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FEW Washington Update September 15-30, 2020

In Congress

Congress is going down to the wire on a measure (HR-8337) to continue funding authority for federal agencies that would otherwise expire at midnight Wednesday September 30, with the end of the 2020 fiscal year. It still appears that action will occur in time to prevent a partial government shutdown.

The measure—passed by the House and pending a vote in the Senate—for the most part would extend spending authority at current levels through December 11. It would add funds for certain veterans, health care, nutrition and farm relief programs while also authorizing agencies to spend at rates needed to prevent furloughs or layoffs of employees.

The bill is needed because Congress made only partial progress to this point on the 12 regular annual appropriations bills, with the House passing 10 of them but the Senate none. Passage of the “continuing resolution” leaves numerous decisions—including, for example, the 2021 federal employee pay raise—to a post-election session.

Meanwhile, some hopes have revived of Congress enacting another substantial pandemic relief bill in the time just ahead. However, there has been no indication that any provisions of specific interest to federal employees would be in such a bill.

The House had planned to recess until after the elections at the end of this week and the Senate to do the same at the end of next week. House Speaker Nancy Pelosi has said she could keep the House in session to deal with any pandemic bill, and the Senate will stay in session longer in response to the Supreme Court nomination. It's unclear whether it would deal with any other substantive issues in that time.

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Tier I

Paid Leave:

Several changes in federal workplace policies will kick in as of the start of the new fiscal year next Thursday (October 1). Most notable is that employees of most agencies will be entitled to a new paid parental leave benefit.

That benefit will allow employees to substitute paid leave for part or all of the 12 weeks of unpaid leave available under the Family and Medical Leave Act (FMLA). Within 12 months of the birth, adoption or foster placement of a child, effective with such events occurring October 1 or after.

The authority excludes the Postal Service as well as several categories of non-postal federal employees are excluded because of what is called an oversight when the authority was enacted quickly late last year. Those include “Title 38” medical personnel, Federal Aviation Administration (FAA) employees, Transportation Security Administration (TSA) employees other than screeners (who were specifically included in the authority), and several small subcategories.

A House-passed defense budget bill (HR-6395) would extend eligibility to all of those groups except for postal employees but that bill has yet to emerge from a conference with the Senate, which has no similar language in its bill. The Veterans Administration (VA) earlier had said that it would extend the benefit to its Title 38 personnel in any case, although with only a week left, there still has been no public announcement.

Among the key provisions of the authority, as outlined in interim rules OPM issued in August, are that: the entitlement will apply only to categories of employees eligible under the FMLA, which requires one year of total federal service before eligibility and excludes temporary and intermittent employees; although the FMLA provides for leave for both parental and various other purposes, the paid leave will apply only for parental purposes as that law defines them; and while the 12-month FMLA leave period can start before a birth, adoption or foster placement, the paid leave will be available only in the 12-month period afterward.

Any amount of unpaid FMLA leave taken for either parental or other purposes will reduce the amount available as paid parental leave within the pertinent period. However, employees will remain free to substitute other forms of paid leave—such as annual leave or, in some circumstances, sick leave—for unpaid FMLA leave.

Also, effective October 1 will be new per diem rates for federal employees on official travel, with the primary change to be increases in the lodging reimbursement for many of the destinations with their own rates. The standard lodging rate for locations without specific rates will remain \$96, however, and the standard “meals and incidental

expenses” portion will remain at \$55. For locations with specific lodging rates, the M&IE portion will continue to range from \$56 to \$76 per day.

In addition, federal employees newly hired starting October 1 will have 5 percent of salary, rather than 3 percent, invested in the Thrift Savings Plan (TSP) by default, a change designed to have them capture the maximum possible government contribution. As is current policy, they could change that investment rate at any time. The change will not affect current employees except if they have a break in service and return to federal employment under certain conditions.

Sourced from [FedWeek](#).

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Tier II

Social Security:

Federal employees who haven’t already seen their pay impacted by the Trump administration-ordered suspension of Social Security withholding should be seeing one soon, and for some that is coming as a surprise.

While federal payroll providers and employing agencies have put out only limited information on the change, the administration’s policy is that any that agency that didn’t carry it out during the pay period that ended September 12 had to do so by the end of the one ending on Saturday (September 26). Pay distributions for that period will occur later this week or early next week, varying by agency.

The policy suspends the 6.2 percent Social Security payroll tax of those whose wages subject to that tax—also called the OASDI tax—are below \$4,000 in a pay period. That suspension took effect either in the pay period that ended September 12 or in the one ending September 26, with the pay distributions for that period to be made either late this week or next week, varying by agency.

Some employees whose gross salary is above \$4,000 in a pay period and had been expected to be excluded are included because their other withholdings bring their Social Security taxable income below that dollar figure.

Almost all federal employees pay their FEHB premiums on a pre-tax basis; all FEDVIP dental-vision plan premiums are paid on that basis; and flexible spending accounts also consist of pre-tax money. Each of those reduces an individual’s wages for purposes of Social Security withholding.

The NTEU union said that by not making that clear from the outset, “the administration’s explanation of which federal employees would be affected by the payroll tax deferral was incomplete and misleading.” (Investments in the TSP do not reduce wages for purposes of the Social Security withholding, although those made into “traditional”—pre-tax, as opposed to “Roth” post-tax—balances do so for purposes of federal income tax.)

