

United States Department of Labor
Mine Safety and Health Administration

Notice of Conditions Under Which This Information
Is Requested and Used

Pursuant to Section 3(e)(3) of the Privacy Act of 1974 (Public Law 93-579), the individual furnishing information on this form is advised as follows:

1. The authority for solicitation of the information is Section 105(c) of the Federal Mine Safety and Health Act of 1977 (Public Law 91-173 as amended by Public Law 95-164).
2. The principle purpose for the information requested is to assist the Mine Safety and Health Administration (MSHA) investigate the merits of the discrimination complaint being filed.
3. The routine uses of the information are:
 - a. To allow the MSHA investigator to initiate the investigation of the discrimination complaint.
 - b. With regard to Page 2 of the complaint form which asks for a "Summary of Discriminatory Action," a copy of this page will be provided to the respondent(s) by MSHA as required by the provisions of Section 105(c).
4. The effect on the individual of not providing all or any part of the requested information would be to hinder the initiation, conduct, and completion of the investigation, and delay decisions on whether the complaint was not frivolously brought and whether discrimination occurred in violation of Section 105(c).

DISCRIMINATION COMPLAINT FORM 2000-123
General Instructions for Completion

The purpose of the form is to capture pertinent data from the Complainant on specific items as outlined below:

Section A - (To be completed by complaint processor)

Item 1 - District Office

Item 2 - Field Office

Item 3 - Date Filed (date complaint received by an MSHA Office)

Item 4 - Received By (complaint processor)

Case Number - (Assigned by Supervisory Special Investigator.)

Section B - (To be completed by Complainant) (Information requested is specific to each individual filing the complaint)

Item 1 - (a.) Name; (b.) Address; and (c.) Phone Numbers (of each Complainant)

Item 2 - Has the discriminatory action resulted in your (Complainant) being suspended, laid off, or discharged? (Check Yes or No block)

Item 3 - Date of discriminatory action

Item 4 - Kind of job you had (Complainant) at the time of discriminatory action

Item 5 - Rate of regular pay (Complainant) at the time of discriminatory action

Item 6 - Number of regular hours (Complainant) worked each week

Item 7 - Rate of overtime pay (Complainant) worked each week

Item 8 - Average number of overtime hours (Complainant) worked each week - based on (Complainant's) last 12 months of work

Section C - (To be completed by Complainant) (Information requested is specific to each respondent [Company] listed in the complaint)

Item 1 - Name of company

Item 2 - Address (of company)

Item 3 - Area Code/Phone Number (of company)

Item 4 - Mine I.D. Number (if known)

Item 5 - Mine Name

Item 6 - Mine Area Code/Phone Number

Section D - (To be completed by Complainant) (Information requested is specific to each individual listed in the complaint)

Item 1 - Name(s) (of persons responsible for the discriminatory action)

Item 2 - Job title(s) (Example: superintendent, mine foreman)

Section E - (To be completed by Complainant)

Should be completed if Complainant desires copies of correspondence forwarded to another party

NOTE: Assure that Complainant does not begin the summary of discriminatory action on this form. Only the information specifically requested should be provided. The complainant shall be advised that names, addresses, and phone numbers of potential witnesses ARE NOT to be included on Form 2000-123.

Discrimination Report

U.S. Department of Labor
Mine Safety and Health Administration



Discrimination Complaint of (name(s))	Case Number
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Summary of Discriminatory Action

Signature(s) of Complainant(s)

Date

DISCRIMINATION COMPLAINT FORM 2000-124

General Instructions for Completion

The purpose of this form is to summarize the discriminatory action as described by the Complainant.

Space is provided at the top of Form 2000-124 for the name(s) of the complainant(s) and the case number.

The main portion of the form provides space for the complainant(s) to present a summary of the events which resulted in the discriminatory action (Exhibit 2-2). The information provided should be brief but concise, usually requiring only one or two paragraphs. When preparing this form, the complainant(s) shall be advised that names, addresses, and phone numbers of potential witnesses **ARE NOT** to be included on Form 2000-124. However, the complainant should be advised that this kind of information will need to be MADE available to the investigator. If names, etc. have been included on Form 2000-124, the complaint processor **SHALL BLANK OUT THE INFORMATION BEFORE COPYING IT TO SEND OUT TO THE RESPONDENT!**

Example: **ON** (Show the date of occurrence or most recent date of an ongoing occurrence), **I** (Describe involvement in a protected activity afforded under the Mine Act, i.e. "reported an unsafe condition - requested training - refused to perform an unsafe act, etc."). **I INFORMED/REPORTED THIS TO** (Name the person(s) you spoke to and conveyed the information to -- this must be someone from management). **AS A RESULT OF THIS, I WAS** (Describe the discriminatory action, i.e. discharged, laid off, suspended, denied the right to travel with the inspector, interfered with, etc.).

