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FEW Washington Legislative Update November 1-15, 2021

“House and Senate are in recess”

In Congress

After President Joe Biden [signed](#) The Infrastructure Investment and Jobs Act, the House and Senate resumed work on a long list to complete before the holiday break.

In a huge win for Speaker Nancy Pelosi (D-California) on the morning of Friday, November 19. The House [passed](#) one of the most consequential pieces of legislation ([TEXT](#)) in half a century, which is the centerpiece of President Joe Biden’s domestic agenda. Approving \$2 trillion in spending over the next decade to battle climate change, expand health care and reweave the nation’s social safety net, over the unanimous opposition of Republicans.

The bill’s passage was 220 to 213 with all Majority members voting yes except one. The bill still has a long road ahead. The Majority leaders must coax it through the 50-50 Senate and navigate a tortuous budget process that is almost certain to reshape the measure and force it back to the House. But even pared back from the \$3.5 trillion plan that President Biden originally sought, the legislation could prove as transformative as any since the Great Society and War on Poverty in the 1960s, especially for young families and older Americans. The Congressional Budget Office published an [official cost estimate](#) on Thursday afternoon that found the package would increase the federal budget deficit by \$160 billion over 10 years.

[Statement](#) by President Joe Biden on Passage of the Build Back Better Act in the U.S. House of Representatives.

Speaker Pelosi [Floor Speech](#) on H.R. 5376, the Build Back Better Act.

The Senate was briefly in session Friday, November 19, and [confirmed](#) seven new U.S. Attorneys for [Colorado](#), North Carolina, Ohio, Pennsylvania and Arizona as well as the

Ambassador to Singapore. An important note: the National Defense Authorization Act ([NDAA](#)) also inched forward during the quiet Friday session when the Senate quickly approved a procedural motion to finally begin debate on the bill.

The Senate's \$768 billion defense policy bill is on hold until after Thanksgiving after efforts to vote on an array of amendments broke down late Thursday evening under objections from several Republicans.

After days of wrangling over what amendments would receive votes or be included in a bipartisan manager's package, Senate Armed Services Chair Jack Reed (D-Rhode Island) sought to secure votes Thursday evening on 19 amendments from Democrats and Republicans. But seven Republicans took turns blocking votes because their amendments weren't included — some with little connection to defense policy at all.

At 3 P.M. on Friday, November 19, two turkeys, Peanut Butter and Jelly, will stand before President Biden during this year's [annual turkey pardoning ceremony](#) in the Rose Garden. President Biden will decide which of the two male turkeys that hail from a farm in Jasper, Indiana, becomes this year's official Thanksgiving turkey. The other turkey's life will also be spared. The two will go on to live at Purdue University's Animal Science Research and Education [Center](#).

The House and Senate are both now in recess with the House [returning](#) for votes at 6:30 P.M. on Tuesday, November 30 and the Senate [returning](#) at 3:00 P.M. on Monday, November 29.

FEW Washington Legislative Update – November 1-15, 2021 Tier I

Paid Family Leave:

Paid Leave in Build Back Better: What You Need to Know

Thanks to the leadership of the Speaker of the House, Chairman Neal, and Chairwoman DeLauro, a four- week paid family and medical leave was added back into the Build Back Better Act after being left out of the initial framework.

Moderates wanted to wait until the Congressional Budget Office (CBO) scored the bill before voting. On Friday, November 19, the CBO released cost information about the paid leave portion of the bill, which confirms that it would cost approximately \$200 billion over 10 years.

The next steps:

The bill will go to the Senate after Thanksgiving. It is unclear exactly when the Senate will take it up, although the earliest would likely be the week of December 6.

Here's what you need to know.

Who would be covered?

Under the bill, all workers—whether they are employees or independent contractors, whether they work in the public or private sectors, regardless of the size of their employer—would be covered. Workers would be eligible for benefits when they have a qualifying need if they have earned income (in any amount), including income from unemployment benefits, over a designated several-month period prior to the start of the benefit period and have earned at least \$2,000 in income (including unemployment benefits) during a designated two-year period.

What can workers use their leave benefits for?

Starting January 1, 2024, workers can receive benefits when they need leave for their own serious health need; to care for a seriously ill loved one (including a parent, child, spouse, registered domestic partner, sibling, grandparent, grandchild, or other person whose relationship to the worker is like family); or to bond with a new child (for parents of any gender, including foster and adoptive parents).

How long can workers receive benefits for?

