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FEW Washington Update September 1-15, 2020

~ IN REMEMBRANCE AND IN HONOR ~

*Supreme Court Justice Ruth Bader Ginsburg, the second woman to serve on the Supreme Court and a pioneering advocate for women's rights, passed away on September 18 at her home in Washington, D.C. She was 87 years old.
May she rest in power.*

In Congress

At mid-September Congress has not acted on several priority items, including a key "continuing resolution" (CR) to carry agency spending authority past the September 30 end of the current fiscal year.

That measure likely would continue funding largely at current levels until sometime past the elections, tentatively December 10.

However, no such measure has been produced, pushing a resolution off to just days before the deadline for preventing a partial government shutdown.

Congress also has not yet moved toward final passage of the National Defense Authorization Act (NDAA), which includes various workplace-related provisions including an expansion of the upcoming paid parental leave authority to include some categories of employees currently left out.

The House Speaker meanwhile has said that the chamber will remain in session until an agreement is reached on a further pandemic relief bill; Congress has been stalled on that issue since May. Senate leaders have made no similar commitment. The Senate currently is scheduled to remain in session through October 9 but there is an expectation that it will recess soon after temporary funding is passed.

FEW Washington Update – September 1-15, 2020 Tier I

Pregnant Workers:

The House has scheduled a vote on HR-2694, to expand requirements that employers, including federal agencies, must provide to pregnant workers, under a policy that would be akin to the “reasonable accommodation” standard for disabilities.

According to a House report on the bill, the Americans with Disabilities Act and the Pregnancy Discrimination Act—both of which apply to the federal workforce along with the private sector—“are insufficient to ensure that pregnant workers receive the accommodations they need.”

It said the former “leaves women with less serious pregnancy-related impairments, and who need accommodations, without legal recourse” while the latter requires that an employee seeking an accommodation show that the employer has done the same for a comparable employee, “which is a burdensome and often impossible standard to meet.”

“Pregnant workers may need reasonable accommodations to protect the health of both mother and baby. Reasonable accommodations can include providing seating, water, and light duty. They do not need to be, nor are they typically, complicated or costly,” it says.

Further, as under disability law, an employer would not have to provide an accommodation that would amount to an “undue hardship” on the employer.

Under the bill, an employer could not: require pregnant workers to accept an accommodation other than a reasonable accommodation arrived at through good faith negotiations with the employee; deny employment opportunities to pregnant workers because of the need for a reasonable accommodation; require a pregnant worker to take paid or unpaid leave if another reasonable accommodation can be provided; or take adverse employment actions against a pregnant worker for requesting or using a reasonable accommodation; or “coerce, intimidate, threaten, or interfere with any individual exercising those rights or supporting someone else in exercising them.

The report says that three-fourths of working women will become pregnant while employed at some time in their lives and that four-fifths of those work until their final month of pregnancy, when the need for accommodations may be the highest.

Sourced from [FedWeek](#).

FEW Washington Update – September 1-15, 2020 Tier II

Retirement:

With only one month to go in the counting period toward the January 2021 federal retirement Cost of Living Adjustment (COLA), the figure stands at 1.4 percent, following an increase in August of 0.4 percentage points in the inflation index used to set that adjustment.

The final figure is to be determined October 13 with the release of the September figure. The adjustment is based on the change in the average of the figures in one third calendar quarter to the next.

Barring an unexpected severe downturn in the September number, release of the August figure virtually guarantees that there will be an increase in January, an issue that had been in question when the index fell into negative figures for several months due to the economic downturn resulting from the pandemic. A negative accounting results in benefits being frozen, but not reduced, which last happened in 2016.

Sourced from: [FedWeek](#).

Social Security:

Federal employees affected by the administration-imposed change in their Social Security payroll tax withholding could start seeing the impact in the pay distributions they receive later this week or early next week for the pay period that ended Saturday (September 12).

While payroll providers generally act in concert, there remains some question regarding whether all of them made it effective with that pay period—or whether it will be effective with the one that started Sunday, September 13 and will run through September 26.

