



FEW Washington Legislative Update May 1-15, 2023

In Congress:

On Thursday, May 11, 2023, [debt-ceiling talks](#) between congressional leaders and President Joe Biden were postponed in favor of ongoing staff-level meetings. White House officials are privately aiming for a two-year deal that would lift the debt limit and impose new limits on discretionary spending. However, some of McCarthy's deputies stated that they're aiming for a ten-year deal.

On Sunday, May 14, 2023, President Biden published [an op-ed announcing new actions](#) the Biden-Harris Administration is taking to implement the Bipartisan Safer Communities Act (BSCA) and maximize the benefits of the law, reducing gun violence and saving lives. The op-ed also honors the lives of those killed in Buffalo, New York, one year ago and in Uvalde, Texas, less than two weeks later.

Diversity, Equity, and Inclusion:

Pregnant Employees at Customs and Border Protection Regularly Discriminated Against, Class Action Lawsuit Alleges

The Homeland Security Department has allegedly discriminated against certain pregnant women for years by forcing them to forfeit some of their duties, according to a lawsuit filed by a group of employees who were recently certified to bring their case as a class action.

The employees all worked at Customs and Border Protection's Office of Field Operations at the time of the alleged discrimination. They brought their case before a

field office of the Equal Employment Opportunity Commission, which found in a recent ruling that any pregnant employee required to enter “temporary light duty,” or TLD, since July 2016 would be eligible to join the class.

According to agency policy and protections afforded by the 1978 Pregnancy Discrimination Act, pregnant employees should only enter light duty status if they request it. Instead, the complainants said, their supervisors required them to surrender some duties as soon as their pregnancies were disclosed. They said temporary light duty status offers fewer chances for overtime and other differential pay, lowers the chances of promotions, allows for fewer training opportunities, makes preferred schedules more difficult to earn and requires the surrendering of their right to carry a firearm. In some cases, they added, employees then have to requalify to carry their gun.

Pregnant employees were treated differently than others who went onto the temporary status, they said, as they were never provided an opportunity to prove they could still carry out their normal duties.

“As soon as I let my supervisor know I was pregnant, I was immediately sent home and then put on light duty,” said Roberta Gabaldon, a CBP employee and a class agent who helped bring the case. “There was no conversation about my ability, it was just assumed. It seemed that the agency believed that my pregnancy would impede my competency.”

CBP countered that the complainants lacked “commonality” that is required for a class-action case. If mandatory TLD occurred, it went against agency policy and was required only because supervisors were acting without proper authority, the agency argued. There is no “overriding agency policy or practice” of discrimination, CBP said, adding that the complaints stemmed only from a handful of offices. Additionally, the agency contended the employees bringing the case did not meet the “numerosity” threshold because only 23 individuals delivered sworn testimony that they were forced onto the light duty status.

CBP conceded that if employees were forced to surrender duties solely because they were pregnant, it would violate anti-discrimination laws. The complainants said CBP’s policy does not specifically preclude involuntary TLD for pregnant workers and the agency failed to properly train its supervisors on its implementation.

Kevin Rung, an EEOC administrative judge, noted a review of CBP data found more than 500 pregnant women were placed on TLD since July 2016. The complainants were not yet responsible for proving all of them were discriminated against and the roughly

two-dozen sworn testimonies—which came from 11 of CBP’s 20 field offices—were sufficient to certify the class.

“The class agents have submitted sufficient probative evidence that the agency subjected pregnant employees to a policy that distinguished pregnancy from other short-term impairments and involuntarily placed them on TLD because they were pregnant without regard to whether they can continue to perform the essential duties of their positions of record,” Rung said. He added a class case was “the most efficient and equitable method of adjudicating claims of this size.”

CBP, which did not respond to a request for comment, must in the next 30 days “use all reasonable means” to contact all potential class members to inform them of the class certification, the EEOC judge ordered. That should include emailing, hand delivery of a notice or mailing a notice to their last known address.

“Our clients endured what is all too common in the workplace: faulty assumptions that a pregnant employee can’t carry out their job duties,” said Cori Cohen, a partner at Gilbert Employment Law who is representing the class. “Through this lawsuit, we seek to hold the agency accountable for its failures to provide these women with the opportunities and protections required by law.”

She added the class certification “brings us one step closer to justice.”

Gabaldon said she hoped the case would cause CBP to change its policy.

“I am grateful that our voices are being heard, and hopeful that this suit will help bring an end to pregnancy discrimination at CBP,” she said.

Sourced From: [\(Government Executive\)](#)

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Tier I

Office of Personnel Management Addresses Gender Pay Gap, Proposes Ban on Agencies' Use of Salary History for New Hires

The Office of Personnel Management (OPM), looking to fully close the gender pay gap in the federal workforce, is taking a new approach to try to level the playing field for new federal hires.

