this section consistent, to the fullest extent possible, with the policies and procedures used to adjudicate alleged violations of section 2302(b)(8) of title 5.

Protects: Employees and employees of a contractor, subcontractor, grantee, subgrantee, or personal services contractor, of an agency.

Original Committee: No committee information found.

## International Safe Container Act (ISCA) (1977)

### Anti-retaliation provision:

#### 46 U.S.C. § 80507(a). Employee protection.

(a) Prohibition. A person may not discharge or discriminate against an employee because the employee has reported the existence of an unsafe container or a violation of this chapter or a regulation prescribed under this chapter.

### Enforcement provisions:

#### 46 U.S.C. § 80507(b)-(d). Employee protection.

(b) Complaints.-An employee alleging to have been discharged or discriminated against in violation of subsection (a) may file a complaint with the Secretary of Labor. The complaint must be filed within 60 days after the violation.

(c) Enforcement.-The Secretary of Labor may investigate the complaint. If the Secretary of Labor finds there has been a violation, the Secretary of Labor may bring a civil action in an appropriate district court of the United States. The court has jurisdiction to restrain violations of subsection (a) and order appropriate relief, including reinstatement of the employee to the employee's former position with back pay.

(d) Notice to Complainant.-Within 30 days after receiving a complaint under this section, the Secretary of Labor shall notify the complainant of the intended action on the complaint.

Protects: Private sector employees, local government and certain state government and interstate compact agencies employees.

Original Committees: House Judiciary, Senate Judiciary.

## James M. Inhofe National Defense Authorization Act for Fiscal Year 2023

### Anti-retaliation/Enforcement provisions:

#### 50 U.S.C. § 3373b(b). Unidentified anomalous phenomena reporting procedures.

(b) Protection for Individuals Making Authorized Disclosures.—

(1) Authorized Disclosures.—An authorized disclosure—

(A) shall not be subject to a nondisclosure agreement entered into by the individual who makes the disclosure;

(B) shall be deemed to comply with any regulation or order issued under the authority of Executive Order 13526 (50 U.S.C. 3161 note; relating to classified national security information) or chapter 18 of the Atomic Energy Act of 1954 (42 U.S.C. 2271 et seq.); and

(C) is not a violation of section 798 of title 18, United States Code, or other provision of law relating to the disclosure of information.

(2) Prohibition on Reprisals.—

(A) Protection.—An employee of a department or agency of the Federal Government, or of a contractor, subcontractor, grantee, subgrantee, or personal services contractor of such a department or agency, who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or fail to take, or threaten to take or fail to take, a personnel action, including the revocation or suspension of security clearances, or termination of employment, with respect to any individual as a reprisal for any authorized disclosure.

(B) Procedures.—The Secretary of Defense and the Director of National Intelligence shall establish procedures for the enforcement of subparagraph (A) consistent with, as appropriate, section 1034 of title 10, United States Code, section 1104 of the National Security Act of 1947 (50 U.S.C. 3234), or other similar provisions of law regarding prohibited personnel actions.

(3) Nondisclosure Agreements.—

(A) Identification.—The Secretary of Defense, the Director of National Intelligence, the Secretary of Homeland Security, the heads of such other departments and agencies of the Federal Government that have supported investigations of the types of events covered by subparagraph (A) of subsection (a)(1) and activities and programs described in subparagraph (B) of such subsection, and contractors of the Federal Government that have supported or are supporting such activities and programs, shall conduct comprehensive searches of all records relating to nondisclosure orders relating to the types of events described in subsection (a) and provide copies of such orders, agreements, or obligations to the Office.

(B) Submission to Congress.—The head of the Office shall—

- (i) make the records compiled under subparagraph (A) accessible to the congressional defense committees, the congressional intelligence committees, and the congressional leadership; and
- (ii) not later than September 30, 2023, and at least once each fiscal year thereafter through fiscal year 2026, provide to such committees and congressional leadership briefings and reports on such records.

Protects: An employee of a department or agency of the Federal Government, or of a contractor, subcontractor, grantee, subgrantee, or personal services contractor of such a department or agency.

Original Committee: House Transportation and Infrastructure.

## Legislative Branch Appropriations Act, 2006

### Anti-retaliation provisions:

#### 2 U.S.C. § 1909(c)(3)(C). Inspector General for the United States Capitol Police.

(c) Duties.

...

(3) Investigations of complaints of employees and members.

...

(C) Prohibiting retaliation. An employee or member of the Capitol Police who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee or member as a reprisal for making a complaint or disclosing information to the Inspector General, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

### Enforcement provisions:

#### 2 U.S.C. § 1909(c)(3). Inspector General for the United States Capitol Police.

...

(A) Authority. The Inspector General may receive and investigate complaints or information from an employee or member of the Capitol Police concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety, including complaints or information the investigation of which is under the jurisdiction of the Internal Affairs Division of the Capitol Police as of August 2, 2005.

(B) Nondisclosure. The Inspector General shall not, after receipt of a complaint or information from an employee or member, disclose the identity of the employee or member without the consent of the employee or member, unless required by law or the Inspector General determines such disclosure is otherwise unavoidable during the course of the investigation.

Protects: The employee and members of the Capitol Police.

Original Committees: House Appropriations, Senate Appropriations.

## Longshore and Harbor Workers' Compensation Act (LHWCA) (1927) (as amended)

### Anti-retaliation/Enforcement provisions:

**33 U.S.C. § 948a. Discrimination against employees who bring proceedings; penalties; deposit of payments in special fund; civil actions; entitlement to restoration of employment and compensation, qualifications requirement; liability of employer for penalties and payments; insurance policy exemption from liability.**

It shall be unlawful for any employer or his duly authorized agent to discharge or in any other manner discriminate against an employee as to his employment because such employee has claimed or attempted to claim compensation from such employer, or because he has testified or is about to testify in a proceeding under this Act. The discharge or refusal to employ a person who has been adjudicated to have filed a fraudulent claim for compensation is not a violation of this section. Any employer who violates this section shall be liable to a penalty of not less than \$1,000 or more than \$5,000, as may be determined by the deputy commissioner. All such penalties shall be paid to the deputy commissioner for deposit in the special fund as described in section 944, and if not paid may be recovered in a civil action brought in the appropriate United States district court. Any employee so discriminated against shall be restored to his employment and shall be compensated by his employer for any loss of wages arising out of such discrimination: *Provided*, That if such employee shall cease to be qualified to perform the duties of his employment, he shall not be entitled to such restoration and compensation. The employer alone and not his carrier shall be liable for such penalties and payments. Any provision in an insurance policy undertaking to relieve the employer from the liability for such penalties and payments shall be void.

Protects: Any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker under 33 U.S.C. § 902(3).

Original Committees: House Education and Labor, Senate Labor and Public Welfare.

## Major Fraud Act of 1988

### Anti-retaliation provision:

**18 U.S.C. § 1031(h)(1). Major Fraud Against the United States.**

(h) Any individual who-

(1) is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by an employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of a prosecution under this section (including investigation for, initiation of, testimony for, or assistance in such prosecution), ...

### Enforcement provision:

**18 U.S.C. § 1031(h)(2). Major Fraud Against the United States.**

(h) Any individual who-

...

(2) was not a participant in the unlawful activity that is the subject of said prosecution, may, in a civil action, obtain all relief necessary to make such individual whole. Such relief shall include reinstatement with the same seniority status such individual would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees.

Protects: Any employee discriminated against in furtherance of a prosecution under 18 U.S.C. § 1031.

Original Committee: House Judiciary.

## Migrant and Seasonal Agricultural Worker Protection Act (MSAWPA) (1983)

### Anti-retaliation provisions:

#### 29 U.S.C. § 1855(a). Discrimination prohibited.

(a) Prohibited activities.

No person shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any migrant or seasonal agricultural worker because such worker has, with just cause, filed any complaint or instituted, or caused to be instituted, any proceeding under or related to this Act, or has testified or is about to testify in any such proceedings, or because of the exercise, with just cause, by such worker on behalf of himself or others of any right or protection afforded by this Act.

### Enforcement provisions:

#### 29 U.S.C. § 1855(b). Discrimination prohibited.

(b) Proceedings for redress of violations.

A migrant or seasonal agricultural worker who believes, with just cause, that he has been discriminated against by any person in violation of this section may, within 180 days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he deems appropriate. If upon such investigation, the Secretary determines that the provisions of this section have been violated, the Secretary shall bring an action in any appropriate United States district court against such person. In any such action the United States district courts shall have jurisdiction, for cause shown, to restrain violation of subsection (a) and order all appropriate relief, including rehiring or reinstatement of the worker, with back pay, or damages.

Protects: Any migrant or seasonal agricultural worker.

Original Committee: House Education and Labor.

## Military Whistleblower Protection Act of 1988 (MWPA)<sup>9</sup> (as amended)

### Anti-retaliation provisions:

#### 10 U.S.C. § 1034(a)-(b). Protected communications; prohibition of retaliatory personnel actions.

(a) Restricting Communications With Members of Congress and Inspector General Prohibited.-

(1) No person may restrict a member of the armed forces in communicating with a Member of Congress or an Inspector General.

(2) Paragraph (1) does not apply to a communication that is unlawful.

(b) Prohibition of Retaliatory Personnel Actions.-

(1) No person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of the armed forces for making or preparing or being perceived as making or preparing-

(A) a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted;

(B) a communication that is described in subsection (c)(2) and that is made (or prepared to be made) to-

(i) a Member of Congress;

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<sup>9</sup> For additional information on statutes applying to military whistleblowers, see CRS In Focus IF11499, *Protecting the Military Whistleblowers: 10 U.S.C. § 1034*, by Alan Ott.

