3.907-6 Remedies and enforcement authority.

(a) *Burden of Proof*.

(1) Disclosure as contributing factor in reprisal.

(i) An employee alleging a reprisal under this section *shall* be deemed to have affirmatively established the occurrence of the reprisal if the employee demonstrates that a disclosure described in section 3.907-2 was a contributing factor in the reprisal.

(ii) A disclosure *may* be demonstrated as a contributing factor in a reprisal for purposes of this paragraph by circumstantial evidence, including-

(A) Evidence that the official undertaking the reprisal knew of the disclosure; or

(B) Evidence that the reprisal occurred within a period of time after the disclosure such that a reasonable person could conclude that the disclosure was a contributing factor in the reprisal.

(2) *Opportunity for rebuttal*. The head of an agency *may* not find the occurrence of a reprisal with respect to a reprisal that is affirmatively established under section 3.907-6(a)(1) if the *non-Federal employer* demonstrates by clear and convincing evidence that the *non-Federal employer* would have taken the action constituting the reprisal in the absence of the disclosure.

(b) No later than 30 days after receiving an *Inspector General* report in accordance with section 1553 of the Recovery Act, the *head of the agency* concerned *shall* determine whether there is sufficient basis to conclude that the *non-Federal employer* has subjected the complainant to a reprisal prohibited by subsection 3.907-2 and *shall* either issue an order denying relief in whole or in part or *shall* take one or more of the following actions:

(1) Order the employer to take affirmative action to abate the reprisal.

(2) Order the employer to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(3) Order the employer to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal.

(c)

(1) The complainant *shall* be deemed to have exhausted all administrative remedies with respect to the complaint, and the complainant *may* bring a de novo action at law or equity against the employer to seek compensatory damages and other relief available under this section in the appropriate district court of *United States*, which *shall* have jurisdiction over such an action without regard to the amount in controversy if-

(i) The head of an agency-

(A) Issues an order denying relief in whole or in part under paragraph (a) of this section;

(B) Has not issued an order within 210 days after the submission of a complaint in accordance with section 1553 of the Recovery Act, or in the case of an extension of time in accordance with section 1553 of the Recovery Act, within 30 days after the expiration of the extension of time; or

(C) Decides in accordance with section 1553 of the Recovery Act not to investigate or to discontinue an investigation; and

(ii) There is no showing that such delay or decision is due to the bad faith of the complainant.

(2) Such an action *shall*, at the request of either party to the action, be tried by the court with a jury.

(d) Whenever an employer fails to comply with an order issued under this section, the *head of the agency shall* request the Department of Justice to file an action for enforcement of such order in the *United States* district court for a district in which the reprisal was found to have occurred. In any action brought under this section, the court *may* grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and attorneys fees and costs.

(e) Any person adversely affected or aggrieved by an order issued under paragraph (b) of this subsection *may* obtain review of the order's conformance with the law, and this section, in the *United States* Court of Appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review *may* be filed more than 60 days after issuance of the order by the *head of the agency*.

Parent topic: 3.907 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (the Recovery Act).