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## **FEW Washington Update June 15-30, 2020**

[Post-Traumatic Stress Awareness Month - June 2020](#)

### **The White House**

President Trump on Friday, June 26, signed an executive order to overhaul requirements federal agencies use when evaluating job candidates, seeking to downplay the importance of college degrees.

The order requires agencies to increase the use of skill assessments and interviews with subject matter experts to determine an applicant's qualifications, rather than simply looking at educational achievements. Degree requirements will not go away entirely, and certain positions—such as those in medical, legal and certain technical fields—will still require advanced degrees. The goal of the order, administration officials said on Friday, is to create a broader pool of potential federal employees and a more equitable hiring process.

The executive order will “modernize recruitment and hiring in the federal government to look for specific skills and knowledge, rather than asking for college degrees and years of experience alone,” said Ivanka Trump, adviser to the president. “This will ensure that we’re able to hire based on talent and expand the universe of qualified candidates.”

Michael Rigas, acting director of the Office of Personnel Management (OPM), said his agency has already developed assessments for a number of federal positions, and the order will enable the administration to expand their use. Skills assessments can be conducted online for applicants to demonstrate their knowledge relevant to a position. He added subject matter expert reviews will replace self-certifications in which applicants simply check a box to indicate they have a requisite skill.

Applicants without college degrees are at a “major disadvantage in the federal hiring process,” Rigas said. While some fields require such degrees, he added, their “necessity is far less clear in many other areas.” The framework that created the requirements is decades old, he said, “but federal hiring has been largely unchanged.” Rigas, who also works in the White House as the Office of Management and Budget’s (OMB) acting deputy director for management, suggested that agencies sometimes look at a college degree with no relevance to the position for which they are hiring as an indication of a candidate’s qualifications and that the new system would be “more merit based.”

The White House [previewed](#) the executive order earlier this year in its fiscal 2021 budget proposal.

“The administration intends to eliminate degree requirements for federal jobs when not inherently necessary to perform the duties of a position, and to identify other instances where degrees are used as a poor proxy for specific competencies sought in job candidates,” the budget stated. “Over-reliance on degrees can be a barrier to entry into federal service, and it can also prevent current civil servants who possess relevant skills, training or experience from transitioning into emerging fields within the federal sector.”

A senior administration official said OPM will work with agencies in the coming months to implement the order, but the bulk of the work would fall on individual agencies. With certain exceptions, [existing federal statute](#) prohibits OPM and other agencies from prescribing a minimum educational achievement for federal positions, with certain exceptions for scientific, technical and specific jobs.

Ivanka Trump said the order followed Congress providing paid family leave for federal employees in recent steps to improve conditions for the federal workforce.

“This executive order is really another example of us as the nation’s largest employer, the federal government, leading by example to recruit and retain the best and the brightest,” she said.

“It depends on how agencies actually implement this. You can have a more diverse and frankly better qualified workforce by removing requirements that are fundamentally not associated with actual jobs,” he said. “The implementation is really the critical element.”

*Executive order press release by the White House issued [here](#).  
Sourced from [GovExec](#).*

## **In Congress**

The House passed a bill Friday [June 26] to make Washington, D.C., the 51st U.S. state, a historic move unlikely to gain traction in the Republican-held Senate.

The chamber approved it by a 232-180 vote.

The legislation would give Washington residents, who have long decried the fact that they pay federal taxes but have no voting representation in Congress, one House member and two senators. A smaller area encompassing the White House, U.S. Capitol, and other federal buildings and monuments would remain under U.S. oversight.

Washington's longtime nonvoting House delegate Eleanor Holmes Norton introduced the bill, which would change the name of the district to the State of Washington, Douglass Commonwealth. In advocating for the legislation Friday, she noted that D.C.'s population of about 700,000 is larger than that of Wyoming or Vermont, and that the district pays more federal taxes than 22 states.

"As we approach July 4th, it is long past time to apply the nation's oldest slogan, 'no taxation without representation,' and the principle of consent of the governed to District of Columbia residents," Norton said.

Some senators have opposed D.C. statehood and look unlikely to take up the legislation.

Sourced from [CNBC](#).

## **FEW Washington Update – June 15-30, 2020 Tier I**

### **Paid Leave:**

Back in February of this year, when employees were still reporting to work and the COVID-19 pandemic was just starting to gain national attention, there was great concern that infected employees with insufficient sick leave would report to work because they needed income. The federal government's first response was to provide for "emergency paid sick leave" under the Families First Coronavirus Response Act (FFCRA). Tax credits were provided so that, in essence, the government would be subsidizing these new paid leaves.

