

## § 1042.535

justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status that she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

### § 1042.535 Effect of state or local law or other requirements.

(a) *Prohibitory requirements.* The obligation to comply with §§1042.500 through 1042.550 is not obviated or alleviated by the existence of any State or local law or other requirement that imposes prohibitions or limits upon employment of members of one sex that are not imposed upon members of the other sex.

(b) *Benefits.* A recipient that provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

### § 1042.540 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job in question.

### § 1042.545 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is “Miss” or “Mrs.”

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

### § 1042.550 Sex as a bona fide occupational qualification.

A recipient may take action otherwise prohibited by §§1042.500 through 1042.550 provided it is shown that sex is a bona fide occupational qualification

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for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section that is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee’s sex in relation to employment in a locker room or toilet facility used only by members of one sex.

## Subpart F—Other Provisions

### § 1042.600 Covered programs.

The financial assistance programs to which this part applies are listed in Appendix A to 10 CFR part 1040.

### § 1042.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 10 CFR part 1040, subparts G and H.

## PART 1044—SECURITY REQUIREMENTS FOR PROTECTED DISCLOSURES UNDER SECTION 3164 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2000

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AUTHORITY: 42 U.S.C. 7101 *et seq.*, 7239, and 50 U.S.C. 2401 *et seq.*

SOURCE: 66 FR 4642, Jan. 18, 2001, unless otherwise noted.

### § 1044.01 What are the purpose and scope of this part?

(a) *Purpose.* This part prescribes the security requirements for making protected disclosures of classified or unclassified controlled nuclear information under the whistleblower protection provisions of section 3164 of the National Defense Authorization Act for Fiscal Year 2000.

(b) *Scope.* The security requirements for making protected disclosures in this part are independent of, and not subject to any limitations that may be provided in, the Whistleblower Protection Act of 1989 (Public Law 101-12) or any other law that may provide protection for disclosures of information by employees of DOE or of a DOE contractor.

[66 FR 54645, Oct. 30, 2001]

### § 1044.02 Who must follow the requirements contained in this part?

The requirements apply to you if you are:

(a) An employee of DOE, including the National Nuclear Security Administration, or one of its contractors;

(b) Engaged in DOE defense activities; and

(c) Wish to make a protected disclosure as described in § 1044.04 of this part.

### § 1044.03 What definitions apply to this part?

The following definitions apply to this subpart:

*Atomic Energy Act* means the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*

*Classified information* means:

(1) Information classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act; or

(2) Information that has been determined pursuant to Executive Order 12958 or prior Executive Orders to require protection against unauthorized disclosure and is marked to indicate its classification status when in document form (also referred to as "National Security Information" in 10 CFR Part 1045 or "defense information" in the Atomic Energy Act).

*Contractor* means any industrial, educational, commercial or other entity, grantee or licensee at any tier, including an individual, that has executed an agreement with the Federal Government for the purpose of performing under a contract, license or other agreement.

*Defense activities* means activities of DOE engaged in support of:

(1) The production, testing, sampling, maintenance, repair, modification, assembly, disassembly, utilization, transportation, or retirement of nuclear weapons or components of nuclear weapons;

(2) The production, utilization, or transportation of nuclear material for military applications; or

(3) The safeguarding of activities, equipment, or facilities which support the production of nuclear weapons or nuclear material for nuclear weapons.

*DOE* means the Department of Energy, including the National Nuclear Security Administration.

*Unclassified controlled nuclear information* means unclassified government information prohibited from unauthorized dissemination under section 148 of the Atomic Energy Act and DOE implementing regulations in 10 CFR part 1017.

### § 1044.04 What is a protected disclosure?

A protected disclosure is:

(a) A disclosure of classified or unclassified controlled nuclear information that you reasonably believe provides direct and specific evidence of—

(1) A violation of law or Federal regulation;

(2) Gross mismanagement, a gross waste of funds, or an abuse of authority; or