

SEC. 1536. MOTOR CARRIER EMPLOYEE PROTECTIONS.

Section 31105 of title 49, United States Code, is amended to read:

` (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.

` (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.

` (B) If the Secretary of Labor issues an order under subparagraph (A) of this paragraph and the complainant requests, the Secretary of Labor may assess against the person against whom the order is issued the costs (including attorney fees) reasonably incurred by the complainant in bringing the complaint. The Secretary of Labor shall determine the costs that reasonably were incurred.

` (C) Relief in any action under subsection (b) may include punitive damages in an amount not to exceed \$250,000.

` (c) 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.

` (d) Judicial Review and Venue- A person adversely affected by an order issued after a hearing under subsection (b) of this section may file a petition for review, not later than 60 days after the order is issued, in the court of appeals of the United States for the circuit in which the violation occurred or the person resided on the date of the violation. Review shall conform to chapter 7 of title 5. The review shall be heard and decided expeditiously. An order of the Secretary of Labor subject to review under this subsection is not subject to judicial review in a criminal or other civil proceeding.

` (e) Civil Actions To Enforce- If a person fails to comply with an order issued under subsection (b) of this section, the Secretary of Labor shall 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.

` (f) No Preemption- Nothing in this section preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination provided by Federal or State law.

` (g) Rights Retained by Employee- 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.

` (h) Disclosure of Identity-

` (1) Except as provided in paragraph (2) of this subsection, or with the written consent of the employee, the Secretary of Transportation or the Secretary of Homeland Security may not disclose the name of an employee who has provided information about an alleged violation of this part, or a regulation prescribed or order issued under any of those provisions.

` (2) The Secretary of Transportation or the Secretary of Homeland Security shall disclose to the Attorney General the name of an employee described in paragraph (1) of this subsection if the matter is referred to the Attorney General for enforcement. The Secretary making such disclosure shall provide reasonable advance notice to the affected employee if disclosure of that person's identity or identifying information is to occur.

` (i) Process for Reporting Security Problems to the Department of Homeland Security-

` (1) ESTABLISHMENT OF PROCESS- The Secretary of Homeland Security shall establish through regulations, after an opportunity for notice and comment, a process by which any person may report to the Secretary of Homeland Security regarding motor carrier vehicle security problems, deficiencies, or vulnerabilities.

` (2) ACKNOWLEDGMENT OF RECEIPT- If a report submitted under paragraph (1) identifies the person making the report, the Secretary of Homeland Security shall respond promptly to such person and acknowledge receipt of the report.

` (3) STEPS TO ADDRESS PROBLEM- The Secretary of Homeland Security shall review and consider the information provided in any report submitted under paragraph (1) and shall take appropriate steps to address any problems or deficiencies identified.

` (j) Definition- In this section, `employee' means a driver of a commercial motor vehicle (including an independent contractor when personally operating a commercial motor vehicle), a mechanic, a freight handler, or an individual not an employer, who--

` (1) directly affects commercial motor vehicle safety or security in the course of employment by a commercial motor carrier; and

` (2) is not an employee of the United States Government, a State, or a political subdivision of a State acting in the course of employment.'