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FEW Washington Update
November 1-15, 2020

In Congress

Both chambers of Congress are in session this week but with no budget measure available for voting and another recess planned for next week. It appears that decisions on key issues affecting federal employees won't be made until December — potentially just ahead of a December 11 deadline to prevent a partial government shutdown.

A temporary funding measure in effect since the end of September expires as of that date, still with none of the 12 regular appropriations bills having been enacted.

The Senate did take a step last week in releasing draft versions of each of those measures but they differ in numerous and significant ways from the 10 bills the House passed earlier in the year.

A needed conference between the two further will be complicated by the political fallout from the elections as well as the potential addition of further pandemic relief funding — an issue on which Congress and the White House have been deadlocked since the last major relief bill passed in the spring.

In similar situations, Congress has bought more time through additional temporary extensions until nearly year's end; an extension into next year also is possible, although currently considered less likely.

Among the measures still pending final action is the general government spending bill, which determines the upcoming federal employee raise. The White House has proposed a 1 percent across the board boost and the House would allow that to take effect by default by not specifying an increase, but the Senate bill advocates a pay freeze.

That is one of several differences between the two; the House version for example contains language aimed at preventing agencies from imposing policies in areas that previously were negotiated with unions unless there is a new contract agreement or a binding arbitration award — a bid to block a Trump administration policy that a Biden administration is expected to reverse. The Senate version further would effectively bar the Thrift Savings Plan (TSP) from expanding the international stock I fund to include stocks of Chinese companies.

Both, however, would continue a long-running ban on conducting “Circular A-76” studies for possibly converting federal jobs to contractors.

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EEOC:

The federal agency charged with enforcing the nation’s main workplace discrimination laws just announced that it recovered over $535 million from employers on behalf of aggrieved workers and applicants this past fiscal year, a figure that shattered the previous record and set an all-time high. The EEOC’s November 16 financial report also touted successes in clearing old inventory of charges, increasing the percentage of resolutions achieved in favor of charging parties, and mediating thousands of charges to conclusion. The report further indicated that the EEOC filed the second-lowest number of merits lawsuits against employers in over two decades. What are the top five takeaways for employers from this latest report?

1. EEOC Achieves Record-High Recovery for Workers

The EEOC announced that it recovered $535.4 million for those alleging violations of federal workplace discrimination laws in FY2020, which concluded on September 30. This amounts to a record-high figure, topping the previous record set in 2015 when it recovered over $525 million. Of this amount:

- Over $106 million was recovered through lawsuits initiated by the EEOC against private employers, the highest litigation total since 2004.
- Over $332 million was paid out by private employers as a result of mediations, conciliations, and other EEOC enforcement activity.
- The EEOC recovered the remaining $96.2 million on behalf of federal employees and applicants.
- These figures demonstrate that the EEOC is becoming more aggressive in seeking relief for charging parties if it concludes that a charge of discrimination has merit, particularly if the allegations fall within the scope of EEOC’s current enforcement priorities. This trend likely will continue or accelerate in FY2021.

2. Inventory of Pending Charges At Lowest Level In 14 Years

The EEOC is obviously proud of the fact that it has further reduced its existing inventory of pending private sector charges to the lowest level in 14 years, as this development was the lead story in the agency's November 16 tweet announcing its report. According to the agency, the inventory of pending charges was reduced by 3.7 percent to 41,951 in FY2020.

This builds on a 12.1 percent decrease in 2019, and an almost 50 percent reduction since 2015 when inventory stood at over 76,000 charges. The agency credits this achievement to a focus on agency-wide inventory reduction strategies, continued technological enhancements, new digital systems, and hiring additional front-line staff.

3. Agency Sees Increase in Favorable Outcomes for Workers

Despite the fact that the agency has reduced its inventory of pending charges, it is quick to point out that it is not laying down on the job when it comes to standing up for aggrieved workers. In fact, the EEOC notes that it increased the percentage of charges resolved with an outcome favorable to the charging party in FY2020 by nearly two percent, to 17.4 percent.

4. Number of Lawsuits Filed Drops to Near-All-Time Low

Meanwhile, the EEOC announced that it only filed 93 merits lawsuits in FY2020, 51 fewer than were filed just the previous year, and the lowest figure since 1997. This number pales in comparison to the number of lawsuits filed several decades ago, when close to 400 such lawsuits were filed on average between 2000 and 2005. According to an interview with Bloomberg Law, EEOC Chair Janet Dhillon attributed the drop in merit suits to the "ebb and flow" of litigation from year to year.

5. EEOC Touts Mediation Success

Finally, the agency indicated that it enjoyed a successful year when it came to mediations with employers, resolving over 6,700 such matters and leading to a recovery of over $156 million to charging parties in FY2020. Of course, the large majority of these proceedings were conducted remotely due to the pandemic. Meanwhile, despite the challenges brought about by remote mediations, the agency said that the average processing time for these cases was 100 days, leading to efficient conclusions for workers and employers alike.

What Should Employers Do?

"Despite the challenges posed by the pandemic, the EEOC has continued to provide excellent service to the public and made progress toward fulfilling our mission," said Chair Dhillon. Employers should recognize that, despite the ongoing pandemic and the fact the majority of agency commissioners have been appointed by a business-friendly president, the EEOC has continued its mission of targeting non-compliant employers and taking up the mantle on behalf of workers who believe they were aggrieved in workplace disputes.

Sourced from JDSupra.

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Annual Leave:

While the current federal leave year doesn't end until January 3 for most employees, the last date for scheduling "use or lose" annual leave is Saturday (November 21).