The United States Department of Labor (DOL) was charged with enforcing this brand new law. While actual enforcement was delayed at first, lately the DOL has become quite active in prosecuting cases against businesses. Employers should be aware of these recent developments, and take steps to evaluate their own compliance with their new obligations under federal law.

## ***Overview of FFCRA Requirements***

As has been reported previously in prior Littler articles, the FFCRA requires private employers with fewer than 500 employees, and certain public employers, to provide employees with paid sick leave and expanded family medical leave related to COVID-19. Qualifying employees who are unable to work or telework due to one of six enumerated reasons relating to COVID-19 are entitled to two weeks (up to 80 hours) of paid sick leave.

The FFCRA also requires that employers provide an additional 10 weeks of paid expanded family and medical leave at two-thirds of the employee's regular rate of pay when the employee is not able to work because the employee needs to care for a minor child whose school or child care provider is closed due to COVID-19 restrictions.

Finally, covered employers qualify for full reimbursement through tax credits for any sick leave and family medical leave paid to qualifying employees under the FFCRA through December 31, 2020.

## ***Enforcement of the Families First Coronavirus Response Act***

When the FFCRA first went into effect, the statute itself provided for a temporary non-enforcement period for the first 30 days. That non-enforcement period expired on April 20, 2020. Since then, the DOL's Wage and Hour Division has started investigating and enforcing FFCRA violations. The DOL announced numerous enforcement actions on its website stemming from public and private employers failing to pay the required FFCRA leave, denying employees' use of FFCRA leave, or even firing employees for attempting to use FFCRA leave. A few of these recent enforcement actions are summarized below.

- A company in Arizona had to pay \$1,600 to an employee who qualified for paid sick leave when the employee's doctor instructed him to self-quarantine.
- A company in California had to pay \$2,606 to an employee who qualified for paid sick leave when the employee had instructions from a doctor to self-quarantine while waiting for COVID-19 test results of a family member.
- A company in Texas had to pay \$1,200 to an employee who qualified for paid sick leave when the employee was hospitalized for a positive COVID-19 diagnosis.
- A company in Indiana had to pay \$3,017 to an employee who qualified for paid sick leave when the employee was experiencing COVID-19 symptoms and seeking a medical diagnosis.
- A company in Hawaii had to pay \$800 to an employee who qualified for paid sick leave when the employee had to care for a child whose school closed due to COVID-19.

- A company in Arizona had to pay \$1,000 to an employee who qualified for paid sick leave after a healthcare provider ordered him to self-quarantine for COVID-19 related reasons.
- A school district in Arizona had to pay \$1,000 to an employee who qualified for paid sick leave to care for her children whose school closed due to COVID-19.
- A government agency in California had to pay \$3,680 to an employee who qualified for paid sick leave for time the employee spent at home caring for her child whose school closed due to COVID-19.
- A government agency in New Mexico had to pay \$1,411 to an employee who qualified for paid sick leave and was a single mother who had to care for her three children whose school closed due to COVID-19.
- A company in Georgia had to pay \$1,060 to an employee who qualified for paid sick leave due to a healthcare provider's recommendation that the employee self-quarantine while waiting for COVID-19 test results.
- A company in Maryland had to reinstate an employee after the DOL determined that the employer denied emergency paid sick leave and wrongly terminated the employee when the employee had to take care of their child due to a COVID-19 school closure.
- A non-profit company in Florida had to pay \$911 to an employee after the DOL determined that the employer wrongly forced the employee to use their accrued personal sick leave due to self-quarantining, rather than the emergency paid sick leave provided for under the FFCRA. The employer also had to reinstate the employee's personal sick leave.
- A company in Florida had to pay an employee two weeks' worth of emergency paid sick leave after the DOL determined that the company failed to pay the employee for two weeks spent out of work due to a doctor's instruction to self-quarantine.

Sourced from [Lexology](#).

### **Pay Increase:**

- Federal employees are getting an inflation increase when it comes to accepting non-sponsored gifts at widely-attended events and those under the Foreign Gifts and Decorations Act. [The Office of Government Ethics](#) raised the thresholds to \$415 from \$390 over a three-year period. The final rule raises the dollar thresholds for the first time since May 2017.
- [The Office of Special Counsel](#) reached settlements with two federal employees who admit to violating the Hatch Act. A Postal Services sales associate in California admitted to violating the Hatch Act making political statements to post office customers and agreed to a 10-day suspension without pay. Meanwhile a Federal Aviation Administration employee admitted to posting on Facebook and endorsing political candidates while at work. That employee agreed to a 30-day suspension without pay.

