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FEW Washington Update July 15-31, 2020

[In Honor of John R. Lewis - A Life Well Lived](#)

In Congress

Some 30 million Americans are collecting unemployment, benefits of which expired on Friday, July 31, and Congress and the White House have still not agreed on the best legislative package to pass to help Americans during the coronavirus pandemic. House appropriations bills have moved to the floor expediently while the Senate is stalled, but both chambers successfully passed the annual National Defense Authorization Act and will next work on negotiating differences for a final version.

House Majority Leader Steny Hoyer, meanwhile, advised members on Friday, July 31, that despite a planned August recess the House is expected to meet during the month of August as talks continue around a coronavirus relief package. Members will be given at least 24 hours notice before being called back for votes.

Senate Majority Leader Mitch McConnell (R-KY) and Appropriations Chairman Richard Shelby (R-AL) just announced the senate COVID-19 legislative proposal two months after the House passed its own \$3 trillion rescue package. The package includes \$105 billion to help schools adapt for children to return to the classroom; \$16 billion in grants to states for testing, contact tracing, and surveillance; and \$20 billion for vaccine, therapeutic and diagnostic development; \$20 billion to assist America's farmers and ranchers who have suffered as a result of the pandemic; nearly \$30 billion to protect our nation's military and defense industrial base; and another round of Paycheck Protection Plan loans limited to businesses with no more than 300 employees, coming down from the 500-worker limit originally set in the third coronavirus stimulus bill passed in March

and limiting loans to businesses that have lost at least of 50% of revenue compared to a previous year's quarter.

Looking ahead in election news, the first presidential debate is currently set for September 29 in Cleveland at Case Western Reserve University.

FEW Washington Update – July 15-31, 2020 Tier I

Pay and Benefits:

The House and Senate have passed one key annual bill on federal employee pay and benefits issues while the House expects to vote soon on another.

Both chambers have now approved separate versions (S. 4049 and H.R. 6395) of the annual DoD authorization bill, setting the stage for possible enactment into law before the October 1 start of the new fiscal year and a planned congressional recess through the elections around the same time.

The House version includes a provision to include certain agencies and categories of employees who were left out of the paid parental leave provision enacted in the counterpart bill late last year. That provision will change from unpaid to paid the 12 weeks of leave available in a 12 month period on the birth, adoption or foster placement of a child.

Those left out of that authority, which will be effective as of those events on October 1 or later, include most employees not under the Title 5 body of civil service law, primarily FAA employees, TSA employees other than screeners (who were specifically included in last year's law) and Title 38 personnel (generally VA employees in medical fields, who the VA has said it will make eligible regardless of whether the law is changed).

The White House has not objected to that amendment although it has objected to several other provisions in the House bill, including one to limit DoD's discretion to ban categories of employees from union representation on national security grounds, and one to essentially make all blue-collar employees in a GS locality eligible for the GS raise there even if they are under a lower-paid locality under the wage grade system. The measure also would strengthen federal employees' protections against discrimination and retaliation for whistleblowing.

During voting on the bill, the House accepted an amendment to exempt employees involved in frontline positions from limits on how much annual leave can be carried from one year to the next—in most cases, 240 hours. The amendment would put into law and broaden a similar exemption policy that OPM recently said it would put in place through regulations. Current policy is that such exceptions can be made only on a case by case basis and only if the leave had been scheduled in advance.

Both that bill and the Senate version meanwhile make several changes to hiring and compensation policies for limited numbers of occupations and in limited situations.

The House meanwhile is expected to vote, as part of a broader package, on the general government appropriations bill (H.R. 7668). That measure is silent on the issue of a January 2021 federal pay raise, effectively endorsing the 1 percent that President Trump included in his budget proposal earlier this year—and which he said at the same time he would set as the default raise if no figure is legislated by the end of the year.

Federal employee organizations and some members in Congress continue to advocate for a 3 percent raise in the name of pay parity with military personnel—who are in line to receive that amount, also what the president proposed—but the best chance to include a larger number may already have passed as the bill moved through the committee level.

The measure also notably would extend language barring further moves by the administration to have the GSA take over most of OPM, leaving the remainder as a policy office under OMB.

While Congress must enact some type of spending measure ahead of the October 1 start of the new fiscal year, that most likely will take the form of a temporary extension until after the elections, rather than enactment of appropriations bills.

Sourced from [FedWeek](#).

Federal Employee Pandemic Provisions:

The pandemic relief bill produced by the Senate Majority this week contains relatively few provisions of direct impact on federal workers, in contrast to a much wider-ranging bill that the House previously approved.

While the pandemic has not caused unemployment among federal workers, the importance of that issue overall is putting strong pressure on Congress to reach a resolution quickly.

While breaking off that issue and acting on it separately is an option, the House Majority is resisting that course out of concern that other provisions would then be dropped or at least put off until after the upcoming August congressional recess.

The Senate measure contains one notable provision not in the House counterpart bill, a \$1.2 billion budget supplement for U.S. Customs and Immigration Services to head off threatened furloughs due to a drop in fees USCIS charges and relies on. USCIS originally had said it would need to furlough some 13,400 of its 19,000 employees starting August 3, although more recently it put off that action at least through August due to an uptick in receipts and the prospects of Congress providing the supplement.

