



FEW Washington Legislative Update October 1-15, 2023

In Congress:

On Tuesday, October 3, 2023, Republicans and Democrats in the U.S. House [voted to oust Kevin McCarthy as speaker](#), a historic move that came just nine months after he secured the gavel following days of negotiating with the GOP's right flank and 15 rounds of voting. Patrick McHenry was named speaker pro temp until the election of a new speaker, and he sent the House into a recess. Representative Patrick McHenry (R-North Carolina) has been appointed as speaker pro tempore, essentially a hall monitor position that will enable him to call the House to order, make general announcements, answer parliamentary inquiries, rule on points of order and designate another speaker pro tempore. But, he has no other powers and may not administer the oath of office to a member-elect without unanimous consent or specific House approval, among other restrictions. McHenry [immediately announced](#) the House would [adjourn](#) until Tuesday, October 10 to discuss possible McCarthy successors, with a vote on a new speaker planned for October 11.

On Wednesday, October 11, 2023, House Republicans elected Louisiana Rep. [Steve Scalise as their nominee for speaker](#) following a secret ballot vote in a closed-door conference. The next step for Scalise, who currently is the majority leader, will be garnering the support of nearly all his GOP colleagues to win a floor vote to become speaker, replacing former Speaker Kevin McCarthy of California.

The Senate convened at 10:00 A.M. Tuesday, October 10, 2023, and will consider the nomination of James C. O'Brien to be Assistant Secretary of State for European and Eurasian Affairs, the nomination of Brendan Abell Hurson to be United States District Judge for the District of Maryland and the nomination of Susan Kim DeClercq to be

United States District Judge for the Eastern District of Michigan. The Senate will adjourn earlier than planned this week, with no session on Thursday, October 12 to allow members to travel to California and pay their respects to the late Senator Dianne Feinstein (D-California).

On Friday, October 13, 2023, a group of 16 Democratic lawmakers led by Sen. Ed Markey, D-Mass., and Rep. Pramila Jayapal, D-Wash., is urging the White House to bake its [Artificial Intelligence \(AI\) Bill of Rights](#) into the administration's forthcoming executive order on artificial intelligence. The lawmakers want federal agencies to be bound to use the principles and best practices from the existing blueprint for an AI Bill of Rights, which was released in 2022 and is currently followed on a voluntary basis.

Diversity, Equity, and Inclusion:

FCC to Consider 'Several Accessibility Items' at Next Open Meeting on October 19

In a blog post published this week, the Federal Communications Commission (FCC) announced a slew of accessibility-oriented topics are on the agenda for its next open meeting that's open to the public. The meeting will be held on Thursday, October 19 at 10:30 A.M. ET.

"On September 28, 2023, FCC Chairwoman [Jessica] Rosenworcel announced a tentative agenda for the October 2023 Open Meeting scheduled for 10:30 am EST on Thursday, October 19, 2023," the agency wrote in the introduction. "The meeting will be held in the Commission Meeting Room of the FCC, 45 L Street N.E., Washington, D.C. The FCC meeting is also online and streamed live with open captioning."

The FCC notes several items are on the agenda for next week's meeting which have pertinence to the disability community. They include seeking comments on proposed rules for maintaining and safeguarding an open internet, a draft order on mandating mobile service providers to make emergency alerts more accessible for those who are disabled and/or don't speak English or Spanish as their primary language, and an order seeking audio description requirements in an additional ten markets.

For the disability community, the open internet initiatives include "availability and performance of IP-based telecommunications relay services" as well as the "the FCC's authority to ensure that individuals with disabilities can communicate using IP-based services such as video communications and electronic messaging services, IP equipment, and mobile browsers." Moreover, the draft order would improve access to

emergency services for disabled people by “preventing the degradation of latency-sensitive and data-intensive applications.” Lastly, the draft covers the FCC’s work involving the “implementation and enforcement of other laws” designed for the protection of disabled people such as the Americans with Disabilities Act and the Rehabilitation Act.

As to 911 alerts, the FCC will consider whether alerts should be available in American Sign Language and whether people should have access to ASL-based emergency alerts. The agency will also discuss whether to compel mobile devices to “include location-aware maps to personalize alerts for consumers and encourage the inclusion of map textual descriptions to ensure the accessibility of such maps to screen readers.”