Proposed regulations OPM published Wednesday, May 10, would bar agencies from using a federal job candidate's previous salary history when setting pay as part of an employment offer.

OPM's proposal aims to address the pay disparity between men, women, and racial minorities, in the federal workforce. In 2022, women federal employees' pay trailed behind that of their male counterparts by an average of 5.6 percent. In other words, women made 94.4 cents for every dollar men made in the federal workforce.

"Relying on a candidate's previous salary history can exacerbate preexisting inequality and disproportionately impact women and workers of color," OPM Director Kiran Ahuja said in a press statement Wednesday, May 10.

The numbers are more striking for women of color in the federal workforce. OPM's 2022 data showed, for example, a pay gap of 15.2 percent between Black women and white men, and a 27.2 percent gap between American Indian and Alaskan Native women and white men.

The 5.6 percent average pay gap is a slight improvement from the 5.9 percent gap in 2021. And it's significantly smaller than it was 30 years ago — 24.5 percent. The current gender pay gap in the federal sector is also smaller than the 16 percent gap in the private sector.

Still, OPM's proposed regulations are a step toward the agency's goal of completely closing the pay gap in the federal government, an objective included in OPM's strategic plan for fiscal 2022 through 2026. OPM's initial plans to propose regulations regarding the hiring and pay-setting processes were included in [a report last June](#).

OPM's current regulations do not require federal job applicants to share their salary history for an agency to make a hiring or pay-setting decision. But current regulations do

let agencies request an applicant's salary history, and then use that information to help set the applicant's starting pay rate.

Under OPM's new proposal, agencies would not be allowed to consider an applicant's salary history at all when setting pay for newly appointed federal employees, which extends to employees who have previously served in the federal government. Agencies would be able to make an exception and consider salary history when a candidate has a competing job offer but would still have to consider at least one other factor when setting pay. The regulations would not change the pay-setting rules for promotions of employees already in government.

OPM's regulations, once finalized, would apply to pay-setting procedures for new federal employees in the General Schedule, Prevailing Rate, Appeals Judge and Administrative Law Judge pay systems. The regulations do not apply to employees in the Senior Executive Service, Senior-Level, or Scientific or Professional pay systems.

For the federal workforce, the gender wage gap exists, in part, because of the demographics of federal employees on the General Schedule. Women — especially women of color — occupy more positions lower on the GS pay scale, while men are more highly represented in higher-paying positions in the Senior Executive Service, OPM said in the proposed regulations.

OPM's proposal would approach the disparity by trying to remove potential biases stemming from federal job candidates' previous pay rates, which can often mean higher salaries for men than for women.

"Research shows that implementing salary history bans can narrow the gender wage gap. Research also shows salary history bans increase wages and reduce pay disparities for workers of color compared to white workers," OPM said in a press release Wednesday, May 10.

The Department of Justice Gender Equality Network (DOJ GEN), an employee advocacy group historically vocal on the topic, urged OPM last November to include in the regulations a full ban of agencies' consideration of salary history and go beyond only banning solicitation of salary history during the federal hiring process.

"Using salary history or a competing job offer to set pay means the federal government defers to what an unrelated company thought the candidate should earn, instead of the federal agency itself determining the value of the new employee," DOJ GEN board member Liza Zamd told Federal News Network.

Zamd said she was “thrilled” to see this recognition from OPM in the new proposed regulations.

“The current practice of using salary history to set pay means that people who had the privilege of a higher-paying job keep that privilege when entering the federal government, while those who initially took lower-paying jobs — often because they chose public service work at non-profits or state and local governments — are penalized. As OPM notes, women and people of color are often the ones who are negatively impacted by these policies,” Zamd said.

But looking at the use of salary history is just one part of much larger pay issues in the federal workforce. Ronald Sanders, former chairman of the Federal Salary Council from 2017 to 2020, said the proposed regulations are a positive step, as they would begin to remove stricter levels of seniority in the civil service, but the ultimate impact may be minimal. The rigidity of the General Schedule creates persistent pay inequity in the federal workforce, he said, beyond candidates’ first entry into the civil service.

“You can literally spend a couple of decades in a particular GS grade and progress through that, based strictly on years of service,” Sanders told Federal News Network. “If you happen to enter the federal workforce at an earlier time, when, frankly, white males dominated the labor market, you could progress without really much getting in your way.”

For current employees changing positions or getting promoted, agencies would still have to default to more stringent classification standards. Reforming the way agencies assess current federal employees up for promotion would make a much larger impact, Sanders said.

The responsibility of carrying out OPM’s proposed regulations would also fall largely to hiring managers, Sanders said. They would have to change their assessments of candidates to include other methods of setting pay.