- (ii) an Inspector General (as defined in subsection (j)) or any other Inspector General appointed under chapter 4 of title 5;
  - (iii) a member of a Department of Defense audit, inspection, investigation, or law enforcement organization;
  - (iv) any person or organization in the chain of command;
  - (v) a court-martial proceeding; or
  - (vi) any other person or organization designated pursuant to regulations or other established administrative procedures for such communications; or
- (C) testimony, or otherwise participating in or assisting in an investigation or proceeding related to a communication under subparagraph (A) or (B), or filing, causing to be filed, participating in, or otherwise assisting in an action brought under this section.

**Enforcement provisions:**

**10 U.S.C. § 1034(c)-(f). Protected communications; prohibition of retaliatory personnel actions.**

(c) Inspector General Investigation of Allegations of Prohibited Personnel Actions.—(1) If a member of the armed forces submits to an Inspector General an allegation that a personnel action prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication described in paragraph (2), the Inspector General shall take the action required under paragraph (4).

...

- (4)(A) An Inspector General receiving an allegation as described in paragraph (1) shall expeditiously determine, in accordance with regulations prescribed under subsection (h), whether there is sufficient evidence to warrant an investigation of the allegation.
  - (B) If the Inspector General receiving such an allegation is an Inspector General within a military department, that Inspector General shall promptly notify the Inspector General of the Department of Defense of the allegation. Such notification shall be made in accordance with regulations prescribed under subsection (h).
  - (C) If an allegation under paragraph (1) is submitted to an Inspector General within a military department and if the determination of that Inspector General under subparagraph (A) is that there is not sufficient evidence to warrant an investigation of the allegation, that Inspector General shall forward the matter to the Inspector General of the Department of Defense for review.
  - (D) Upon determining that an investigation of an allegation under paragraph (1) is warranted, the Inspector General making the determination shall expeditiously investigate the allegation. In the case of a determination made by the Inspector General of the Department of Defense, that Inspector General may delegate responsibility for the investigation to an appropriate Inspector General within a military department.
  - (E) If the Inspector General makes a preliminary determination in an investigation under subparagraph (D) that, more likely than not, a personnel action prohibited by subsection (b) has occurred and the personnel action will result in an immediate hardship to the member alleging the personnel action, the Inspector General shall promptly notify the Secretary of the military department concerned or the Secretary of Homeland Security, as applicable, of the hardship, and such Secretary shall take such action as such Secretary considers appropriate.
  - (F) In the case of an investigation under subparagraph (D) within the Department of Defense, the results of the investigation shall be determined by, or approved by, the Inspector General of the Department of Defense (regardless of whether the investigation itself is conducted by the Inspector General of the Department of Defense or by an Inspector General within a military department).
  - (5) Neither an initial determination under paragraph (4)(A) nor an investigation under paragraph (4)(D) is required in the case of an allegation made more than one year after the date on which the member becomes aware of the personnel action that is the subject of the allegation.
  - (6) The Inspector General of the Department of Defense, or the Inspector General of the Department of Homeland Security (in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy), shall ensure that the Inspector General conducting the investigation of an allegation under this subsection is one or both of the following:
    - (A) Outside the immediate chain of command of both the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.
    - (B) At least one organization higher in the chain of command than the organization of the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.
- (d) Inspector General Investigation of Underlying Allegations.—Upon receiving an allegation under subsection (c), the Inspector General receiving the allegation shall conduct a separate investigation of the information that the member making the allegation believes constitutes evidence of wrongdoing (as described in subparagraph (A), (B), or (C) of subsection (c)(2)) if there previously has not been such an investigation or if the Inspector General determines that the original investigation was biased or otherwise inadequate. In the case of an allegation received by the Inspector

General of the Department of Defense, the Inspector General may delegate that responsibility to the Inspector General of the armed force concerned.

(e) Reports on Investigations.-(1) After completion of an investigation under subsection (c) or (d) or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under subsection (c)(4)(F), the Inspector General conducting the investigation shall submit a report on the results of the investigation to the Secretary of Defense and the Secretary of the military department concerned (or to the Secretary of Homeland Security in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) and shall transmit a copy of the report on the results of the investigation to the member of the armed forces who made the allegation investigated. The report shall be transmitted to such Secretaries, and the copy of the report shall be transmitted to the member, not later than 30 days after the completion of the investigation or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under subsection (c)(4)(E).

(2) In the copy of the report transmitted to the member, the Inspector General shall ensure the maximum disclosure of information possible, with the exception of information that is not required to be disclosed under section 552 of title 5. However, the copy need not include summaries of interviews conducted, nor any document acquired, during the course of the investigation. Such items shall be transmitted to the member, if the member requests the items, with the copy of the report or after the transmittal to the member of the copy of the report, regardless of whether the request for those items is made before or after the copy of the report is transmitted to the member.

(3)(A) Not later than 180 days after the commencement of an investigation of an allegation under subsection (c)(4), and every 180 days thereafter until the transmission of the report on the investigation under paragraph (1) to the member concerned, the Inspector General conducting the investigation shall submit a notice on the investigation described in subparagraph (B) to the following:

(i) The member.

(ii) The Secretary of Defense.

(iii) The Secretary of the military department concerned, or the Secretary of Homeland Security in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(B) Each notice on an investigation under subparagraph (A) shall include the following:

(i) A description of the current progress of the investigation.

(ii) An estimate of the time remaining until the completion of the investigation and the transmittal of the report required by paragraph (1) to the member concerned.

(4) The report on the results of the investigation shall contain a thorough review of the facts and circumstances relevant to the allegation and the complaint or disclosure and shall include documents acquired during the course of the investigation, including summaries of interviews conducted. The report may include a recommendation as to the disposition of the complaint.

(f) Action in Case of Substantiated Violations.-(1) Not later than 30 days after receiving a report from the Inspector General under subsection (e), the Secretary of Homeland Security or the Secretary of the military department concerned, as applicable, shall determine whether corrective or disciplinary action should be taken. If the Secretary concerned determines that corrective or disciplinary action should be taken, the Secretary shall take appropriate corrective or disciplinary action.

(2) If the Inspector General determines that a personnel action prohibited by subsection (b) has occurred, the Secretary concerned shall-

(A) order such action as is necessary to correct the record of a personnel action prohibited by subsection (b), including referring the report to the appropriate board for the correction of military records; and

(B) submit to the Inspector General a report on the actions taken by the Secretary pursuant to this paragraph, and provide for the inclusion of a summary of the report under this subparagraph (with any personally identifiable information redacted) in the semiannual report to Congress of the Inspector General of the Department of Defense or the Inspector General of the Department of Homeland Security, as applicable, under section 5 of the Inspector General Act of 1978 (5 U.S.C. App.).<sup>1</sup>

(3) If the Secretary concerned determines under paragraph (1) that an order for corrective or disciplinary action is not appropriate, not later than 30 days after making the determination, such Secretary shall-

(A) provide to the Secretary of Defense and the member or former member a notice of the determination and the reasons for not taking action; and

(B) when appropriate, refer the report to the appropriate board for the correction of military records for further review under subsection (g).

Protects: Members of the armed forces and members of the U.S. Public Health Service Commissioned Corps and NOAA Commissioned Officer Corps.

Original Committees: House and Senate Armed Services.

# Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21) (2012)

## Anti-retaliation provisions:

### 49 U.S.C. § 30171(a). Protection of employees providing motor vehicle safety information.

(a) Discrimination against employees of manufacturers, part suppliers, and dealerships. No motor vehicle manufacturer, part supplier, or dealership may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

- (1) provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to the employer or the Secretary of Transportation information relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of this chapter;
- (2) has filed, caused to be filed, or is about to file (with any knowledge of the employer) or cause to be filed a proceeding relating to any violation or alleged violation of any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of this chapter;
- (3) testified or is about to testify in such a proceeding;
- (4) assisted or participated or is about to assist or participate in such a proceeding; or
- (5) objected to, or refused to participate in, any activity that the employee reasonably believed to be in violation of any provision of chapter 301 of this title, or any order, rule, regulation, standard, or ban under such provision.

## Enforcement provisions:

### 49 U.S.C. § 30171(b). Protection of employees providing motor vehicle safety information.

(b) Complaint Procedure.-

(1) Filing and notification.-A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may file (or have any person file on his or her behalf), not later than 180 days after the date on which such violation occurs, a complaint with the Secretary of Labor (hereinafter in this section referred to as the "Secretary") alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify, in writing, the person named in the complaint of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2) ...

...

(4) Review.-

(A) Appeal to court of appeals.-Any person adversely affected or aggrieved by an order issued under paragraph (3) 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 or the circuit in which the complainant resided on the date of such violation. The petition for review shall be filed not later than 60 days after the date of the issuance of the final order of the Secretary. 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 order.

(B) Limitation on collateral attack.-An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(5) Enforcement of order by secretary.-Whenever any person fails to comply with an order issued under paragraph (3), 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 paragraph, the district courts shall have jurisdiction to grant all appropriate relief, including injunctive relief and compensatory damages.

(6) Enforcement of order by parties.-

(A) Commencement of action.-A person on whose behalf an order was issued under paragraph (3) 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 ....

Protects: Employees of motor vehicle manufacturers, part suppliers and dealerships.

Original Committees: House Transportation and Infrastructure, House Ways and Means, House Natural Resources, House Science, Space, and Technology, House Energy and Commerce.

