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TOP NEWS STORIES

DOD SHOULD REEVALUATE APPROACH FOR MANAGING FUNCTIONAL COMBATANT COMMAND RESOURCES, GAO FINDS

In recent years the Department of Defense (DOD) has seen its headquarters staff grow and costs rise. Defense Secretary Chuck Hagel has [announced initiatives](#) to reduce those costs and staffing levels.

A [new report](#) by the Government Accountability Office (GAO) found that DOD needs to reevaluate its approach for managing resources devoted to the functional combatant commands.

GAO found that the department did not have a clear or accurate accounting of the resources being devoted to management headquarters to use as a starting point to track reductions. DOD's directed reductions of headquarters staff did not include all resources available at the commands, a problem exacerbated by the fact that DOD relied on self-reported data from the commands, which GAO found to be potentially inconsistent and not fully inclusive of headquarters resources.

GAO found that less than a quarter of the positions at the functional combatant commands were considered to be management headquarters even though many positions appeared to be performing management headquarters functions such as planning, budgeting, and developing policies. Consequentially, nearly three quarters of headquarters positions at the functional combatant commands could be potentially excluded from DOD's directed reductions.

The department told GAO that there were no plans to reevaluate the baselines on which reductions were based, lacking an alternative source of reliable data.

"Unless DOD reevaluates its decision to focus reductions to management headquarters and establishes a clearly defined and consistently applied starting point on which to base reductions, the department will be unable to track and reliably report its headquarters reductions and ultimately may not realize significant savings," the GAO report stated.

GAO recommended that DOD (1) reevaluate the decision to focus reductions on management headquarters to ensure meaningful savings, (2) set a clearly defined and consistently applied starting point as a baseline for the reductions, and (3) track reductions against the baselines in order to provide reliable accounting of savings and reporting to Congress. DOD partially concurred with the first recommendation, questioning, in part, the recommendation's scope, and concurred with the second and third recommendations. GAO asserted its first recommendation is valid.

To access the full GAO report, GAO-14-439, [click here](#).

DHS RELEASES QUADRENNIAL HOMELAND SECURITY REVIEW

In June the Department of Homeland Security (DHS) released its second [Quadrennial Homeland Security Review](#) (QHSR), intended to strengthen the department's unity of effort.

"The 2014 QHSR sets priorities for homeland security over the next four years based on risk and charts a path forward to proactively address rapidly evolving threats and hazards," [said](#) DHS Secretary Jeh Johnson.

The QHSR outlines five basic homeland security missions for DHS, which have been revised to address threats and hazards over the next four years. These missions are: 1) Prevent terrorism and enhance security, 2) secure and manage borders, 3) enforce and administer immigration laws, 4) safeguard and secure cyberspace, and 5) strengthen national preparedness and resilience.

A [hearing](#) of the House Homeland Security Committee to discuss the QHSR found [some members dissatisfied with the review](#), as well as its timing, noting that the document was delivered too late to inform the President's budget request and that it failed to address critical issues facing the department. In particular, lawmakers were critical of a lack of strong focus on management and establishing a connection between strategy and resources needed to fulfill mission.

[Cybersecurity](#) holds a prominent place in the review, as does [public-private partnerships](#) in that area and the [other focus areas](#) of the department.

Witnesses at the House hearing, which included department officials as well as those that work with the department, said a [significant challenge for DHS will be operationalizing the policy](#) contained in the report.

To access the full 2014 QHSR, [click here](#).

ADMINISTRATION EXTENDING WORKPLACE PROTECTIONS TO LGBT EMPLOYEES

Throughout his administration President Obama has expanded workplace protections for gay, lesbian, and bisexual federal employees. His administration has also made efforts to [advance equality for the LGBT community](#).

Last week [the President announced](#) he would soon be issuing an executive order to protect transgender employees and contractors from discrimination based on gender identity.

"The majority of Fortune 500 companies already have nondiscrimination policies to protect their employees because it's the right thing to do and because many say it helps to retain and attract the best talent. And I agree. So if Congress won't act, I will. I have directed my staff to prepare an executive order for my signature that prohibits discrimination by federal contractors on the basis of sexual orientation and gender identity," the President [stated](#) at a White House LGBT Pride Month celebration at the White House.

