www.few.org

1629 K Street NW, Suite 300
Washington, DC 20006
Phone: 202/898-0994
Fax: 202/898-1535

FEW Washington Legislative Update
August 1-15, 2023

In Congress:

On Monday, August 7, 2023, the President signed into law H.R. 4004, the "United States-Taiwan Initiative on 21st-Century Trade First Agreement Implementation Act," which approves the June 1, 2023, trade agreement between the United States and Taiwan, under the auspices of the American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office in the United States (TECRO), and establishes other requirements with respect to future agreements.

On Thursday, August 10, 2023, The White House asked Congress for nearly $800 million in additional funding to fight drug addiction and overdoses, which killed more than 100,000 people in the U.S. last year, according to provisional data from the Centers for Disease Control and Prevention. The request comes during a "critical inflection point," Dr. Rahul Gupta, the director of the White House Office of National Drug Control Policy, said in an interview.

On Monday, August 14, 2023, Defense Secretary Lloyd Austin criticized Republican Sen. Tommy Tuberville's ongoing hold on hundreds of military promotions as an "unprecedented" move that threatens the country's safety. Austin called for the Senate to confirm "all of our superbly qualified military nominees, including the 33rd chief of naval operations."

Diversity, Equity, and Inclusion:

Agencies Would See Broader Applicant Pools, More Flexibility in Pathways Program Under OPM Proposal

In another effort to try to usher young talent into the federal workforce, the Office of Personnel Management (OPM) is proposing changes to decade-old parameters for the Pathways Program.

The new proposed regulations from OPM, in part, look to expand eligibility for the recent graduates' Pathways Program, to include individuals who may not have a college degree, but who have completed different "technical education programs." By counting experience in the Peace Corps, AmeriCorps, Job Corps and the Registered Apprenticeship Program, OPM said it hopes to make the program overall more inclusive, and help agencies attract a broader, more diverse pool of early-career applicants.

The proposal comes amid a more recent push toward skills-based hiring, which makes the Pathways Program's current regulations, dating back to 2012, limited in comparison.

"In the years since the creation of the Pathways Program, employment trends in other sectors have shifted to better recognize the value of and utilize skills-based hiring over reliance on degrees," OPM said in the proposed regulations, published Tuesday.

The Pathways Program, designed to bring early-career individuals into federal service, is split into three distinct programs, and traditionally reserved for high school and college-level interns, recent college graduates and Presidential Management Fellows. Pathways employees take a temporary position at an agency, with the potential to later convert into a full-time position in the civil service. The Pathways hiring authorities have confused some agencies over the years, but OPM's new regulations aim to clarify the parameters. Last year, agencies made more than 8,000 new appointments using the Pathways Program's hiring authorities.

Expanding program eligibility is just one part of the program reforms that OPM wants to make. OPM said the overall goal of its new proposed regulations is to facilitate a better applicant experience, improve development opportunities for participants and streamline agencies' ability to permanently hire Pathways participants.

The new regulations will "better reflect agency needs, candidate preferences and best practices that have evolved since the regulations were first issued over 10 years ago,"

OPM Deputy Director Rob Shriver told Federal News Network earlier this month. Shriver shared OPM's initial plans to revamp Pathways in June, and detailed the timeline in early August.

OPM's proposed regulations also dovetail with broader efforts of moving the government toward more paid internships. A command for agencies to reduce their reliance on unpaid internships was outlined in the Biden administration's 2021 executive order on diversity, equity, inclusion and accessibility.

Unpaid internships, notably, are a barrier to a more diverse workforce, disproportionately causing Black and Latino individuals to turn down internship opportunities. Since Pathways offers paid opportunities, opening the doors to more candidates at the front end may result in a more diverse internship pool down the road.

"The proposed updates to the Pathways Programs will help inform and support agency efforts to use and promote paid internships," OPM said.

Beyond broadening eligibility into Pathways in the first place, OPM is also proposing to broaden eligibility for conversions into full-time positions, post-Pathways. Generally, participants in the Pathways internship program are required to log 640 hours in Pathways to qualify for a full-time federal position. Under the new proposal from OPM, half of those hours could come from time spent in a Registered Apprenticeship Program or the Job Corps.

Agencies would also have more time to bring Pathways interns on board permanently under the new proposed regulations. They would have 180 days — about six months — to make the conversion to a full-time position, instead of the currently allotted 120 days. The current window is a challenge, since in some cases, background investigations and vetting processes can exceed that 120-day limit, OPM said. And when converting to a permanent position, OPM is proposing letting Pathways participants who work at one agency move to another agency as well.