# National Defense Authorization Act for Fiscal Year 1987

## Anti-retaliation provisions:

### 10 U.S.C. § 4701(a). Contractor employees: protection from reprisal for disclosure of certain information.

#### (a) Prohibition of reprisals.

- (1) An employee of a contractor, subcontractor, grantee, or subgrantee or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (2) information that the employee reasonably believes is evidence of the following:
  - (A) Gross mismanagement of a Department of Defense contract or grant, a gross waste of Department funds, an abuse of authority relating to a Department contract or grant, or a violation of law, rule, or regulation related to a Department contract (including the competition for or negotiation of a contract) or grant.
  - (B) Gross mismanagement of a National Aeronautics and Space Administration contract or grant, a gross waste of Administration funds, an abuse of authority relating to an Administration contract or grant, or a violation of law, rule, or regulation related to an Administration contract (including the competition for or negotiation of a contract) or grant.
  - (C) A substantial and specific danger to public health or safety.
- (2) The persons and bodies described in this paragraph are the persons and bodies as follows:
  - (A) A Member of Congress or a representative of a committee of Congress.
  - (B) An Inspector General.
  - (C) The Government Accountability Office.
  - (D) An employee of the Department of Defense or the National Aeronautics and Space Administration, as applicable, responsible for contract oversight or management.
  - (E) An authorized official of the Department of Justice or other law enforcement agency.
  - (F) A court or grand jury.
  - (G) A management official or other employee of the contractor or subcontractor who has the responsibility to investigate, discover, or address misconduct.
- (3) For the purposes of paragraph (1)—
  - (A) an employee who initiates or provides evidence of contractor or subcontractor misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a Department of Defense or National Aeronautics and Space Administration contract or grant shall be deemed to have made a disclosure covered by such paragraph; and
  - (B) a reprisal described in paragraph (1) is prohibited even if it is undertaken at the request of a Department or Administration official, unless the request takes the form of a nondiscretionary directive and is within the authority of the Department or Administration official making the request.

## Enforcement provisions:

### 10 U.S.C. § 4701(b). Contractor employees: protection from reprisal for disclosure of certain information.

#### (b) Investigation of Complaints.-

- (1) A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the Inspector General of the Department of Defense, or the Inspector General of the National Aeronautics and Space Administration in the case of a complaint regarding the National Aeronautics and Space Administration. Unless the Inspector General determines that the complaint is frivolous, fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, the Inspector General shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the contractor, subcontractor, grantee, subgrantee, or personal services contractor concerned, and the head of the agency.
- (2)

- (A) Except as provided under subparagraph (B), the Inspector General shall make a determination that a complaint is frivolous, fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant or submit a report under paragraph (1) within 180 days after receiving the complaint.
- (B) If the Inspector General is unable to complete an investigation in time to submit a report within the 180-day period specified in subparagraph (A) and the person submitting the complaint agrees to an extension of time, the Inspector General shall submit a report under paragraph (1) within such additional period of time, up to 180 days, as shall be agreed upon between the Inspector General and the person submitting the complaint.
- (3) The Inspector General may not respond to any inquiry or disclose any information from or about any person alleging the reprisal, except to the extent that such response or disclosure is-
- (A) made with the consent of the person alleging the reprisal;
  - (B) made in accordance with the provisions of section 552a of title 5 or as required by any other applicable Federal law; or
  - (C) necessary to conduct an investigation of the alleged reprisal.
- (4) A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.
- (c) Remedy and Enforcement Authority.-
- (1) Not later than 30 days after receiving an Inspector General report pursuant to subsection (b), the head of the agency concerned shall determine whether there is sufficient basis to conclude that the contractor, subcontractor, grantee, subgrantee, or personal services contractor concerned has subjected the complainant to a reprisal prohibited by subsection (a) and shall either issue an order denying relief or shall take one or more of the following actions:
- (A) Order the contractor, subcontractor, grantee, subgrantee, or personal services contractor to take affirmative action to abate the reprisal.
  - (B) Order the contractor, subcontractor, grantee, subgrantee, or personal services contractor to reinstate the person to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
  - (C) Order the contractor, subcontractor, grantee, subgrantee, or personal services contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the agency.
  - (D) Consider disciplinary or corrective action against any official of the Department of Defense.

Protects: The employee of a contractor, subcontractor, grantee, or subgrantee or personal services contractor.

Original Committees: House Appropriations, House Armed Services, Senate Commerce, Science, and Transportation, Senate Agriculture, Nutrition, and Forestry, Senate Appropriations.

## National Defense Authorization Act for Fiscal Year 2013

### Anti-retaliation provisions:

#### **41 U.S.C. § 4712(a). Enhancement of contractor protection from reprisal for disclosure of certain information.**

##### (a) Prohibition of reprisals.

(1) In general. An employee of a contractor, subcontractor, grantee, or subgrantee or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (2) information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.

(2) Persons and bodies covered. The persons and bodies described in this paragraph are the persons and bodies as follows:

- (A) A Member of Congress or a representative of a committee of Congress.

- (B) An Inspector General.
  - (C) The Government Accountability Office.
  - (D) A Federal employee responsible for contract or grant oversight or management at the relevant agency.
  - (E) An authorized official of the Department of Justice or other law enforcement agency.
  - (F) A court or grand jury.
  - (G) A management official or other employee of the contractor, subcontractor, grantee, or subgrantee who has the responsibility to investigate, discover, or address misconduct.
- (3) Rules of construction. For the purposes of paragraph (1)—
- (A) an employee who initiates or provides evidence of contractor, subcontractor, grantee, or subgrantee misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a Federal contract or grant shall be deemed to have made a disclosure covered by such paragraph; and
  - (B) a reprisal described in paragraph (1) is prohibited even if it is undertaken at the request of an executive branch official, unless the request takes the form of a non-discretionary directive and is within the authority of the executive branch official making the request.

**Enforcement provisions:**

**41 U.S.C. § 4712(b)-(c). Enhancement of contractor protection from reprisal for disclosure of certain information.**

(b) Investigation of Complaints.-

(1) Submission of complaint.-A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the Inspector General of the executive agency involved. Unless the Inspector General determines that the complaint is frivolous, fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, the Inspector General shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the contractor, subcontractor, grantee, subgrantee, or personal services contractor concerned, and the head of the agency.

(2) Inspector general action.-

(A) Determination or submission of report on findings.-Except as provided under subparagraph (B), the Inspector General shall make a determination that a complaint is frivolous, fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant or submit a report under paragraph (1) within 180 days after receiving the complaint.

(B) Extension of time.-If the Inspector General is unable to complete an investigation in time to submit a report within the 180-day period specified in subparagraph (A) and the person submitting the complaint agrees to an extension of time, the Inspector General shall submit a report under paragraph (1) within such additional period of time, up to 180 days, as shall be agreed upon between the Inspector General and the person submitting the complaint.

(3) Prohibition on disclosure.-The Inspector General may not respond to any inquiry or disclose any information from or about any person alleging the reprisal, except to the extent that such response or disclosure is-

(A) made with the consent of the person alleging the reprisal;

(B) made in accordance with the provisions of [section 552a of title 5](#) or as required by any other applicable Federal law; or

(C) necessary to conduct an investigation of the alleged reprisal.

(4) Time limitation.-A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.

(c) Remedy and Enforcement Authority.-

(1) In general.-Not later than 30 days after receiving an Inspector General report pursuant to subsection (b), the head of the executive agency concerned shall determine whether there is sufficient basis to conclude that the contractor, subcontractor, grantee, subgrantee, or personal services contractor concerned has subjected the complainant to a reprisal prohibited by subsection (a) and shall either issue an order denying relief or shall take one or more of the following actions:

(A) Order the contractor, subcontractor, grantee, subgrantee, or personal services contractor to take affirmative action to abate the reprisal.

(B) Order the contractor, subcontractor, grantee, subgrantee, or personal services contractor to reinstate the person to the position that the person held before the reprisal, together with compensatory damages

(including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(C) Order the contractor, subcontractor, grantee, subgrantee, or personal services contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the executive agency.

(D) Consider disciplinary or corrective action against any official of the executive agency, if appropriate.

Protects: The employee of a contractor, subcontractor, grantee, or subgrantee or personal services contractor, and persons and bodies covered under 41 U.S.C. § 4712(a)(2).

Original Committees: House and Senate Armed Services.

## National Labor Relations Act (NLRA) (1935)

### Anti-retaliation provision:

#### 29 U.S.C. § 158(a)(4). Unfair labor practices.

(a) Unfair labor practices by employer. It shall be an unfair labor practice for an employer—

...

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act; ...

### Enforcement provisions:

#### 29 U.S.C. § 160. Prevention of unfair labor practices.

(b) Complaint and notice of hearing; answer; court rules of evidence inapplicable

Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: Provided, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to section 2072 of title 28.

Protects: Private sector employees, including employees whose work has ceased as a consequence of, or in connection with, any current labor dispute or unfair labor practice as defined by 29 U.S.C. § 152.

Original Committees: House Labor, Senate Education and Labor.

## National Oceanic Atmospheric Administration Commissioned Officer Corps Amendments Act of 2020

Text amended by Pub. L. No. 116-259, §§ 205(a), 207.

### Anti-retaliation/Enforcement provisions:

33 U.S.C. § 3071(a)(8). Applicability of certain provisions of title 10.

(a) Provisions made applicable to the corps

The rules of law that apply to the Armed Forces under the following provisions of title 10, as those provisions are in effect from time to time, apply also to the commissioned officer corps of the Administration:

...

(8) Section 1034, relating to protected communications and prohibition of retaliatory personnel actions.<sup>10</sup>

Protects: Members of the NOAA Commissioned Officers Corps.

Original Committee: Senate Commerce, Science, and Transportation.

## National Security Act of 1947 (as amended)

*Text added by the FISA Amendments Reauthorization Act of 2017, the Intelligence Authorization Act for Fiscal Year 2014, Intelligence Authorization Act for Fiscal Year 2022, and the James N. Inhofe National Defense Authorization Act for Fiscal Year 2023.*

**Anti-retaliation provisions:**

**50 U.S.C. § 3033(g)(3). Inspector General of the Intelligence Community.**

**(g) Authorities.**

...

