

employer shall provide the individual with adequate notice to challenge the subpoena or court order, unless the subpoena or court order also imposes confidentiality requirements; or

(4) to executive branch officials investigating compliance with this order, if the information is relevant to the investigation.

(e) The employing department or agency shall not maintain protected genetic information or information about a request for or the receipt of genetic services in general personnel files; such information shall be treated as confidential medical records and kept separate from personnel files.

SEC. 3. Exceptions.

1-301. The following exceptions shall apply to the nondiscrimination requirements set forth in section 1202.

(a) The employing department or agency may request or require information defined in section 1-201(e)(1)(C) with respect to an applicant who has been given a conditional offer of employment or to an employee if:

(1) the request or requirement is consistent with the Rehabilitation Act [of 1973, 29 U.S.C. 701 et seq.] and other applicable law;

(2) the information obtained is to be used exclusively to assess whether further medical evaluation is needed to diagnose a current disease, or medical condition or disorder, or under the terms of section 1-301(b) of this order;

(3) such current disease, or medical condition or disorder could prevent the applicant or employee from performing the essential functions of the position held or desired; and

(4) the information defined in section 1-201(e)(1)(C) of this order will not be disclosed to persons other than medical personnel involved in or responsible for assessing whether further medical evaluation is needed to diagnose a current disease, or medical condition or disorder, or under the terms of section 1-301(b) of this order.

(b) The employing department or agency may request, collect, or purchase protected genetic information with respect to an employee, or any information about a request for or receipt of genetic services by such employee if:

(1) the employee uses genetic or health care services provided by the employer (other than use pursuant to section 1-301(a) of this order);

(2) the employee who uses the genetic or health care services has provided prior knowing, voluntary, and written authorization to the employer to collect protected genetic information;

(3) the person who performs the genetic or health care services does not disclose protected genetic information to anyone except to the employee who uses the services for treatment of the individual; pursuant to section 1-202(d) of this order; for program evaluation or assessment; for compiling and analyzing information in anticipation of or for use in a civil or criminal legal proceeding; or, for payment or accounting purposes, to verify that the service was performed (but in such cases the genetic information itself cannot be disclosed);

(4) such information is not used in violation of sections 1-202(a) or 1-202(b) of this order.

(c) The employing department or agency may collect protected genetic information with respect to an employee if the requirements of part 46 of title 45 of the Code of Federal Regulations are met.

(d) Genetic monitoring of biological effects of toxic substances in the workplace shall be permitted if all of the following conditions are met:

(1) the employee has provided prior, knowing, voluntary, and written authorization;

(2) the employee is notified when the results of the monitoring are available and, at that time, the employer makes any protected genetic information that may have been acquired during the monitoring available to the employee and informs the employee how to obtain such information;

(3) the monitoring conforms to any genetic monitoring regulations that may be promulgated by the Secretary of Labor; and

(4) the employer, excluding any licensed health care professionals that are involved in the genetic monitoring program, receives results of the monitoring only in aggregate terms that do not disclose the identity of specific employees.

(e) This order does not limit the statutory authority of a Federal department or agency to:

(1) promulgate or enforce workplace safety and health laws and regulations;

(2) conduct or sponsor occupational or other health research that is conducted in compliance with regulations at part 46 of title 45, of the Code of Federal Regulations; or

(3) collect protected genetic information as a part of a lawful program, the primary purpose of which is to carry out identification purposes.

SEC. 4. Miscellaneous.

1-401. The head of each department and agency shall take appropriate action to disseminate this policy and, to this end, shall designate a high level official responsible for carrying out its responsibilities under this order.

1-402. Nothing in this order shall be construed to:

(a) limit the rights or protections of an individual under the Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), the Privacy Act of 1974 (5 U.S.C. 552a), or other applicable law; or

(b) require specific benefits for an employee or dependent under the Federal Employees Health Benefits Program or similar program.

1-403. This order clarifies and makes uniform Administration policy and does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its officers or employees, or any other person.

WILLIAM J. CLINTON.

§ 2000e-16a. Short title; purpose; definition

(a) Short title

Sections 2000e-16a to 2000e-16c of this title may be cited as the "Government Employee Rights Act of 1991".

(b) Purpose

The purpose of sections 2000e-16a to 2000e-16c of this title is to provide procedures to protect the rights of certain government employees, with respect to their public employment, to be free of discrimination on the basis of race, color, religion, sex, national origin, age, or disability.

(c) "Violation" defined

For purposes of sections 2000e-16a to 2000e-16c of this title, the term "violation" means a practice that violates section 2000e-16b(a) of this title.

(Pub. L. 102-166, title III, §301, Nov. 21, 1991, 105 Stat. 1088; Pub. L. 103-283, title III, §312(f)(1), July 22, 1994, 108 Stat. 1446; Pub. L. 104-1, title V, §504(a)(1), Jan. 23, 1995, 109 Stat. 40.)