The regulations will additionally change how agencies can begin using the Pathways Program. Traditionally, agencies interested in using Pathways to hire early-career talent have to create a memorandum of understanding (MOU) with OPM before getting started. Instead, OPM is proposing to replace the MOU requirement with a requirement for agencies to have their own policy in place before beginning to use Pathways.

"We think it is an appropriate modification based on 10 years of experience overseeing the Pathways Programs that will streamline administration," OPM said.

In the proposal, OPM is also looking to clarify the role of the Presidential Management Fellows coordinator, since there are often inconsistencies in how agencies view the importance of the role. The coordinator position should focus on organizing recruitment of PMF finalists, overseeing onboarding and aligning the program with an agency's broader workforce plans, OPM said. Under OPM's proposal, each agency would have to have a PMF coordinator working in agency headquarters, at or above the GS-12 level.

"By bolstering the role of the PMF coordinator, OPM seeks to offer agencies a better way to share information about the PMF Program throughout agencies and standardized practices associated with the use of the program," OPM said.

OPM has made other efforts, too, to give early-career hiring, as well as the federal internship program, a bit of a boost. For one, OPM created a one-stop shop for agencies to post federal internship openings, for applicants to find all the opportunities in a single online location. And OPM launched the federal internship experience program earlier this summer, hosting events, workshops and more to interns, to try to give them a more well-rounded experience.

Now, OPM is looking for feedback on its proposals, specifically around the job conversion process, other eligibility options for Pathways to use alternative hours, as well as whether to include non-federal programs when considering applicants' eligibility for Pathways.

"Updating the Pathways Programs will allow the federal government to better compete with other sectors for talent and ensure the paths to public service are clear and fair," OPM Director Kiran Ahuja said in a press statement Tuesday. "Whether you're entering the workforce for the first time or changing professions, the federal government offers opportunities in every sector and every industry."

Sourced From: (Federal News Network)

FEW Washington Legislative Update – August 1-15, 2023

Tier I

Abortion Fight Threatens to Spoil Bipartisan Pregnant Worker Protections

Republicans and social conservatives are fuming over the inclusion of abortion language in proposed rules to protect pregnant workers, threatening to mar a law that passed with bipartisan support.

The rule put forward Monday by the Equal Employment Opportunity Commission (EEOC) includes abortion among the potential medical conditions for which employers may have to make workplace accommodations, such as rest breaks.

Sen. Bill Cassidy (R-La.), the top Senate HELP Committee Republican, on Tuesday accused the EEOC of "going rogue" and exceeding its authority under the Pregnant Workers Fairness Act, which passed late last year as part of the omnibus spending deal and took effect earlier this summer.

"These regulations completely disregard legislative intent and attempt to rewrite the law by regulation," Cassidy, who helped lead the fight for the legislation with Sen. Bob Casey (D-Pa.), said in a statement. "The decision to disregard the legislative process to inject a political abortion agenda is illegal and deeply concerning."

The law expands rights for pregnant workers by requiring employers to provide "reasonable accommodations," such as additional rest breaks or modified job duties, in addition to existing non-discrimination protections.

The legislation applied to pregnancy, childbirth and "related medical conditions." The EEOC's proposal used an expansive definition for that term that includes birth control, menstruation, lactation, fertility treatments, miscarriage — and "having or choosing not to have an abortion."

In a lengthy footnote, the agency cites a number of federal cases that it says support its broad interpretation, including several relating to abortion.

Shortly after the proposal's release, the Alliance Defending Freedom, a conservative Christian legal organization, accused the EEOC of "hijacking" the law with its inclusion of abortion.

“Congress sought to help pregnant workers, not force employers to facilitate abortions,” ADF senior counsel Julie Marie Blake said in a statement. “The administration doesn’t have the legal authority to smuggle an abortion mandate into a transformational pro-life, pro-woman law.”

The EEOC attempted to head off concerns that it is placing a mandate on employers by stating in its proposal that nothing in the law “requires or forbids an employer to pay for health insurance benefits for an abortion.”

Chair Charlotte Burrows said the regulations will promote “the economic security and health of pregnant and postpartum workers” by allowing them to continue working.

The regulations still need to be voted on and finalized by the EEOC following a public comment period, and the dustup over its proposed abortion language portends a heated lobbying battle to come.

