

(k) Appointment and compensation of administrative law judges

Except as otherwise provided in this chapter, the administrative law judges shall be subject to the laws governing employees in the classified civil service, except that appointments shall be made without regard to section 5108 of title 5. Each administrative law judge shall receive compensation at a rate not less than that prescribed for GS-16 under section 5332 of title 5.

(Pub. L. 91-596, §12, Dec. 29, 1970, 84 Stat. 1603; Pub. L. 95-251, §2(a)(7), Mar. 27, 1978, 92 Stat. 183.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (e), is set out under section 5332 of Title 5, Government Organization and Employees.

The Federal Rules of Civil Procedure, referred to in subsec. (g), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

CODIFICATION

Subsec. (c) of this section amended sections 5314 and 5315 of Title 5, Government Organization and Employees.

In subsec. (e), referred to section 5372 of title 5 was substituted for section 5362 on authority of Pub. L. 95-454, §801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221, which redesignated sections 5361 through 5365 of title 5 as sections 5371 through 5375.

AMENDMENTS

1978—Subsecs. (e), (j), (k). Pub. L. 95-251 substituted “administrative law judge” and “administrative law judges” for “hearing examiner” and “hearing examiners”, respectively, wherever appearing.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 662. Injunction proceedings

(a) Petition by Secretary to restrain imminent dangers; scope of order

The United States district courts shall have jurisdiction, upon petition of the Secretary, to restrain any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this chapter. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or where a cessation of operations is necessary, to permit such

to be accomplished in a safe and orderly manner.

(b) Appropriate injunctive relief or temporary restraining order pending outcome of enforcement proceeding; applicability of Rule 65 of Federal Rules of Civil Procedure

Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to this chapter. The proceeding shall be as provided by Rule 65 of the Federal Rules, Civil Procedure, except that no temporary restraining order issued without notice shall be effective for a period longer than five days.

(c) Notification of affected employees and employers by inspector of danger and of recommendation to Secretary to seek relief

Whenever and as soon as an inspector concludes that conditions or practices described in subsection (a) exist in any place of employment, he shall inform the affected employees and employers of the danger and that he is recommending to the Secretary that relief be sought.

(d) Failure of Secretary to seek relief; writ of mandamus

If the Secretary arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employees, might bring an action against the Secretary in the United States district court for the district in which the imminent danger is alleged to exist or the employer has its principal office, or for the District of Columbia, for a writ of mandamus to compel the Secretary to seek such an order and for such further relief as may be appropriate.

(Pub. L. 91-596, §13, Dec. 29, 1970, 84 Stat. 1605.)

REFERENCES IN TEXT

Rule 65 of the Federal Rules of Civil Procedure, referred to in subsec. (b), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 663. Representation in civil litigation

Except as provided in section 518(a) of title 28 relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under this chapter but all such litigations shall be subject to the direction and control of the Attorney General.

(Pub. L. 91-596, §14, Dec. 29, 1970, 84 Stat. 1606.)

§ 664. Disclosure of trade secrets; protective orders

All information reported to or otherwise obtained by the Secretary or his representative in connection with any inspection or proceeding under this chapter which contains or which might reveal a trade secret referred to in section 1905 of title 18 shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this chapter or when relevant in any proceeding

under this chapter. In any such proceeding the Secretary, the Commission, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

(Pub. L. 91-596, §15, Dec. 29, 1970, 84 Stat. 1606.)

§ 665. Variations, tolerances, and exemptions from required provisions; procedure; duration

The Secretary, on the record, after notice and opportunity for a hearing may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this chapter as he may find necessary and proper to avoid serious impairment of the national defense. Such action shall not be in effect for more than six months without notification to affected employees and an opportunity being afforded for a hearing.

(Pub. L. 91-596, §16, Dec. 29, 1970, 84 Stat. 1606.)

§ 666. Civil and criminal penalties

(a) Willful or repeated violation

Any employer who willfully or repeatedly violates the requirements of section 654 of this title, any standard, rule, or order promulgated pursuant to section 655 of this title, or regulations prescribed pursuant to this chapter may be assessed a civil penalty of not more than \$70,000 for each violation, but not less than \$5,000 for each willful violation.

(b) Citation for serious violation

Any employer who has received a citation for a serious violation of the requirements of section 654 of this title, of any standard, rule, or order promulgated pursuant to section 655 of this title, or of any regulations prescribed pursuant to this chapter, shall be assessed a civil penalty of up to \$7,000 for each such violation.

(c) Citation for violation determined not serious

Any employer who has received a citation for a violation of the requirements of section 654 of this title, of any standard, rule, or order promulgated pursuant to section 655 of this title, or of regulations prescribed pursuant to this chapter, and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to \$7,000 for each such violation.

(d) Failure to correct violation

Any employer who fails to correct a violation for which a citation has been issued under section 658(a) of this title within the period permitted for its correction (which period shall not begin to run until the date of the final order of the Commission in the case of any review proceeding under section 659 of this title initiated by the employer in good faith and not solely for delay or avoidance of penalties), may be assessed a civil penalty of not more than \$7,000 for each day during which such failure or violation continues.

(e) Willful violation causing death to employee

Any employer who willfully violates any standard, rule, or order promulgated pursuant to section 655 of this title, or of any regulations

prescribed pursuant to this chapter, and that violation caused death to any employee, shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months, or by both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than \$20,000 or by imprisonment for not more than one year, or by both.

(f) Giving advance notice of inspection

Any person who gives advance notice of any inspection to be conducted under this chapter, without authority from the Secretary or his designees, shall, upon conviction, be punished by a fine of not more than \$1,000 or by imprisonment for not more than six months, or by both.

(g) False statements, representations or certification

Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

(h) Omitted

(i) Violation of posting requirements

Any employer who violates any of the posting requirements, as prescribed under the provisions of this chapter, shall be assessed a civil penalty of up to \$7,000 for each violation.

(j) Authority of Commission to assess civil penalties

The Commission shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(k) Determination of serious violation

For purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(l) Procedure for payment of civil penalties

Civil penalties owed under this chapter shall be paid to the Secretary for deposit into the Treasury of the United States and shall accrue to the United States and may be recovered in a civil action in the name of the United States brought in the United States district court for the district where the violation is alleged to have occurred or where the employer has its principal office.

(Pub. L. 91-596, §17, Dec. 29, 1970, 84 Stat. 1606, 1607; Pub. L. 101-508, title III, §3101, Nov. 5, 1990, 104 Stat. 1388-29.)