

One Hundred Fourteenth Congress
of the
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on ___ Monday.,
the ___ day of ___, two thousand and fifteen*

An Act

To amend 5 CFR 4 of the Code of Federal Regulations various sections of title 5, United States Code, to implement the policy of zero tolerance for retaliation against whistleblowers

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC 1. SHORT TITLE.

This Act may be cited as the “Zero Tolerance for Retaliation Against Whistleblowers Act of 2015”.

SEC. 2. PROHIBITED PRACTICES

(a) IN GENERAL.—Part 4 of title 5, Code of Federal Regulations, is amended --

(1) by adding the following section to Part 4:

“Sec. 4.4 Prohibition against retaliation against whistleblowers.”

(2) by inserting the following § 4.4 after § 4.3

“No person employed in the executive branch of the Federal Government, or any agency or department thereof, shall take any action to retaliate against any person who has made a lawful disclosure as defined in Section 2302(b)(8) or (b)(9) of title 5, or as defined in Section 1034(2) of title 10.

SEC. 3 REMOVAL FOR ACTS OF RETALIATION

Part 433 is added to the Code of Federal Regulations to read as follows:

PART 433 – REMOVAL FOR ACTS OF RETALIATION

§ 433.101(a) If the Head of the Agency determines from the results of any internal or external investigation, administrative process, grievance, or other agency resource; that a person has knowingly committed, or

recommended, an act of retaliation against a whistleblower, who has made a lawful disclosure as defined in Section 2302(b)(98) or (b)(9) of title 5, or as defined in Section 1034(2) of title 10, by taking, or failing to take, a personnel action with regard to the whistleblower, the Head of the Agency shall order the termination of the retaliator from Federal Service, shall order that the retaliator be debarred from Federal employment for a period of not less than five years, and shall order that the retaliator be debarred from serving in any capacity on any contract or subcontract which receives Federal funds for a period of not less than five years. This authority may not be delegated to a lower level official.

§ 433.101(b) If the Head of the Agency determines from the results of any internal or external investigation, administrative process, grievance, or other agency resource; that a person has been subjected to retaliation for having made a lawful disclosure and that this person has been made whole within sixty days from the date of the disclosure of the alleged act of retaliation to a supervisor, higher level manager, the Office of Special Counsel, or the Merit Systems Protection Board, the Head of the Agency may order disciplinary action to be imposed on the retaliator other than that specified in (a).

SEC. 4 POWERS AND FUNCTIONS OF THE MERIT SYSTEMS PROTECTION BOARD

Section 1204(b)(2) of title 5, United States Code, is amended by adding (2)(C) to read as follows:

(C) order the agency to terminate from Federal Service, and to debar from Federal employment for a period of not less than five years, and to debar from serving in any capacity on any contract or subcontract which receives Federal funds for a period of not less than five years; any person who is found to have knowingly committed, or recommended, an act of retaliation against a whistleblower, who has made a lawful disclosure as defined in Section 2302(a)(2) of title 5, by taking, or failing to take, a personnel action with regard to the whistleblower.

SEC. 5. DISCIPLINARY ACTION.

(a) AFFIRMATIVE DEFENSE

In any action under sections 1221 or 7701 of title 5, an employee may petition to Merit Systems Protection Board to order the actions in sections 3 or 4 as part of relief upon a finding of prohibited personnel practice.

Section 1215(a)(3), 1221 and 7701 of title 5, United States Code, are amended by adding the following at the end of each section:

If a final order of the Board determines that a person has knowingly committed or recommended an act of retaliation against a whistleblower, who has made a lawful disclosure as defined in Section 2302(a)(2) of title 5, by taking, or failing to take, a personnel action with regard to the whistleblower, the Board shall order the

termination of the retaliator from Federal Service, shall order that the retaliator be debarred from Federal employment for a period of not less than five years, and shall order that the retaliator be debarred from serving in any capacity on any grant, contract, or subcontract which receives Federal funds for a period of not less than five years.

SEC. 6. GRIEVANCE PROCEDURES.

Section 7121(2)(A) of title 5, United States Code, is amended by adding (iii) to read as follows:

(iii) the agency to terminate from Federal Service, and to debar from Federal employment for a period of not less than five years, and to debar from serving in any capacity on any grant, contract, or subcontract which receives Federal funds for a period of not less than five years.; any person who is found to have knowingly committed, or recommended, an act of retaliation against a whistleblower, who has made a lawful disclosure as defined in Section 2302(b)(8) and (b)(9) of title 5, by taking, or failing to take, a personnel action with regard to the whistleblower. An aggrieved employee who elects to pursue relief for an act of retaliation through the negotiated grievance process may request any or all of the disciplinary actions herein defined.

SEC. 7 ACTIONS COVERED.

Section 7512 Actions Covered of title 5, United States Code, is amended by striking “and” from item (4) and adding items (6) and (7) to read as follows:

- (6) debar from Federal employment; and
- (7) debar from serving in any capacity on any grant, contract, or subcontract which receives Federal funds.

SEC. 8 CAUSE AND PROCEDURES.

Section 7513 Cause and Procedures of title 5, United States Code, is amended by adding the following to item (a) so that it reads as follows:

(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service. Because acts of retaliation against whistleblowers foster an atmosphere of fear for reporting wrongdoing among the workforce, retaliation promotes a continuation and/or expansion of acts of wrongdoing which contribute to the public’s lack of trust in government and its officials. Therefore, any act of retaliation against a whistleblower is deemed to be contrary to promoting the efficiency of the service.

SEC. 9 PROTECTED COMMUNICATIONS; PROHIBITION OF RETALIATORY PERSONNEL ACTIONS.

Section 1034(f)(3) of title 10, United States Code, is amended by adding (f)(c) to read as follows:

(C) If the Secretary determines that a person has knowingly committed or recommended an act of retaliation against a whistleblower, who has made a lawful disclosure as defined in Section 1034(2) of title 10, by taking, or failing to take, a personnel action with regard to the whistleblower, the Secretary shall order the termination of the retaliator from Federal Service or separation from the Armed Forces, shall order that the retaliator be debarred from Federal employment for a period of not less than five years, and shall order that the retaliator be debarred from serving in any capacity on any grant, contract, or subcontract which receives Federal funds for a period of not less than five years.