REFERENCES IN TEXT

Sections 2000e-16a to 2000e-16c of this title, referred to in text, was in the original "this title", meaning title III of Pub. L. 102-166, which is classified generally to sections 2000e-16a to 2000e-16c of this title. For complete classification of title III to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 1201 of Title 2, The Congress.

AMENDMENTS

1995—Pub. L. 104-1 amended section generally, substituting "rights of certain government employees" for

“right of Senate and other government employees” in subsec. (b) and striking out definitions of “Senate employee” and “head of employing office” in subsec. (c).

1994—Subsec. (c)(1)(B) to (D). Pub. L. 103-283, which directed the amendment of subsec. (c) by striking out subpar. (B), redesignating subpars. (C) and (D) as (B) and (C), respectively, and striking out “or (B)” after “described in subparagraph (A)” in subpars. (B) and (C), was executed by making the amendment to subsec. (c)(1) to reflect the probable intent of Congress. Prior to amendment, subpar. (B) read as follows: “any employee of the Architect of the Capitol who is assigned to the Senate Restaurants or to the Superintendent of the Senate Office Buildings;”.

EFFECTIVE DATE

Section effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102-166, set out as an Effective Date of 1991 Amendment note under section 1981 of this title.

§ 2000e-16b. Discriminatory practices prohibited

(a) Practices

All personnel actions affecting the Presidential appointees described in section 1219¹ of title 2 or the State employees described in section 2000e-16c of this title shall be made free from any discrimination based on—

- (1) race, color, religion, sex, or national origin, within the meaning of section 2000e-16 of this title;
- (2) age, within the meaning of section 633a of title 29; or
- (3) disability, within the meaning of section 791 of title 29 and sections 12112 to 12114 of this title.

(b) Remedies

The remedies referred to in sections 1219(a)(1)¹ of title 2 and 2000e-16c(a) of this title—

- (1) may include, in the case of a determination that a violation of subsection (a)(1) or (a)(3) of this section has occurred, such remedies as would be appropriate if awarded under sections 2000e-5(g), 2000e-5(k), and 2000e-16(d) of this title, and such compensatory damages as would be appropriate if awarded under section 1981 or sections 1981a(a) and 1981a(b)(2) of this title;
- (2) may include, in the case of a determination that a violation of subsection (a)(2) of this section has occurred, such remedies as would be appropriate if awarded under section 633a(c) of title 29; and
- (3) may not include punitive damages.

(Pub. L. 102-166, title III, §302, Nov. 21, 1991, 105 Stat. 1088; Pub. L. 104-1, title V, §504(a)(1), Jan. 23, 1995, 109 Stat. 40.)

REFERENCES IN TEXT

Section 1219 of title 2, referred to in text, was repealed by Pub. L. 104-331, §5(a), Oct. 26, 1996, 110 Stat. 4072.

CODIFICATION

Section was formerly classified to section 1202 of Title 2, The Congress.

AMENDMENTS

1994—Pub. L. 104-1 amended section generally. Prior to amendment, text read as follows: “All personnel ac-

tions affecting employees of the Senate shall be made free from any discrimination based on—

- “(1) race, color, religion, sex, or national origin, within the meaning of section 2000e-16 of this title;
- “(2) age, within the meaning of section 633a of title 29; or
- “(3) handicap or disability, within the meaning of section 791 of title 29 and sections 12112 to 12114 of this title.”

EFFECTIVE DATE

Section effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102-166, set out as an Effective Date of 1991 Amendment note under section 1981 of this title.

§ 2000e-16c. Coverage of previously exempt State employees

(a) Application

The rights, protections, and remedies provided pursuant to section 2000e-16b of this title shall apply with respect to employment of any individual chosen or appointed, by a person elected to public office in any State or political subdivision of any State by the qualified voters thereof—

- (1) to be a member of the elected official’s personal staff;
- (2) to serve the elected official on the policy-making level; or
- (3) to serve the elected official as an immediate advisor with respect to the exercise of the constitutional or legal powers of the office.

(b) Enforcement by administrative action

(1) In general

Any individual referred to in subsection (a) of this section may file a complaint alleging a violation, not later than 180 days after the occurrence of the alleged violation, with the Equal Employment Opportunity Commission, which, in accordance with the principles and procedures set forth in sections 554 through 557 of title 5, shall determine whether a violation has occurred and shall set forth its determination in a final order. If the Equal Employment Opportunity Commission determines that a violation has occurred, the final order shall also provide for appropriate relief.

(2) Referral to State and local authorities

(A) Application

Section 2000e-5(d) of this title shall apply with respect to any proceeding under this section.

(B) Definition

For purposes of the application described in subparagraph (A), the term “any charge filed by a member of the Commission alleging an unlawful employment practice” means a complaint filed under this section.

(c) Judicial review

Any party aggrieved by a final order under subsection (b) of this section may obtain a review of such order under chapter 158 of title 28. For the purpose of this review, the Equal Employment Opportunity Commission shall be an “agency” as that term is used in chapter 158 of title 28.

¹ See References in Text note below.