

641—40.117 (136C) Employee protection.

40.117(1) Discrimination by a licensee or registrant, an applicant for a license or registration, or a contractor or subcontractor of a licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in 641—Chapters 38 to 45 and in general are related to the administration or enforcement of requirements imposed under 641—Chapters 38 to 45.

a. The protected activities include but are not limited to:

(1) Providing the agency or the individual's employer information about alleged violations of either of the statutes named in this rule or possible violations of requirements imposed under either of those statutes;

(2) Refusing to engage in any practice made unlawful under either of the statutes named in this rule or under these requirements if the employee has identified the alleged illegality to the employer;

(3) Requesting that the agency institute action against the individual's employer for the administration or enforcement of these requirements;

(4) Testifying in any agency proceeding, or before Congress, or at any federal or state proceeding regarding any provision (or proposed provision) of federal statutes or these rules;

(5) Assisting or participating in, or about to assist or participate in, these activities.

b. These activities are protected even if no formal proceeding is actually initiated as a result of the employee's assistance or participation.

c. This rule has no application to any employee alleging discrimination prohibited by this rule who, acting without direction from the individual's employer (or the employer's agent), deliberately causes a violation of any requirement of 641—Chapters 38 to 45.

40.117(2) Any employee who believes that the employee has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in 40.117(1)“a” may seek a remedy for the discharge or discrimination through an administrative proceeding in the U.S. Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may file for the administrative proceeding by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

40.117(3) A violation of 40.117(1)“a”(1) or 40.117(1)“a”(4) by a licensee or registrant, an applicant for a license or registration, or a contractor or subcontractor of a licensee or applicant may be grounds for:

a. Denial, revocation, or suspension of the license or registration.

b. Imposition of a civil penalty on the licensee, registrant, or applicant.

c. Other enforcement action.

40.117(4) Actions taken by an employer or others which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render the employee immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

40.117(5) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to 641—Chapters 38 to 45, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in 40.117(1)“a” including, but not limited to, providing information to the agency or to the individual's employer on potential violations or other matters within the agency's regulatory responsibilities.