“It’s going to mean that much more pressure on federal agencies,” Sanders said. “If you can’t use salary history, you have to use something else. That means you have to use assessments or performance on the job. It’s going to take trained managers to evaluate a candidate.”

OPM’s proposed regulations align with the executive order on diversity, equity, inclusion and accessibility that President Joe Biden signed in 2021. Specifically, the executive

order called on OPM to review governmentwide regulations related to pay and address any inequities, in an effort to advance equal pay.

The proposed regulations prohibiting the use of salary history in federal pay-setting will be published to the Federal Register and will remain open to public comments for the next 30 days.

Sourced From: [\(Federal News Network\)](#)

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Tier II

Feds Could Be Fired at Any Time for Any Reason, Under a Bill That Was Just Reintroduced

A group of 14 conservative lawmakers in both chambers of Congress reintroduced legislation that would make the federal government an at-will employer and abolish the Merit Systems Protection Board, effectively eviscerating federal workers' civil service protections and chilling whistleblowing.

Rep. Chip Roy, R-Texas, and Sen. Rick Scott, R-Fla., are the lead sponsors of the Public Service Reform Act (H.R. 3115), which would make career federal workers at-will employees and get rid of most of the avenues currently available to appeal adverse personnel decisions. It also would abolish the MSPB and send most appeals directly to federal appellate courts, although it preserves a 14-day window for whistleblowers to allege retaliation before the Office of Special Counsel.

“It is far past time to reinstate accountability to the people for the federal bureaucracy by requiring that like any private sector employee, federal workers can be removed from their positions,” Roy said in a statement. “Notwithstanding the majority of federal workers who faithfully serve, especially our law enforcement personnel, we should not allow a wall of red tape to shield those engaged in noncompliance with the law and brazen political partisanship. Federal employees should keep their jobs based on merit, just like the people they serve.”

The bill also allows for federal workers to appeal adverse personnel actions they believe were discriminatory to the Equal Employment Opportunity Commission (EEOC), although the legislation requires EEOC to scrap its policies relating to the federal workforce and apply private sector rules to the proceedings.

And it creates a disincentive to federal workers filing appeals of their firings through a provision that says that if a court finds a complaint to be “frivolous” or otherwise “brought in bad faith,” the employee’s defined benefit annuity is automatically reduced by 25 percent.

“It’s clear that the bureaucracy of the federal government is both a waste of taxpayer dollars and inefficient,” Scott said in a statement. “Red tape and bloated federal agencies constantly slow down progress and hamper American innovation. It’s time to change Washington so it actually works for the American people. The Public Service Reform Act will boost accountability and responsiveness across the federal government by making all executive branch employees at-will.”

Roy previously introduced his bill last July, but with Democrats in control of the House, it languished. With a divided Congress, its chance of passage now remains low. But the bill has gained support, with the number of initial cosponsors growing from five to 14.

Between this legislation and other initiatives gaining steam within the Republican party, including a proposed revival of Schedule F, which has already been endorsed by the Heritage Foundation, former President Trump, and other likely GOP presidential candidates, it is clear that efforts to upend the federal civil service have become a central plank of the party’s platform. These plans, along with early signs of a push to declare federal employee unions unconstitutional, suggest “truly epic storm clouds” are on the horizon, according to Don Kettl, professor emeritus at the University of Maryland and former dean of its School of Public Policy.

“It’s inconceivable that a major Republican candidate would stake out a position any more favorable to federal employees,” Kettl wrote. “[Conservatives] are offering two tracks for remedies: executive action, especially through a revival of Schedule F; and judicial cases, especially through challenges to the role of public employee unions and, even more fundamentally, to the role of the merit system itself.”

Sourced From: ([Government Executive](#))

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Tier III

President Biden’s Proclamation on National Women’s Health Week, 2023

During National Women's Health Week, our Nation recommits to improving the health and well-being of women and girls across America and encouraging them to make their health a priority.

The White House officially observed its first National Women's Health Week in 2010, the same year we passed the landmark Affordable Care Act. This law ended the shameful practices of denying women coverage for pre-existing conditions and charging them more for health care simply because they are women. It extended crucial preventive care, like cancer screenings, to millions more Americans and expanded access to basic health services, like maternity care.

As President, I have worked hard to protect the expanded health care coverage provided to millions by the Affordable Care Act and to strengthen Medicaid for those who need it. At the same time, I have acted to improve the well-being of women and their families, including slashing prescription drug prices and saving American families hundreds of dollars a year on health insurance premiums. I am proud that our Nation has seen historic health insurance coverage gains since I took office, and I am working to ensure that health care is a right in our Nation, not a privilege.

