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FEW Washington Legislative Update
May 15-31, 2021

Congress begins recess May 27, 2021
Senate is out until June 7, 2021
House is out until June 14, 2021

In Congress

The Senate convened and will resume consideration of S.1260, United States Innovation and Competition Act of 2021. The House-passed legislation aims to create a 10-person panel to figure out what happened, including the law enforcement's "preparedness and response," and then report recommendations in order "to prevent future acts of targeted violence and domestic terrorism." The Senate is expected to vote on the commission bill today, (May 27, 2021) though timing is unclear and will depend on what happens with the China-focused U.S. Innovation and Competition Act.

Path forward: Statement by Press Secretary Jen Psaki on Senate Republicans' Infrastructure Proposal. "Though there are no votes in Congress next week, we will work actively with members of the House and Senate next week, so that there is a clear direction on how to advance much needed jobs legislation when Congress resumes legislative business during the week of June 7."

Yesterday (May 26, 2021), more than 200 House Majority members banded together to issue a new warning as part of the contentious debate over infrastructure spending: Include strong union and labor protections, or possibly risk losing some of their support. In their letter, members stressed that Congress must couple any new federal loans, grants or tax benefits to improve the country's infrastructure with a series of policy mandates to help workers. The companies that stand to profit from this potential influx of government aid must make it easy for employees to unionize, pay them prevailing wages, take action to prevent wage theft and train workers through apprenticeship programs for future positions, the lawmakers said.

Of note, President Biden will propose a $6 trillion budget on Friday, May 28, 2021 that would take the United States to its highest sustained levels of federal spending since World War II, while running deficits above $1.3 trillion throughout the next decade.

President Biden's first budget request as president calls for the federal government to spend $6 trillion in the 2022 fiscal year, and for total spending to rise to $8.2 trillion by 2031. The growth is driven by President Biden's two-part agenda to upgrade the nation's infrastructure and substantially expand the social safety net, contained in his American Jobs Plan and American Families Plan, along with other planned increases in discretionary spending.

Upon going into recess Friday May 28, 2021, for the Memorial Day state work period, the Senate will next convene on Monday, June 7, 2021.

The House will be in Memorial Day recess next week, and a committee work week the week of June 7, 2021.

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Equal Pay:

During the former Administration, equal pay advocates focused their attention on legislative and regulatory changes at the state and local levels. These advocates believed change was impossible at the federal level. Still, they successfully convinced states to revise their equal pay statutes and enhance state-level protections against pay inequities. However, with the changing of the White House, pay equity advocates have refocused their attention back on the federal government.

The Biden Administration has announced its support of the Paycheck Fairness Act, which was reintroduced in Congress in January of 2021. Given that the Democrats control the House, the Senate, and the Presidency, the Paycheck Fairness Act has a much greater chance of becoming law in 2021. This year could see the first federal legislative effort on the pay equity front in over a decade.

The Paycheck Fairness Act would significantly increase an employee's ability to commence a claim under the federal Equal Pay Act in several ways.

The Paycheck Fairness Act would require an employer attempting to defend a pay disparity to show that the disparity

1. is job-related and consistent with business necessity,
2. explains the entire difference in compensation and
3. is not itself derived from gender.

Each of these changes would affect an employer's ability to defend against an Equal Pay Act claim. Initially, the employer would need to show that whatever factor created the compensation disparity (e.g., performance, tenure, etc.) was job-related and also that there was no alternative factor that could have been used to determine compensation that would not be correlated with gender. As a result, if an employer compensated employees based upon tenure, and that decision created a gender pay inequity, the employer would need to show that it does not have an alternate mechanism to compensate employees that would not result in inequity. Second, the employer would need to show that any explanation for a pay inequity was sufficient to explain the entire disparity in compensation. As a result, an explanation that merely eliminated a portion of the disparity would not be a valid defense to a claim. Finally, the employer could not rely upon an explanation that is itself correlated with gender, such as compensation history, since that history might itself be a product of gender-based discrimination.

The Paycheck Fairness Act would also amend the EPA to specifically allow employees to disclose information regarding their wages. Employers would no longer be allowed to adopt policies precluding employees from discussing wages or compensation. This aspect of the Paycheck Fairness Act is specifically designed to facilitate employee discussion about wages, so any disparities that exist do come to light and can be addressed by the employee, the EEOC, and the courts.

Finally, the Paycheck Fairness Act would increase penalties against employers who violate the Equal Pay Act and increase the recovery that employees could receive if they succeed on a claim under the Act.

Employers would be well advised to analyze their pay practices to ensure that they have identified and remedied any pay inequities prior to the amendment of the Equal Pay Act. Given the potential statutory changes and increased regulatory focus in this area, employers should expect to see additional claims in 2021 and for the foreseeable future.

Sourced from JDSUPRA.

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Federal Workforce:

The House Oversight and Reform Committee voted along party lines Tuesday (May 24, 2021) to advance legislation that would block efforts by future presidents to unilaterally exempt portions of the federal workforce from civil service protections.