(3) The Inspector General is authorized to receive and investigate, pursuant to subsection (h), complaints or information from any person concerning the existence of an activity within the authorities and responsibilities of the Director of National Intelligence constituting a violation of laws, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety. Once such complaint or information has been received from an employee of the intelligence community—

(A) the Inspector General shall not disclose the identity of the employee without the consent of the employee, unless the Inspector General determines that such disclosure is unavoidable during the course of the investigation or the disclosure is made to an official of the Department of Justice responsible for determining whether a prosecution should be undertaken; and

(B) no action constituting a reprisal, or threat of reprisal, for making such complaint or disclosing such information to the Inspector General may be taken by any employee in a position to take such actions, unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

**50 U.S.C. § 3234(b)-(e). Prohibited personnel practices in the intelligence community.**

(b) Agency employees. Any employee of a covered intelligence community element or an agency who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee of a covered intelligence community element as a reprisal for—

(1) any lawful disclosure of information by the employee to the Director of National Intelligence (or an employee designated by the Director of National Intelligence for such purpose), the Inspector General of the Intelligence Community, a supervisor in the employee's direct chain of command, or a supervisor of the employing agency with responsibility for the subject matter of the disclosure, up to and including the head of the employing agency (or an employee designated by the head of that agency for such purpose), the appropriate inspector general of the employing agency, a congressional intelligence committee, or a member of a congressional intelligence committee, which the employee reasonably believes evidences—

(A) a violation of any Federal law, rule, or regulation; or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(2) any lawful disclosure that complies with—

(A) subsections (a)(1), (d), and (g) of section 8H of the Inspector General Act of 1978 (5 U.S.C. App.);

(B) subparagraphs (A), (D), and (H) of section 3517(d)(5) of this title; or

<sup>10</sup> See *infra*, pp. 55-57 of the Military Whistleblower Protection Act of 1988 for anti-retaliation and enforcement provisions of 10 U.S.C. § 1034.

- (C) subparagraphs (A), (D), and (I) of section 3033(k)(5) of this title; or
- (3) if the actions do not result in the employee unlawfully disclosing information specifically required by Executive order to be kept classified in the interest of national defense or the conduct of foreign affairs, any lawful disclosure in conjunction with—
  - (A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;
  - (B) testimony for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A); or
  - (C) cooperation with or disclosing information to the Inspector General of an agency, in accordance with applicable provisions of law in connection with an audit, inspection, or investigation conducted by the Inspector General.
- (c) Contractor employees.
  - (1) Any employee of an agency or of a contractor, subcontractor, grantee, subgrantee, or personal services contractor, of a covered intelligence community element who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or fail to take, or threaten to take or fail to take, a personnel action with respect to any contractor employee as a reprisal for—
    - (A) any lawful disclosure of information by the contractor employee to the Director of National Intelligence (or an employee designated by the Director of National Intelligence for such purpose), the Inspector General of the Intelligence Community, a supervisor in the contractor employee's direct chain of command, or a supervisor of the contracting agency with responsibility for the subject matter of the disclosure, up to and including the head of the contracting agency (or an employee designated by the head of that agency for such purpose), the appropriate inspector general of the contracting agency, a congressional intelligence committee, or a member of a congressional intelligence committee, which the contractor employee reasonably believes evidences—
      - (i) a violation of any Federal law, rule, or regulation (including with respect to evidence of another employee or contractor employee accessing or sharing classified information without authorization); or
      - (ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.
    - (B) any lawful disclosure that complies with—
      - (i) subsections (a)(1), (d), and (g) of section 8H of the Inspector General Act of 1978 (5 U.S.C. App.);
      - (ii) subparagraphs (A), (D), and (H) of section 3517(d)(5) of this title; or
      - (iii) subparagraphs (A), (D), and (I) of section 3033(k)(5) of this title; or
    - (C) if the actions do not result in the contractor employee unlawfully disclosing information specifically required by Executive order to be kept classified in the interest of national defense or the conduct of foreign affairs, any lawful disclosure in conjunction with—
      - (i) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;
      - (ii) testimony for or otherwise lawfully assisting any individual in the exercise of any right referred to in clause (i); or
      - (iii) cooperation with or disclosing information to the Inspector General of an agency, in accordance with applicable provisions of law in connection with an audit, inspection, or investigation conducted by the Inspector General.
  - (2) A personnel action under paragraph (1) is prohibited even if the action is undertaken at the request of an agency official, unless the request takes the form of a nondiscretionary directive and is within the authority of the agency official making the request.
- (d) Rule of construction. Consistent with the protection of intelligence sources and methods, nothing in subsection (b) or (c) shall be construed to authorize—
  - (1) the withholding of information from Congress; or
  - (2) the taking of any personnel action against an employee who lawfully discloses information to Congress.
- (e) Disclosures. A disclosure shall not be excluded from this section because—
  - (1) the disclosure was made to an individual, including a supervisor, who participated in an activity that the employee reasonably believed to be covered under subsection (b)(1)(B) or the contractor employee reasonably believed to be covered under subsection (c)(1)(A)(ii);
  - (2) the disclosure revealed information that had been previously disclosed;
  - (3) the disclosure was not made in writing;

- (4) the disclosure was made while the employee was off duty;
- (5) of the amount of time which has passed since the occurrence of the events described in the disclosure; or
- (6) the disclosure was made during the normal course of duties of an employee or contractor employee.

**Enforcement provision:**

**50 U.S.C. § 3234(f). Prohibited personnel practices in the intelligence community.**

(f) Enforcement.

The President shall provide for the enforcement of this section consistent, to the fullest extent possible, with the policies and procedures used to adjudicate alleged violations of section 2302(b)(8) of title 5.

Protects: The agency employee or the employee of a contractor, subcontractor, grantee, subgrantee, or personal services contractor, or of a covered intelligence community element under 50 U.S.C. § 3234(2)(A)(i-ii). Employees in covered intelligence community elements: the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, the Office of the Director of National Intelligence, and the National Reconnaissance Office; and “(ii) any executive agency or unit thereof determined by the President under section 2302(a)(2)(C)(ii) of title 5, United States Code, to have as its principal function the conduct of foreign intelligence or counterintelligence activities.”

Original Committee: Senate Intelligence.

## National Transit Systems Security Act of 2007 (NTSSA)

**Anti-retaliation provisions:**

**6 U.S.C. § 1142(a). Public transportation employee protections.**

(a) In general. A public transportation agency, a contractor or a subcontractor of such agency, or an officer or employee of such agency, shall not discharge, demote, suspend, reprimand, or in any other way discriminate against an employee if such discrimination is due, in whole or in part, to the employee’s lawful, good faith act done, or perceived by the employer to have been done or about to be done—

(1) to provide information, directly cause information to be provided, or otherwise directly assist in any investigation regarding any conduct which the employee reasonably believes constitutes a violation of any Federal law, rule, or regulation relating to public transportation safety or security, or fraud, waste, or abuse of Federal grants or other public funds intended to be used for public transportation safety or security, if the information or assistance is provided to or an investigation stemming from the provided information is conducted by—

(A) a Federal, State, or local regulatory or law enforcement agency (including an office of the Inspector General under the Inspector General Act of 1978 (5 U.S.C. App.; Public Law 95-452)[]);

(B) any Member of Congress, any Committee of Congress, or the Government Accountability Office; or

(C) a person with supervisory authority over the employee or such other person who has the authority to investigate, discover, or terminate the misconduct;

(2) to refuse to violate or assist in the violation of any Federal law, rule, or regulation relating to public transportation safety or security;

(3) to file a complaint or directly cause to be brought a proceeding related to the enforcement of this section or to testify in that proceeding;

(4) to cooperate with a safety or security investigation by the Secretary of Transportation, the Secretary of Homeland Security, or the National Transportation Safety Board; or

(5) to furnish information to the Secretary of Transportation, the Secretary of Homeland Security, the National Transportation Safety Board, or any Federal, State, or local regulatory or law enforcement agency as to the facts relating to any accident or incident resulting in injury or death to an individual or damage to property occurring in connection with public transportation.

**Enforcement provisions:**

**6 U.S.C. § 1142(c). Public transportation employee protections.**

(c) Enforcement action.

(1) Filing and notification

A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) or (b) may, not later than 180 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination. Upon receipt of a complaint filed under this paragraph, the Secretary of Labor shall notify, in writing, the person named in the complaint and the person's employer of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

(2) Investigation; preliminary order

(A) In general

Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the person named in the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with a representative of the Secretary of Labor to present statements from witnesses, the Secretary of Labor shall conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) or (b) of the Secretary of Labor's findings. If the Secretary of Labor concludes that there is a reasonable cause to believe that a violation of subsection (a) or (b) has occurred, the Secretary of Labor shall accompany the Secretary of Labor's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Such hearings shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(B) Requirements

(i) Required showing by complainant

The Secretary of Labor shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in subsection (a) or (b) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(ii) Showing by employer

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

(iii) Criteria for determination by Secretary of Labor

The Secretary of Labor may determine that a violation of subsection (a) or (b) has occurred only if the complainant demonstrates that any behavior described in subsection (a) or (b) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(iv) Prohibition

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

(3) Final order

(A) Deadline for issuance; settlement agreements

Not later than 120 days after the date of conclusion of a hearing under paragraph (2), the Secretary of Labor shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

(B) Remedy

If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) or (b) has occurred, the Secretary of Labor shall order the person who committed such violation to-

- (i) take affirmative action to abate the violation; and
- (ii) provide the remedies described in subsection (d).

(C) Order

If an order is issued under subparagraph (B), the Secretary of Labor, 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 attorney and expert witness fees) reasonably incurred, as determined by the

Secretary of Labor, by the complainant for, or in connection with, bringing the complaint upon which the order was issued.

(D) Frivolous complaints

If the Secretary of Labor finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary of Labor may award to the prevailing employer reasonable attorney fees not exceeding \$1,000.

(4) Review

(A) Appeal to Court of Appeals

Any person adversely affected or aggrieved by an order issued under paragraph (3) 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 or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary of Labor. 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 order.