Among the major providers, the Defense Finance and Accounting Service (DFAS) has publicly confirmed that it put the change in effect in the biweekly pay period and for which pay distributions are upcoming. DFAS is the largest of the four main providers, handling the payroll for the Department of Defense (DoD) civilian personnel (and military personnel, who also are affected) plus Energy, Environmental Protection Association, Veterans Affairs and Health and Human Services.

Another, the Interior Business Center, meanwhile has said it is “working towards implementing the payroll tax deferral for pay period 19 with an electronic funds transfer (EFT) pay date of September 18, 2020, or September 22, 2020, depending on your agency pay calendar.”

The International Bank of Commerce (IBC) added that unlike executive branch agencies—other than the Postal Service, which as a semi-corporate entity had the discretion whether to carry out the change and has decided not to—judicial branch agencies for which it provides payroll services have the option to opt out. It said it would provide information on those decisions as it becomes available.

Meanwhile, the Office of Management and Budget (OMB) issued a memo Friday, September 11, stating that “to the maximum extent feasible,” agencies “are to implement the deferral for the next pay period”—presumably meaning the period that started Sunday, two days after the memo.

OMB also said agencies are to “continue to inform and educate employees concerning the payroll tax deferral, including its anticipated impact on individuals’ paychecks over the course of the coming months”; many employees say just that sort of information has been lacking, however.

Under the change, employees who have Social Security taxes withheld from their pay—meaning that those under Civil Service Retirement System (CSRS) are excluded—will have that 6.2 percent tax suspended through the end of the calendar year for any pay period in which their gross salary is below \$4,000.

For example, for an employee earning \$85,000 annually, about the average federal salary, that tax comes to about \$200 per pay period. Assuming that the change became effective with the pay period that ended September 12 Saturday and continues through December 31, it would apply for nearly nine full pay periods.

The tax typically is identified on leave and earnings statements as the Social Security tax or the OASDI tax. Contrary to how some media outlets have reported it, the change does not affect Medicare taxes, federal income taxes or other taxes regularly withheld from pay.

Sourced from [FedWeek](#).

FEW Washington Update – September 1-15, 2020 Tier III

Workplace Safety:

A report from the inspector general at General Services Administration (GSA) has questioned whether federally owned and leased buildings are being cleaned up to the standards now required due to the pandemic, while saying that agencies are not always promptly reporting infections of employees to the GSA or to other employees.

A management alert report further disclosed that since the first confirmed incident on March 9, GSA has addressed some 3,400 incidents across 660 government-owned facilities and nearly 1,100 leased facilities.

The report said that GSA's Public Building Service "did not always receive timely notice of COVID-19 incidents from building occupants and did not always provide timely notification of confirmed COVID-19 cases." Under GSA policy, reports of COVID-19 incidents must be reported within the agency and then to the GSA facility manager or the lease administration manager, but the auditors found two instances in which GSA was not notified for a week.

In turn, all occupants of a GSA-controlled facility are to be notified of COVID-19 incidents no later than 24 hours after the incident is first reported to the GSA. However, in reviewing seven incidents at GSA-owned buildings, it found that occupants were not notified until 7 days later in one case and 16 days later in another.

"It is unconscionable that more than two weeks could pass between learning of a positive coronavirus case and sharing that with building occupants," said Rep. Gerald Connolly, D-Va., chair of the House government management subcommittee.

"This alert memorandum demonstrates the risk of this administration's failure to have a coherent and universal plan for reopening the federal government. This patchwork approach has resulted in a failure to clearly and quickly share positive COVID-19 cases, threatening the health and safety of federal workers, contractors, building occupants, and the public," he said.

The report also said that because the GSA "does not have a standard inspection process for COVID-19 cleaning and disinfection services, it does not have assurance that contractors are cleaning and disinfecting space" in accordance with its own policies and those of the CDC. In its response, the GSA said it will reemphasize the reporting requirements and oversight of cleaning.

Sourced from [FedWeek](#).

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