Generally, employees may carry forward no more than 30 days (240 hours). Employees stationed overseas may carry up to 45 days; and SES, senior level, and senior scientific and professional employees may carry up to 90 days.

An agency may restore annual leave subject to forfeiture if the employee was unable to take it due to an "exigency of the public business" but only if the leave was scheduled before the start of the third to last pay period in the leave year.

Under interim rules the Office of Personnel Management (OPM) issued in August, employees who would be in a use or lose situation because the agency deems, they were needed to remain on the job "to support the nation during a national emergency" including the Coronavirus pandemic, will have their excess annual leave deemed to have been scheduled in advance and eligible for restoration.

Last month [October 2020] legislation (HR-8457 and S-4777) was introduced to more broadly protect all employees against losing leave because of the pandemic, on the grounds that some employees who would not qualify under the OPM standard have not been able to take time off because of heavy workloads, while others have had to cancel planned vacations because of restrictions on travel. Those measures have not advanced, however.

Leave that otherwise would be forfeited could instead be donated to agency leave-sharing programs for employees facing health or other emergencies who have used up their own leave.

Sourced from FEDWeek.

Social Security (Taxes):

As the end of the year approaches, neither the IRS nor the federal payroll processors have issued further guidance for federal employees whose Social Security taxes (also known as the OASDI withholding) have been temporarily suspended since September to repay the difference.

That's becoming a growing concern for many employees—especially those set to join the annual spike in federal retirements that occurs around the turn of the year—because of the obligation to repay the difference by April 30 or else face potential tax penalties. The only guidance issued so far, dating to late August and early September, speaks only of doing that through increased regular payroll withholding.

Those retiring or otherwise leaving the federal workforce but not continuing to work for salary would not be able to make the repayment in that way since they would no longer have Social Security-taxable earnings. Employees thinking of leaving the government for the private sector meanwhile have questioned how they could make such arrangements with a new employer, especially if they have a break in time before starting new jobs.

Since September, federal employees with Social Security-taxable earnings below $4,000 in a pay period have not been paying their regular 6.2 percent withholding toward that system. Deductions such as pre-tax payment of FEHB and FEDVIP premiums and flexible spending account set-asides lower the Social Security taxable amount to below the threshold for some employees; TSP investments do not, however.

Change Likely Affected Most Employees Under FERS:

Given federal salary patterns, the change likely affected the majority of employees under FERS; CSRS employees don't pay into Social Security. For those affected, the impact could range from hundreds to several thousand dollars, depending on their salary.

The suspension, ordered by President Trump as an economic stimulus measure, is voluntary for private sector employers and even some who adopted it—apparently a small number, but there has been no full accounting—allowed individual employees to opt out. While the USPS as a semi-corporate entity was allowed to opt out, and did, it was mandatory for other federal agencies and individual employees were given no choice.

Legislation was offered in Congress to allow a choice but it hasn't advanced and even if it were to be enacted, at this point the situation would be little changed. Meanwhile, there has been no move to waive the repayment obligation, which would require a change in law.

The largest federal payroll provider, the Defense Finance and Accounting Service, continues to say this about the repayment obligation: "In 2021, normal OASDI will be withheld from wages you receive in 2021 at a rate of 6.2 percent. Under current IRS guidance, 2020 deferred OASDI taxes will be collected over a 4-month period. The rate of pay collected each pay period during this 4-month period in 2021 will depend on the total amount of taxes deferred in 2020 and will be different for each individual."

It adds this: “If you separate or retire in 2020 before the Social Security tax can be collected in 2021, you are still responsible for the Social Security tax repayment.” Presumably such persons would have to square up the difference through making an additional payment when filing their 2020 tax returns in the early months of 2021 but there has been no specificity from either the payroll providers or the IRS on that point.

Employee organizations and many financial advisors have been urging those affected by the suspension to treat it as a loan—in many cases, an unwanted one—and set the additional income aside to offset the increase in withholdings over the first four months of 2021.

Sourced from FEDWeek.

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COVID-19 and Women:

COVID-19 is taking a toll on Americans’ mental health and women may be taking the brunt of it. According to the Kaiser Family Foundation, 53 percent of women say they are feeling the stress from COVID-19, as compared to 37 percent of men. And to make matters worse, new research indicates a serious work-life unbalance for some women during the pandemic.

Meals. Laundry. Childcare. In most U.S. homes, household work was primarily mom’s domain before the pandemic. But now?

Richard Petts, PhD, a sociologist at Ball State University told Ivanhoe, “So, we had this sort of unique opportunity to really understand, okay, what happens when you're forced to be at home? Do men do more, are couples sharing the work more or is it status quo?”

Petts and his research team surveyed 1,060 U.S. parents living with a partner of the opposite sex. They analyzed changes in the division of labor for household chores and childcare since the pandemic began.

“For a subset of women, about a third of women, things have gotten significantly worse,” Petts explained.

According to the survey, 34 percent of the moms say they are spending more time house cleaning. 43 percent say they are doing more cooking. And don’t forget about kids’ on-line learning ...

“Women are taking on the majority of those tasks as well,” added Petts.

But the news isn't all bad. In a number of families, fathers have increased homework time and 45 percent of dads reported spending more time taking care of young children. Putting smiles on the faces of everyone at home.

Petts says there is the potential for COVID-19 restrictions to reshape the gendered division of labor, although he says it remains to be seen whether dads will continue with housework and childcare once shelter-in-place is lifted and most go back to work out of the house.

Sourced from NBCDFW.

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