I AM SEEKING (Describe what remedy is being sought).

Space is provided at the bottom of Form 2000-124 for the signature(s) of the complainant(s) and the date the complainant(s) signed the complaint. (If more than two or three complainants are filing, i.e. where it involves the entire crew or shift, you may attach an additional sheet with the additional signatures, or you can make copies of the complaint form and have each person sign their own complaint form.)

INFORMATION ON BACKPAY FOR MINERS

NOTICE

YOU MAY BE ENTITLED TO BACKPAY

Read this information carefully and follow each instruction to ensure that you will receive all the money which you may have coming.

1. PURPOSE OF THIS LEAFLET

You, or your representative, have filed a 105(c) discrimination complaint under the 1977 Federal Mine Safety and Health Act. This may result in a decision by an Administrative Law Judge of the Federal Mine Safety and Health Review Commission (FMSHRC) that you have been illegally discharged, laid off, demoted, or refused employment. The FMSHRC may decide that you are entitled to backpay because of this. We will need your help to find out how much the backpay may be. The purpose of this leaflet is to tell you what backpay is and how you can help us. It is important to remember, however, that the charges concerning your complaint may be dismissed. If this happens, you will not receive backpay.

2. WHAT IS BACKPAY?

Backpay has two parts. The first is what you would have earned if the mine operator had not violated the law and caused you to be discharged, suspended, laid off, demoted or refused employment. This is called gross backpay. The second part is what you earn while you are kept from your rightful job. This is called interim earnings. The backpay due you is the difference between gross backpay and interim earnings. To use a simple example, suppose you were making \$200 a week before you were discharged. The FMSHRC finds that you were illegally discharged and orders that you be paid for loss of earnings. Immediately after being discharged, you take another job for \$150 a week. Then, 10 weeks after your discharge, the operator who illegally discharged you offers you your old job. The gross backpay is \$2,000 (\$200 per week for 10 weeks) and your interim earnings are \$1,500 (\$150 per week for 10 weeks). Thus, your backpay would be \$500 (\$2,000 minus \$1,500).

This calculation for backpay is normally computed for every calendar quarter during which you were entitled to backpay and the backpay due you for a particular quarter will normally not be offset by additional interim earnings from a different calendar quarter.

3. **ARE YOU EMPLOYED NOW OR LOOKING FOR WORK?** (Read what follows very carefully, it is important)

YOU WILL NOT GET BACKPAY FOR TIMES WHEN YOU ARE UNEMPLOYED AND DO NOT LOOK FOR WORK OR ARE UNABLE TO WORK.

You must make a real and sincere effort to obtain work even though you may have been illegally discharged. If you decide to take a fishing trip for a month rather than look for a job, you may not get backpay for that month. If you decide to be a full-time homemaker or go back to school or college full-time, you may not qualify for backpay until you again start looking for a full-time job. Therefore, we must know whether you were looking for work by going to employers, by registering with your state employment service (or unemployment insurance office) and in various other ways. You may not remember names of places where you apply for work and are turned down unless you keep a written record of your search for work on a daily or weekly basis. We have provided a form, Claimant Expense and Search for Work Report, for the purpose of keeping a record of the expenses you have while searching for employment (such as mileage, phone calls, motels, parking fees, etc.) and this form will also provide a convenient record of your search for work.

