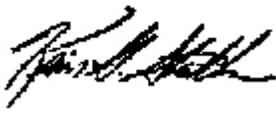


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PROGRAM INFORMATION BULLETIN NO. P10-17

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SUBJECT: Miners' Protections against Discrimination for Exercising Statutory Rights
and Procedures to Protect those Rights

Scope

Mine operators, miners, miners' representatives, Mine Safety and Health Administration (MSHA) enforcement personnel, and other interested parties should have this information.

Purpose

The purpose of this Program Information Bulletin (PIB) is to remind mine operators and other persons that the Federal Mine Safety and Health Act of 1977 (Mine Act), as amended, protects miners against discrimination for exercising statutory rights. This PIB also provides a summary of the enforcement procedures to protect miners against discrimination or interference with these rights.

Information

MINERS' STATUTORY RIGHTS

Section 105(c) of the Mine Act prohibits persons from discriminating against miners, applicants for employment and representatives of miners for exercising statutory rights especially concerning safety or health activities, such as identifying hazards, asking for MSHA inspections, or refusing to engage in unsafe acts.

Statutory rights protected under the Mine Act are expansive. A miner has the right to:

- Refuse to work if the miner has a good faith, reasonable belief that a specific working condition threatens the miner's health or safety.
- File or make a complaint under the Mine Act of a hazardous condition or a violation of the safety or health standards to a Federal or State agency, a mine operator, an operator's agent or a miners' representative.
- Institute, testify, or assist in any proceeding conducted under the Mine Act.
- Have medical evaluations leading to a possible transfer to another job location because of harmful physical agents and toxic substances.
- Withdraw from the mine for not having the required safety and health training.
- Exercise any statutory rights afforded by the Mine Act.

MSHA provides a nonexclusive list of miners' rights under the Mine Act and its standards in its newly revised publication "A Guide to Miners' Rights and Responsibilities under the Federal Mine Safety and Health Act of 1977" at: <http://www.msha.gov/S&HINFO/minersrights/minersrights.asp>.

Also, under the Mine Act, mine operators have a responsibility to provide training. Miners have a right to be trained in the health and safety aspects of tasks, recognizing hazards at the mine, and the proper procedures for reporting health and safety hazards at the mine. The mine operator must conduct this training at least annually or more frequently as necessary. See 30 C.F.R. parts 46 and 48.

Among the most common forms of discrimination the Mine Act prohibits are discharge, suspension, loss of pay, demotion, changes in pay, changes in work hours, or reduction in benefits, vacation, bonuses, overtime, or rates of pay. The Mine Act also protects miners from the more subtle forms of interference, such as intimidation or threats of reprisal. The Mine Act prohibits any person (not just the mine operator) either directly or indirectly from discriminating against a miner, an applicant for employment or a representative of miners.

ENFORCEMENT PROCEDURES

MSHA vigorously investigates discrimination complaints to encourage miners to exercise their rights under the Mine Act and to maximize their involvement in monitoring safety and health conditions at mines. MSHA will seek more substantial civil penalties against mine operators that have repeatedly discriminated against miners as a deterrent to future instances of illegal discrimination.

When any person takes discriminatory action including threats of reprisal against a miner, representative of miners, or an applicant for employment for exercising her or his

rights under the Mine Act, a complaint may be sent to MSHA. The miner, representative, or applicant must sign the complaint and should send the complaint to

MSHA within 60 days of the discriminatory act. MSHA will begin to investigate a discrimination complaint within 15 days of receiving it.

Discrimination complaints requesting temporary reinstatement will be investigated immediately. If it is determined that the complaint was not frivolously brought, the Mine Act provides that Department of Labor attorneys shall request an Order from the Federal Mine Safety and Health Review Commission (Commission) for temporary reinstatement of the miner. This action will happen before MSHA issues a final decision on the complaint. If granted, the Order for reinstatement will last until the complaint is resolved, including any hearings or appeals.

Generally, within 90 days after receiving a complaint, MSHA determines whether a violation has occurred and notifies the miner, representative, or applicant in writing of the Agency's decision. If MSHA determines a violation exists, Department of Labor attorneys will file a complaint on behalf of the complainant with the Commission. If MSHA determines that no violation has occurred, the miner, representative of miners, or applicant may file an action in his or her own behalf before the Commission within 30 days of MSHA's notification.

REMEDIES

Under the Mine Act, the Department of Labor attorneys will request and the Commission must provide any and all relief to the miner, applicant or representative of miners to correct the discrimination. Relief may include permanent reinstatement to the miner's old job, back pay, restoration of seniority rights, transfer (reassignment to a comparable job), or any other remedy needed to correct the discrimination. The Commission may also issue broad cease-and-desist orders and require the mine operator to post notices.

In addition, the Commission is to award the miner, applicant for employment or representative of miners, all reasonable costs and expenses (including attorney's fees) incurred to prosecute the case. The person who discriminated and therefore violated the Mine Act must pay these costs and expenses in addition to any other penalties or fines under the Mine Act.

MSHA maintains an anonymous hotline to report hazardous conditions. The phone number is **1-800-746-1553**. Persons may also report hazardous conditions to their MSHA District office. MSHA will promptly investigate any report of a hazardous condition at a mine.

Background

On April 21, 2010, MSHA launched inspections at 57 coal mines whose enforcement history indicated a significant number of violations related to methane accumulations,

ventilation, rock dusting and mine examinations. These impact inspections followed the April 5, 2010, explosion at Massey's Upper Big Branch Mine in Montcoal, West Virginia, and focused attention on mine ventilation, rock dusting, methane monitoring, and mine examinations.

On May 24, 2010, the House Education and Labor Committee conducted a hearing on the Upper Big Branch explosion. The Committee heard testimony from deceased miners' families. The testimony addressed issues regarding safety conditions in existence prior to the explosion. The family members testified that the mine operator, Massey Energy, Inc., would retaliate if miners expressed concern about safety and health issues to management. Family members testified that even if nothing was done immediately, Massey would find reason to retaliate weeks or months later. The Committee also heard testimony that the Upper Big Branch miners did not have an opportunity to refuse to work at a job or in an area that they deemed to be unsafe, and if they did refuse to work, they would be fired.

This PIB re-emphasizes MSHA's intent that mine operators fully comply with the Mine Act and MSHA's regulatory requirements. MSHA encourages miners who believe that they have been discriminated against for exercising their rights under the Mine Act to file a complaint at their local MSHA office.

Authority

Section 105(c) of The Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 815(c).

Internet Availability

This PIB may be viewed on the Internet by accessing MSHA's home page at www.msha.gov then choosing "Compliance Info" and then "Program Information Bulletin."

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MSHA Program Policy Manual Holders
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