On the same day as the President's announcement, the Office of Special Counsel (OSC) issued a [press release](#) outlining actions taken by OSC to improve protection of LGBT federal employees. OSC highlighted collaboration with the Office of Personnel Management (OPM), the Equal Employment Opportunity Commission (EEOC), the Justice Department, and others in this area.

In May of this year the Merit Systems Protection Board (MSPB) issued a report entitled "[Sexual Orientation and the Federal Workforce](#)," which examined federal employee perceptions of workplace treatment based on sexual orientation, how workplace protections from sexual orientation discrimination have evolved, and an assessment of whether further action is needed to communicate or clarify those protections.

LGBT employees make up [less than 3 percent](#) of the federal workforce, slightly lower than the national average of 3.5 percent [reported by Gallup](#).

FROM THE HILL

BILL WOULD “DE-MILITARIZE” FEDERAL INSPECTORS GENERAL

Legislation recently introduced in the House, if approved, would lead to regulatory agency de-militarization by stripping federal inspectors general of arrest and firearm authority, according to its two dozen Republican sponsors.

The Regulatory Agency De-militarization (RAD) Act ([H.R. 4934](#)) was introduced by Rep. Chris Stewart (R-UT).

"It's disturbing to see the stories of federal regulators armed to the teeth and breaking into homes and businesses when there was no reason to think there would be resistance," Rep. Stewart [said](#).

Rep. Stewart cited law enforcement operations carried out by inspectors general from the Food and Drug Administration (FDA), Department of Education, and the National Oceanic and Atmospheric Administration (NOAA) to support his legislation.

Stewart's legislation has three components.

1. Repeals the arrest and firearm authority granted to Offices of Inspectors General in the 2002 Homeland Security Act.
2. Prohibits federal agencies, other than those traditionally tasked with enforcing federal law—such as the FBI and U.S. Marshals, from purchasing machine guns, grenades, and other weaponry regulated under the National Firearms Act.
3. Directs the Government Accountability Office (GAO) to write a complete report detailing all federal agencies, including Offices of Inspectors General, with specialized units that receive special tactical or military-style training and that respond to high-risk situations that fall outside the capabilities of regular law enforcement officers.

"When IG Special Agents engage in enforcement operations, this isn't some nefarious masquerade where feds dress up like Ninja Turtles for giggles. It's convenient for Rep. Stewart to take certain cases out of context and portray the subjects as upstanding innocent victims," said Jon Adler, National President of the Federal Law Enforcement Officers Associations (FLEOA).

"Rep. Stewart's bill erroneously mischaracterized properly equipped federal agents asserting a police presence as being militarized. Inspector General Special Agents are professionally trained federal law enforcement officers who play a vital role in protecting our homeland and our government institutions. Prudent steps for Officer Safety should not be misconstrued as militarization," Adler also stated.

CASE LAW UPDATE

MSPB OVERRULES ENFORCED LEAVE CASES

On December 29, 2011, a United States Postal Service (“USPS”) Supervisor for Customer Services submitted a request to work on light-duty assignment. The employee’s Officer-In-Charge denied her request on the ground that, within the employee’s medical restrictions, there was no work available. On January 6, 2012, the United States Postal Service proposed to place an employee on enforced leave because there was no available work within the employee’s medical restrictions, and issued a final decision effecting the proposed enforced leave action on February 8, 2012. The employee appealed the decision to the MSPB, but an MSPB administrative

judge dismissed the appeal after a jurisdictional hearing, finding that the employee failed to establish that the agency placing the employee on enforced leave for more than 14 days constituted a constructive suspension. The employee filed a petition for full Board review of the initial decision to dismiss the appeal, and on June 23, 2014, the Merit Systems Protection Board granted the employee's petition, reversed the dismissal, and remanded the appeal to the administrative judge for adjudication on the merits.

The Board began its analysis by defining a "suspension" under 5 U.S.C. § 7501(2) as the temporary placement of an employee in a nonpay, nonduty status. Citing *Yarnell v. Department of Transportation*, 109 M.S.P.R. 416 (2008), the Board explained that this definition covers not just unpaid absences but also an agency's placement of an employee on sick or annual leave against her will. "For jurisdictional purposes," the Board stated, "whether the employee was able to perform her duties is immaterial. Rather, the only question is whether the employee's placement in a leave status was voluntary or involuntary..." As the Board went on to note, only involuntary placements in leave status are appealable.