(B) Limitation on collateral attack

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

(5) Enforcement of order by Secretary of Labor

Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary of Labor 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 paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

(6) Enforcement of order by parties

(A) Commencement of action

A person on whose behalf an order was issued under paragraph (3) 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.

(B) Attorney fees

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

(7) De novo review

With respect to a complaint under paragraph (1), if the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint and if the delay is not due to the bad faith of the employee, the employee may bring an original 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, and which action shall, at the request of either party to such action, be tried by the court with a jury. The action shall be governed by the same legal burdens of proof specified in paragraph (2)(B) for review by the Secretary of Labor.

Protects: Frontline employees defined under 6 U.S.C. § 1131(4) as an employee of a public transportation agency who is a transit vehicle driver or operator, dispatcher, maintenance and maintenance support employee, station attendant, customer service employee, security employee, or transit police, or any other employee who has direct contact with riders on a regular basis, and any other employee of a public transportation agency that the Secretary determines should receive security training under § 1137 of this title.

Original Committees: House Homeland Security, House Energy and Commerce, House Judiciary, House Intelligence, House Foreign Affairs, House Transportation and Infrastructure, House Oversight and Government Reform, House Ways and Means, Senate Homeland Security and Governmental Affairs, Senate Commerce, Science, and Transportation, Senate Judiciary.

## Occupational Safety and Health Act of 1970 (OSH Act)

### Anti-retaliation/Enforcement provisions:

#### 29 U.S.C. § 660(c)(1)-(3). Judicial review.

(c) Discharge or discrimination against employee for exercise of rights under this chapter; prohibition; procedure for relief.

- (1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act.
- (2) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this subsection may, within thirty days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he deems appropriate. If upon such investigation, the Secretary determines that the provisions of this subsection have been violated, he shall bring an action in any appropriate United States district court against such person. In any such action the United States district courts shall have jurisdiction, for cause shown to restrain violations of paragraph (1) of this subsection and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.
- (3) Within 90 days of the receipt of a complaint filed under this subsection the Secretary shall notify the complainant of his determination under paragraph (2) of this subsection.

Protects: The employee of an employer in a business of his employer which affects commerce under 29 U.S.C. § 652. The OSH Act covers most private sector employers and their employees in the 50 states, the District of Columbia, Puerto Rico, and other U.S. Territories.

Original Committees: House Education and Labor, Senate Labor and Public Welfare.

## Patient Protection and Affordable Care Act (ACA) (2010)

### Anti-retaliation provisions:

#### 29 U.S.C. § 218c(a). Protections for employees.

- (a) Prohibition. No employer shall discharge or in any manner discriminate against any employee with respect to his or her compensation, terms, conditions, or other privileges of employment because the employee (or an individual acting at the request of the employee) has—
- (1) received a credit under section 36B of title 26 or a subsidy under section 18071 of title 42;
  - (2) provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of, any provision of this title (or an amendment made by this title);
  - (3) testified or is about to testify in a proceeding concerning such violation;
  - (4) assisted or participated, or is about to assist or participate, in such a proceeding; or
  - (5) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of this title (or amendment), or any order, rule, regulation, standard, or ban under this title (or amendment).

### Enforcement provisions:

#### 29 U.S.C. § 218c(b). Protections for employees.

- (b) Complaint procedure.
- (1) In general. An employee who believes that he or she has been discharged or otherwise discriminated against by any employer in violation of this section may seek relief in accordance with the procedures, notifications, burdens of proof, remedies, and statutes of limitation set forth in section 2087(b) of title 15, United States Code.
  - (2) No limitation on rights. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

Protects: Any individual employed by the employer, any individual employed by a public agency as defined by (29 U.S.C. § 203(e)1-4).

Original Committee: House Ways and Means.

**Anti-retaliation provisions:**

**42 U.S.C. § 1320b-25(d)(1-3). Reporting to law enforcement of crimes occurring in Federal funded long-term care facilities.**

(d) Additional penalties for retaliation.

(1) In general. A long-term care facility may not—

(A) discharge, demote, suspend, threaten, harass, or deny a promotion or other employment-related benefit to an employee, or in any other manner discriminate against an employee in the terms and conditions of employment because of lawful acts done by the employee; or

(B) file a complaint or a report against a nurse or other employee with the appropriate State professional disciplinary agency because of lawful acts done by the nurse or employee,

for making a report, causing a report to be made, or for taking steps in furtherance of making a report pursuant to subsection (b)(1).

**Enforcement provisions:**

**42 U.S.C. § 1320b-25(d)(1-3). Reporting to law enforcement of crimes occurring in Federal funded long-term care facilities.**

(d) Additional penalties for retaliation.

(1) In general. A long-term care facility may not—

...

(2) Penalties for retaliation. If a long-term care facility violates subparagraph (A) or (B) of paragraph (1) the facility shall be subject to a civil money penalty of not more than \$200,000 or the Secretary may classify the entity as an excluded entity for a period of 2 years pursuant to section 1320a-7(b) of this title, or both.

Protects: Private and public sector employees.

Original Committee: House Ways and Means.

## Pipeline Safety Improvement Act of 2002 (PSIA) (as amended)

**Anti-retaliation provisions:**

**49 U.S.C. § 60129(a)(1). Protection of employees providing pipeline safety information.**

(a) Discrimination against employee.

(1) In general. No employer may discharge any employee or otherwise discriminate against any current or former 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) provided, caused to be provided, or is about to provide or cause to be provided, to the employer or the Federal Government information relating to any violation or alleged violation of any order, regulation, or standard under this chapter or any other Federal law relating to pipeline safety;

(B) refused to engage in any practice made unlawful by this chapter or any other Federal law relating to pipeline safety, if the employee has identified the alleged illegality to the employer;

(C) provided, caused to be provided, or is about to provide or cause to be provided, testimony before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of this chapter or any other Federal law relating to pipeline safety;

(D) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or any other Federal law relating to pipeline safety, or a proceeding for the administration or enforcement of any requirement imposed under this chapter or any other Federal law relating to pipeline safety;

(E) provided, caused to be provided, or is about to provide or cause to be provided, testimony in any proceeding described in subparagraph (D); or

(F) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of this chapter or any other Federal law relating to pipeline safety.

**Enforcement provisions:**

**49 U.S.C. § 60129(b). Protection of employees providing pipeline safety information.**

(b) Department of Labor Complaint Procedure.-

(1) Filing and notification.-A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary of Labor shall notify, in writing, the person or persons named in the complaint and the Secretary of Transportation of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person or persons under paragraph (2).

(2) Investigation; preliminary order.-

(A) In general.-Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the person or persons named in the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with a representative of the Secretary of Labor to present statements from witnesses, the Secretary of Labor shall conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify in writing the complainant and the person or persons alleged to have committed a violation of subsection (a) of the Secretary of Labor's findings. If the Secretary of Labor concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary of Labor shall include with the Secretary of Labor's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 60 days after the date of notification of findings under this subparagraph, any person alleged to have committed a violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Such hearings shall be conducted expeditiously. If a hearing is not requested in such 60-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(B) Requirements.-

(i) Required showing by complainant.-The Secretary of Labor shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(ii) Showing by employer.-Notwithstanding a finding by the Secretary of Labor that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(iii) Criteria for determination by Secretary.-The Secretary of Labor may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(iv) Prohibition.-Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(3) Final order.-

(A) Deadline for issuance; settlement agreements.-Not later than 90 days after the date of conclusion of a hearing under paragraph (2), the Secretary of Labor shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person or persons alleged to have committed the violation.

(B) Remedy.-If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) has occurred, the Secretary of Labor shall order the person or persons who committed such violation to-

(i) take affirmative action to abate the violation;

(ii) reinstate the complainant to his or her former position together with the compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

(iii) provide compensatory damages to the complainant.

If such an order is issued under this paragraph, the Secretary of Labor, at the request of the complainant, shall assess against the person or persons against whom the order is issued a sum equal to the aggregate amount of all

costs and expenses (including attorney's and expert witness fees) reasonably incurred, as determined by the Secretary of Labor, by the complainant for, or in connection with, the bringing the complaint upon which the order was issued.

(C) Frivolous complaints.-If the Secretary of Labor finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary of Labor may award to the prevailing employer a reasonable attorney's fee not exceeding \$1,000.

(D) De novo review.-

(i) In general.-With respect to a complaint under paragraph (1), if the Secretary of Labor has not issued a final decision by the date that is 210 days after the date on which the complaint was filed, and if the delay is not due to the bad faith of the employee who filed the complaint, that employee may bring an original action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such action without regard to the amount in controversy, and which action shall, at the request of either party to the action, be tried by the court with a jury.

(ii) Burdens of proof.-An original action described in clause (i) shall be governed by the same legal burdens of proof specified in paragraph (2)(B) for review by the Secretary of Labor.

(4) Review.-

(A) Appeal to court of appeals.-Any person adversely affected or aggrieved by an order issued under paragraph (3) 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 or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of issuance of the final order of the Secretary of Labor. Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

(B) Limitation on collateral attack.-An order of the Secretary of Labor with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(5) Enforcement of order by secretary of labor.-Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary of Labor 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 paragraph, the district courts shall have jurisdiction to grant all appropriate relief, including, but not to be limited to, injunctive relief and compensatory damages.

(6) Enforcement of order by parties.-

(A) Commencement of action.-A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person or persons 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.

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

Protects: Current or former employees, contractors and subcontractors of pipeline operators or facilities, and any person acting pursuant to a request of the employee.

Original Committees: House Transportation and Infrastructure, House Energy and Commerce, Senate Commerce, Science, and Transportation.

## Public Health Service Act

*Text as amended by the Food and Drug Administration Food Safety and Innovation Act of 2012.*

### Anti-retaliation/Enforcement provisions:

#### **42 U.S.C. § 213a(a)(18). Rights, benefits, privileges and immunities for commissioned officers or beneficiaries; exercise of authority by Secretary or designee.**

(a) Commissioned officers of the Service or their surviving beneficiaries are entitled to all the rights, benefits, privileges, and immunities now or hereafter provided for commissioned officers of the Army or their surviving beneficiaries under the following provisions of title 10:

...

