www.few.org

455 Massachusetts Ave. NW, P.O. Box 306
Washington, DC 20001
Phone: 202/898-0994
Fax: 202/898-1535

This information may be provided to FEW membership via government email

FEW Washington Legislative Update
December 15-31, 2020

In Congress

The House has voted to override President Trump's veto of the annual Department of Defense (DoD) authorization bill, which has several key provisions regarding leave policies for federal employees, with a Senate vote to follow.

Both chambers initially passed the measure with the needed two-thirds majorities. In the veto override vote, fewer than a dozen Republicans changed their votes to side with President Trump, leaving the margin little changed. An override is now similarly expected in the Senate but a complication has arisen there, with some members vowing to hold up the vote until there is a guarantee that the Senate will take up a bill the House passed Monday, December 28, 2020 to provide most Americans with a $2,000 economic stimulus payment.

The bill would allow all federal employees to carry leave into year 2021—which starts January 3—25 percent more annual leave than the normal limit; since that limit for most is 240 hours, that would mean an extra 60 hours. The additional leave carryover would not count toward a lump-sum payment for unused annual leave for employees separating for retirement or other reasons, however.

The intent is to make allowances for the fact that many employees could not use their normal amount of annual leave due to work requirements. Or other disruptions caused by the pandemic, beyond employees eligible for a waiver of "use or lose" limits because their agencies have designated them as having been needed for front-line type work related to the pandemic.

The other main provision would extend, retroactive to births, adoptions or foster placements since October 1, eligibility for up to 12 weeks of paid parental leave to substitute for unpaid leave under the Family and Medical Leave Act. That would make eligible those left out of the authority when it was enacted last year, most notably

Federal Aviation Administration (FAA) employees, Title 38 medical personnel and Transportation Security Administration (TSA) employees other than screeners (who the law specifically included). Postal Service employees also are excluded but the provision would not apply to them because the benefit would be subject to negotiations there.

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Pay Raise:

President Trump late on Thursday, December 31, issued an executive order formalizing a 1 percent across the board pay raise, with no differences by locality, for federal employees in 2021, effective January. 3. The order meanwhile finalizes a raise for military personnel of 3 percent.

The order follows passage of the wrap-up spending bill signed last week that extends agency spending authority for the remainder of the current fiscal year and that contains numerous pandemic relief provisions.

Funding has now been provided through September 30, 2021, but the spending bill was silent on two key issues for federal employees: the pay raise (officially now 1 percent) and Trump's executive order to move potentially tens of thousands or more competitive service employees into a new excepted service Schedule F.

The silence on the pay raise was effectively an endorsement of the 1 percent raise that the President advocated for most of the year. His early-year budget proposal recommended that amount—to be paid across the board, with no differences by locality—and at the same time he issued a letter stating that if no figure were enacted into law by the end of the calendar year he would set that as the default raise. Typically, such a letter is not issued until late August.

Final rules were published in October to create a new GS locality for the Des Moines, Iowa, area, as well as to add Imperial County, California, to the Los Angeles locality, effective in January. However, the 3,100 employees in Des Moines and about 1,860 in Imperial County will remain under the "Rest of U.S." designation with the same 15.95 percent locality increase they had in 2020.

2021 GS Pay Tables

Schedule F

Some House members had sought to have the wrap-up bill include language to block the Schedule F order—by preventing agencies from spending money to carry it out—but the final version of the bill did not contain such language. That order calls for shifting policy-related positions and certain other positions currently in the competitive service into the new excepted service category and removing their appeal and union representation rights, while allowing hiring into those positions without competition.

Agencies continue to compile lists of positions that could be subject to such conversions—the order requires preliminary lists to be sent to Office of Personnel Management (OPM) the day before Inauguration Day—but no changes in status have been announced to date. The Biden administration is expected to act quickly to repeal the order but many complications may arise if positions are converted in the meantime, with the potential for current career employees being summarily removed and replaced with hold-over administration appointees.

Sourced from FEDWeek.

Social Security:

The wrap-up funding bill passed by Congress last week and signed into law Sunday (December 27) will extend through calendar year 2021 the obligation to repay Social Security taxes that have not been withheld from the pay of many federal employees for several months.

The action comes as federal payroll processors have been preparing to begin recouping the amounts that were not withheld under an August presidential memo. That memo suspended, from September through the end of this year, Social Security withholdings for a pay period in which an employee's pay that was subject to that tax was below $4,000. That applied in most agencies although the Postal Service opted out.

The original guidance from the IRS and from the payroll providers stated that the difference had to be repaid by April 30, 2021, or else penalties could apply.