The money is termed a loan, however, which the agency would have to pay back by raising those fees.

The measure further would add funds for cleaning and protective equipment at several agencies but otherwise is silent on federal workplace issues. Its projected \$1 trillion in spending is mainly directed toward continuing the unemployment supplement, although at a lower level, as well as other forms of assistance to individuals, businesses and state and local governments.

In contrast, the House-passed bill (H.R. 6800) would provide some \$3 trillion in funding for economic assistance, including a \$25 billion supplement to the U.S. Postal Service; it does not address the USCIS situation, which arose after the House bill passed.

In addition, that bill would create: a “hazardous duty differential” of \$13 an hour, up to \$10,000 maximum for the year plus child care subsidies for workers, including federal employees, who have remained on the job in front-line positions; a presumption that employees in such positions who contract the virus are eligible for Federal Employees Compensation Act benefits; and a presumption that employees eligible for telework should remain in that status until certain standards are met.

It also would allow employees under special retirement provisions for law enforcement, firefighting and air traffic control to remain under those rules if they no longer are able to perform such duties due to having contracted the virus; and extend retroactively to 2019 a previously enacted waiver for 2020 of a requirement that retirees age 72 and above must take certain minimum distributions from retirement savings programs such as the TSP.

Sourced from [FedWeek](#).

FEW Washington Update – July 15-31, 2020 Tier II

Sexual Assault:

Sexual harassment in the workplace can negatively affect both employees and the environment in which they work. According to data from the most recent Merit Systems Protection Board (MSPB) survey in 2016, an estimated 22 percent of VA employees, and 14 percent of federal employees overall, experienced some form of sexual harassment in the workplace from mid-2014 to mid-2016.

Sexual harassment may include unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Sexual harassment that is sufficiently severe or pervasive, or that results in an adverse employment action, may constitute a form of unlawful employment discrimination prohibited by Title VII of the Civil Rights Act of 1964 (Title VII).

Incomplete or outdated policies and information

While VA has an overarching sexual harassment policy regarding preventing and addressing sexual harassment of employees, and VA and its administrations have additional policies to support it, some policies and information documents are not consistent with the overarching sexual harassment policy and some have outdated or missing information. For example, these resources may not include all options employees have for reporting sexual harassment, which could result in confusion among employees and managers. Our report recommends that VA ensure that all VA and administration policies and information documents are current, complete, and aligned with VA's overarching sexual harassment policy. VA agreed with this recommendation and said it will develop a plan to address it by the end of December 2020 and begin implementing the plan by the end of March 2021.

Delayed finalization of HPP

The Harassment Prevention Program (HPP) has been an active VA program for over 4 years and is cited in VA's sexual harassment policy. However, neither the directive establishing HPP's policies nor its handbook of implementation guidance has been approved by VA leadership and distributed to employees. VA officials said the delay is due to numerous revisions to ensure the documents are clear and comprehensive, and that even without a directive and handbook, VA employees are aware of HPP through VA's sexual harassment policy and the HPP website. However, we found that VA's failure to approve and distribute HPP policy and guidance has contributed to inconsistent implementation and a lack of awareness about HPP. This includes inconsistent collection of HPP data and some EEO staff having an inaccurate understanding of HPP. Our report recommends that VA finalize the HPP directive and handbook. VA agreed with this recommendation and said it will finalize the documents by December 2020.

Limitations in use of sexual harassment data

The Office of Resolution Management (ORM) relies on complaint data to understand the extent of sexual harassment at VA, but these data are incomplete. Specifically, VA does not have centralized information on complaints addressed through the management process because there is no requirement to report this information to ORM after managers receive an allegation. According to VA policy, HPP is to provide centralized tracking, monitoring, and reporting to proactively respond to all allegations of harassment. However, HPP cannot effectively do this until the VA has more comprehensive information on all reported allegations. In addition, VA does not use additional available information that could inform its efforts to address sexual harassment, such as data from the MSPB survey, which suggest that many employees do not file formal complaints when they experience sexual harassment. Our report recommends that VA require managers to report all sexual harassment complaints to ORM, and that ORM should use this information, along with other available data, to assess and improve VA's efforts to prevent and address sexual harassment. VA agreed with this recommendation and said it will implement a new system to address it by the end of September 2021.

Incomplete tracking of corrective actions

VA has policies and procedures to ensure that appropriate corrective actions occur for sexual harassment cases addressed through the EEO process, but not for cases addressed through the management process or HPP. In cases in which an investigation of a complaint results in a finding of discrimination (through the EEO process) or a finding of harassment (through the management/HPP process), corrective actions or other remedies may be appropriate. However, for cases that are resolved through the management process or HPP, VA does not require that managers provide evidence to ORM that appropriate corrective action, if any, was taken. ORM officials said documentation is not required because HPP staff—who are responsible for monitoring that managers address sexual harassment complaints—can follow up with the facility to obtain documentation, if needed. However, without access to documentation of corrective actions, there is no consistent way for ORM to hold management accountable for taking these steps. A lack of documentation does not mean that such corrective actions did not occur; nonetheless, without adequate documentation VA may not have reasonable assurance that they did. Such information is important to show that the agency takes harassment seriously and that those responsible are held accountable. Our report recommends, for sexual harassment complaints addressed through the management process, VA ensure that decided corrective actions are implemented, including requiring managers to provide evidence of such actions. VA agreed with this recommendation and said by the end of September 2021 it will require managers to upload evidence of corrective actions to its new system for reporting sexual harassment allegations.

