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**FEW Washington Update**

**May 16-31, 2020**

**Congress**

The House is expected to convene in Washington again in late June with plans to act through July.

Prior to that, the House committees will continue to meet virtually to prepare for major legislation that needs to be passed.

According to House Majority Leader Steny Hoyer (D-MD) the House’s priority will be the fourth COVID-19 stimulus package. Some other must-pass bills are;

“…2021 National Defense Authorization Act (NDAA); an infrastructure package that includes reauthorization of expiring surface transportation provisions; a reauthorization of the Water Resources Development Act (WRDA); legislation to strengthen and expand the Affordable Care Act as more Americans have come to rely on it during this pandemic; and appropriation bills for Fiscal Year 2021; among others. ”

The Senate appears to be on the same schedule.

**Protests Spark Potential Legislation**

Protesters have marched in the U.S. for six consecutive nights over the death of George Floyd at the hands of a police officer. Their anger over the killing of the unarmed black man has now spread worldwide. People in several cities around the world have rallied in solidarity with anti-racism protests in the U.S. in countries such as Brazil, Poland, France, the United Kingdom, and more.

**FEW Washington Update – May 1-15, 2020**

**Tier I**

**Paid Leave:**

Among the issues that have been set aside since early in this calendar year—but on which there is pressure to act in the upcoming months—is the gap in a paid parental leave authority for federal employees enacted late last year.

That authority generally provides up to 12 weeks per 12 months of paid, rather than the current unpaid, leave for birth or adoptions or foster care placements after September 30. However, the language excluded most employees outside the “Title 5” section of federal personnel law—most numerous, “Title 38” medical personnel, “Title 49” employees of the FAA, and TSA employees other than screeners, who were specifically included.

Bills were quickly introduced in Congress early this year to include those employees and certain other smaller categories left out. However, momentum toward enactment stalled when the attention of both the White House and Congress was refocused on the virus pandemic.

Since then, the only development on the issue has been advocacy by some members of the House to extend the benefit available for a birth, adoption or foster care placement retroactive to the enactment date of the law December 20, 2019.

The VA has said, though, that even if the law is not changed, it would use a separate authority to extend the benefit to its Title 38 personnel.

*See source here.*

**OPM and Sick Leave:**

Federal employees can challenge denials of requests for a special sick leave benefit created by one of the Coronavirus relief laws under the procedures used for asserting that they have been improperly denied overtime pay, OPM has said.

The guidance is the latest in a series regarding a provision called the “Emergency Paid Sick Leave Act,” or EPSLA, in the “Families First” relief law. The Labor Department administers that program in general but OPM is involved as it pertains to the federal workforce.

OPM previously told agencies that they “must provide” the leave—which is over and above normal sick leave entitlements–to federal employees who qualify under that law. Qualifying conditions include situations in which an employee has been quarantined due to the virus, is caring for such a person, or is caring for a child due to a virus-related closing of a school or day care center. Amounts payable vary according to the conditions cited and generally are limited to 80 hours; U.S. Postal Service employees and certain other employees are eligible for more.

Despite that guidance, many employees have said their requests for the leave were denied or disappeared into an administrative void.

OPM’s latest guidance says the law “provides that employers (such as federal agencies) who violate the EPSLA paid sick leave provisions shall be considered to have failed to pay minimum wages in violation of the Fair Labor Standards Act.”

OPM adjudicates FLSA minimum wage and overtime claims for most federal employees, it added, the main exceptions would be employees of the Postal Service, the Postal Regulatory Commission, and the Tennessee Valley Authority. Also, certain executive branch employees may not be covered by the FLSA based on a special agency personnel authority.

OPM said that they and the Labor Department “have determined that federal employees covered by OPM’s FLSA regulations would file any EPSLA paid sick leave claims with their employing agency or with OPM in accordance with the claim filing requirements in 5 CFR part 551, subpart G. As with other FLSA claims covered under that subpart, employees who want to file EPSLA paid sick leave claims are not required to obtain a final agency decision before filing with OPM.”

