

The NRC's Enforcement Policy does not address the issue of discrimination in one specific area or section. Therefore, the following is a collection of areas in the Policy where the issue of discrimination (which is considered willful) is addressed as indicated in **bold**.

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IV. SIGNIFICANCE OF VIOLATIONS

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A. Assessing Significance

In assessing the significance of a noncompliance, the NRC considers four specific issues: (1) actual safety consequences; (2) potential safety consequences, including the consideration of risk information; (3) potential for impacting the NRC's ability to perform its regulatory function; and (4) any **willful** aspects of the violation.

For certain types of violations at commercial nuclear power plants, the NRC relies on information from the Reactor Oversight Process's Significance Determination Process (SDP). The SDP is used to evaluate the actual and potential safety significance of inspection findings to provide a risk-informed framework for discussing and communicating the significance of inspection findings. Violations associated with findings evaluated through the SDP are addressed in Section IV.A.5. Violations at commercial nuclear power plants that are associated with inspection findings that *cannot* be evaluated through the SDP (i.e., violations that may impact the NRC's ability for oversight of licensed activities and violations that involve willfulness, including **discrimination**) are evaluated in accordance with the guidance in Sections IV.A.1 through IV.A.4 and Section IV.B. Violations that are associated with inspection findings with actual consequences are evaluated in accordance with the guidance in Section IV.A.5.c.

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4. Willfulness. Willful violations are by definition of particular concern to the Commission because its regulatory program is based on licensees and their contractors, employees, and agents acting with integrity and communicating with candor. Willful violations cannot be tolerated by either the Commission or a licensee. Therefore, a violation may be considered more significant than the underlying noncompliance if it includes indications of willfulness. The term "willfulness" as used in this policy embraces a spectrum of violations ranging from deliberate intent to violate or falsify to and including careless disregard for requirements. Willfulness does not include acts which do not rise to the level of careless disregard, e.g., negligence or inadvertent clerical errors in a document submitted to the NRC. In determining the significance of a violation involving willfulness, consideration will be given to such factors as the position and responsibilities of the person involved in the violation (e.g.,

licensee official¹ or non-supervisory employee), the significance of any underlying violation, the intent of the violator (i.e., careless disregard or deliberateness), and the economic or other advantage, if any, gained as a result of the violation. The relative weight given to each of these factors in arriving at the significance assessment will be dependent on the circumstances of the violation. However, if a licensee refuses to correct a minor violation within a reasonable time such that it willfully continues, the violation should be considered at least more than minor. Licensees are expected to take significant remedial action in responding to willful violations commensurate with the circumstances such that it demonstrates the seriousness of the violation thereby creating a deterrent effect within the licensee's organization.

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V. PREDECISIONAL ENFORCEMENT CONFERENCES

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A predecisional enforcement conference is a meeting between the NRC and the licensee. Conferences are normally held in the regional offices and are normally open to public observation. Predecisional enforcement conferences will not normally be open to the public if the enforcement action being contemplated:

- (1) Would be taken against an individual, or if the action, though not taken against an individual, turns on whether an individual has committed wrongdoing;
- (2) Involves significant personnel failures where the NRC has requested that the individual(s) involved be present at the conference;
- (3) Is based on the findings of an NRC Office of Investigations report that has not been publicly disclosed; or
- (4) Involves safeguards information, Privacy Act information, or information which could be considered proprietary;

In addition, conferences will not normally be open to the public if:

- (5) The conference involves medical misadministrations or overexposures and the conference cannot be conducted without disclosing the exposed individual's name; or

¹The term "licensee official" as used in this policy statement means a first-line supervisor or above, a licensed individual, a radiation safety officer, or an authorized user of licensed material whether or not listed on a license. Notwithstanding an individual's job title, severity level categorization for willful acts involving individuals who can be considered licensee officials will consider several factors, including the position of the individual relative to the licensee's organizational structure and the individual's responsibilities relative to the oversight of licensed activities and to the use of licensed material.

(6) The conference will be conducted by telephone or the conference will be conducted at a relatively small licensee's facility.

Notwithstanding meeting any of these criteria, a predecisional enforcement conference may still be open if the conference involves issues related to an ongoing adjudicatory proceeding with one or more interveners or where the evidentiary basis for the conference is a matter of public record, such as an **adjudicatory decision by the Department of Labor**. In addition, notwithstanding the normal criteria for opening or closing predecisional enforcement conferences, conferences may either be open or closed to the public, with the approval of the Executive Director for Operations, after balancing the benefit of the public's observation against the potential impact on the agency's decision-making process in a particular case.