YOU WILL BE ABLE TO SHOW THAT YOU LOOKED FOR WORK BY DOING THE FOLLOWING THINGS:

- a. Register at your local employment service (or unemployment insurance office). Keep a record on the Claimant Expense and Search for Work Report (Part I,A) and keep whatever registration card or record that office gives you. Note the date of your registration and the location of the office. When you receive unemployment insurance benefits, keep all records which show the dates of payment of the benefits, etc. If you register with any other state, private, or union employment agency, this information must also be recorded.
- b. Whenever you apply or ask for a job, keep a record on the Claimant Expense and Search for Work Report, (Part I,B) on the date you asked for work, the name of the employer, its location, whom you talked to and what was said (e.g., "Sorry, we have no work for you" or "We will let you know if a job opens", etc.)

c. You must also list in the space provided (Part I,C) the dates and reasons why you were unavailable for work for any period of time during the calendar quarter.

d. If you become employed by another employer, but for any reason lose the job, before the operator from which you were illegally discharged asks you to return to work, you must again make a real and sincere effort to obtain work in the manner discussed above.

4. **YOUR INTERIM EARNINGS**

When you do find another job, you must keep a record of the name and address of the employer, the job classification, when you start, how much you earn, how long you continue working at the job and why your employment ended. Keep this information on Part II,B, of the Claimant Expense and Search for Work Report. In addition, keep all records that show what you earn at these other jobs, including pay stubs, W-2 forms or any other record of your earnings.

5. **YOUR EXPENSES**

You may have to spend money looking for other work or holding another job and you be may entitled to deduct these expenses from your interim earnings. It is important to keep a record of these expenses on the enclosed Claimant Expense and Search for Work Report (Part II,A).

FOR EXAMPLE: On your new job, you may have to pay more money to get to and from work than you had to pay with your old job. You may be entitled to the increased cost as an expense. You may have spent bus fare or used a car looking for work. You may have paid employment agency fees to get a job. You may have had to pay union initiation or work permit fees or dues to keep a job. You may be entitled to a credit for those expenses when your backpay is calculated. Therefore, it is very important to keep a record of all your expenses on the Claimant Expense and Search for Work Report form.

In your search for work, you should record your mileage, parking fees, public transportation expenses, etc., on Part II,A, of the form. Maintain the Claimant Expense and Search for Work Report form until the MSHA special investigator investigating your case requests that you provide the form to him/her or until such time as you are notified that MSHA has determined that no violation occurred.

If the alleged discriminatory action results in your incurring an unusual loss, such as the loss of a car, truck, or home due to your not being able to make the payments, you should document and maintain all information pertinent to that loss and notify the MSHA special investigator assigned to your case immediately.

6. KEEPING RECORDS

In addition to recording the necessary information on the form we have provided, you should keep all the records you have on applications made for claim on your own behalf.

7. WHEN DO YOU GET YOUR BACKPAY?

If you help by doing the things listed above, we will be able to figure out your backpay without delay. This assumes, of course, that the FMSHRC decides that you are entitled to backpay. Not all cases take the same time. Therefore, we cannot tell you **now, when,** or **if** you will get backpay.

**REMEMBER TO TELL THE MSHA SPECIAL INVESTIGATOR ABOUT ANY
CHANGE IN YOUR ADDRESS**

KEEP THIS PAMPHLET FOR YOUR INFORMATION



CLAIMANT EXPENSE SEARCH FOR WORK, AND INTERIM EARNINGS REPORT		PERIOD COVERED BY THIS REPORT (Check One)			
		<input type="checkbox"/> JAN 1 - MAR 31 _____ <small>(Year)</small>	<input type="checkbox"/> APR 1 - JUN 30 _____ <small>(Year)</small>		
		<input type="checkbox"/> JUL 1 - SEP 30 _____ <small>(Year)</small>	<input type="checkbox"/> OCT 1 - DEC 31 _____ <small>(Year)</small>		
YOUR NAME AND CURRENT ADDRESS					
CASE NUMBER	CASE NAME				
It is important that you maintain records concerning your interim earnings and expenses, your search of work, and your availability for work during the entire period of time until your back pay entitlement has been resolved. Additional copies of this form are available from any MSHA office.					
PART 1					
A. LIST ALL STATE, PRIVATE AND UNION EMPLOYMENT SERVICES WHERE YOU REGISTERED FOR WORK DURING THIS QUARTER: LIST THE DATE YOU REPORTED TO THEM: AND LIST THE COMPANIES AND DATES WHEN YOU WERE REFERRED FOR WORK.					
DATE VISITED	NAME AND ADDRESS OF EMPLOYMENT SERVICE	REFERRED FOR WORK?			NAME AND ADDRESS OF COMPANY
		YES	NO	DATE	
B. SEARCH FOR EMPLOYMENT: LIST ALL OTHER PLACES WHERE YOU LOOKED FOR WORK THIS QUARTER.					
DATE	NAME AND ADDRESS OF COMPANY	COMPANY RESPONSE (What was said? By Whom?)			
C. LIST ALL PERIODS OF TIME DURING THIS QUARTER WHEN FOR ANY REASON YOU WERE UNABLE TO WORK. (For example, because of illness, pregnancy, vacations, military service, jail, layoff, strike duty, etc.)					
DATES		REASON			
FROM	TO				