(18) Section 1034, Protected Communications; Prohibition of Retaliatory Personnel Actions.<sup>11</sup>

## Safe Drinking Water Act (SDWA) (1974)

### Anti-retaliation provisions:

#### 42 U.S.C. § 300j-9(i)(1). General provisions.

(i) Discrimination prohibition; filing of complaint; investigation; orders of Secretary; notice and hearing; settlements; attorneys' fees; judicial review; filing of petition; procedural requirements; stay of orders: exclusiveness of remedy; civil actions for enforcement of orders; appropriate relief; mandamus proceedings; prohibition inapplicable to undirected but deliberate violations.

(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) has—

- (A) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this subchapter or a proceeding for the administration or enforcement of drinking water regulations or underground injection control programs of a State,
- (B) testified or is about to testify in any such proceeding, or
- (C) 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 subchapter.

### Enforcement provisions:

#### 42 U.S.C. § 300j-9(i)(2-5). General provisions.

(2)

(A) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of paragraph (1) may, within 30 days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection 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.

(B)

(i) Upon receipt of a complaint filed under subparagraph (A), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 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 90 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 clause (ii) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for agency hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(ii) If in response to a complaint filed under subparagraph (A) the Secretary determines that a violation of paragraph (1) has occurred, the Secretary shall order (I) the person who committed such violation to take affirmative action to abate the violation, (II) such person to reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, (III) compensatory damages, and (IV) where appropriate, exemplary damages. If such an order is issued, 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' 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) Any person adversely affected or aggrieved by an order issued under paragraph (2) 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

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<sup>11</sup> See *infra*, pp. 46-48 for anti-retaliation and enforcement provisions of 10 U.S.C. § 1034 of the Military Whistleblower Protection Act of 1988.

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.

(B) An order of the Secretary with respect to which review could have been obtained under subparagraph

(A) shall not be subject to judicial review in any criminal or other civil proceeding.

(4) Whenever a person has failed to comply with an order issued under paragraph (2)(B), the Secretary shall 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 paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages.

(5) Any nondiscretionary duty imposed by this section is enforceable in mandamus proceeding brought under section 1361 of title 28.

Protects: Private sector persons including officers, employees and agents of any corporation, company association, Native American tribes, and state, municipality or federal agency employees as defined by 42 U.S.C. § 300f.

Original Committees: House Interstate and Foreign Commerce, Senate Commerce.

## Sarbanes-Oxley Act of 2002 (SOX) (2002)

### Anti-retaliation provisions:

#### 18 U.S.C. § 1514A(a). Civil action to protect against retaliation in fraud cases.

(a) Whistleblower protection for employees of publicly traded companies. No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)) including any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company, or nationally recognized statistical rating organization (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c), or any officer, employee, contractor, subcontractor, or agent of such company or nationally recognized statistical rating organization, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee—

(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by—

(A) a Federal regulatory or law enforcement agency;

(B) any Member of Congress or any committee of Congress; or

(C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or

(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

### Enforcement provisions:

#### 18 U.S.C. § 1514A(b). Civil action to protect against retaliation in fraud cases.

(b) Enforcement Action.-

(1) In general.-A person who alleges discharge or other discrimination by any person in violation of subsection

(a) may seek relief under subsection (c), by-

(A) filing a complaint with the Secretary of Labor; or

(B) if the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing 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.

Protects: Employees of publicly traded companies and companies registered under §12 or required to report under §15(d) of the Securities and Exchange Act and their consolidated subsidiaries or affiliates, contractors, subcontractors, officers, and agents, and nationally recognized statistical rating organizations.

Original Committees: House Financial Services, Senate Banking, Housing, and Urban Affairs.

## Seaman's Protection Act (SPA)

*Text added by the Coast Guard Authorization Act of 1984.*

### Anti-retaliation provisions:

#### 46 U.S.C. § 2114(a)(1). Protection of seamen against discrimination.

(a)(1) A person may not discharge or in any manner discriminate against a seaman because—

(A) the seaman in good faith has reported or is about to report to the Coast Guard or other appropriate Federal agency or department that the seaman believes that a violation of a maritime safety law or regulation prescribed under that law or regulation has occurred;

(B) the seaman has refused to perform duties ordered by the seaman's employer because the seaman has a reasonable apprehension or expectation that performing such duties would result in serious injury to the seaman, other seamen, or the public;

(C) the seaman testified in a proceeding brought to enforce a maritime safety law or regulation prescribed under that law;

(D) the seaman notified, or attempted to notify, the vessel owner or the Secretary of a work-related personal injury or work-related illness of a seaman;

(E) the seaman cooperated with a safety investigation by the Secretary or the National Transportation Safety Board;

(F) the seaman furnished information to the Secretary, the National Transportation Safety Board, or any other public official as to the facts relating to any marine casualty resulting in injury or death to an individual or damage to property occurring in connection with vessel transportation; or

(G) the seaman accurately reported hours of duty under this part.

### Enforcement provision:

#### 46 U.S.C. § 2114(b). Protection of seamen against discrimination.

(b) A seaman alleging discharge or discrimination in violation of subsection (a) of this section, or another person at the seaman's request, may file a complaint with respect to such allegation in the same manner as a complaint may be filed under subsection (b) of section 31105 of title 49. Such complaint shall be subject to the procedures, requirements, and rights described in that section, including with respect to the right to file an objection, the right of a person to file for a petition for review under subsection (c) of that section, and the requirement to bring a civil action under subsection (d) of that section.

Protects: Private sector and state and local government seamen working on American-owned, U.S.-flagged vessels.

Original Committee: Senate Commerce, Science, and Transportation.

## Solid Waste Disposal Act (SWDA) (as amended)

### Anti-retaliation provision:

#### 42 U.S.C. § 6971(a). Employee protection.

(a) General. No person shall fire, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this chapter or under any applicable implementation plan, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this chapter or of any applicable implementation plan.

### Enforcement provision:

**42 U.S.C. § 6971(b). Employee protection.**

(b) Remedy. Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions of the Administrator or subject to judicial review under this chapter.

Protects: Private sector employees or any authorized representative of employees, and federal, state and municipal employees and Native American tribes.

Original Committees: House Interstate and Foreign Commerce, Senate Public Works.

## Surface Mining Control and Reclamation Act of 1977 (SMCRA)

**Anti-retaliation provision:**

**30 U.S.C. § 1293(a). Employee protection.**

(a) Retaliation practices prohibited. No person shall discharge, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this chapter, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this chapter.

**Enforcement provision:**

**30 U.S.C. § 1293(b). Employee protection.**

(b) Review by Secretary; investigation; notice; hearing; findings of fact; judicial review. Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary for a review of such firing or alleged discrimination. A copy of the application shall be sent to the person or operator who will be the respondent. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to the alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation the Secretary shall make findings of fact. If he finds that a violation did occur, he shall issue a decision incorporating therein his findings and an order requiring the party committing the violation to take such affirmative action to abate the violation as the Secretary deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no violation, he will issue a finding. Orders issued by the Secretary under this subsection shall be subject to judicial review in the same manner as orders and decisions of the Secretary are subject to judicial review under this chapter.

Protects: Employees or any authorized representative of employees.

Original Committees: House Interior and Insular Affairs, Senate Interior and Insular Affairs.

# Surface Transportation Assistance Act of 1982 (STAA)

## Anti-retaliation provisions:

### 49 U.S.C. § 31105(a). Employee protections.

#### (a) Prohibitions.

(1) A person may not discharge an employee, or discipline or discriminate against an employee regarding pay, terms, or privileges of employment, because—

##### (A)

(i) the employee, or another person at the employee's request, has filed a complaint or begun a proceeding related to a violation of a commercial motor vehicle safety or security regulation, standard, or order, or has testified or will testify in such a proceeding; or

(ii) the person perceives that the employee has filed or is about to file a complaint or has begun or is about to begin a proceeding related to a violation of a commercial motor vehicle safety or security regulation, standard, or order;

##### (B) the employee refuses to operate a vehicle because—

(i) the operation violates a regulation, standard, or order of the United States related to commercial motor vehicle safety, health, or security; or

(ii) the employee has a reasonable apprehension of serious injury to the employee or the public because of the vehicle's hazardous safety or security condition;

##### (C) the employee accurately reports hours on duty pursuant to chapter 315;

(D) the employee cooperates, or the person perceives that the employee is about to cooperate, with a safety or security investigation by the Secretary of Transportation, the Secretary of Homeland Security, or the National Transportation Safety Board; or

(E) the employee furnishes, or the person perceives that the employee is or is about to furnish, information to the Secretary of Transportation, the Secretary of Homeland Security, the National Transportation Safety Board, or any Federal, State, or local regulatory or law enforcement agency as to the facts relating to any accident or incident resulting in injury or death to an individual or damage to property occurring in connection with commercial motor vehicle transportation.

(2) Under paragraph (1)(B)(ii) of this subsection, an employee's apprehension of serious injury is reasonable only if a reasonable individual in the circumstances then confronting the employee would conclude that the hazardous safety or security condition establishes a real danger of accident, injury, or serious impairment to health. To qualify for protection, the employee must have sought from the employer, and been unable to obtain, correction of the hazardous safety or security condition.

## Enforcement provisions:

### 49 U.S.C. § 31105(b). Employee protections.

#### (b) Filing Complaints and Procedures.-

(1) An employee alleging discharge, discipline, or discrimination in violation of subsection (a) of this section, or another person at the employee's request, may file a complaint with the Secretary of Labor not later than 180 days after the alleged violation occurred. All complaints initiated under this section shall be governed by the legal burdens of proof set forth in section 42121(b). On receiving the complaint, the Secretary of Labor shall notify, in writing, the person alleged to have committed the violation of the filing of the complaint.