Sourced From: [\(Forbes\)](#)

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Tier I

Senate Bill Would Codify Remote Work, Increase Telework Reporting

A bipartisan pair of senators on Thursday, October 12, proposed legislation that would codify federal employees’ use of remote work in federal law, as well as establish stronger reporting and training requirements for telework and authorize the noncompetitive hiring of military and law enforcement spouses into remote work positions.

The Telework Reform Act (S. 3015), introduced by Sens. James Lankford, R-Okla., and Kyrsten Sinema, I-Ariz., codifies the Office of Personnel Management’s (OPM) administratively determined definitions of telework and remote work—including the requirement that teleworkers commute to their traditional worksite at least twice per pay period—and institutes a barrage of new reporting requirements for agencies.

First, the bill sets up a new requirement that agencies and federal workers renew telework and remote work agreements each year, following an annual process in which employees and their supervisors review whether the employees’ duties and performance or the agency’s needs have changed. The legislation also would require managers of teleworking and remote working employees to undergo annual training both on telework itself and how to accurately report employees’ eligibility and participation in the workplace flexibility.

Additionally, provisions throughout the bill are aimed at improving agencies' reporting on their telework and remote work programs, including requiring agencies to conduct biannual surveys on the workplace flexibilities' usage and an annual review of telework guidelines by the Office of Management and Budget. And agency chief human capital officers would be required to submit reports to OPM and Congress outlining recommendations to improve telework and remote work, including how to address barriers to OPM receiving "consistent and reliable data" on the workplace flexibilities.

The bill also would authorize federal agencies to hire spouses of military service members and federal law enforcement officers to remote work positions outside the competitive hiring process.

The bill marks something of a departure from recent congressional scrutiny of telework. House Republicans in recent months have approached workplace flexibilities such as telework and remote work with suspicion, while Sen. Joni Ernst, R-Iowa, accused federal workers without evidence of committing "fraud" by purportedly relocating to "low-cost" regions while retaining a higher level of locality pay. The House Oversight and Accountability Committee is slated to host a hearing on the government's use of telework with agencies GOP leaders previously described as less cooperative in responding to their records requests next week.

In a statement accompanying the bill's introduction, Lankford said lawmakers must embrace remote work and telework as important tools for staffing federal agencies, albeit with better metrics to track their usage.

"[Remote work] is a great recruiting tool for military and law enforcement spouses who wish to support their loved ones while also pursuing their own career," he said. "The spouse of a Border Patrol agent working in the small town of Eagle Pass, Texas, might not be able to find a job that fits their education or training, but remote work for a federal agency may be a great opportunity. By rethinking how the government uses remote work, we are encouraging federal agencies to hire in diverse communities across the country; instead of requiring our workforce to be centralized in Washington, D.C."

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

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Tier II

OPM Announces Expansion of ‘Continuous Vetting’ Security Clearance Process for Current Feds

Biden administration officials on Monday, October 2, announced plans to expand the use of the new “continuous vetting” process for reviewing existing federal workers’ background checks to all “public trust” government positions by September 2024.

Part of an initiative dating back to the Trump administration, continuous vetting refers to a new process by which the federal government uses automated data checks, such as credit histories and criminal records, to continuously monitor federal workers’ suitability to maintain a security clearance or otherwise serve in positions that require public trust.

It is designed to replace the existing process, known as periodic reinvestigations, and proponents hope the new process will ease some of the pressure that follow-up investigations place on the security clearance process, particularly the backlog of background checks required for federal job candidates to start work at their new jobs. Additionally, continuous vetting could catch potential red flags earlier, giving agencies a chance to offer support to federal workers experiencing difficulties before the problem can escalate.

Continuous vetting has already been implemented at national security agencies and for federal employees whose positions require a security clearance. And in a memo to federal agency heads Monday, Office of Personnel Management Director Kiran Ahuja, who works alongside the Defense Counterintelligence and Security Agency (DCSA) on federal background checks for current and prospective federal employees, said OPM and DCSA hope to roll the new process out to all federal workers in “public trust” positions by the end of fiscal 2024.

