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Environmental whistle-blowers get legal help

By Carol Emert
States News Service

WASHINGTON — Federal employees who "blow the whistle" on environmental wrongdoers can get better protection and more financial awards than whistle-blowers who have witnessed other types of violations.

Few people know about the alternative legal system for environmental whistle-blowers, said Steve Kohn,

Federal workers

an attorney with the National Whistleblower Center in Washington. "But when they're used — and I've reviewed every case that's ever been issued under these laws — they can be effective."

While most federal whistle-blowing cases are conducted under civil service laws, a special procedure is outlined in six environmental laws, including statutes involving clean air, clean water and Superfund sites. Non-federal employees also can litigate under the environmental laws.

When federal workers are dismissed, they are routinely provided with information on legal action they can take under civil service laws, but they are not informed about the environmental law procedure, Mr. Kohn said.

Consequently, only "a couple hundred" such cases have been litigated — and mostly in the private sector — despite the fact that one of the statutes has been on the books for 20 years, he said.

Earlier this month, the Environmental Protection Agency was ordered to reinstate William Marcus, a high-level scientist, with full back pay and \$50,000 compensatory damages after he brought suit under the environmental laws.

Mr. Marcus was fired last May, allegedly for his moonlighting activities. But administrative law judge David Clare Jr. ruled that the allegation was a "pretext," and that Mr. Marcus was fired because he embarrassed the agency by publicly opposing its policy on fluoride in drinking water.

Under the environmental laws, a winning complainant must be reinstated and awarded both back pay and attorney's fees. If the complainant loses, he or she is not required to pay attorney's fees. Under civil service laws, attorney's fees are discretionary.

Workers who win a case under some of the environmental laws may also be awarded punitive damages, although Mr. Marcus was not.

Another advantage of the environmental system is that an employee can litigate based on any "adverse

personnel action" such as an oral reprimand, hostile work environment or an involuntary transfer. Under civil service law, an employee must be fired before he or she can sue.

"That's very important because usually before someone is terminated, they experience other, lesser forms of discrimination," said Mr. Kohn.

The biggest drawback to litigating under the environmental laws is that the case must be filed within 30 days of the employer's discriminatory action. Complaints must be filed with the Department of Labor's Wage and Hour Division.

Whistle-blowers needing legal advice can call the National Whistle-blower Center at 202 667-7515.

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