But so many women are still denied this right, especially when it comes to making deeply personal decisions about their own bodies and health. Last year, the Supreme Court overturned *Roe v. Wade*, with grave repercussions for millions of women across the country. Since then, women having miscarriages have been turned away from emergency rooms by health care professionals afraid of the legal consequences of providing care. Women have been told they need to wait until they are sicker before they can be seen by a doctor. Others have been denied prescriptions they need, and still others are forced to travel hundreds of miles away from their homes and families, across State lines, to access life-saving care.

In response to this crisis, I have issued two Executive Orders to protect a woman's right to access comprehensive reproductive health care services, including abortion and contraception. My Administration is working to ensure that patients receive care during medical emergencies; safeguard patients' privacy and their sensitive health information; and promote the safety and security of patients as well as providers, who are delivering the evidence-based, lawful care and treatment that they have been trained to provide. My Administration will continue to defend access to medication abortion, and I will also continue to call on the Congress to restore the protections of *Roe v. Wade* in Federal law, which would secure the right to choose once and for all.

My Administration is also leading efforts to tackle the maternal health crisis, which has resulted in American women — particularly Black and Native American women — dying

at a higher rate from pregnancy-related causes than in any other developed nation. As part of my Blueprint for Addressing the Maternal Health Crisis, we have extended Medicaid postpartum coverage across America and taken steps to grow and diversify the maternal health workforce, and we are working to improve access to care in rural communities and address systemic inequities that put many women at greater risk of pregnancy-related complications.

Vice President Kamala Harris has been a leader on the issue of maternal mortality for years, and she continues to elevate the problem nationally, convening State legislators, medical professionals, and private industry leaders to work together to develop solutions so all women can access the care they need before, during, and after childbirth.

To address the mental health challenges that new and expecting mothers may face, including postpartum depression, anxiety, or substance use disorder, my Administration launched the National Maternal Mental Health Hotline (1-833-TLC-MAMA) and the Maternal Mental Health Task Force, charged with improving maternal mental health in this country. We are making other investments in women's mental health as well, such as expanding Certified Community Behavioral Health Clinics, which deliver 24/7 mental health care to millions of Americans, regardless of their ability to pay. And my 2024 Budget proposes spending tens of billions over the next 10 years to transform our behavioral health system.

Standing up for women's health also means preventing gender-based violence and helping survivors access safety, justice, and healing. Last year, I was proud to reauthorize and strengthen the landmark Violence Against Women Act, which I first introduced in the United States Senate more than 30 years ago. We have increased funding for shelters and rape crisis centers, expanded access to housing and legal assistance for survivors of abusive relationships, and enhanced training for law enforcement agencies and courts. We have also expanded support for survivors — including addressing the needs of LGBTQI+ survivors and other underserved populations — and have broadened protections to cover online abuse, such as the non-consensual distribution of intimate images.

My Administration is fighting a wave of extreme State policies that target transgender women and girls to prevent or limit access to evidence-based, gender-affirming health care just because of who they are. I have challenged my Administration to address discrimination wherever we find it and to ensure equal access to health care for all Americans.

The First Lady and I are committed to ending cancer as we know it through the reignited Cancer Moonshot, including for the nearly one million American women who will be diagnosed with cancer this year. My Administration increased our investment in the Centers for Disease Control and Prevention's National Breast and Cervical Cancer Early Detection Program, which provides breast and cervical cancer screening and diagnostic services to those with low incomes who are uninsured or otherwise qualify for the program. We are bringing together community health centers and leading cancer centers to facilitate access to life-saving cancer screenings and close the screening gap. We have also created the Advanced Research Projects Agency for Health (ARPA-H) to deliver new, innovative, comprehensive ways to prevent, detect, and treat cancer and other diseases.

In addition, my Administration will continue its work to prevent health conditions that affect women, including heart disease and diabetes. Heart disease is the number one killer of women in this country. My Administration has a national strategy that seeks to improve access to affordable, healthy food; better integrate nutrition into the health care system; support physical activity for all; and enhance research into food and nutrition security. At the same time, experts agree it is important that women get regular checkups, preventive screenings, vaccinations, and mental health care.

This week, we make our message clear to women and girls across America: Your health impacts the future of our Nation. Achieving everything America aspires to be depends on the health, safety, and support we give to all women, who are leaders in every industry, in every community, and in every family.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 14 through May 20, 2023, as National Women's Health Week. During this week, I encourage all Americans to join us in a collective effort to improve and support the health of women and girls and promote health equity for all. I encourage all women and girls to prioritize their health and catch up on any missed screenings, routine care, and vaccines.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of May, in the year of our Lord two thousand twenty-three, and of the Independence of the United States of America the two hundred and forty-seventh.

Sourced From: [\(The White House\)](#)

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