

itoring 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 1219<sup>1</sup> 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)<sup>1</sup> 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) 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) 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 actions 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;

<sup>1</sup> See References in Text note below.

“(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) 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) 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.

#### (d) Standard of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law and interpret constitu-

tional and statutory provisions. The court shall set aside a final order under subsection (b) if it is determined that the order was—

(1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(2) not made consistent with required procedures; or

(3) unsupported by substantial evidence.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

#### (e) Attorney's fees

If the individual referred to in subsection (a) is the prevailing party in a proceeding under this subsection,<sup>1</sup> attorney's fees may be allowed by the court in accordance with the standards prescribed under section 2000e-5(k) of this title.

(Pub. L. 102-166, title III, §304, formerly §321, Nov. 21, 1991, 105 Stat. 1097; renumbered §304 and amended Pub. L. 104-1, title V, §504(a)(3), (4), Jan. 23, 1995, 109 Stat. 41.)

#### CODIFICATION

Section was formerly classified to section 1220 of Title 2, The Congress.

#### PRIOR PROVISIONS

A prior section 304 of Pub. L. 102-166 was classified to section 1204 of Title 2, The Congress, prior to repeal by Pub. L. 104-1.

#### AMENDMENTS

1995—Subsec. (a). Pub. L. 104-1, §504(a)(4), struck out “and 1207(h) of title 2” before “shall apply” in introductory provisions.

#### 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-17. Procedure for denial, withholding, termination, or suspension of Government contract subsequent to acceptance by Government of affirmative action plan of employer; time of acceptance of plan

No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of section 554 of title 5, and the following pertinent sections: *Provided*, That if such employer has deviated substantially from such previously agreed to affirmative action plan, this section shall not apply: *Provided further*, That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the

<sup>1</sup> So in original.