##### (2)

(A) Not later than 60 days after receiving a complaint, the Secretary of Labor shall conduct an investigation, decide whether it is reasonable to believe the complaint has merit, and notify, in writing, the complainant and the person alleged to have committed the violation of the findings. If the Secretary of Labor decides it is reasonable to believe a violation occurred, the Secretary of Labor shall include with the decision findings and a preliminary order for the relief provided under paragraph (3) of this subsection.

(B) Not later than 30 days after the notice under subparagraph (A) of this paragraph, the complainant and the person alleged to have committed the violation may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of objections does not stay a reinstatement ordered in the preliminary order. If a hearing is not requested within the 30 days, the preliminary order is final and not subject to judicial review.

(C) A hearing shall be conducted expeditiously. Not later than 120 days after the end of the hearing, the Secretary of Labor shall issue a final order. Before the final order is issued, the proceeding may be ended by a settlement agreement made by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

(3)

(A) If the Secretary of Labor decides, on the basis of a complaint, a person violated subsection (a) of this section, the Secretary of Labor shall order the person to-

(i) take affirmative action to abate the violation;

(ii) reinstate the complainant to the former position with the same pay and terms and privileges of employment; and

(iii) pay compensatory damages, including backpay with interest and compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

Protects: Under 49 U.S.C. § 31101, private sector employees defined as drivers of commercial motor vehicles, including independent contractors when personally operating a commercial motor vehicle, and a mechanic, a freight handler or an individual not an employer, who (A) directly affects commercial motor vehicle safety in the course of employment by a commercial motor carrier; and (B) is not an employee of the United States Government, a State, or a political subdivision of a State acting in the course of employment.

Original Committees: House Judiciary, Senate Judiciary.

## Taxpayer First Act (TFA) (2019)

### Anti-retaliation provisions:

#### 26 U.S.C. § 7623(d)(1). Expenses of detection of underpayments and fraud, etc.

(d) Civil action to protect against retaliation cases.

(1) Anti-retaliation whistleblower protection for employees. No employer, or any officer, employee, contractor, subcontractor, or agent of such employer, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment (including through an act in the ordinary course of such employee's duties) in reprisal for any lawful act done by the employee—

(A) to provide information, cause information to be provided, or otherwise assist in an investigation regarding underpayment of tax or any conduct which the employee reasonably believes constitutes a violation of the internal revenue laws or any provision of Federal law relating to tax fraud, when the information or assistance is provided to the Internal Revenue Service, the Secretary of the Treasury, the Treasury Inspector General for Tax Administration, the Comptroller General of the United States, the Department of Justice, the United States Congress, a person with supervisory authority over the employee, or any other person working for the employer who has the authority to investigate, discover, or terminate misconduct, or

(B) to testify, participate in, or otherwise assist in any administrative or judicial action taken by the Internal Revenue Service relating to an alleged underpayment of tax or any violation of the internal revenue laws or any provision of Federal law relating to tax fraud.

### Enforcement provisions:

#### 26 U.S.C. § 7623(d)(2). Expenses of detection of underpayments and fraud, etc.

(d) Civil action to protect against retaliation cases.

(2) Enforcement action

(A) In general

A person who alleges discharge or other reprisal by any person in violation of paragraph (1) may seek relief under paragraph (3) by-

(i) filing a complaint with the Secretary of Labor, or

(ii) if the Secretary of Labor has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing 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.

Protects: The employee and persons under 26 U.S.C. § 7701(a)(1) construed to include an individual, a trust, estate, partnership, association, company or corporation.

Original Committees: House Ways and Means, House Budget, House Financial Services.

## Toxic Substances Control Act (TSCA) (1976)

### Anti-retaliation provisions:

#### 15 U.S.C. § 2622(a). Employee protection.

(a) In general. No employer may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) has—

- (1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter;
- (2) testified or is about to testify in any such proceeding; or
- (3) 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.

### Enforcement provisions:

#### 15 U.S.C. § 2622(b). Employee protection.

##### (b) Remedy

(1) Any employee who believes that the employee has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section may, within 30 days after such alleged violation occurs, file (or have any person file on the employee's behalf) a complaint with the Secretary of Labor (hereinafter 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.

##### (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 30 days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting on behalf of the complainant) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this paragraph. 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 agency hearing. 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) of this section has occurred, the Secretary shall order (i) the person who committed such violation to take affirmative action to abate the violation, (ii) such person to reinstate the complainant to the complainant's former position together with the compensation (including back pay), terms, conditions, and privileges of the complainant's employment, (iii) compensatory damages, and (iv) where appropriate, exemplary damages. If such an order issued, 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 attorney's 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.

Protects: Any private sector employee.

Original Committees: House Interstate and Foreign Commerce, Senate Commerce.

## Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)

### Anti-retaliation provisions:

#### 38 U.S.C. § 4311(b). Discrimination against persons who serve in the uniformed services and acts of reprisal prohibited.

(b) An employer may not discriminate in employment against or take any adverse employment action against any person because such person (1) has taken an action to enforce a protection afforded any person under this chapter, (2) has testified or otherwise made a statement in or in connection with any proceeding under this chapter, (3) has assisted or otherwise participated in an investigation under this chapter, or (4) has exercised a right provided for in this chapter. The prohibition in this subsection shall apply with respect to a person regardless of whether that person has performed service in the uniformed services.

**Enforcement provisions:**

**38 U.S.C. § 4326(a)-(d). Conduct of investigation; subpoenas.**

(a) In carrying out any investigation under this chapter, the Secretary's duly authorized representatives shall, at all reasonable times, have reasonable access to and the right to interview persons with information relevant to the investigation and shall have reasonable access to, for purposes of examination, and the right to copy and receive, any documents of any person or employer that the Secretary considers relevant to the investigation.

(b) In carrying out any investigation under this chapter, the Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation. In case of disobedience of the subpoena or contumacy and on request of the Secretary, the Attorney General may apply to any district court of the United States in whose jurisdiction such disobedience or contumacy occurs for an order enforcing the subpoena.

(c) Upon application, the district courts of the United States shall have jurisdiction to issue writs commanding any person or employer to comply with the subpoena of the Secretary or to comply with any order of the Secretary made pursuant to a lawful investigation under this chapter and the district courts shall have jurisdiction to punish failure to obey a subpoena or other lawful order of the Secretary as a contempt of court.

(d) Subsections (b) and (c) shall not apply to the legislative branch or the judicial branch of the United States.

Protects: Under 38 U.S.C. § 4303(3), "employee" means any person employed by an employer, including a citizen, national, or permanent resident alien of the United States employed in a workplace in a foreign country by an employer that is an entity incorporated or otherwise organized in the United States or that is controlled by an entity organized in the United States.

Original Committees: House Post Office and Civil Service, House Veterans' Affairs, Senate Veterans' Affairs.

## United States-Mexico-Canada Agreement Implementation Act (2020)

**19 U.S.C. § 4532(e)(5)(A)(i)-(ii). Special rules for automotive goods.**

(e) Verification of labor value content requirements.

...

(5) Whistleblower protections.

(A) Unlawful acts. It is unlawful to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against any person for—

(i) disclosing information to a Federal agency or to any person relating to a verification under this subsection; or

(ii) cooperating or seeking to cooperate in a verification under this subsection.

**Enforcement provisions:**

**19 U.S.C. § 4532(e)(5)(B). Special rules for automotive goods.**

(e) Verification of labor value content requirements.

...

(5) Whistleblower protections.

(B) Enforcement. The Secretary of the Treasury and the Secretary of Labor are authorized to take such actions under existing law, including imposing appropriate penalties and seeking appropriate injunctive relief, as may be necessary to ensure compliance with this subsection and as provided for in existing regulations.

Protects: Any person.

Original Committees: House Ways and Means, House Education and Labor, House Natural Resources, House Foreign Affairs, House Judiciary, House Budget, House Transportation and Infrastructure, House Financial Services, House Agriculture, House Energy and Commerce, House Oversight and Reform, Senate Appropriations, Senate Budget, Senate Commerce, Science, and Transportation, Senate Environment and Public Works, Senate Finance, Senate Foreign Relations, Senate Health, Education, Labor, and Pensions.

## VA Patient Protection Act of 2016

### Anti-retaliation provisions:

#### **38 U.S.C. § 731(c). Adverse actions against supervisory employees who commit prohibited personnel actions relating to whistleblower complaints.**

(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.

### Enforcement provisions:

*Text as amended by the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017.*

#### **38 U.S.C. § 323(c)(A-1). Office of Accountability and whistleblower protection.**

(c) Functions.—(1) The functions of the Office are as follows:

- (A) Advising the Secretary on all matters of the Department relating to accountability, including accountability of employees of the Department, retaliation against whistleblowers, and such matters as the Secretary considers similar and affect public trust in the Department.
- (B) Issuing reports and providing recommendations related to the duties described in subparagraph (A).
- (C) Receiving whistleblower disclosures.
- (D) Referring whistleblower disclosures received under subparagraph (C) for investigation to the Office of the Medical Inspector, the Office of Inspector General, or other investigative entity, as appropriate, if the Assistant Secretary has reason to believe the whistleblower disclosure is evidence of a violation of a provision of law, mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety.
- (E) Receiving and referring disclosures from the Special Counsel for investigation to the Medical Inspector of the Department, the Inspector General of the Department, or such other person with investigatory authority, as the Assistant Secretary considers appropriate.
- (F) Recording, tracking, reviewing, and confirming implementation of recommendations from audits and investigations carried out by the Inspector General of the Department, the Medical Inspector of the Department, the Special Counsel, and the Comptroller General of the United States, including the imposition of disciplinary actions and other corrective actions contained in such recommendations.
- (G) Analyzing data from the Office and the Office of Inspector General telephone hotlines, other whistleblower disclosures, disaggregated by facility and area of health care if appropriate, and relevant audits and investigations to identify trends and issue reports to the Secretary based on analysis conducted under this subparagraph.