The Preventing a Patronage System Act (H.R. 302) was introduced by Reps. Gerry Connolly, D-Va., and Brian Fitzpatrick, R-Pa., in response to former the President's effort to establish a new Schedule F within the excepted service for federal employees in policy-related positions and strip them of their civil service protections.

Schedule F, which was enacted via executive order just weeks before the 2020 presidential election, was universally panned by federal employee unions, management and executive groups, and good government organizations, who decried the measure as a gutting of over a century of federal employment law and a return to the 19th century spoils system. Ronald Sanders, an appointee to chair the Federal Salary Council, resigned in protest of the decision, which he described as a "smokescreen" to require federal workers' "political loyalty" to the president.

Although some agencies submitted proposals for the reclassification of employees, including the Office of Management and Budget, which proposed moving 88 percent of its workforce to Schedule F, no employees were successfully moved to the new job classification before President Biden rescinded the order on January 22, 2021

Connolly and Fitzpatrick's bill prevents any president from unilaterally creating a new schedule within the excepted service, effectively forcing the executive branch to request that Congress make any additions via legislation.

"We're trying to restore the balance between the branches of government and reasserting the role of Congress in controlling, in this case, the civil service protections system," Connolly said. "[Future] administrations should be required to come to Congress before making such sweeping changes to the workforce. If Congress concurs, then you can go ahead, but Congress would have to create those new excepted schedules in statute at the request of the executive."

The Minority members on the committee argued that Schedule F was merely an attempt to make it easier for supervisors to "discipline poor performers," and railed against "unelected bureaucrats" thwarting the former administration's efforts to implement new policies.

"The former administration did not create Schedule F to reinstitute a patronage system," said Rep. James Comer, R-Ky. "If he wanted to do that, he could have converted Schedule F employees into the same political employees in Schedule C. It merely made it easier to discipline or remove civil service officials in policy roles that are poor performers or actively work to undermine the work of their politically accountable supervisors."

Schedule C is currently reserved for political appointees with "a close and confidential working relationship" with agency heads, and each appointment requires case-by-case permission from the Office of Personnel Management.

Rep. Jody Hice, R-Ga., proposed an amendment that deleted the entire text of Connolly's bill, and replaced it with a bill that would codify Schedule F as federal law.

Sourced from [Government Executive](#).

Federal Pay and Retirement:

A bipartisan group of senators has introduced a counterpart to a bill moving in the House to revise numerous Postal Service operating and benefits policies, adding a boost to prospects for enactment.

Like the House bill (HR-3067), the Senate measure (S-1720) would relieve the USPS of the obligation to prefund future retiree health insurance costs, strengthen transparency of service performance, create a carve-out health insurance program within the FEHB for postal employees and retirees, and require postal retirees to also enroll in Medicare Part B under certain circumstances.

While bills addressing some of the same issues have been offered for many years, in many cases the House and Senate versions differed significantly, in some cases split along partisan lines.

Also recently introduced in Congress were:

> HR-3086 and S-1561, to require equal pay raises for all wage grade employees within a pay locality area as defined by the system applying to the GS system; currently, some wage grade employees within a GS area receive lower raises than others because of the way wage grade localities are defined.
>
> S-1714, to provide health benefits to federal personnel suffering from symptoms consistent with microwave attacks, which were first identified among diplomats in Cuba in 2016 and which sponsors say since have also been experienced by more than 100 federal employees in China and elsewhere.

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<u>Violence Against Women:</u>

The Biden administration announced on Monday, May 24, 2021, it is allocating $200 million from the American Rescue Plan to support services for survivors of domestic violence following a rise in cases during pandemic lockdowns.

"As we all know, the pandemic and its economic impact significantly increased the risks of abuse for victims of domestic violence and made it much harder for them to seek safety and support," White House press secretary Jen Psaki told reporters at a White House briefing.

The money, awarded by the US Department of Health and Human Services, will provide support through the Family Violence Prevention and Services Act program, which is the primary federal funding stream dedicated to supporting emergency shelter and other related assistance for victims of domestic violence and their children.

It will also provide 296 supplemental grant awards to fund domestic violence services in every state and territory, and will provide supplementary funding for tribes, state domestic violence coalitions, national resource centers, specialized services for abused parents, children grantees and national domestic violence hotlines.

The announcement comes as domestic violence incidents have risen in the United States and around the world following lockdowns that were put in place to stop the spread of COVID-19. All types of violence against women and girls, particularly domestic violence, has intensified amid the pandemic, according to the United Nations, which refers to the rise as the "Shadow Pandemic."

In the United States, domestic violence incidents rose by about 8.1 percent during pandemic lockdowns, according to an analysis by the National Commission on COVID-19 and Criminal Justice. The authors of the study theorized that economic issues exacerbated factors associated with domestic violence, including unemployment, financial insecurity and stress from childcare and homeschooling.

Sourced from CNN.

FEW receives information from the following sources and contacts: Federal News Network, Government Executive, CNN, Military Times.