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## FEW Washington Legislative Update August 16-31, 2023

### In Congress:

On Monday, August 21, 2023, The House Freedom Caucus said it would oppose any short-term stopgap unless leadership meets [a slew of their demands](#). They are planning to vote against any spending legislation that does not meet certain priorities. That would mean including a sweeping GOP border bill that has stalled in the Senate, addressing “the unprecedented weaponization” of the Justice Department and FBI and ending Defense Department policies.

On Thursday, August 31, 2023, Chairman James Comer, Rep. Pete Sessions, the chair of a federal workforce subcommittee, and Rep. Lauren Boebert questioned whether the Biden administration’s [post-pandemic telework policy](#) led to “reduced productivity” by federal employees after a recent White House call for more in-office work. House Republicans have been criticizing the Biden administration’s telework policies and passed the SHOW UP Act that would force federal offices to reimplement pre-pandemic work policies. Comer has argued the administration allows “indiscriminate, unaccountable” levels of telework.

On Thursday, August 31, 2023, The White House pushed Congress to pass a [short-term spending bill to](#) avoid a shutdown and ensure continuity of government services while the key players hash out a long list of disagreements. The current funding for the government is set to expire at the end of September when the current fiscal year ends, setting up lawmakers and the White House for a sprint to avoid a shutdown once lawmakers return from their summer breaks.

## **Diversity, Equity, and Inclusion:**

### **LGBTQ+ and Single FEHB Participants Face ‘Unnecessary Barriers’ Under OPM’s Definition of Infertility**

LGBTQ+ individuals, as well as single individuals, enrolled in the Federal Employees Health Benefits (FEHB) program have “unnecessary barriers and costs” to accessing the program’s full range of health benefits, a group of House Democrats has said.

The Office of Personnel Management’s (OPM) working definition of “infertility” in FEHB program guidance, dating back to 2015, does not account for a broad enough range of enrollees who may be looking to get coverage for assisted reproductive technology (ART) as part of their health benefits package.

The Congress members are urging OPM to immediately change the definition, which they said is outdated and lacks inclusivity.

“By adopting an inclusive definition that recognizes the full spectrum of reproductive needs and removing unnecessary barriers to coverage, we can ensure that all federal employees, regardless of their sexual orientation, gender identity or marital status, have access to the comprehensive reproductive health care they deserve,” the 32 lawmakers, led by Rep. Gerry Connolly (D-Va.), said in a letter to OPM Director Kiran Ahuja earlier this month.

In 2023 guidance for FEHB carriers, OPM referenced its 2015 policy, which states that FEHB plans offering infertility benefits “must ensure that benefit definitions and coverage descriptions use terms that are relationship neutral.” But the definition of infertility fails to account for same-sex couples and single individuals, the lawmakers said.

OPM’s current technical guidance defines infertility for women ages 35 and younger as being unable to conceive for one year. For women over age 35, that time frame is six months. The guidance also defines infertility for single women as the inability to conceive after six cycles of artificial insemination or intrauterine insemination.

These timelines determine when enrollees would be able to start receiving coverage for infertility-related procedures and medications. Under the current infertility definitions, participants would not receive any coverage under FEHB prior to going through six unsuccessful cycles of artificial insemination, as they would not yet technically meet the program’s requirements for infertility.

The six-cycle requirement to reach the definition of infertility “is both arbitrary and unnecessarily restrictive,” the lawmakers said. “The number of cycles required in the definition does not take into account an infertility diagnosis that may occur when a patient is evaluated, leading to inconsistent and unequal coverage for individuals seeking alternative methods of conception. Furthermore, this policy creates unnecessary barriers and costs for LGBTQ people by excluding consideration of at-home inseminations.”

And the barrier to coverage can spur large out-of-pocket costs. Intrauterine insemination costs between \$500 to \$4,000 per cycle — not including the cost of the donor sperm.

“By limiting coverage to these individuals only after six cycles of insemination with donor sperm, we are effectively denying them access to necessary fertility treatments, placing an undue burden on their path to parenthood,” the lawmakers said.

The call from lawmakers is the latest in a line of several letters addressed to OPM in the last couple of years, urging the agency to update and expand FEHB carriers’ coverage of infertility treatments, the costs of which are often “prohibitively expensive.”

OPM did not respond to a request for comment on plans to update the definition of infertility for FEHB.

