

## **Advantages & Disadvantages of DOL versus MSPB Processes**

- Broad definition of protected activities under DOL laws: generally broader than under the WPA and include any disclosures or actions that further the purposes of the Act, as well as participating in any proceedings under the Act.
- DOL ALJs better trained and more independent: Hearings are conducted by Administrative Law Judges, (ALJs) as opposed to the Administrative Judges (AJs) (really hearing officers) at the MSPB. ALJs have more independence, better training, and are generally regarded as more fair to whistleblowers.
- DOL allows time for discovery and hearing preparation: The proceedings are not mandated to conclude in a very short period as at MSPB, and generally afford ample time for discovery, although the disadvantage is that resolution can take a long time – possibly years.
- Agency's Burden of Proof is Lower at DOL: Under the environmental whistleblower provisions, the agency does not have the WPA's "clear and convincing" burden of proof that it would have taken the same action if the whistleblowing had not occurred, but only the lesser burden of proof by a preponderance of the evidence. [LINK MSPB3]. Some non-environmental DOL laws do have the clear and convincing burden. Even when they do not, the generally more fair proceeding at DOL usually makes up for this lack.
- Short –30 Day –Time to File: Like the WPA, most of the DOL laws have very short statutes of limitations – 30 days from when the employee learned of the adverse action (a few are longer). Be aware that it is not 30 days from the effective date of the action like at MSPB, but from when the employee received notice that the action would occur, so sometimes even shorter than MSPB.