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For a case in which an NRC Office of Investigations (OI) report finds that **discrimination** as defined under 10 CFR 50.7 (or similar provisions in Parts 30, 40, 60, 70, or 72) has occurred, the OI report may be made public, subject to withholding certain information (i.e., after appropriate redaction), in which case the associated predecisional enforcement conference will normally be open to public observation. In a predecisional enforcement conference where a particular individual is being considered potentially responsible for the **discrimination**, the conference will remain closed. In either case (i.e., whether the conference is open or closed), the employee or former employee who was the subject of the alleged **discrimination** (hereafter referred to as "complainant") will normally be provided an opportunity to participate in the predecisional enforcement conference with the licensee/employer. This participation will normally be in the form of a complainant statement and comment on the licensee's presentation, followed in turn by an opportunity for the licensee to respond to the complainant's presentation. In cases where the complainant is unable to attend in person, arrangements will be made for the complainant's participation by telephone or an opportunity given for the complainant to submit a written response to the licensee's presentation. If the licensee chooses to forego an enforcement conference and, instead, responds to the NRC's findings in writing, the complainant will be provided the opportunity to submit written comments on the licensee's response. For cases involving potential **discrimination** by a contractor, any associated predecisional enforcement conference with the contractor would be handled similarly. These arrangements for complainant participation in the predecisional enforcement conference are not to be conducted or viewed in any respect as an adjudicatory hearing. The purpose of the complainant's participation is to provide information to the NRC to assist it in its enforcement deliberations.

A predecisional enforcement conference may not need to be held in cases where there is a full **adjudicatory record before the Department of Labor**. If a conference is held in such cases, generally the conference will focus on the licensee's corrective action. As with discrimination cases based on OI investigations, the complainant may be allowed to participate.

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VI. DISPOSITION OF VIOLATIONS

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C. Civil Penalty

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2. Civil Penalty Assessment

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c. Credit for Prompt and Comprehensive Corrective Action

The purpose of the Corrective Action factor is to encourage licensees to (1) take the immediate actions necessary upon discovery of a violation that will restore safety and compliance with the license, regulation(s), or other requirement(s); and (2) develop and implement (in a timely manner) the lasting actions that will not only prevent recurrence of the violation at issue, but will be appropriately comprehensive, given the significance and complexity of the violation, to prevent occurrence of violations with similar root causes.

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Corrective action for violations involving **discrimination** should normally only be considered comprehensive if the licensee takes prompt, comprehensive corrective action that (1) addresses the broader environment for raising safety concerns in the workplace, and (2) provides a remedy for the particular discrimination at issue.

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VII. EXERCISE OF DISCRETION

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B. Mitigation of Enforcement Sanctions

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5. Violations Involving Certain Discrimination Issues

Enforcement discretion may be exercised for discrimination cases when a licensee who, without the need for government intervention, identifies an issue of discrimination and takes prompt, comprehensive, and effective corrective action to address both the particular situation and the overall work environment for raising safety concerns. Similarly, enforcement may not be warranted where a complaint is filed with the Department of Labor (DOL) under Section 211 of the Energy Reorganization Act of 1974, as amended, but the licensee settles the matter before the DOL makes an initial finding of discrimination and addresses the overall work environment.

Alternatively, if a finding of discrimination is made, the licensee may choose to settle the case before the evidentiary hearing begins. In such cases, the NRC may exercise its discretion not to take enforcement action when the licensee has addressed the overall work environment for raising safety concerns and has publicized that a complaint of discrimination for engaging in protected activity was made to the DOL, that the matter was settled to the satisfaction of the employee (the terms of the specific settlement agreement need not be posted), and that, if the DOL Area Office found discrimination, the licensee has taken action to positively reemphasize that discrimination will not be tolerated. Similarly, the NRC may refrain from taking enforcement action if a licensee settles a matter promptly after a person comes to the NRC without going to the DOL. Such discretion would normally not be exercised in cases in which the licensee does not appropriately address the overall work environment (*e.g.*, by using training, postings, revised policies or procedures, any necessary disciplinary action, etc., to communicate its policy against discrimination) or in cases that involve: allegations of discrimination as a result of providing information directly to the NRC, allegations of discrimination caused by a manager above first-line supervisor (consistent with current Enforcement Policy classification of Severity Level I or II violations), allegations of discrimination where a history of findings of discrimination (by the DOL or the NRC) or settlements suggests a programmatic rather than an isolated discrimination problem, or allegations of discrimination which appear particularly blatant or egregious.

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SUPPLEMENTS - VIOLATION EXAMPLES

This section provides examples of violations in each of four severity levels as guidance in determining the appropriate severity level for violations in each of eight activity areas (reactor operations, Part 50 facility construction, safeguards, health physics, transportation, fuel cycle and materials operations, miscellaneous matters, and emergency preparedness).

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SUPPLEMENT VII--MISCELLANEOUS MATTERS

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A. Severity Level I - Violations involving for example:

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4. Action by senior corporate management in violation of **10 CFR 50.7** or similar regulations against an employee;

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B. Severity Level II - Violations involving for example:

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4. An action by plant management or mid-level management in violation of **10 CFR 50.7** or similar regulations against an employee;

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9. The failure of licensee management to take effective action in correcting a **hostile work environment**.

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C. Severity Level III - Violations involving for example:

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5. An action by first-line supervision or other low-level management in violation of **10 CFR 50.7** or similar regulations against an employee;

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10. Threats of discrimination or restrictive agreements which are violations under NRC regulations such as **10 CFR 50.7(f)**.

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D. Severity Level IV - Violations involving for example:

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7. **Discrimination** cases which, in themselves, do not warrant a Severity Level III categorization.