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

## **FEW Washington Legislative Update – August 16-31, 2023**

### **Tier I**

#### **Pregnant Employees Ruled Eligible for Class Action Discrimination Lawsuit Against CBP**

Potentially hundreds of Customs and Border Protection (CBP) employees can move forward as a class in their lawsuit against the agency for alleged discrimination against pregnant staff, after a new ruling that dismissed CBP’s objections.

The Homeland Security Department component has allegedly discriminated against certain pregnant women for years by forcing them to forfeit some of their duties, according to the lawsuit, which brought its complaint to the Equal Employment

Opportunity Commission (EEOC). A regional EEOC administrative judge previously ruled in the employees' favor, but CBP rejected the decision, and it appealed it rather than notifying other class members of their eligibility to participate in the class action.

In a new ruling on Wednesday, Carlton Hadden, director of EEOC's Office of Federal Operations, reversed CBP's order rejecting the judge's decision. Instead, Hadden recertified the class, saying the plaintiffs met their thresholds for moving forward. EEOC appeared to suggest the complaints stood on firm ground in their case against the government.

Now, any pregnant CBP employee required to enter "temporary light duty," or TLD, since July 2016 would be eligible to join the class. EEOC noted there are more than 500 women who were placed on TLD in that time and may now be eligible to sign their names to the case.

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.

"When I let my supervisors know I was pregnant, it should have been a moment of shared joy and excitement," said Roberta Gabaldon, a CBP employee and a class agent who helped bring the case. "Instead, I was devastated to endure a humiliating forced reassignment and a complete disregard for my ability to keep working as I was trained to and in a job that I loved. I'm grateful to the EEOC for upholding our class certification and hope that through this decision we can create meaningful change at the agency."

CBP, which did not respond to a request for comment, must in the next 15 days "use all reasonable means" to contact all potential class members to inform them of the class's certification, the EEOC official ordered. That should include emailing, hand delivery of a

notice or mailing a notice to their last known address. The agency has 30 days to once again appeal the decision further up the commission.

In its previous appeal, CBP argued it had failed to prove more than the two-dozen employees who have so far signed onto the case faced any discrimination. It also said 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.

EEOC rejected those arguments, however, noting the women making the complaints suggested they were scared to tell management they were pregnant, and they knew of many more colleagues in similar positions.

“The agency fails to cite a single piece of evidence showing that any individual supervisor acted independently regarding the temporary light duty assignment for a class member,” Hadden said.

EEOC also found employees were “treated in a consistent manner” in duty stations across the country once management found out they were pregnant.

“The agency also asserts that its policy stipulates that an employee initiates the request for temporary light duty, but the evidence shows that pregnant employees suffered from a practice to immediately place them onto temporary light duty once a pregnancy was disclosed,” Hadden added.

He further said the practice had real impacts on class members.

“Due to their reassignments into these light duty positions, class agents’ compensations were affected, in addition to their abilities to qualify for promotions; take trainings; and bid on positions,” Hadden said.

If CBP declines to appeal further, it must notify the EEOC field office in New Orleans that it requires a hearing on the merits of the case.

“A worker's pregnancy does not define their ability to work, and yet the CBP field offices have operated under that assumption for years,” said Joe Sellers, an attorney at Cohen, Milstein, Sellers, and Toll who is representing the plaintiffs. “Now that the EEOC has upheld class certification, we can continue to pursue accountability on behalf of our clients and bring the agency’s policies in line with the 21st century.”

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

## **FEW Washington Legislative Update – August 16-31, 2023**

### **Tier II**

#### **Biden Formally Announces 5.2% Average Pay Raise for Feds in 2024**

President Biden on Thursday formalized his plan to provide civilian federal employees with an average 5.2 percent pay increase, their largest in four decades, in a letter to congressional leaders.

In March, Biden first announced his pay raise plan as part of his fiscal 2024 budget proposal, recommending the largest pay increase for civilian federal workers since the Carter administration. Thursday's announcement confirms that, if implemented, federal employees will see an across-the-board increase in basic pay of 4.7 percent and an average 0.5 percent boost to locality pay.

In his letter, Biden said the pay raise is critical to his administration's goal of ensuring that the federal government is a model employer and able to attract qualified candidates to join the workforce.

"We must attract, recruit and retain a skilled workforce with fair compensation in order to keep our government running, deliver services and meet our nation's challenges today and tomorrow," Biden wrote. "This alternative pay plan decision will continue to allow the federal government to employ a well-qualified federal workforce on behalf of the American people, keeping pace with prior wage growth in the labor market."