Of the four major providers, the Defense Finance and Accounting Service (DFAS) has released the most information, recently specifying—as had been widely assumed—that the repayment would be made by increasing Social Security withholdings over an equivalent period to start 2021. Just days ago, further guidance from DFAS stated that the increase would begin with the pay period starting January 3 and continue in eight equal installments through the pay period ending April 24.

With a change in the deadline, revised guidance from both the IRS and the payroll providers likely lies ahead on issues including whether the difference will be spread out over the entire year or whether employees will have the option to choose a time period.

The latest information from DFAS also added detail to previous statements regarding what will happen if someone has left federal employment, for retirement or other reasons, before repaying the full amount—considerations that will apply regardless of the repayment deadline, and that actually would apply to more employees if the repayment is made over 12 months rather than four.

For those separating in 2021 before the deferred Social Security tax is collected in full, “you are still responsible for the remainder of your Social Security tax repayment. The unpaid balance will be collected from your final pay. If there are insufficient funds to collect the full amount, you may receive a debt letter with instructions for repayment,” it says.

It adds that for those who have separated, or still will, in 2020, “The government will pay the deferred Social Security taxes to the IRS on your behalf, and you will owe DFAS for this repayment. Collection will occur through the debt management process. A debt letter will be posted in your myPay account in January 2021, as well as sent to your address of record via US Mail. The debt letter will provide instructions for repayment; payments can be made online via Pay.gov,” it says.

While the DFAS policy specifically applies only to payrolls its services—in addition to DoD civilians and military, most notably Veteran’s Administration (VA), Health and Human Services (HHS) and Department of Energy—other providers likely would follow similar procedures.

*Sourced from [FEDWeek](). *

<u>Office of Personnel Management:</u>

A proposal from OPM would increase the role of ratings in Reduction In Force (RIF) retention, leap-frogging over veterans preference and years of service as called for by one of the May 2018 White House executive orders on federal employee rights.

The proposal would keep tenure as the first retention factor, with employees on permanent appointments always being protected ahead of those on temporary or term appointments. However, with the exception of the Defense Department—where performance ratings already are the next-highest factor—the order of the following factors would be changed.

Under current policy, preference is next given to veterans with a compensable service-connected disability of 30 percent or more, then others with veterans status, and then non-veterans. Next is length of actual service, with performance the last factor. The most recent three ratings of record are used to artificially increase years of service, with 20 additional years for an “outstanding” rating, 16 additional years for an “exceeds fully successful” rating; and 12 additional years for a “fully successful” rating.

Under the proposed rules, for non-Defense agencies, preference for permanent employees would first be sorted by the most recent three ratings. They would be given a numeric value (5 for outstanding, 4 for exceed fully successful and so on) and averaged together. After that would come veterans preference and then actual years of service.

The proposal is the latest bid by OPM to put into regulation various provisions of those orders although the outcome is uncertain. The comment period will expire only several days before President Biden's inauguration and he has said he will override all three of those orders.

If OPM acts quickly and finalizes the rules before then, the agency under Biden would have to go through a similar process to cancel them. That already is the case with a set of rules recently finalized under the same order involving disciplinary practices.

Sourced from FEDWeek.

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Veterans Affairs:

COVID-19's impact on veterans is not slowing down but the Department of Veterans Affairs is going ahead with its plan to restart collections for care. The agency's Office of Public and Intergovernmental Affairs announced Wednesday that it would resume overpayment notifications for benefit overpayments that were suspended from April 3 through January 1, 2021.

Secretary Robert Wilkie said veterans and beneficiaries who still are experiencing financial hardships due to the pandemic still will have access to certain enhanced relief options as a result.

VA deferred collection of these overpayments during the COVID-19 pandemic, including suspending all actions on veteran's debts under the jurisdiction of the Treasury Department, and suspending collections or extending repayments for preexisting VA debts.

As such, veterans could submit their paperwork late for purposes of perfecting claims, challenging adverse decisions, submitting "notices of disagreement," submitting "substantive appeals," and if responding to "supplemental statements of the case."

"These include extending repayment plans, waivers, compromises and temporary hardship suspensions," Wilkie said in a statement. "Most importantly, the department will pause collections through October 2021 for veterans who remain in financial hardship and request relief."

Since April 6, the VA put monthly copay patient statements on hold, although veterans could make payments before the statements restart next month. The statements going out in January may include the total amount of any new copay charges for medical care and prescriptions received from April 6 through December 31, and unpaid copay charges for medical care and prescriptions received before April 2020.

The department said it was processing benefits payments as normal and that it would not count any money received as part of the COVID-19 stimulus package as income for VA disability compensation, individual unemployability, VA pension, or parent Dependency and Indemnity Compensation (DIC) beneficiaries.