The withholding change applies to the majority of the federal workforce—outside the Postal Service and judicial agencies, which have opted out—many of whom argue that it is only complicating their finances and creating an obligation for them to repay the money through higher Social Security deductions starting in January.

The federal payroll provider agencies and administration officials have consistently said that individual employees may not opt out. However, there was a glimmer of a potential change last week when Treasury Secretary Mnuchin—when asked about the issue at a hearing—said it would be “reasonable” to allow employees to opt out.

Mnuchin said he would discuss the matter with OMB but there has been no sign since then of a policy change.

Sourced from [FedWeek](#).

FEW Washington Update – September 15-30, 2020 Tier III

Congressional Research Service report on the Federal Employees’ Compensation Act:

Federal Employees' Compensation Act (FECA) Coverage of COVID-19 Exposure

A federal employee who contracts Coronavirus Disease 2019 (COVID-19) in the course of his or her federal employment is eligible for FECA benefits. However, as in all other cases, the employee must demonstrate a causal relationship between the disease and his/her employment. Due to the nature of COVID-19 transmission, including the lack of complete understanding about how Sars-CoV-2, the virus that causes COVID-19, is transmitted by asymptomatic individuals and how long the virus can remain viable on a variety of surfaces, there is concern that this could prove difficult for some employees, preventing them from receiving FECA benefits. On March 30, 2020, Office of Workers' Compensation Programs (OWCP) issued guidance on how to process FECA claims related to COVID-19.

Continuation of Pay in COVID-19 Cases

If an employee engaged in high-risk employment files a COVID-19 claim, and the employer supports the claim and that the exposure occurred, OWCP will “accept that the exposure to COVID-19 was proximately caused by the nature of the employment” and authorize continuation of pay for up to 45 days.

Employees not engaged in high-risk employment will be required to submit a factual statement and any evidence regarding their exposure. If the employer supports the claim and that the exposure occurred, continuation of pay will be authorized for up to 45 days.

High-Risk Employment

High-risk employment, for the purposes of processing COVID-19 FECA claims, is defined in the OWCP guidance.

The guidance states that: In the case of COVID-19, federal employees who are required to have in-person and close proximity interactions with the public on a frequent basis—such as members of law enforcement, first responders, and front-line medical and public health personnel—will be considered to be in high-risk employment.

The guidance adds: Conditions such as COVID-19 ... more commonly represent a work hazard in health care facilities, correctional institutions, and drug treatment centers, among others. The employment-related incidence of COVID-19 appears more likely to occur among members of law enforcement, first responders, and front-line medical and public health personnel, and among those whose employment causes them to come into direct and frequent in-person and close proximity contact with the public.

A footnote to the OWCP guidance states that “a real-time list of occupational codes and/or job series, including the geographic locations where the high-risk determination has been flagged by the agency, will be available to OWCP staff to assist OWCP’s determination that the position falls within that category.” This list has not been made available to the public.

Testing for COVID-19

The OWCP guidance provides that if a federal employee encounters difficulty in getting tested for COVID-19, OWCP will authorize testing if the employee is in high-risk employment or has a confirmed employment-related exposure.

Establishing a Causal Relationship in COVID-19 Cases

To receive compensation for disability beyond the continuation of pay period, and medical benefits under FECA, an employee with COVID-19 will have to establish a causal relationship between the disease and his or her employment. The determination of a causal relationship is based on the case’s factual and medical background. The OWCP guidance, citing a March 2020 decision by the Employees’ Compensation Appeals Board (ECAB), states that “in the case of high-risk employment, the factual and medical background would include the physician’s recognition that the employee is engaged in high-risk employment that included exposure to COVID-19 while in federal employment.”

Legislation to Create a Presumption of FECA Eligibility for COVID-19 Cases

H.R. 6379

Section 150006 of H.R. 6379, the Take Responsibility for Workers and Families Act, would create a presumption of FECA eligibility for any of the following groups of federal

employees diagnosed with COVID-19 between January 30, 2020, and January 30, 2022:

- health care workers;
- first responders;
- law enforcement officers (including corrections officers);
- Transportation Security Administration (TSA) officers;
- employees of the U.S. Postal Service (USPS), Department of Veterans Affairs (VA), and Indian Health Service (IHS);
- employees carrying out duties that “require substantial contact with the public”; and
- “any employee whose duties include a recognized risk of exposure to the coronavirus.”

H.R. 6656

H.R. 6656, the Coronavirus Workers’ Compensation for TSA Employees Act, would create a presumption of FECA eligibility for any of the following groups of TSA employees diagnosed with COVID-19 between January 30, 2020, and January 30, 2022:

- transportation security officers;
- federal air marshals;
- canine handlers; and
- any TSA employee “carrying out duties that require substantial contact with the public.”

H.R. 6800

Section 70303 of H.R. 6800, the Heroes Act, as passed by the House of Representatives, would create a presumption of FECA eligibility for federal employees diagnosed with COVID-19 who meet the following conditions:

- were employed in the federal service at any time between January 27, 2020, and January 20, 2022;
- carried out duties requiring contact with patients, the public, or coworkers;
- carried out duties that included a risk of exposure to SARS-CoV-2 or another coronavirus with pandemic potential; and
- were not teleworking on a full-time basis for the entire duration of the period between January 27, 2020, and January 20, 2022.

Under the presumptions of eligibility proposed in these bills, specified employees would not be required to demonstrate a causal link between COVID-19 and their employment to be eligible for all FECA benefits.

Sourced from [FedWeek](#)

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