Part II

A. LIST ALL EXPENSES RELATED TO SEARCHING FOR WORK AND OR HOLDING ANOTHER JOB (KEEP ALL RECORDS). FOR AUTOMOBILE EXPENSE LIST TRIP MILEAGE FOR ALL OTHER EXPENSES SHOW DOLLAR AMOUNT.

DATE	MILEAGE	PHONE CALLS	OUT OF TOWN		PARKING	LIST TYPE AND AMOUNT OF ANY OTHER EXPENSE
			MEALS	LODGING		

B. KEEP A RECORD OF ALL THE FOLLOWING INFORMATION FOR EVERY JOB YOU HOLD DURING THIS CALENDAR QUARTER.

DATE OF EMPLOYMENT	NAME AND ADDRESS OF EMPLOYER	JOB TITLE	GROSS WEEKLY PAY	REASON FOR LEAVING THIS EMPLOYER
FROM:				
TO:				
FROM:				
TO:				
FROM:				
TO:				
FROM:				
TO:				
FROM:				
TO:				
FROM:				
TO:				

**FEDERAL MINE SAFETY AND HEALTH
REVIEW COMMISSION**

**PROCEDURAL RULES
29 CFR Part 2700**

SEPTEMBER 2012

This document sets forth the Federal Mine Safety and Health Review Commission's Procedural Rules, and includes amendments published in the Federal Register at 75 Fed. Reg. 73955 (Nov. 30, 2010), and 75 Fed. Reg. 81459 (Dec. 28, 2010). These rules are applicable to proceedings before the Commission and its Administrative Law Judges and are intended to secure the just, speedy and inexpensive determination of these proceedings. This document is provided for the convenience of users. Practitioners should consult the official rules as published in the Federal Register, or the July 1, 2011 edition of Volume 29, Part 2700 of the Code of Federal Regulations, when available.

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PART 2700 – PROCEDURAL RULES

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§ 2700.40 Who may file.

(a) The Secretary. A discrimination complaint under section 105(c)(2) of the Act, 30 U.S.C. 815(c)(2), shall be filed by the Secretary if, after an investigation conducted pursuant to section 105(c)(2), the Secretary determines that a violation of section 105(c)(1), 30 U.S.C. 815(c)(1), has occurred.

(b) Miner, representative of miners, or applicant for employment. A discrimination complaint under section 105(c)(3) of the Act, 30 U.S.C. 815(c)(3), may be filed by the complaining miner, representative of miners, or applicant for employment if the Secretary, after

investigation, has determined that the provisions of section 105(c)(1) of the Act, 30 U.S.C. 815(c)(1), have not been violated.

§ 2700.41 Time to file.

(a) The Secretary. A discrimination complaint shall be filed by the Secretary within 30 days after his written determination that a violation has occurred.

(b) Miner, representative of miners, or applicant for employment. A discrimination complaint may be filed by a complaining miner, representative of miners, or applicant for employment within 30 days after receipt of a written determination by the Secretary that no violation has occurred.

§ 2700.42 Contents of complaint.

A discrimination complaint shall include a short and plain statement of the facts, setting forth the alleged discharge, discrimination or interference, and a statement of the relief requested.

§ 2700.43 Answer.

Within 30 days after service of a discrimination complaint, the respondent shall file an answer responding to each allegation of the complaint.

§ 2700.44 Petition for assessment of penalty in discrimination cases.

(a) Petition for assessment of penalty in Secretary's complaint. A discrimination complaint filed by the Secretary shall propose a civil penalty of a specific amount for the alleged violation of section 105(c) of the Act, 30 U.S.C. 815(c). The petition for assessment of penalty shall include a short and plain statement of supporting reasons based on the criteria for penalty assessment set forth in section 110(i) of the Act. 30 U.S.C. 820(i).