Last year, while supporters were racing to shore up Republican support, Casey — who previously considered himself a “pro-life Democrat” though in recent years has moved closer to his party on abortion rights and distanced himself from the term — overtly stated that abortion rules were outside the scope of the legislation.

“Under the Pregnant Workers Fairness Act … the EEOC could not — could not — issue any regulation that requires abortion leave, nor does the act permit the EEOC to require employers to provide abortion leave in violation of state law,” Casey said during the Senate floor debate.

In a statement Tuesday, Casey said it’s important for the EEOC’s rulemaking to “proceed swiftly” to ensure that the law’s enhanced protections are in place for workers.

“As the Pregnant Workers Fairness Act is implemented, it’s important that we do not lose sight of the heart of this law: to ensure pregnant workers aren’t forced to choose between their jobs and healthy pregnancies, including some of the most vulnerable women in the workplace,” he said.

The EEOC’s two Democratic commissioners and one of its Republican appointees voted to advance the regulations, while GOP Commissioner Keith Sonderling abstained. The Senate in mid-July confirmed the Biden-nominated Kalpana Kotagal to fill the fifth seat on the commission, though she has yet to officially join the EEOC.

The recent regulatory movement particularly stands out as the lack of a true Democratic majority on the commission has stymied much of Burrows' agenda in the two-and-a-half years since Biden elevated her to chair.

Sourced From: (Politico)

FEW Washington Legislative Update – August 1-15, 2023
Tier II

Cannabis Users Could Become Feds Under Bipartisan House Bill

A bipartisan trio of House lawmakers last week introduced legislation that would allow marijuana users past and present to qualify for security clearances and serve as federal employees.

The Cannabis Users Restoration of Eligibility Act (H.R. 5040), sponsored by Reps. Jamie Raskin, D-Md., Nancy Mace, R-S.C., and Earl Blumenauer, D-Ore., would end the practice by which a job applicant's past or current cannabis use are unable to apply for jobs in the federal government and can be the basis of denying them a security clearance.

Pressure for the federal government to ease up on regulations barring federal workers, particularly those who need security clearances for their jobs, from having ever used marijuana has grown in recent years. Currently, 38 states and Washington, D.C., allow for the use of cannabis for medicinal purposes, while 23 states and D.C. have enacted laws legalizing the sale and consumption of marijuana recreationally.

The topic has seen a flurry of activity both within the Biden administration and in Congress. In 2021, Director of National Intelligence Avril Haines issued a memo to agency heads clarifying that while past cannabis use "remains relevant" to the security clearance process, it should no longer be "determinative" and automatically lead to rejection.

The fiscal 2024 Intelligence Authorization Act (S. 2103) , introduced in June by Sen. Mark Warner, D-Va., chairman of the Senate Select Committee on Intelligence, includes a provision that would bar intelligence agencies from denying security clearances to individuals based solely on their past use of marijuana. And last year, President Biden

announced that his administration would review marijuana's status as a federally controlled substance.

But Raskin, Mace and Blumenauer's bill goes further, barring federal agencies from denying security clearances or rejecting the job applications of prospective public servants due to cannabis use at any time, past or present.

"Notwithstanding any other law, rule or regulation, current or past use of marijuana by a covered person may not be used in any determination with respect to whether such person is eligible for a security clearance or suitable for federal employment, including under any suitability determination," the bill states.

The legislation also sets up a process by which applicants for federal jobs or security clearances who had been denied due to their marijuana use may ask federal agencies to reconsider that decision, dating back to January 1, 2008. And if the agency reconfirms the original denial after that process, the applicant may appeal the decision to the Merit Systems Protection Board.

"Every year, qualified and dedicated individuals seeking to serve our country are unable to secure federal jobs and security clearances because the federal government has not caught up with the widely established legal use of medical and recreational cannabis," Raskin said in a statement. "I am proud to partner with my friend Rep. Mace to introduce the bipartisan CURE Act that will eliminate the draconian, failed and obsolete marijuana policies that prevent talented individuals from becoming honorable public servants in their own government."

The legislation already has the support of a variety of groups supporting the federal decriminalization of cannabis and critical of the War on Drugs.

"There are many talented and dedicated people who have used cannabis and want to serve their country," said Terry Blevins, a board member at the Law Enforcement Action Partnership and a former police sergeant and Defense Department civilian investigator. "Compromising recruitment by our federal agencies with antiquated cannabis laws makes our nation less safe in the face of security threats we face globally."