Veterans and beneficiaries with questions regarding benefit overpayments can submit requests online through the Inquiry Routing and Information System (IRIS), which has staff assigned to individual cases. Beneficiaries can also call 800-827-0648, but VA's Debt Management Center said on its website as of Thursday, December 31, it was struggling with high call volume due to the COVID-19 debt suspension notifications. The center will also close Friday, January 1, for the federal holiday and will reopen Saturday, January 2 from 6 a.m. EDT (7 a.m. CDT) until 2:30 p.m. EDT (3:30 p.m. CDT). The center resumes normal operating hours on Monday, January 4.

As for its response to the virus itself, VA said on Wednesday, December 16, it had begun administering the Pfizer-BioNTech COVID-19 vaccine to frontline health care workers and veterans in long-term care and spinal cord injury centers, in New Orleans and Bedford, Massachusetts. As of Wednesday, the department said it had administered more than 55,000 vaccines nationwide, using both the Pfizer-BioNTech and the Moderna versions.

By Thursday morning, the department tabulated 152,091 cumulative COVID-19 cases among veterans, employees and non-veterans tested or treated at VA facilities – 10,726 active cases and 6,607 known deaths – according to its public data tracker. Employees accounted for 1,055 of the active cases, 13,587 convalescent cases, and 95 VA employees have died from the virus as of Tuesday, add specific date.

It's why employee union representatives said before the December holidays that many VA medical center workers were feeling "burned out" and a sense of despair. Age-old staffing shortages were making it even harder to treat patients and keep health care workers quarantined if they test positive.

During the six weeks between March 15 and May 1, the Veterans Health Administration canceled 7.3 million appointments after it instructed medical facility staff to avoid non-urgent face-to-face contact with patients. And although some were converted to telehealth appointments, VA Inspector General Michael Missal told Federal Drive with Tom Temin back in September that there was no evidence of follow-up for about 2.3 million of the cancelled appointments. Missal called VHA's guidance on March 22 to designate all canceled appointments as being canceled by the patient "whether or not the patient really canceled it" problematic because it was less likely to encourage facilities to follow up.

Missal said some veterans had multiple appointments canceled, making it unclear exactly how many individuals never got rescheduled.

Sourced from [Federal News Network](#).

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COVID-19 Vaccine and Federal Employees:

Much uncertainty remains regarding the status of federal employees for Coronavirus inoculations and the level of coordination between federal agencies and state governments, now three weeks since vaccinations started.

With most of the available doses going to states for them to distribute, “Federal employees need to know the vaccine guidelines for their agency, if they can expect their employing agency to administer their vaccine and what is expected to access it,” Rep. Don Beyer, D-Va., has written to administration officials, saying he has been trying without success to get that information.

“If not, it needs to be communicated to their corresponding state and local public health department if they qualify as frontline, as an essential worker, and that they make plans to get vaccinated through their healthcare provider. Without this notification, states and localities will not know which federal employees need to be covered under their distribution plans rather than under the federal distribution plan,” he wrote.

He asked for information on agencies expecting to administer their own vaccines and their guidelines for priority and what is being done to notify state and local public health departments of employees not eligible for an agency administered vaccine, among other information.

Distribution in general is being made according to Center for Disease Control (CDC) guidance, with front-line health care workers and residents of nursing homes and similar facilities the top priority—the so-called 1a list. Meanwhile, two agencies with the largest number of federal employees in the healthcare field, DoD and VA, have received separate shipments and have begun inoculating those workers.

In some of the earliest accounting available, the VA recently announced that they inoculated 50,000 employees plus 5,000 veterans in the first two weeks. VA’s overall workforce is in the 400,000 range, most of them in the health care branch but how many of them would qualify for first-group treatment has not been publicly stated.

Further, the relationship between the two types of distributions is not well defined, nor are the numbers of federal employees who have been inoculated—or who soon are to be—inoculated under one or the other.

An additional complication is that both DoD and the VA operate the type of residential facilities atop the general priority list, with again little clarity on the source of those doses or how priority for those people is being weighed against the health care workers.

It further is not clear when all of those in the 1a category who want the vaccine will have received it, allowing the next phase, 1b, to begin. The CDC advisory panel that determines priorities meanwhile recently redefined that category to include all those age 75 and older plus “frontline essential workers” in fields other than health care.

That category also encompasses many federal occupations, including first responders such as police and firefighters, corrections officers and the U.S. Postal Service—as well as food and agricultural workers, which presumably would include Agriculture Department inspectors. That category also includes several other occupations represented in the federal workforce, including transit, education and child care.

Sourced from FEDWeek.

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