Workers can take leave for any combination of covered purposes for up to 4 weeks. Benefits are payable starting with the second calendar week in which a worker uses covered leave (the first calendar week is an unpaid waiting period).

How much money will workers receive while they are on leave?

Workers will receive a percentage of their income on a sliding scale (amounts approximate and adjusted annually):

- 90.138 percent of income below \$290 per week
- 73.171 percent of income between \$290 and \$659 per week
- 53.023 percent of income between \$659 and \$1192 per week

The maximum benefit will be about \$814 per week, adjusted annually. Exact wage replacement rates may be lower as a result of budget sequester.

How will workers receive their benefits?

Depending on where they work, workers will apply for and receive their benefits either:

Through the Social Security Administration, which will administer the program;

- Through an existing state paid leave program (reimbursed by federal funds); or
- Through an approved employer program (reimbursed by federal funds).
- What worker protections would the bill provide?

The bill would not provide new, generally applicable worker protections. However, it would guarantee the right to get their job back, among other important protections, to workers whose benefits are provided through a reimbursed employer program. In addition, many workers already have the right to job-protected leave under existing federal and state laws, like the Family and Medical Leave Act.

What about existing state paid leave programs?

States with existing paid leave programs will be able to continue those programs and, if they meet certain criteria, receive federal reimbursement. (Source [A Better Balance](#))

FEW Washington Legislative Update – – November 1-15, 2021 Tier II

Biden’s Management Agenda Puts the Federal Workforce Front and Center

President Biden’s management agenda, published on [Thursday](#), November 18, appears to elevate the role and importance of a happy federal workforce in federal agencies’ ability to meet their missions in a way that runs counter to his predecessors.

The management agenda outlines four strategies for empowering federal employees: attract and hire a new generation of diverse and qualified federal workers; ensure federal jobs are “good jobs” that engage and support workers, including through union representation; use lessons from the COVID-19 pandemic to integrate telework and other flexibilities into the federal workplace; and reform the federal personnel system to both meet agency missions and serve as a model for private sector employment.

The document specifically cites the need to attract young people to serve in the federal government, and it calls on agencies to foster positive collaborative relationships between managers and federal employee unions.

“Agencies should make it as easy as possible for their employees to communicate with union representatives and, if the employees choose, to join or organize a union,” the White House wrote. “The administration’s philosophy is that federal employee organizing is a good and productive workplace practice that it should facilitate.”

The agenda marks a 180 turn from the former administration, which [argued](#) that federal compensation needed to be overhauled to mirror the private sector, particularly in the way of reducing non-salary benefits, and saw federal unions as a pest to be eradicated. But Don Kettl, professor emeritus and the former dean of the University of Maryland School of Public Policy, said Biden's management agenda is nearly unprecedented in its focus on improving federal employees' experience at work, perhaps even dating back to former President Clinton's National Partnership for Reinventing Government.

"These recommendations are fewer and more focused, so that means that anything that does get included gets elevated in terms of importance, because there are few other priorities to compete with," Kettl said. "Past PMAs sometimes would say, 'Yes, pay attention to the workforce,' but there was also a big focus on data, and there would be a long list of issues on the list. So there sometimes seemed to be a sense that if everything is on the list, then effectively nothing's on the list. This time around, there's no mistaking the fact that the administration is focusing very clearly on the federal workforce."

Kettl said that the focus on improving employee engagement marks a subtle, but significant, shift in thinking from previous administrations: instead of seeking to grant agencies and managers more flexibility to shape the workforce to meet the mission, the Biden administration appears to argue in favor of empowering employees to do their best work.

"The question is, 'What does it take to create the workforce we need?' and the previous strategy assumed that government was riddled with poor performers . . . and the key to performance is more flexibility for supervisors to rid themselves of problem employees," Kettl said. "Compare that to the Biden effort, which takes a more benign view of workers, advancing the idea that the key to try to make them work more effectively is to engage them better. That's really the strongest connection to the 'reinventing government' days, when the idea was that the real problem was that you've got good people in bad systems."

Another subtle difference in approach that could lead to meaningful changes comes from the fact that every member of the President's Management Council signed on as an author of the report, which Kettl said could create more ownership and accountability for implementing its priorities.

"It used to be seen as this document that was narrowly made and then narrowly held," he said. "It's not something that was foisted onto them; it's a document that they own and share and will try to help implement. I think this is really a transition away from the Contract With America—on the one hand, it's a contract with federal employees executed by supervisors, and it provides a direct connection between the president and those responsible for managing his agenda." (Source [Government Executive](#))

FEW Washington Legislative Update – – November 1-15, 2021 Tier III

First Federal Legislation on Workplace Harassment and Discrimination Reintroduced in Congress: “No More Silence, No More Complacency”

“It doesn’t matter who you are, or where you work—everyone deserves to be treated fairly, respectfully and with dignity.”