Detailed information on OPM’s FLSA claims filing procedures is at https://www.opm.gov/policy-data-oversight/pay-leave/claim-decisions/fair-labor-standards-act/#url=Overview

*See source here.*

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**Tier II**

**EEOC Delays Collection of EEO-1 Data Due to COVID-19:**

In light of the public health emergency caused by COVID-19, the Equal Employment Opportunity Commission (EEOC) announced that it will delay collection of EEO-1 Component 1 data until March 2021. Under federal law, businesses with at least 100 employees and federal contractors with at least 50 employees and a federal contract of $50,000 or more generally must file an EEO-1 form each year. This development gives government contractors a one-year extension to file their 2019 Component 1 data.

Many employers had been in the dark regarding deadline dates for 2019 data collection. EEOC only had approval from the Office of Management and Budget (OMB) to collect EEO-1 Component 1 data through 2018 under the Paperwork Reduction Act. Thus, the agency was in the process of seeking approval to collect the data for 2019, 2020, and 2021. The agency sent its initial request to OMB in 2019 and a renewed request on March 23, 2020. Employers were expecting to hear from EEOC about the results. Instead, EEOC announced that EEO-1 data collection would be postponed until next year.

Pending approval from the OMB, EEOC expects to begin collecting both 2019 and 2020 EEO-1 Component 1 data in 2021 and will notify filers of the precise date the surveys will open. The agency will also be collecting only Component 1 data and plans to discontinue the collection of Component 2 pay data.

This development essentially gives employers a one-year extension to file their 2019 Component 1 data, which includes demographic data based on job category, race, ethnicity, and gender. To prevent having to complete both 2019 and 2020 reports next year, employers are encouraged to compile data and/or complete preparation of the EEO-1 for 2019 if they have the available resources.

*See source here.*

**Whistleblower Protections:**

The Commonwealth of Virginia enacted a number of new employment laws this year, completely transforming employee rights as never before.

One of these new employment laws in Virginia involves providing Whistleblower rights for employees. In the past, employees had to rely on a very weak system of whistleblower protection that was developed through the courts and case law. Essentially, there was little protection for those terminated for blowing the whistle on an employer’s illegal conduct. That has now changed and this article discusses the new Virginia Whistleblower legislation.

**Virginia’s New Whistleblower Law**

Virginia’s new whistleblower law, enacted in House Bill 798, was sponsored by State Delegate Karrie Delaney, was signed into law on April 11, 2020, by Governor Ralph Northam and becomes effective on July 1, 2020.

The new law prohibits employers from discharging, disciplining, threatening, discriminating against, or penalizing an employee or from taking other retaliatory action with respect to the employee’s compensation, terms, conditions, location or privileges of employment.

**How an Employee May Be Protected Under the Whistleblower Protection Law**

An employee may be protected by Virginia’s new Whistleblower Protection Law if they:

(1) Report in good faith (or cause another employee to report in good faith) a violation of state law, federal law, or regulation to a supervisor, law enforcement or to any governmental body (e.g., Fairfax/Arlington County, City of Alexandria, federal government authorities).

(2) Are asked by law enforcement or a governmental body to participate in an investigation, hearing or inquiry.

(3) Refuse to commit a criminal act for the employer that would expose the employee to potential criminal liability.

(4) Refuse an employer’s order to perform an act that would violate any federal or state law or regulation (and explain to their employer that their refusal is based on potentially violating the law).

(5) Testify before law enforcement or a governmental body if it is connected to an investigation of an employer’s unlawful conduct.

**Employee Remedies**

If an employee is subject to whistleblower retaliation, then she/he may file a lawsuit within a year of the retaliation. Courts in Virginia may issue an injunction against the employer’s retaliation, reinstate a wrongfully terminated employee, provide appropriate backpay, attorneys fees and compensation and costs.