- (H) Receiving, reviewing, and investigating allegations of misconduct, retaliation, or poor performance involving-
  - (i) an individual in a senior executive position (as defined in section 713(d) of this title) in the Department;
  - (ii) an individual employed in a confidential, policy-making, policy-determining, or policy-advocating position in the Department; or
  - (iii) a supervisory employee, if the allegation involves retaliation against an employee for making a whistleblower disclosure.
- (I) Making such recommendations to the Secretary for disciplinary action as the Assistant Secretary considers appropriate after substantiating any allegation of misconduct or poor performance pursuant to an investigation carried out as described in subparagraph (F) or (H).

Protects: Whistleblowers under 38 U.S.C. § 323(g) who make whistleblower disclosures.

Original Committees: House Appropriations, Senate Appropriations.

## Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century (AIR21) (2000)

*Text added by the Aircraft Certification, Safety, and Accountability Act of 2020.*

### Anti-retaliation provisions:

#### **49 U.S.C. § 42121(a). Protection of employees providing air safety information.**

(a) Prohibited discrimination. A holder of a certificate under section 44704 or 44705 of this title, or a contractor, subcontractor, or supplier of such holder, may not discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

- (1) provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to the employer or Federal Government information relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to aviation safety under this subtitle or any other law of the United States;
- (2) has filed, caused to be filed, or is about to file (with any knowledge of the employer) or cause to be filed a proceeding relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to aviation safety under this subtitle or any other law of the United States;
- (3) testified or is about to testify in such a proceeding; or
- (4) assisted or participated or is about to assist or participate in such a proceeding.

### Enforcement provisions:

#### **49 U.S.C. § 42121(b). Protection of employees providing air safety information.**

(b) Department of Labor Complaint Procedure.-

(1) Filing and notification.-A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 90 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary of Labor shall notify, in writing, the person named in the complaint and the Administrator of the Federal Aviation Administration of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

(2) Investigation; preliminary order.-

(A) In general.-Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the person named in the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary of Labor shall conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary's findings. If the Secretary of Labor concludes that there is a reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, either the

person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Such hearings shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(B) Requirements.-

- (i) Required showing by complainant.-The Secretary of Labor shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.
- (ii) Showing by employer.-Notwithstanding a finding by the Secretary that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.
- (iii) Criteria for determination by secretary.-The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.
- (iv) Prohibition.-Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

Protects: Holders of certificates under 49 U.S.C. § 44704 (relating to design and manufacture of aircraft, engines, propellers, and related equipment) or 49 U.S.C. § 44705 (air carrier operating certificates) and contractors, subcontractors, and suppliers of such certificate holders.

Original Committees: House Transportation and Infrastructure, House Budget, House Rules, Senate Commerce, Science, and Transportation.

## Whistleblower Protection Act of 1989 (WPA)

*Text amended by the Whistleblower Protection Enhancement Act (WPEA) of 2012.*

**Anti-retaliation provisions:**

**5 U.S.C. § 2302(b)(8)-(9). Prohibited personnel practices.**

(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—

...

(8) take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of—

(A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—

- (i) any violation of any law, rule, or regulation, or
- (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs;

(B) any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—

- (i) any violation (other than a violation of this section) of any law, rule, or regulation, or
- (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; or

(C) any disclosure to Congress (including any committee of Congress) by any employee of an agency or applicant for employment at an agency of information described in subparagraph (B) that is—

- (i) not classified; or
- (ii) if classified—

- (I) has been classified by the head of an agency that is not an element of the intelligence community (as defined by section 3 of the National Security Act of 1947 (50 U.S.C. 3003)); and
  - (II) does not reveal intelligence sources and methods[;]
- (9) take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of—
- (A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation—
    - (i) with regard to remedying a violation of paragraph (8); or
    - (ii) other than with regard to remedying a violation of paragraph (8);
  - (B) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A) (i) or (ii);
  - (C) cooperating with or disclosing information to the Inspector General (or any other component responsible for internal investigation or review) of an agency, or the Special Counsel, in accordance with applicable provisions of law; or
  - (D) refusing to obey an order that would require the individual to violate a law, rule, or regulation;

**Enforcement provisions:**

**5 U.S.C. § 1221. Individual right of action in certain reprisal cases.**

- (a) Subject to the provisions of subsection (b) of this section and subsection 1214(a)(3), an employee, former employee, or applicant for employment may, with respect to any personnel action taken, or proposed to be taken, against such employee, former employee, or applicant for employment, as a result of a prohibited personnel practice described in section 2302(b)(8) or section 2302(b)(9)(A)(i), (B), (C), or (D), seek corrective action from the Merit Systems Protection Board.
- (b) This section may not be construed to prohibit any employee, former employee, or applicant for employment from seeking corrective action from the Merit Systems Protection Board before seeking corrective action from the Special Counsel, if such employee, former employee, or applicant for employment has the right to appeal directly to the Board under any law, rule, or regulation.
- (c)(1) Any employee, former employee, or applicant for employment seeking corrective action under subsection (a) may request that the Board order a stay of the personnel action involved.
- (2) Any stay requested under paragraph (1) shall be granted within 10 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date the request is made, if the Board determines that such a stay would be appropriate.
  - (3)(A) The Board shall allow any agency which would be subject to a stay under this subsection to comment to the Board on such stay request.
  - (B) Except as provided in subparagraph (C), a stay granted under this subsection shall remain in effect for such period as the Board determines to be appropriate.
  - (C) The Board may modify or dissolve a stay under this subsection at any time, if the Board determines that such a modification or dissolution is appropriate.
- (d)(1) At the request of an employee, former employee, or applicant for employment seeking corrective action under subsection (a), the Board shall 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 the testimony or production requested is not unduly burdensome and appears reasonably calculated to lead to the discovery of admissible evidence.
- (2) A subpoena under this subsection may be issued, and shall be enforced, in the same manner as applies in the case of subpoenas under section 1204.
- (e)(1) Subject to the provisions of paragraph (2), in any case involving an alleged prohibited personnel practice as described under section 2302(b)(8) or section 2302(b)(9)(A)(i), (B), (C), or (D), the Board shall order such corrective action as the Board considers appropriate if the employee, former employee, or applicant for employment has demonstrated that a disclosure or protected activity described under section 2302(b)(8) or section 2302(b)(9)(A)(i), (B), (C), or (D) was a contributing factor in the personnel action which was taken or is to be taken against such employee, former employee, or applicant. The employee may demonstrate that the disclosure or protected activity 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 or protected activity; and
  - (B) the personnel action occurred within a period of time such that a reasonable person could conclude that the disclosure or protected activity was a contributing factor in the personnel action.

**5 U.S.C. § 7701. Appellate procedures.**

- (a) An employee, or applicant for employment, may submit an appeal to the Merit Systems Protection Board from any action which is appealable to the Board under any law, rule, or regulation. An appellant shall have the right-

- (1) to a hearing for which a transcript will be kept; and
- (2) to be represented by an attorney or other representative.

Appeals shall be processed in accordance with regulations prescribed by the Board.

(b)(1) The Board may hear any case appealed to it or may refer the case to an administrative law judge appointed under section 3105 of this title or other employee of the Board designated by the Board to hear such cases, except that in any case involving a removal from the service, the case shall be heard by the Board, an employee experienced in hearing appeals, or an administrative law judge. The Board, administrative law judge, or other employee (as the case may be) shall make a decision after receipt of the written representations of the parties to the appeal and after opportunity for a hearing under subsection (a)(1) of this section. A copy of the decision shall be furnished to each party to the appeal and to the Office of Personnel Management.

(2)(A) If an employee or applicant for employment is the prevailing party in an appeal under this subsection, the employee or applicant shall be granted the relief provided in the decision effective upon the making of the decision, and remaining in effect pending the outcome of any petition for review under subsection (e), unless-

- (i) the deciding official determines that the granting of such relief is not appropriate; or
- (ii)(I) the relief granted in the decision provides that such employee or applicant shall return or be present at the place of employment during the period pending the outcome of any petition for review under subsection (e); and
- (II) the employing agency, subject to the provisions of subparagraph (B), determines that the return or presence of such employee or applicant is unduly disruptive to the work environment.

(B) If an agency makes a determination under subparagraph (A)(ii)(II) that prevents the return or presence of an employee at the place of employment, such employee shall receive pay, compensation, and all other benefits as terms and conditions of employment during the period pending the outcome of any petition for review under subsection (e).

(C) Nothing in the provisions of this paragraph may be construed to require any award of back pay or attorney fees be paid before the decision is final.

(3) With respect to an appeal from an adverse action covered by subchapter V of [chapter 75](#), authority to mitigate the personnel action involved shall be available, subject to the same standards as would apply in an appeal involving an action covered by subchapter II of [chapter 75](#) with respect to which mitigation authority under this section exists.

(c)(1) Subject to paragraph (2) of this subsection, the decision of the agency shall be sustained under subsection (b) only if the agency's decision-

- (A) in the case of an action based on unacceptable performance described in [section 4303](#), is supported by substantial evidence; or
- (B) in any other case, is supported by a preponderance of the evidence.

(2) Notwithstanding paragraph (1), the agency's decision may not be sustained under subsection (b) of this section if the employee or applicant for employment-

- (A) shows harmful error in the application of the agency's procedures in arriving at such decision;
- (B) shows that the decision was based on any prohibited personnel practice described in [section 2302\(b\)](#) of this title; or
- (C) shows that the decision was not in accordance with law.

Protects: Employees in, or applicant for, any covered positions in federal agencies.

Original Committees: House Homeland Security, House Intelligence, House Oversight and Government Reform, Senate Homeland Security and Governmental Affairs.

## Author Information

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