

88.9 Judicial review.

1. *Aggrieved persons.*

a. Judicial review of any order of the appeal board issued under section 88.8, subsection 3, may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. Notwithstanding the terms of the Iowa administrative procedure Act, chapter 17A, petitions for judicial review may be filed in the district court of the county in which the violation is alleged to have occurred or where the employer has its principal office and may be filed within sixty days following the issuance of such order. The appeal board's copy of the testimony shall be available to all parties for examination at all reasonable times, without cost, and for the purpose of judicial review of the appeal board's orders.

b. The commissioner may obtain judicial review or enforcement of any final order or decision of the appeal board by filing a petition in the district court of the county in which the alleged violation occurred or in which the employer has its principal office. The judicial review provisions of chapter 17A shall govern such proceedings to the extent applicable.

c. Notwithstanding section 10A.601, subsection 7, and chapter 17A, the commissioner has the exclusive right to represent the appeal board in any judicial review of an appeal board decision under this chapter in which the commissioner does not appeal the appeal board decision, except as provided by section 88.17.

2. *Uncontested appeal board orders.* If no petition for judicial review is filed within sixty days after service of the appeal board's order, the appeal board's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the commissioner after the expiration of such sixty-day period. In any such case, as well as in the case of a noncontested citation or notification by the commissioner which has become a final order of the appeal board under section 88.8, subsection 1 or 2, the clerk of the district court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the appeal board and the employer named in the petition. In any contempt proceeding brought to enforce a decree of a district court entered pursuant to this subsection or subsection 1, the district court may assess the penalties provided in section 88.14 in addition to invoking any other available remedies.

3. *Discrimination and discharge.*

a. (1) A person shall not discharge or in any manner discriminate against an employee because the employee has filed a complaint or instituted or caused to be instituted a proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by the employee on behalf of the employee or others of a right afforded by this chapter.

(2) A person shall not discharge or in any manner discriminate against an employee because the employee, who with no reasonable alternative, refuses in good faith to expose the employee's self to a dangerous condition of a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury; provided the employee, where possible, has first sought through resort to regular statutory enforcement channels, unless there has been insufficient time due to the urgency of the situation, or the employee has sought and been unable to obtain from the person, a correction of the dangerous condition.

b. (1) An employee who believes that the employee has been discharged or otherwise discriminated against by a person in violation of this subsection may, within thirty days after the violation occurs, file a complaint with the commissioner alleging discrimination.

(2) Upon receipt of the complaint, the commissioner shall conduct an investigation as the commissioner deems appropriate. If, upon investigation, the commissioner determines that the provisions of this subsection have been violated, the commissioner shall bring an action in the appropriate district court against the person. In any such action, the district court has jurisdiction to restrain violations of this subsection and order all appropriate relief including rehiring or reinstatement of the employee to the employee's former position with back pay.

(3) Within ninety days of the receipt of a complaint filed under this subsection, the

commissioner shall notify the complainant of the commissioner's determination under this subsection.

[C66, 71, §88A.16; C73, 75, 77, 79, 81, §88.9]

88 Acts, ch 1107, §1; 93 Acts, ch 180, §56, 57; 2003 Acts, ch 44, §114; 2008 Acts, ch 1032, §174

Referred to in §88.6, 602.8102(23)