Each August, the president must issue an alternative pay plan that determines an "economic emergency" precludes much larger automatic increases in locality pay from taking effect, per the Federal Employees Pay Comparability Act. The step has been largely perfunctory since the law was enacted in 1990.

Biden's pay plan still falls short of proposals supported by federal employee groups and some Democratic lawmakers, such as the Federal Adjustment of Income Rates Act, which calls for an average 8.7 percent raise for feds next year—split between a 4.7 percent increase in basic pay and an average 4.0 percent increase in locality pay—and Congress thus far has been disinclined to overrule the president's pay proposal for next year. But labor unions on Thursday applauded the White House plan anyway.

“Federal employees would get their largest pay raise in 43 years under President Biden’s announcement today that officially proposes to increase salaries by an average of 5.2 percent, a significant endorsement of federal employees and the valuable work they do,” said Doreen Greenwald, national president of the National Treasury Employees Union. “Frontline federal employees earn 24.09 percent less than people in similar private sector jobs, according to the Federal Salary Council, so Biden’s plan would help chip away at that deficit and make federal employment more competitive.”

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

### **FEW Washington Legislative Update – August 16-31, 2023** **Tier III**

#### **Women Fact Misogyny, Barriers to Promotion in Special Operations Forces, US Army Study Says**

Women fighting in the U.S. Army’s special operations forces face misogyny, gender-based barriers to promotion, and ill-fitting equipment, according to a 2021 report released today by U.S. Army Special Operations Command.

Among the report’s conclusions is that there is an “active subset” of soldiers who hold a range of misogynistic views, with at least some seeming to believe that any policies that sought to end the traditional exclusion of women from Army special operations were a dangerous product of political correctness.

“The idea that women are EQUALLY as physically, mentally and emotionally capable as men to effectively perform the majority of jobs” within Army special operations forces is “ridiculous,” said one male senior non-commissioned officer who submitted comments for the report.

Women who do join special forces units in support roles “are looking for a husband, boyfriend or attention,” said another male senior non-commissioned officer quoted in the report. “I know this will not get read because it will be screened beforehand, so whatever. I will just retire and watch my country fail right after I watch my unit fail.”

The study, which sought comments from 5,010 Army Special Operations Forces soldiers and civilians through surveys, group discussions, and interviews in 2021 found that most respondents did not express such views. But many of those who did hold

leadership positions as senior enlisted soldiers and junior officers up to the rank of captain.

Female special operations soldiers who participated in focus groups for the study were unsurprised to hear these views, the report's authors said. One woman suggested that her unit's commanding general needed to "put out that if you think like this, then we don't want you in our formation."

The report was released after Military Times filed a freedom-of-information-act request.

The leader of Army Special Operations Command, Lt. Gen. Jonathan Braga called the findings "disappointing."

Female Army helicopter pilots achieved "some of the most daring" assaults into enemy territory, Braga told reporters on Monday. "I do not think anyone in the back of this helicopter was like, 'Man, I wish it were a male pilot'."

The study has led to the incorporation of its findings into the training process for new soldiers, the creation of a sexual-harassment awareness course, and support for a female mentorship initiative.

There will be no repercussions for the "very small percentage" of respondents who expressed misogyny in their comments, which were collected anonymously, said Cmd. Sgt. Maj. JoAnne Naumann, the senior enlisted leader of Army Special Operations Command.

"Education is far more important than a witch hunt," Naumann said.

"Frequently, that perspective is just based on the fact that they have not served with women," she added.

But opportunities to serve alongside men, particularly in combat jobs, have long been limited by regulations and decisions made by men.

The report cites women who said they had been denied opportunities for combat by male colleagues; one said her male teammates had decided it was "too risky" for her to leave the base during a deployment.

And women who lack deployment or other experiences due to what the report called "benevolent sexism" can find it harder to win promotion, the report said.



One female non-commissioned officer said she would be leaving the Army after spending two years being passed up for deployments and training events after having a child.

Women also struggle with a lack of equipment and training programs designed for their bodies, the report said. Because body armor designed for men is often ill-fitting, many women said they disobeyed regulations and bought their own at personal expense.

Army special operations forces are currently testing various forms of body armor that would provide a better fit. One prototype is slated for testing in February 2024.

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

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