

(3) If an employee, former employee,¹ or applicant for employment is the prevailing party in an appeal from the Merit Systems Protection Board, the agency involved shall be liable to the employee, former employee, or applicant for reasonable attorney's fees and any other reasonable costs incurred, regardless of the basis of the decision.

(4) Any corrective action ordered under this section to correct a prohibited personnel practice may include fees, costs, or damages reasonably incurred due to an agency investigation of the employee, if such investigation was commenced, expanded, or extended in retaliation for the disclosure or protected activity that formed the basis of the corrective action.

(h)(1) An employee, former employee, or applicant for employment adversely affected or aggrieved by a final order or decision of the Board under this section may obtain judicial review of the order or decision.

(2) A petition for review under this subsection shall be filed with such court, and within such time, as provided for under section 7703(b).

(i) Subsections (a) through (h) shall apply in any proceeding brought under section 7513(d) if, or to the extent that, a prohibited personnel practice as defined in section 2302(b)(8) or section 2302(b)(9)(A)(i), (B), (C), or (D) is alleged.

(j) In determining the appealability of any case involving an allegation made by an individual under the provisions of this chapter, neither the status of an individual under any retirement system established under a Federal statute nor any election made by such individual under any such system may be taken into account.

(k) If the Board grants a stay under subsection (c) and the employee who is the subject of the action is in probationary status, the head of the agency employing the employee shall give priority to a request for a transfer submitted by the employee.

(Added Pub. L. 101-12, §3(a)(13), Apr. 10, 1989, 103 Stat. 29; amended Pub. L. 103-424, §§4, 8(b), Oct. 29, 1994, 108 Stat. 4363, 4365; Pub. L. 112-199, title I, §§101(b)(1)(A), (2)(A), 104(c)(2), 107(b), 114(b), Nov. 27, 2012, 126 Stat. 1465, 1468, 1469, 1472; Pub. L. 115-73, title I, §102(b), Oct. 26, 2017, 131 Stat. 1236; Pub. L. 115-91, div. A, title X, §1097(c)(3)(B), Dec. 12, 2017, 131 Stat. 1619.)

Editorial Notes

AMENDMENTS

2017—Subsec. (k). Pub. L. 115-91 added subsec. (k) and struck out former subsec. (k) which read as follows: "If the Merit Systems Protection Board grants a stay to an employee in probationary status under subsection (c), the head of the agency employing the employee shall give priority to a request for a transfer submitted by the employee."

Pub. L. 115-73 added subsec. (k).

2012—Subsec. (a). Pub. L. 112-199, §101(b)(1)(A), inserted "or section 2302(b)(9)(A)(i), (B), (C), or (D)" after "section 2302(b)(8)".

Subsec. (e)(1). Pub. L. 112-199, §101(b)(1)(A), (2)(A), inserted "or section 2302(b)(9)(A)(i), (B), (C), or (D)" after "section 2302(b)(8)" in two places and inserted "or protected activity" after "disclosure" wherever appearing.

Subsec. (e)(2). Pub. L. 112-199, §114(b), inserted "after a finding that a protected disclosure was a contributing factor," after "ordered if".

Subsec. (g)(1)(A)(ii). Pub. L. 112-199, §107(b), substituted "any other reasonable and foreseeable consequential damages, and compensatory damages (including interest, reasonable expert witness fees, and costs)." for "and any other reasonable and foreseeable consequential changes."

Subsec. (g)(4). Pub. L. 112-199, §104(c)(2), added par. (4).

Subsec. (i). Pub. L. 112-199, §101(b)(1)(A), inserted "or section 2302(b)(9)(A)(i), (B), (C), or (D)" after "section 2302(b)(8)".

1994—Subsec. (d)(1). Pub. L. 103-424, §4(a), added par. (1) and struck out former par. (1) which read as follows: "At the request of an employee, former employee, or applicant for employment seeking corrective action under subsection (a), the Board may 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 such subpoena is necessary for the development of relevant evidence."

Subsec. (e)(1). Pub. L. 103-424, §4(b), which directed the amendment of section 1221(e)(1), without specifying the Code title to be amended, by inserting at end "The employee may demonstrate that the disclosure 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; and

"(B) the personnel action occurred within a period of time such that a reasonable person could conclude that the disclosure was a contributing factor in the personnel action.", was executed to subsec. (e)(1) of this section to reflect the probable intent of Congress.

Subsec. (f)(3). Pub. L. 103-424, §4(c), added par. (3).

Subsec. (g). Pub. L. 103-424, §8(b), added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-199 effective 30 days after Nov. 27, 2012, see section 202 of Pub. L. 112-199, set out as a note under section 1204 of this title.

EFFECTIVE DATE

Subchapter effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101-12, set out as an Effective Date of 1989 Amendment note under section 1201 of this title.

§ 1222. Availability of other remedies

Except as provided in section 1221(i), nothing in this chapter or chapter 23 shall be construed to limit any right or remedy available under a provision of statute which is outside of both this chapter and chapter 23.

(Added Pub. L. 101-12, §3(a)(13), Apr. 10, 1989, 103 Stat. 31.)

CHAPTER 13—SPECIAL AUTHORITY

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| Sec. | Rules. |
| 1301. | Regulations. |
| 1302. | Investigations; reports. |
| 1303. | Loyalty investigations; reports; revolving fund. |
| 1304. | Administrative law judges. |
| 1305. | Oaths to witnesses. |
| 1306. | Minutes. |
| 1307. | Repealed.] |
| [1308. | |

Editorial Notes

AMENDMENTS

1998—Pub. L. 105-362, title XIII, §1302(b)(2)(A), Nov. 10, 1998, 112 Stat. 3293, struck out item 1308 "Annual reports".

¹ So in original. Probably should be "employee."