(b) Petition for assessment of penalty after sustaining of complaint by miner, representative of miners, or applicant for employment. Immediately upon issuance of a decision by a Judge sustaining a discrimination complaint brought pursuant to section 105(c)(3), 30 U.S.C. 815(c)(3), the Judge shall notify the Secretary in writing of such determination. The Secretary shall file with the Commission a petition for assessment of civil penalty within 45 days of receipt of such notice.

§ 2700.45 Temporary reinstatement proceedings.

(a) Service of pleadings. A copy of each document filed with the Commission in a temporary reinstatement proceeding shall be expeditiously served on all parties, such as by personal delivery, including courier service, by express mail, or by facsimile transmission.

(b) Contents of application. An application for temporary reinstatement shall state the Secretary's finding that the miner's discrimination complaint was not frivolously brought and shall be accompanied by an affidavit setting forth the Secretary's reasons supporting his finding. The application also shall include a copy of the miner's complaint to the Secretary, and proof of notice to and service on the person against whom relief is sought by the most expeditious means of notice and delivery reasonably available.

(c) Request for hearing. Within 10 calendar days following receipt of the Secretary's application for temporary reinstatement, the person against whom relief is sought shall advise the Commission's Chief Administrative Law Judge or his designee, and simultaneously notify the Secretary, whether a hearing on the application is requested. If no hearing is requested, the Judge assigned to the matter shall review immediately the Secretary's application and, if based on the contents thereof the Judge determines that the miner's complaint was not frivolously brought, he shall issue immediately a written order of temporary reinstatement. If a hearing on the application is requested, the hearing shall be held within 10 calendar days following receipt of the request for hearing by the Commission's Chief Administrative Law Judge or his designee, unless compelling reasons are shown in an accompanying request for an extension of time.

(d) Hearing. The scope of a hearing on an application for temporary reinstatement is limited to a determination as to whether the miner's complaint was frivolously brought. The burden of proof shall be upon the Secretary to establish that the complaint was not frivolously brought. In support of his application for temporary reinstatement, the Secretary may limit his presentation to the testimony of the complainant. The respondent shall have an opportunity to cross-examine any witnesses called by the Secretary and may present testimony and documentary evidence in support of its position that the complaint was frivolously brought.

(e) Order on application.

(1) Within 7 calendar days following the close of a hearing on an application for temporary reinstatement, the Judge shall issue a written order granting or denying the application. However, in extraordinary circumstances, the Judge's time for issuing an order may be extended as deemed necessary by the Judge.

(2) The Judge's order shall include findings and conclusions supporting the determination as to whether the miner's complaint has been frivolously brought.

(3) The parties shall be notified of the Judge's determination by the most expeditious means reasonably available. Service of the order granting or denying the application shall be by certified or registered mail, return receipt requested.

(4) A Judge's order temporarily reinstating a miner is not a final decision within the meaning of § 2700.69, and except during appellate review of such order by the Commission or courts, the Judge shall retain jurisdiction over the temporary reinstatement proceeding.

(f) Review of order. Review by the Commission of a Judge's written order granting or denying an application for temporary reinstatement may be sought by filing with the Commission a petition, which shall be captioned "Petition for Review of Temporary Reinstatement Order," with supporting arguments, within 5 business days following receipt of the Judge's written order. The filing of any such petition is effective upon receipt. The filing of a petition shall not stay the effect of the Judge's order unless the Commission so directs; a motion

for such a stay will be granted only under extraordinary circumstances. Any response shall be filed within 5 business days following service of a petition. Pleadings under this rule shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing, except that if service by facsimile transmission is impossible, the filing party shall serve by a third-party commercial overnight delivery service or by personal delivery. The Commission's ruling on a petition shall be made on the basis of the petition and any response (any further briefs will be entertained only at the express direction of the Commission), and shall be rendered within 10 calendar days following receipt of any response or the expiration of the period for filing such response. In extraordinary circumstances, the Commission's time for decision may be extended.

(g) Dissolution of order. If, following an order of temporary reinstatement, the Secretary determines that the provisions of section 105(c)(1), 30 U.S.C. 815(c)(1), have not been violated, the Judge shall be so notified. An order dissolving the order of reinstatement shall not bar the filing of an action by the miner in his own behalf under section 105(c)(3) of the Act, 30 U.S.C. 815(c)(3), and § 2700.40(b) of these rules.