VA Provides Limited Training on Sexual Harassment to Its Employees

VA provides information on sexual harassment policies and procedures as part of its broader online harassment trainings required for all employees and managers every 2 years, and through web pages and policy statements, posters, and brochures in VA facilities. However, the required trainings do not provide in-depth information on identifying and addressing sexual harassment. For example, they have one or no sexual harassment scenarios to help employees understand prohibited behaviors, and there is no information about HPP. Some facilities within VA's administrations supplement the VA-wide mandatory harassment training with additional training that is specifically focused on sexual harassment; however, not all VA employees are required to take it. Mandatory training focused on sexual harassment that includes clear and consistent information on HPP could substantially improve employee knowledge of VA policies and procedures, and help prevent sexual harassment or ensure it is properly handled when it occurs. Our report recommends that VA require additional training for all VA employees on identifying and addressing sexual harassment, including the HPP process. VA agreed with this recommendation and said by the end of September 2021 it will restructure its sexual harassment prevention training for all employees to make it more impactful.

In conclusion, an agency's ability to prevent and address workplace sexual harassment is important to ensuring that employees are healthy and productive. A wide range of issues currently hamper VA's ability to effectively protect its employees from such

behavior. Absent additional action, some VA employees may continue to distrust VA's handling of allegations, and VA's efforts to prevent and address sexual harassment may remain limited. Further, VA's core values, which include integrity, advocacy, and respect, along with its ability to deliver the highest quality services to the nation's veterans, may be compromised. By implementing our report's seven recommendations, VA has the opportunity to better prevent and address sexual harassment and create a safer work environment for its employees.

Sourced from [FedWeek](#).

FEW Washington Update – July 15-31, 2020 Tier III

EEOC:

For years, people with disabilities have been denied work from home (WFH) accommodations, with skeptical employers citing that WFH would decrease productivity, increase security risks, and cause undue hardship on an organization – the threshold that defines an accommodation as “unreasonable.”

But now, because the COVID-19 pandemic pushed the American workforce out of offices and into their homes, many American employers are finally realizing that WFH arrangements aren't that disruptive after all. A multitude of employees have shown that they can still perform well while working remotely, and frequently that work can be quantified by sales or tasks completed.

For individuals with disabilities, the good news is that going forward, employers may have a hard time claiming undue hardship for the WFH accommodations that individuals with disabilities may request. The bad news, however, is we're already seeing some misconceptions about reasonable accommodations related to the pandemic.

In the Equal Employment Opportunity Commission's (EEOC) recently released guidelines for accommodations during the pandemic, one of the new orders allows employers to place an end date on accommodations that were provided as a result of the pandemic, including WFH policies. Under this rule, employers can choose to maintain the accommodation for an interim or trial period for the duration of statewide shutdowns.

The reasoning behind this decision is understandable. It recognizes that millions of businesses are suffering from a loss of income due to current economic pressures, and that because of this income loss, an accommodation that might have been previously considered reasonable may now pose undue hardship on an organization and need to be rescinded. Businesses lacking cash flow might struggle to financially provide necessary tools to a teleworker. This means an employer could be paying higher costs for workers to function at home vs. when they are in the office.

However, it's worth noting that many employees with desk jobs don't require expensive tools and resources. Also, individuals with disabilities need to know that the new EEOC rules do not allow an employer to reject any and all accommodations that cost money. An employer must still evaluate the cost of the accommodation, and provide an explanation about why the accommodation does or does not pose undue hardship on the business. Analysis has shown most employer accommodations carry a one-time cost of \$500 or less, and 58% of accommodations come at no extra expense to employers.

In addition, employees and job candidates with disabilities are still protected under the federal Americans with Disabilities Act (ADA). Some states like New York and California offer even greater employment protections, and for individuals receiving federal disability benefits, such as Social Security Disability Insurance (SSDI), free programs like Ticket to Work can pair job candidates with employers who are actively looking to recruit a workforce that better reflects America's diversity.

The bottom line is that even with the potential for misconceptions about how the pandemic is shaping work from home efforts, individuals with disabilities have options.

These new EEOC guidelines may add to the confusion, but it's important for workers and employers to understand that the rights of individuals with disabilities are still protected by the ADA. The evolution of our workforce continues to shift toward flexibility, accommodation and collaboration between employers and employees with disabilities – and this continues to the advantages of both. The pandemic just helps to illustrate how our economy and world of work advances with the changing of our times.

Sourced from [Federal News Network](#).

FEW receives information from the following sources and contacts: Federal News Network, CNN, and FedWeek.