- The National Commission on Military, National and Public Service is urging Congress to take swift action on hiring, veterans' preference, and other recruitment challenges in the federal workforce. The commission made 164 recommendations on a wide spectrum of topics. But it made the most recommendations on ways to improve federal hiring. The commission wants government to extend noncompetitive eligibility to students who have successfully completed federal internships. Some senators fear the recommendation would hurt the federal government's merit-based hiring processes. But the commission says short-term fixes were necessary to address possible brain drain. Eighteen percent of the federal workforce is eligible to retire today. Just 6 percent of employees are under the age of 30. ([Federal News Network](#))
- Congress has been largely impressed with the strides the Department of Veterans Affairs (VA) made to boost telehealth during the pandemic. VA telehealth appointments are up 1,000 percent during the health crisis. Bandwidth to support concurrent video telehealth sessions went up nearly five-fold. The department had been conducting around 2,500 video appointments daily before the pandemic. Telehealth visits are up to 25,000 a day now. VA is buying tens of thousands of I-Pads for veterans and providers, as well as webcams and other equipment to support the sudden telehealth expansion. VA also expanded its telehealth help desk after initial capacity issues. ([Federal News Network](#))
- Now that the State Department has re-staffed its passport offices, the Government Publishing Office (GPO) is following suit. GPO plans on restarting the printing and assembly of passports starting July 6. It is part of director Hugh Halpern's plan for re-populating the GPO's plants and offices. The agency will continue a pattern of having two production teams working alternating weeks. Other manufacturing operations, such as books, will also re-start. But employees who can telework will continue to do so Halpern said, for the foreseeable future. He called the pandemic the agency's biggest disruption since the Civil War. ([Federal News Network](#))
- Households that haven't filled out the 2020 Census yet will get [one last notice in the mail](#) before an enumerator knocks on their door later this summer. The Census Bureau says households should expect to receive a postcard in the mail reminding them to fill out the census between July 22 and July 28. Enumerators will start following up with households in mid-August. More than 61 percent of households have responded to the census so far.
- The 8(a) STARS II government-wide acquisition contract is back and open for new business. The General Services Administration is raising the ceiling of the popular IT services contract by \$7 billion dollars. GSA had to severely limit new work under 8(a) STARS II in April after the agency decided the GWAC would hit its \$15 billion dollar contract limit in fiscal 2020. By raising the ceiling to 22 billion dollars, GSA is opening the door for 787 small businesses and agency customers to take full advantage of the contract. Agencies have

issued more than 5,400 task orders and obligated more than \$10 billion dollars between 2011 and 2019. ([Federal News Network](#))

- Almost two decades after the start of the war in Afghanistan, DoD still faces major challenges in contingency contracting there. In a new audit, [the Pentagon's inspector general](#) looked at a sample of 15 Army contracts and found that all of them violated federal regulations or Army Contracting Command procedures designed to fight fraud and minimize improper payments. The IG says that's partly because overseas contracting officials dealt with persistent IT problems. Auditors also blame staffing problems that arose out of what they called an "improvised" hiring and training process for contracting officers in Afghanistan.
- The Army's garrison commander for Fort Bragg in North Carolina has been relieved of his duties. Col. Phillip Sounia was taken off the job late last week by Lt. Gen. Douglas Gabram, the leader of Army Installation Management Command. Sounia was removed from his position due to a loss of trust and confidence in his ability to command. Justin Mitchell, who is the civilian deputy garrison commander at Fort Bragg, will act as the acting replacement.
- The Air Force is looking further into racial issues in its ranks. The Air Force Inspector General will look into [racial disparities within the Air Force and Space Force](#). The review will be conducted in two phases. The first will look into racial disparity in the uniformed military discipline process. The second phase will look at racial disparity in the leader development system. Part of the investigation will involve an anonymous email survey, which will be sent out to all airmen. Recent studies have found Black and Latino airmen are more likely to be investigated for crimes than their White counterparts.

Sourced from [Federal News Network](#) (podcast).

## **FEW Washington Update – June 15-30, 2020 Tier II**

### **LGBTQ+ Rights:**

Earlier this month, the U.S. Supreme Court ruled in a landmark 6-3 decision that the rights of Lesbian, Gay, Bisexual, Transgender and Queer or Questioning (LGBTQ) people are protected from employment discrimination.

The case involved three separate lawsuits that were consolidated into one. Two of the cases arose from the termination of two male gay employees working for separate companies and the third arose following the termination of a transgender female.

It tested whether federal law protections apply to lesbian, gay, bisexual and transgender workers.