Recalling its decision in *Bean v. U.S. Postal Service*, 120 M.S.P.R. 397 (2013), the Board recognized that certain leaves of absence may also be appealable under chapter 75 as "constructive" suspensions. In *Bean*, the employee asserted that leave that appeared to be voluntary was involuntary in reality. The Board stated that these constructive suspension appeals usually involve "employee-initiated absences in which the appellant alleges that: (1) she lacked a meaningful choice, and (2) the absence was caused by the agency's improper actions.

The Board explored the nature of constructive adverse action appeals further, stating that, for jurisdictional purposes, the employee must prove by preponderant evidence that the action was involuntary to establish Board jurisdiction, and that if the employee cannot prove such, the appeal will be dismissed. However, because these constructive suspensions defined by the Board often come without the benefit of notice, if the employee can establish jurisdiction, the Board will reverse the adverse action because of a violation of due process rights.

After a full explanation of the concept of constructive suspension, the Board turned to the case at hand, and stated succinctly that it "is not a case in which an appellant alleges that leave that appears to be voluntary is not. Rather, it concerns the agency's placing the appellant on enforced leave." The Board noted the conflict in precedent between *Pittman v. Merit Systems Protection Board*, 832 F.2d 598 (Fed. Cir. 1987), which held that placement of an employee on enforced leave due to his medical condition which prevented him from performing in any available position constituted an appealable suspension (rather than a constructive suspension) of more than 14 days, and subsequent cases like *Childers v. Department of the Air Force*, 36 M.S.P.R. 486 (1998) which "mischaracterized *Pittman*" as holding that such a placement constituted a "constructive" suspension.

In a footnote, the Board explained that although appealable suspensions of more than 14 days must be "disciplinary" in nature, the Federal Circuit in *Pittman* had held that when the agency believes retention of an employee in active duty can result in damage to federal property, or be detrimental to governmental interests, herself, or others, any suspensions issued are "disciplinary in the broader sense of maintaining the orderly working of the Government against possible disruption by the suspended employee.

As a result of the confusion resulting from the mischaracterization of *Pittman* in *Childers*, the Board stated that, in the past, it has adjudicated multiple claims involving agency placement of an employee on enforced leave as an alleged "constructive" suspension, rather than adjudicating it properly as a suspension. To clarify, the Board held that "an agency's placement of an employee on enforced leave for more than 14 days constitutes an appealable suspension within the Board's jurisdiction." Looking to the aforementioned improperly adjudicated decisions, the Board also held that to the extent it used a constructive suspension framework for enforced leave cases, those cases were overruled, and that the agency decision must be sustained through normal adverse action standards: preponderant proof by the agency "that the charged conduct occurred, that a nexus exists between the conduct and service efficiency, and that the penalty is reasonable."

For the aforementioned reasons, and specifically because the administrative judge improperly dismissed the employee's appeal due to the use of the constructive suspension framework, the Merit Systems Protection Board determined that the Board indeed had jurisdiction, and remanded the appeal for adjudication on the merits.

[You can read the full case, *Abbott v. United States Postal Service*, here.](#)

This case law update was written by [Conor D. Dirks](#), associate attorney, [Shaw Bransford & Roth, PC](#).

For thirty years, Shaw Bransford & Roth P.C. has provided superior representation on a wide range of federal employment law issues, from representing federal employees nationwide in administrative investigations, disciplinary and performance actions, and Bivens lawsuits, to handling security clearance adjudications and employment discrimination cases.

EDUCATE YOURSELF

ASPA-IPMA HR FORUM ON SUCCESSION PLANNING NEXT WEEK IN DC

Succession planning is one of the most critical elements for sustaining a healthy and well equipped public sector workforce. At the same time, it is captive to a wide range of dynamics that impact its effectiveness, including demographic trends and budget battles.

Join the American Society for Public Administration (ASPA), in partnership with the International Public Management Association for Human Resources (IPMA HR), in Washington, D.C. on Tuesday, July 15 for an [ASPA Forum on succession planning](#) in the public sector.

Across government, agencies face the constant pressure of recruiting and retaining talent while, at the same time, planning for the future. As governments face impending retirement waves and an unpredictable budget environment, succession planning has taken on a new level of urgency.