The law is new and more complex than provided in this article so it is important to obtain legal advice if a suspected case of retaliation develops.

*See source here.*

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**Tier III**

**Women and COVID-19:**

Women held 55 percent of the jobs lost in the wake of the COVID-19 pandemic. Female-dominated service sectors such as food service, hospitality, and child care were among the hardest hit. This drove women's unemployment up to 15.5 percent, a historic high, in April.

As with many things, the pandemic will reveal many things about the American economy and shape its future. This COVID-induced "she-cession" has important implications:

First, it's worth noting the unprecedented level of economic success American women were enjoying just before the pandemic. A strong economy was fueling a tight labor market, creating a high demand for labor across sectors. Women's unemployment in February 2020 was 3.5 percent, just below men's at 3.6 percent. This was a record low, and no surprise, given women's progress in recent decades in education: Now the majority of our college-educated workforce is female.

Between 2017 to 2018, women started 1,821 net new businesses each day. In 2018, there were 12.3 million women-owned businesses (40 percent of all firms), employing 8 percent of the total private-sector workforce. In 2018, the poverty rate for families headed by single mothers fell 1.7 percentage points to 26.8 percent, the lowest rate for this group on record.

Sadly, the pandemic will reverse many of these positive trends, shuttering businesses, destroying livelihoods, and sending more households back into poverty and dependency. But thankfully, the economy before COVID was strong, and women were prime beneficiaries, and many of these trends will help women and the economy come back.

Second, the "she-cession" is not the result of any sexist design, or top-down "occupational segregation" but rather the choices of men and women, that, ironically, demonstrated the strength of our economy, not a weakness.

As American Enterprise Institute (AEI) scholar, Christina Hoff Sommers has noted, women and men's voluntary segregation into different occupations and behaviors is not a mark of oppression, but social well-being.

In other words, as economies advance, they allow both men and women to make choices more in line with their preferences, and according to a study in the Journal of Personality and Social Psychology, differences between men and women tend to be largest in the most prosperous countries. Despite left-wing feminist claims to the contrary, most women, especially mothers, prefer jobs that allow them to spend more time with their families, to work with people, and in safe environments, even though such jobs result in less income.

Safety helps explain why more women are losing their jobs than men: Many men are keeping their jobs in public safety, mass transit, and energy infrastructure, to name a few "essential" industries. The reason these jobs are unattractive to many women is the same reason they pay more: they're less safe. That's the reason men are 10 times more likely to be killed on the job than women. And it's one of the contributing factors behind the "wage gap" that shows, on average, men earn more. Importantly, the wage gap doesn't compare equal work but compares raw averages that don't take into account factors like field, hours, work conditions, experience, or other benefits.

Finally, just as a "she-cession" might exacerbate disparities between men and women, it may also exacerbate disparities among women in various situations, particularly regarding their marriage, education, and economic status.

Married women, particularly those married to men who can sustain an income during the pandemic, will benefit from this stability. Indeed, even absent an epidemic, stable marriages often provide important financial security for both partners. Sadly, marriage rates in the U.S. have declined from about three-fourths of the population to about half in recent decades. And marriage has increasingly become a stable institution only for Americans with higher levels of education and socioeconomic status.

Unmarried women, particularly those with children and lower levels of education and resources, will face the hardest challenges. With mass school and daycare closures, child care is a significant challenge, even if jobs become available.

Many women, particularly those with white-collar jobs, are presently benefitting from extreme workplace flexibility as they work from home. We can hope that this trend extends beyond the pandemic and expands to as many workers as possible, even outside high-paying jobs.

But our greatest hope for a swift recovery for women is to mitigate the worst pandemic risk with sensible precautions while reopening as many sectors of the economy as possible, particularly the childcare sector so that we can return to the economic success seen just before COVID-19.

*See source here.*

*FEW receives information from the following sources and contacts: Roll Call, The Hill, Politico, ARLNow, FedWeek, Federal News Network, Piliero-Mazza Blog, CNN and Newsweek.*