

§ 1981.105

29 CFR Ch. XVII (7–1–05 Edition)

(e) Prior to the issuance of findings and a preliminary order as provided for in § 1981.105, if the Assistant Secretary has reasonable cause, on the basis of information gathered under the procedures of this part, to believe that the named person has violated the Act and that preliminary reinstatement is warranted, the Assistant Secretary will again contact the named person to give notice of the substance of the relevant evidence supporting the complainant's allegations as developed during the course of the investigation. This evidence includes any witness statements, which will be redacted to protect the identity of confidential informants where statements were given in confidence; if the statements cannot be redacted without revealing the identity of confidential informants, summaries of their contents will be provided. The named person will be given the opportunity to submit a written response, to meet with the investigators to present statements from witnesses in support of his or her position, and to present legal and factual arguments. The named person will present this evidence within 10 business days of the Assistant Secretary's notification pursuant to this paragraph, or as soon afterwards as the Assistant Secretary and the named person can agree, if the interests of justice so require.

§ 1981.105 Issuance of findings and preliminary orders.

(a) After considering all the relevant information collected during the investigation, the Assistant Secretary shall issue, within 60 days of filing of the complaint, written findings as to whether or not there is reasonable cause to believe that the named person has discriminated against the complainant in violation of the Act.

(1) If the Assistant Secretary concludes that there is reasonable cause to believe that a violation has occurred, he or she shall accompany the findings with a preliminary order providing relief to the complainant. The preliminary order shall include, where appropriate, a requirement that the named person abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay),

terms, conditions and privileges of the complainant's employment; and payment of compensatory damages. Where the named person establishes that the complainant is a security risk (whether or not the information is obtained after the complainant's discharge), a preliminary order of reinstatement would not be appropriate. At the complainant's request the order shall also assess against the named person the complainant's costs and expenses (including attorney's and expert witness fees) reasonably incurred in connection with the filing of the complaint.

(2) If the Assistant Secretary concludes that a violation has not occurred, the Assistant Secretary will notify the parties of that finding.

(b) The findings and the preliminary order will be sent by certified mail, return receipt requested, to all parties of record. The letter accompanying the findings and order will inform the parties of their right to file objections and to request a hearing, and of the right of the named person to request attorney's fees from the administrative law judge, regardless of whether the named person has filed objections, if the named person alleges that the complaint was frivolous or brought in bad faith. The letter also will give the address of the Chief Administrative Law Judge. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the original complaint and a copy of the findings and order.

(c) The findings and the preliminary order will be effective 60 days after receipt by the named person pursuant to paragraph (b) of this section, unless an objection and a request for a hearing has been filed as provided at § 1981.106. However, the portion of any preliminary order requiring reinstatement will be effective immediately upon receipt of the findings and preliminary order.

Subpart B—Litigation

§ 1981.106 Objections to the findings and the preliminary order and request for a hearing.

(a) Any party who desires review, including judicial review, of the findings