All three sued for employment discrimination under Title VII of the Civil Rights Act of 1964, which makes it an unlawful employment practice for an employer, which has 15 or more workers, to:

- fail, refuse to hire or to discharge any individual that discriminates against any individual with respect to his or her compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex, or national origin; or
- to limit, segregate or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee, because of such individual's race, color, religion, sex, or national origin.

The law further defines "because of sex" to include "on the basis of sex" which includes but is not limited to on the basis of "pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes..."

The question before the Supreme Court was whether Congress also intended the term "because of sex" to include protecting individuals based on their sexual orientation and/or gender identity.

The Supreme Court had previously ruled in 1989 that discrimination based on gender stereotyping was protected under Title VII of the Civil Rights Act.

Writing for the majority was Neil Gorsuch, who was President Donald Trump's first nominee for the high court.

Gorsuch wrote: "Today, we must decide whether an employer can fire someone simply for being homosexual or transgender. The answer is clear. An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids."

"Those who adopted the Civil Rights Act might not have anticipated their work would lead to this particular result. Likely, they weren't thinking about many of the Act's consequences that have become apparent over the years, including its prohibition against discrimination on the basis of motherhood or its ban on the sexual harassment of male employees. But the limits of the drafters' imagination supply no reason to ignore the law's demands. When the express terms of a statute give us one answer and extra textual considerations suggest another, it's no contest. Only the written word is the law, and all persons are entitled to its benefit."

Based on this ruling, employers, including private, public and nonprofit, cannot discriminate against individuals based on these protected characteristics if they employ 15 or more workers.

Effective July 1, a new Virginia law also will prohibit discrimination in public and private employment and housing, among other things.

For more than a decade, Congress had made multiple failed attempts to pass legislation that would have guaranteed these rights.

Employers should have already been providing these protections to applicants and employees through their policies and practices.

Employers should articulate expectations that all workers be treated consistent with the law, including protecting members of the LGBTQ community from discrimination and harassment. This expectation should be shared to employees from management through policy, training and practice.

Sourced from [Richmond-Times Dispatch](#).

## **FEW Washington Update – June 15-30, 2020 Tier III**

### **2020 Federal Employee Viewpoint Survey:**

Officials at OPM on Thursday [June 25] announced that the agency will start its annual survey of federal employees' engagement and morale next month, ending a two-month delay due to the novel coronavirus pandemic.

In March, OPM announced that its annual Federal Employee Viewpoint Survey, which normally fields responses beginning in May, would be delayed to allow agencies to focus on mission critical work in response to COVID-19.

In a memo to agency heads Thursday [June 25], acting OPM Director Michael Rigas said his agency is on track to open the survey up to federal employee respondents on July 13. Invitations to fill out the survey will be sent to every federal employee in two waves, each of which will be open for six weeks.

Rigas wrote that there will be some changes to the questions included in the survey this year, although he did not specify the nature of those changes.

“Responding to requests from multiple agencies to ease administrative burden, we streamlined the core set of standard items for 2020,” he wrote. “As in prior years, the survey will include widely used Employee Engagement and Global Satisfaction indices . . . Maintaining half the core items from prior OPM FEVS administrations addresses the needs of stakeholders by facilitating transparency through a comparison of survey results across agencies and across time.”

Continuing a trend from last year, when OPM asked employees about the impact of the partial government shutdown that occurred at the start of 2019 on agency operations, the 2020 survey will include a section of questions devoted to the coronavirus pandemic.

“New this year will be a comprehensive section addressing the COVID-19 pandemic, with questions that allow identification of ways in which employees continued to achieve missions in the face of an unprecedented pandemic,” Rigas wrote. “[With] the addition of the COVID-19 pandemic section, the survey also provides employees an opportunity to participate in data collection with the potential to shape future policies and interagency learning regarding human capital management in the face of an emergency.”

Rigas urged agency leaders to encourage employees to take the survey, and to demonstrate that they use the survey’s results to shape workforce policy.

“As we near the 2020 OPM FEVS, please show your employees how you support the survey,” he wrote. “If you have not done so yet, a good place to begin is by sharing the results of the 2019 survey. Tell employees about steps being taken based on the findings within your agencies and what the outcomes of those efforts have been. In addition to sharing information, providing official time to complete the survey can help increase participation rates.”

Despite the delay in deploying the survey, Rigas wrote that OPM still anticipates releasing the results in October, a date in line with previous years’ survey results.

Sourced from [GovExec](#).

*FEW receives information from the following sources and contacts: Richmond-Times Dispatch, GovExec, CNBC, and FedWeek.*