the program's accessibility to employees, prioritization processes, independence, ability to protect the identity of employees, and adequate resources. However, the prime factors in the success of a given program appear to be demonstrated management support and how employees perceive the program. Therefore, timely feedback on the follow-up and resolution of concerns raised by employees is a necessary element of these programs.

Improving Contractors Awareness of Their Responsibilities

The Commission's long-standing policy has been and continues to be to hold its licensees responsible for compliance with NRC requirements, even if licensees use contractors for products or services related to licensed activities. Thus, licensees are responsible for having their contractors maintain an environment in which contractor employees are free to raise concerns without fear of retaliation.

Nevertheless, certain NRC requirements apply directly to contractors of licensees (see, for example, the rules on deliberate misconduct, such as 10 CFR 30.10, and 50.5 and the rules on reporting of defects and noncompliances in 10 CFR Part 21). In particular, the Commission's prohibition on discriminating against employees for raising safety concerns applies to the contractors of its licensees, as well as to licensees (see, for example, 10 CFR 30.7 and 50.7). Accordingly, if a licensee contractor discriminates against one of its employees in violation of applicable Commission rules, the Commission intends to consider enforcement action against both the licensee, who remains responsible for the environment maintained by its contractors, and the employer who actually discriminated against the employee.

The Commission is concerned that a large number of discrimination complaints are made by employees of contractors. The Commission expects its licensees to take action so that:

(1) Each contractor is aware of the applicable regulations that prohibit discrimination;

(2) Each contractor is aware of its responsibilities in fostering an environment for raising concerns;

(3) The licensee has the ability to oversee the contractor's efforts to encourage employees to raise concerns, prevent discrimination, and resolve allegations of discrimination by obtaining reports of alleged contractor discrimination and associated investigations conducted by or on behalf of its contractors; conducting its own

investigations of such discrimination; and, if warranted, by directing that remedial action be undertaken; and

(4) Contractor employees and management are informed of (a) the importance of raising safety concerns and (b) how to raise concerns through normal processes, alternative internal processes, and directly to the NRC.

Adoption of contract provisions covering the matters discussed above may provide additional assurance that contractor employees will be able to raise concerns without fear of retaliation

Involvement of Senior Management in Cases of Alleged Discrimination

The Commission reminds licensees of their obligation both to ensure that personnel actions against employees who have raised concerns, including personnel actions by contractors, have a well-founded, legitimate non-discriminatory basis and to make clear to all employees that any adverse action taken against an employee was for legitimate non-discriminatory reasons. If employees allege retaliation for engaging in protected activities, senior licensee management should become involved, review the particular facts, and consider or reconsider the action.

In some cases, management may desire to use a holding period, that is, to maintain or restore the pay and benefits of the employee alleging retaliation, pending resolution of the matter or pending the outcome of an investigation by the Department of Labor (DOL). This holding period may calm feelings on site and could be used to demonstrate management encouragement of an environment conducive to raising concerns. By this approach, management would be acknowledging that although a dispute exists as to whether discrimination occurred, in the interest of not discouraging other employees from raising concerns, the employee involved in the dispute will not lose pay and benefits while the dispute is being resolved. In addition, this approach encourages licensees and employees to resolve their differences without the need for NRC or DOL involvement.

Nothing in this policy statement should be taken to alter the existing rights of either the licensee or the employee, or be taken as a direction by, or an expectation of, the Commission, for licensees to adopt the holding period concept. For both the employee and the employer, participation in a holding period under the conditions of a specific case is entirely voluntary.

The intent of this policy statement is to emphasize the importance of licensee

management taking an active role to resolve promptly situations involving alleged discrimination internally, with minimal disruption of the work place and without government involvement. Because of the complex nature of labormanagement conflicts, any externallyimposed resolution is not as desirable as one achieved internally. The Commission emphasizes that internal resolution is the licensee's responsibility, and that early resolution is in the best interests of both the licensee and the employee. For this reason, the Commission has recently amended its enforcement policy (10 CFR Part 2, Appendix C) to provide greater consideration of the actions taken by licensees in addressing and resolving issues of discrimination when the Commission develops enforcement sanctions for violations involving discrimination. 59 FR 60697 (November 28, 1994).

A licensee may conclude after a full review that an adverse action against an employee is warranted. 4 The Commission recognizes the need for licensees to take disciplinary action when such action is justified. Commission regulations do not render a person who engages in protected activity immune from discharge or discipline stemming from nonprohibited considerations (see, for example, 10 CFR 50.7(d)). The Commission expects licensees to make personnel decisions that are consistent with regulatory requirements and that will enhance the effectiveness and safety of the licensee's operations.

Responsibilities of Employees

As emphasized above, the responsibility for maintaining a quality-conscious environment rests with licensee management. However, employees in the nuclear industry also have responsibilities in this area. As a general principle, the Commission expects employees in the nuclear industry to raise safety and compliance concerns directly to licensees, or indirectly to licensees through contractors, since it is the licensee, and not the Commission, who has the primary responsibility for, and is most able to ensure, safe operation of nuclear

⁴When other employees know that the individual who was the recipient of an adverse action may have engaged in protected activities, it may be appropriate for the licensee to let the other employees know, consistent with privacy considerations, that (1) management reviewed the matter and determined that its action was warranted, (2) the action was not in retaliation for engaging in protected activity and the reason why, and (3) licensee management continues to encourage them to raise issues. This may reduce any perception that retaliation occurred.