

**(d) Remedies****(1) In general**

An employee prevailing in any action under subsection (c) shall be entitled to all relief necessary to make the employee whole.

**(2) Damages**

Relief in an action under subsection (c) (including an action described in (c)(7))<sup>2</sup> shall include—

(A) reinstatement with the same seniority status that the employee would have had, but for the discrimination;

(B) any backpay, with interest; and

(C) compensatory damages, including compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

**(3) Possible relief**

Relief in any action under subsection (c) may include punitive damages in an amount not to exceed \$250,000.

**(e) Election of remedies**

An employee may not seek protection under both this section and another provision of law for the same allegedly unlawful act of the public transportation agency.

**(f) No preemption**

Nothing in this section preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination provided by Federal or State law.

**(g) Rights retained by employee**

Nothing in this section shall be construed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

**(h) Disclosure of identity**

(1) Except as provided in paragraph (2) of this subsection, or with the written consent of the employee, the Secretary of Transportation or the Secretary of Homeland Security may not disclose the name of an employee who has provided information described in subsection (a)(1).

(2) The Secretary of Transportation or the Secretary of Homeland Security shall disclose to the Attorney General the name of an employee described in paragraph (1) of this subsection if the matter is referred to the Attorney General for enforcement. The Secretary making such disclosure shall provide reasonable advance notice to the affected employee if disclosure of that person's identity or identifying information is to occur.

**(i) Process for reporting security problems to the Department of Homeland Security****(1) Establishment of process**

The Secretary shall establish through regulations after an opportunity for notice and

comment, and provide information to the public regarding, a process by which any person may submit a report to the Secretary regarding public transportation security problems, deficiencies, or vulnerabilities.

**(2) Acknowledgment of receipt**

If a report submitted under paragraph (1) identifies the person making the report, the Secretary shall respond promptly to such person and acknowledge receipt of the report.

**(3) Steps to address problem**

The Secretary shall review and consider the information provided in any report submitted under paragraph (1) and shall take appropriate steps to address any problems or deficiencies identified.

(Pub. L. 110-53, title XIV, §1413, Aug. 3, 2007, 121 Stat. 414; Pub. L. 117-286, §4(b)(22), Dec. 27, 2022, 136 Stat. 4345.)

**Editorial Notes**

## AMENDMENTS

2022—Subsec. (a)(1)(A). Pub. L. 117-286 substituted “chapter 4 of title 5;” for “the Inspector General Act of 1978 (5 U.S.C. App.; Public Law 95-452);”.

**§ 1143. Security background checks of covered individuals for public transportation****(a) Definitions**

In this section, the following definitions apply:

**(1) Security background check**

The term “security background check” means reviewing the following for the purpose of identifying individuals who may pose a threat to transportation security, national security, or of terrorism:

(A) Relevant criminal history databases.

(B) In the case of an alien (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3))), the relevant databases to determine the status of the alien under the immigration laws of the United States.

(C) Other relevant information or databases, as determined by the Secretary.

**(2) Covered individual**

The term “covered individual” means an employee of a public transportation agency or a contractor or subcontractor of a public transportation agency.

**(b) Guidance**

(1) Any guidance, recommendations, suggested action items, or any other widely disseminated voluntary action item issued by the Secretary to a public transportation agency or a contractor or subcontractor of a public transportation agency relating to performing a security background check of a covered individual shall contain recommendations on the appropriate scope and application of such a security background check, including the time period covered, the types of disqualifying offenses, and a redress process for adversely impacted covered individuals consistent with subsections (c) and (d) of this section.

<sup>2</sup>So in original. Probably should be “subsection (c)(7)”.

(2) Not later than 60 days after August 3, 2007, any guidance, recommendations, suggested action items, or any other widely disseminated voluntary action item issued by the Secretary prior to August 3, 2007, to a public transportation agency or a contractor or subcontractor of a public transportation agency relating to performing a security background check of a covered individual shall be updated in compliance with paragraph (b)(1).

(3) If a public transportation agency or a contractor or subcontractor of a public transportation agency performs a security background check on a covered individual to fulfill guidance issued by the Secretary under paragraph (1) or (2), the Secretary shall not consider such guidance fulfilled unless an adequate redress process as described in subsection (d) is provided to covered individuals.

**(c) Requirements**

If the Secretary issues a rule, regulation or directive requiring a public transportation agency or contractor or subcontractor of a public transportation agency to perform a security background check of a covered individual, then the Secretary shall prohibit a public transportation agency or contractor or subcontractor of a public transportation agency from making an adverse employment decision, including removal or suspension of the employee, due to such rule, regulation, or directive with respect to a covered individual unless the public transportation agency or contractor or subcontractor of a public transportation agency determines that the covered individual—

(1) has been convicted of, has been found not guilty of by reason of insanity, or is under warrant, warrant, or indictment for a permanent disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations;

(2) was convicted of or found not guilty by reason of insanity of an interim disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations, within 7 years of the date that the public transportation agency or contractor or subcontractor of the public transportation agency performs the security background check; or

(3) was incarcerated for an interim disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations, and released from incarceration within 5 years of the date that the public transportation agency or contractor or subcontractor of a public transportation agency performs the security background check.

**(d) Redress process**

If the Secretary issues a rule, regulation, or directive requiring a public transportation agency or contractor or subcontractor of a public transportation agency to perform a security background check of a covered individual, the Secretary shall—

(1) provide an adequate redress process for a covered individual subjected to an adverse employment decision, including removal or suspension of the employee, due to such rule, regulation, or directive that is consistent with the appeals and waiver process established for applicants for commercial motor vehicle haz-

ardous materials endorsements and transportation workers at ports, as required by section 70105(c) of title 49;<sup>1</sup> and

(2) have the authority to order an appropriate remedy, including reinstatement of the covered individual, should the Secretary determine that a public transportation agency or contractor or subcontractor of a public transportation agency wrongfully made an adverse employment decision regarding a covered individual pursuant to such rule, regulation, or directive.

**(e) False statements**

A public transportation agency or a contractor or subcontractor of a public transportation agency may not knowingly misrepresent to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary related to security background check requirements for covered individuals when conducting a security background check. Not later than 1 year after August 3, 2007, the Secretary shall issue a regulation that prohibits a public transportation agency or a contractor or subcontractor of a public transportation agency from knowingly misrepresenting to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary related to security background check requirements for covered individuals when conducting a security background check.

**(f) Rights and responsibilities**

Nothing in this section shall be construed to abridge a public transportation agency's or a contractor or subcontractor of a public transportation agency's rights or responsibilities to make adverse employment decisions permitted by other Federal, State, or local laws. Nothing in the<sup>2</sup> section shall be construed to abridge rights and responsibilities of covered individuals, a public transportation agency, or a contractor or subcontractor of a public transportation agency under any other Federal, State, or local laws or collective bargaining agreement.

**(g) No preemption of Federal or State law**

Nothing in this section shall be construed to preempt a Federal, State, or local law that requires criminal history background checks, immigration status checks, or other background checks of covered individuals.

**(h) Statutory construction**

Nothing in this section shall be construed to affect the process for review established under section 70105(c) of title 46, including regulations issued pursuant to such section.

(Pub. L. 110-53, title XIV, § 1414, Aug. 3, 2007, 121 Stat. 419.)

**§ 1144. Limitation on fines and civil penalties**

**(a) Inspectors**

Surface transportation inspectors shall be prohibited from issuing fines to public transpor-

<sup>1</sup> So in original. Probably should be title "46";.

<sup>2</sup> So in original. Probably should be "this".