"For too long, the federal government has been denying Americans civil service opportunities solely because of its outdated attitudes toward cannabis and those who consume it," said Morgan Fox, political director at the National Organization for the Reform of Marijuana Laws. "Denying these millions of Americans consideration for

employment and security clearances is discriminatory and it unnecessarily shrinks the talent pool available for these important jobs."

Sourced From: (Government Executive)

FEW Washington Legislative Update – August 1-15, 2023
Tier III

New Federal Protections Against Pregnancy Discrimination Are a Good Start – Working Parents Deserve Even More

The EEOC issued proposed rules to implement the Protecting Pregnant Workers Fairness Act (PWFA), which became effective in June, and establishes a long-overdue national requirement for employers to provide workplace accommodations to protect pregnant workers. Under the new law, employers must provide "reasonable accommodations" to pregnant and postpartum employees, which may include leave for medical appointments, more flexible breaks and work schedules, and allowing workers to have water or food if otherwise prohibited. But the United States has a ways to go before working parents are truly protected in the workplace.

PWFA's passage marks a major win for advocates who, for decades, have made the case locally, at the state level and nationally that the failure to accommodate pregnant workers in offices, warehouses, storefronts and beyond amounts to discrimination of a protected group. Employers who fail to meet these new requirements can expect new liabilities and legal action.

The PWFA is also a reflection of what the courts have been saying for years, and what more than 30 states and four municipalities have adopted. The federal government, as it is wont to do, is just catching up.

Although PWFA is an important step in the right direction, working parents continue to lack protection. Any parent of young children knows the incessant ballet of getting the kids to and from school, after school, day camp, grandma's house or friends' houses all while juggling work and other grown-up obligations. This highly-coordinated dance is so fragile it may as well be done on a tightrope: One slight breeze (a cold or all too normalized COVID case, however mild) or school closure can bring the whole thing crashing down. It is even more complicated for the 82 percent of employed Americans who care for young children as well as elderly parents.

At no time was this vulnerability clearer than during the early days of the pandemic, when millions of Americans were suddenly working from home, parenting full time, and forced to play the role of teacher simultaneously. Coordinating care for ailing parents, sometimes across the country, created even more complications. Even as daycares and schools reopened, frequent closures due to COVID outbreaks plunged families — and often working moms, especially — into that limbo yet again.

Because the vast majority of employers in the United States do not provide paid time off to take care of a sick child or other family member or for other caregiving responsibilities, nor are they required to do so under federal law, most workers can be fired for missing work due to these familial responsibilities. Similarly, under federal law, employers are not required to accommodate familial responsibilities in other ways such as providing flexible or modified schedules. This lack of protection disproportionately impacts people of color, women and LGBTQ+, who are most likely to be impoverished, as a result of caregiver discrimination. Additionally, as caregiving responsibilities typically falls to women, they are more likely to be penalized in their careers because of these responsibilities, and the lack of protection exacerbates the gender gap. For example, women may lose pay as a result of requiring leave, may not ever reach their full earning potential, may lose out on promotion opportunities, or may drop out of the workforce entirely because an employer need not accommodate their childcare responsibilities.

Some caregiver discrimination cases overlap with other forms of discrimination, including on the basis of sex, but workers with caregiving responsibilities do not have the defined protection they deserve and many fall through the cracks. The Family Medical Leave Act can apply for some workers, but even that has its limitations and doesn't require that the leave be paid.

If Congress is serious about protecting working parents — and ensuring families can maintain economic stability — our leaders in Washington should expand labor protections for family caregivers. Some states and localities have expanded protections with success. For example, the D.C. Human Rights Act explicitly prohibits discrimination on the basis of "familial status" and "familial responsibilities." Specifically, under the D.C. Human Rights Act, an employer cannot take adverse action against an employee based on their "state of being, or potential to become, a contributor to the support of a person or persons in a dependent relationship."

As an employment attorney and parent, I have seen firsthand how family responsibility discrimination is harmful not only for families and the employee, but the employer as well. I have represented a number of highly talented mothers who have been terminated from their positions because employers held stereotypical beliefs about what they

should, or should not, be able to do as working mothers. Employers lost valuable employees because they viewed the need for leave to take children to doctor's appointments or care for their sick kids as unreliable attendance.

While the PFWA is a good step in the right direction, we must continue to build on that work. Given the current lack of economic stability for so many families, workplace protections for caregiving workers will be essential to keep families safe, fed and housed and, in the long term, to achieve true equality in the workplace.

Sourced From: **(Federal News Network)**