“DCSA . . . initiated a continuous vetting pilot in June 2023 for the non-sensitive public trust population,” she wrote. “Full implementation of this population is currently targeted to begin in fiscal year 2024. Enrollment will proceed iteratively, with a goal of enrolling 100 percent of this population into an initial capability in fiscal 2024.”

Although continuous vetting will replace periodic reinvestigations, in the meantime, agencies should continue to begin periodic reinvestigations according to existing policy, Ahuja wrote.

“Until agencies begin enrollment of their non-sensitive public trust populations into continuous vetting, they must continue to initiate reinvestigations for individuals occupying these positions in accordance with existing policy and established protocol,” the memo states. “Doing so will ensure that agencies are in compliance with the regulatory requirement and avoid potential delays in mobility for applicants or employees caused by out-of-scope investigations.”

The move to continuous vetting will also take place for federal workers in the excepted service, as well as federal contractors and Defense Department non-appropriated fund employees. Agencies will be expected to respond to alerts generated by continuous vetting similarly to how they respond to alerts generated during the existing reinvestigation process, according to an FAQ document released Monday.

“Agencies should handle issue resolution in response to CV alerts much the same way as derogatory information discovered during a periodic reinvestigation is handled today,” OPM wrote. “Any result from a continuous vetting alert that meets the requirement for expansion in Appendix I of the Federal Personnel Vetting Investigative Standards . . . will require the agency to request their [investigative service provider] to conduct the required investigatory actions. The agency will review the investigative results and make a suitability determination in accordance with Title 5.”

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

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EEOC Proposes New Guidance on Harassment in the Workplace

The Equal Employment Opportunity Commission (EEOC) has issued proposed enforcement guidance on harassment in the workplace. If finalized, it would be the EEOC’s first updated guidance since 1999.

The proposed guidance, issued on October 2, 2023, is intended to reflect legal developments as well as specific issues that have arisen in recent years, including social media, remote work, and the U.S. Supreme Court’s decision in *Bostock v. Clayton County*.

Sex-based harassment:

In *Bostock*, the court held that discrimination on the basis of sexual orientation and gender identity is discrimination on the basis of sex under Title VII of the Civil Rights Act of 1964.

The EEOC's proposed guidance reflects this expansion of the scope of Title VII to include sexual orientation and gender identity, as well as gender expression. The guidance provides examples of harassment, such as:

- Making derogatory comments or jokes about an employee's sexual orientation or gender identity
- Intentionally misgendering an employee
- Refusing to use an employee's preferred pronouns
- Denying an employee access to a bathroom or other sex-segregated facility consistent with their gender identity

The guidance further stipulates that sex-based harassment includes harassment on the basis of pregnancy and childbirth as well as a woman's reproductive decisions, such as decisions about contraception or abortion.

Social media:

The EEOC guidance includes issues of harassment that occur in a non-work-related context, including employees' personal social media platforms. The guidance states that social media harassment can be considered workplace harassment if it interferes with an employee's work performance or creates a hostile work environment.

Remote work:

The guide also addresses how interactions that take place over video conference calls could constitute harassment. One notable example includes offensive or racist imagery that is visible while the employee participates in a video meeting.

Employer's duty of reasonable care:

The EEOC's proposed enforcement guidance identifies a number of things that employers can do to show they have exercised "reasonable care" to prevent harassment. Examples include:

A policy that is comprehensible to workers, including those with limited proficiency in English

- Requiring supervisors to report harassment when they are aware of it
- Multiple avenues for employees to report harassment
- Regular anti-harassment training for employees and managers
- Monitoring for signs of harassment
- Adequate confidentiality protections for the complaint and investigation processes

Next steps:

The guidance is not yet final. The draft guidance was published on October 2 and will be open for public comment for 30 days.

The EEOC's guidance is not legally binding in and of itself. However, the EEOC's guidance is highly persuasive and is often given deference by the courts. Furthermore, proposed guidance is based on decades of case law, and as such, it is a valuable resource for employers, even before it is finalized.

Sourced From: [\(New England Biz Law Update\)](#)

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