At the forum you'll hear from federal, state and local experts who will discuss the following:

- What are agencies doing to develop a pipeline of leaders to achieve their organizational mission?
- What are strategic—but practical—approaches to transfer knowledge to the next generation of the public sector workforce?
- How can agencies undertake successful succession in spite of political and budget crises beyond their control?
- How can leaders make workforce and succession planning an integral part of a management culture?

Event Details:

- Date: Tuesday, July 15 from 8:30 AM to 11:00 AM
- Location: Washington Marriott at Metro Center, 775 12th Street NW, Washington, DC 20005
- Registration: <http://www.eventbrite.com/e/aspa-ipma-hr-forum-on-succession-planning-tickets-12094943301>

GEICO'S GOOD STUFF

NAVY GETS FIRST FOUR-STAR FEMALE ADMIRAL

GEICO's Good Stuff is a column series highlighting great stuff happening in the federal community.

On July 1, Michelle J. Howard became the [first woman to attain the rank of four-star admiral](#) in the U.S. Navy's 238 year history.

Howard, the first African American woman to command a Navy ship, will rise to the rank of Vice Chief of Naval Operations, the second senior-most officer position in the Navy.

Navy Secretary Ray Mabus administered the oath of office and presided over the ceremony at the [Women in Military Service for America Memorial](#) at Arlington National Cemetery.

Since graduating from the U.S. Naval Academy in 1982, Howard has climbed through the ranks. She completed the Army's Command and General Staff College in 1988 with a master's degree in military arts and sciences.

Howard's initial sea tours were aboard the USS Hunley and USS Lexington. While serving on board the Lexington, she received the Secretary of the Navy/Navy League Captain Winifred Collins Award in May 1987. This award is given to one woman officer a year for outstanding leadership.

Howard served as chief engineer of the USS Mount Hood in 1990 during Desert Shield and Desert Storm, later rising to first lieutenant on board the USS Flint in July 1992. In January 1996, she became the executive officer of USS Tortuga and deployed to the Adriatic in support of Operation Joint Endeavor, a peacekeeping effort in the former Republic of Yugoslavia.

In March 1999 Howard took command of the USS Rushmore, where she became the first African American woman to command a U.S. Navy ship. She was the commander of Amphibious Squadron 7 from May 2004 to September 2005. Deploying with Expeditionary Strike Group 5, operations included tsunami relief efforts in Indonesia and maritime security operations in the North Arabian Gulf. She commanded Expeditionary Strike Group 2 from April 2009 to July 2010. In 2009, Howard deployed to the U.S. Central Command theater, where she commanded the Task Force 151 multinational counterpiracy effort and Task Force 51 expeditionary forces. In 2010, she was the Maritime Task Force commander for Baltic operations under 6th Fleet.

Howard was named the USO Military Woman of the Year for 2011 and the NAACP Chairman's Image Award recipient in 2013.

Navy Adm. Jonathan W. Greenert, chief of naval operations, noted Howard's success through more than decades of service. "Michelle's many trailblazing accomplishments in her 32 years of naval service are evidence of both her fortitude and commitment to excellence and integrity," he said. "I look forward to many great things to come from the Navy's newest four-star admiral."

"Michelle Howard's promotion to the rank of admiral is the result of a brilliant naval career, one I fully expect to continue when she assumes her new role as vice chief of naval operations, but also it is an historic first, an event to be celebrated as she becomes the first female to achieve this position," Mabus said. "Her accomplishment is a direct example of a Navy that now, more than ever, reflects the nation it serves -- a nation where success is not born of race, gender or religion, but of skill and ability."

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HEARD INSIDE THE BELTWAY

The Civil Rights Act brought us closer to making real the declaration at the heart of our founding – that we are all created equal. But that journey continues. A half a century later, we're still working to tear down barriers and put opportunity within reach for every American, no matter who they are, what they look like, or where they come from. So as we celebrate this anniversary and the undeniable progress we've made over the past 50 years, we also remember those who have fought tirelessly to perfect our union, and recommit ourselves to making America more just, more equal and more free.

[Statement](#) made on July 2 by President Obama on the 50th Anniversary of the Civil Rights Act of 1964

WEEKLY LEADERSHIP REFLECTION

Train people well enough so they can leave, treat them well enough so they don't want to.

Richard Branson