

Chapter 16

Section 105(c) Discrimination Complaints: A Primer on Temporary Reinstatement and Litigating Discrimination Complaints

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Synopsis

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§ 16.01. Introduction.

The number of miners seeking temporary reinstatement pursuant to Section 105(c) of the Federal Mine Safety and Health Act of 1977 (Mine

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Act),² has increased substantially over the past four years.³ This chapter analyzes the basic elements of Section 105(c) claims, how these cases arise and progress, and provides a background on discrimination and temporary reinstatement proceedings and concludes with a discussion of several important issues and recent cases.

§ 16.02. **Section 105(c) — Discrimination Under the Mine Act.**

In late 2012, the Mine Safety and Health Administration (MSHA) announced what most in the industry were already experiencing — confirmation of a heightened focus on discrimination leading to an uptick in Section 105(c) complaints and investigations. So what constitutes discrimination under the Mine Act? Discrimination under the Mine Act occurs when an employer retaliates against an employee based upon that employee engaging in a protected activity.⁴

[1] — Protected Activity.

Protected activity under the Mine Act is broadly interpreted and takes various forms. For instance, under the Mine Act, miners are legally permitted to file or make a complaint of alleged dangerous conditions or health or safety violations. These safety complaints can be made internally to supervisors or management, or externally, to MSHA or equivalent state enforcement agencies. Additionally, a miner who refuses to work in unsafe conditions, requests specific safety equipment or training, or who actively

² 30 U.S.C. § 815(c) (1977).

³ Lauviere, Amy, U.S. DOL, MSHA's actions lead to more miners receiving temporary job reinstatements after discrimination complaints, www.dol.gov/opa/media/press/msha/MSHA20121792.htm (2012). For the fiscal years 2010 to 2012, MSHA filed 71 temporary reinstatement requests and 70 discrimination cases on behalf of miners. For the fiscal years 2007 to 2009, MSHA filed 22 temporary reinstatement requests and 39 discrimination complaints.

⁴ Section 105(c)(1) of the Mine Act provides:

No person shall discharge or in any other manner discriminate against . . . or otherwise interfere with the exercise of the statutory rights of any miner . . . because such miner . . . has filed or made a complaint under or related to this Act, including a complaint notifying the operator or the operator's agent, or the representative of miners . . . of an alleged danger or safety or health violation