—*Sen. Patty Murray (D-Wash.), co-sponsor of the BE HEARD in the Workplace Act*

On Wednesday, the first comprehensive federal legislation on workplace harassment and discrimination was reintroduced in Congress. The Bringing an End to Harassment by Enhancing Accountability and Rejecting Discrimination—or BE HEARD in the Workplace—Act aims to create a safe and harassment-free workplace, expand protections, and help facilitate justice for workers nationwide. The bill is sponsored in the Senate by Sens. Patty Murray (D-Wash.) and Marie Hirono (D-Hawaii), and in the House by Reps. Katherine Clark (D-Mass.), Ayanna Pressley (D-Mass.), Sylvia Garcia (D-Texas), Elissa Slotkin (D-Mich.) and Marilyn Strickland (D-Wash.).

“It doesn’t matter who you are, or where you work—everyone deserves to be treated fairly, respectfully and with dignity,” said Murray.

The BE HEARD in the Workplace Act would:

- extend the scope of current laws, including civil rights protections and anti-harassment laws, to include all workers, no matter the workplace’s size, as well as extend these laws to apply to interns, fellows, volunteers, trainees and independent contractors;
- widen the definition of “sex discrimination” at work to include harassment and any form of discrimination based upon sexual orientation or gender identity;
- require nondiscrimination training;
- extend the statute of limitations for complaints from 180 days to four years; and
- mandate that the Census Bureau do further research on harassment in the workplace.

“Even with the laws we have on the books and the **#MeToo** movement shedding light on this problem, it’s still way too easy for employers to get away with committing these offenses,” said Hirono.

To promote transparency and accountability, the BE HEARD in the Workplace Act would also stop pre-employment non-disclosure agreements and mandatory arbitration,

which requires employees and customers to file complaints and resolve conflicts within the company, instead of in a court. Mandatory arbitration is used in 54 percent of the cases involving non-union employers in the private sector, and the system is disadvantageous to workers, who win only 1.6 percent of these cases on average. Rates of mandatory arbitration have increased since the onset of the pandemic.

Sexual harassment has also been exacerbated by the pandemic, especially for women in the food service industry and other public-facing professions like hospitality and care work. (See: Comments like, “Take off your mask so I know how much to tip you.”) In fact, 71 percent of women restaurant workers report being sexually harassed at least once during their time in the restaurant industry, often by both customers and supervisors—according to an April report from One Fair Wage.

These workers—disproportionately women—are forced to withstand harassment because many rely heavily on tips, which make up their base income. Most restaurant servers and bartenders are not guaranteed the national minimum wage in four out of five U.S. states. Not surprisingly, tipped workers who receive a subminimum wage report experiencing sexual harassment at a rate significantly higher than their non-tipped counterparts, by a 75 to 52 percent margin.

Restaurant workers have also faced an undue burden in enforcing COVID-19 safety protocols: 58 percent of reported feeling hesitant to enforce safety protocols because they were concerned it would affect their tips. These fears were not unfounded either: 67 percent of workers reported receiving a lower tip after enforcing safety measures.

“Women know all too well that workplace harassment is still commonplace in every industry and every type of job,” said Emily Martin, vice president for education and workplace justice at the National Women’s Law Center. “The pandemic and economic uncertainty exacerbate vulnerability to abuse, especially among low-paid women of color who often must remain silent and endure the harassment to hold on to their jobs.”

The BE HEARD Act would eliminate the tipped minimum wage. Studies have shown that restaurant workers in states that have already eliminated the subminimum wage reported half the amount of harassment as workers who are still paid subminimum wage.

“Today, we’re saying enough is enough: No more silence, no more complacency. Whether you’re an assistant, an actress, a waitress, or an executive, workplace harassment is unacceptable, and victims must have the ability to seek justice,” said Clark, assistant speaker of the House and the second highest-ranking woman in House leadership. “This is about justice and respect for every worker, and nothing less should be tolerated under the law.”

A whopping 83 percent of voters agree the president and Congress should focus on ending sexual harassment at work, according to an NWLC poll from last year. With important reforms on transparency, civil protections and wages, the reintroduction of the

BE HEARD Act is a huge step towards ensuring that all workers nationwide have a safe work environment free of discrimination and harassment. (Source [MS Magazine](#))

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