



JULY 29, 2014
TOP NEWS STORIES

COMPROMISE BILL TO REFORM VA UNVEILED

The chairmen of the House and Senate Veterans Affairs Committees unveiled compromise legislation this week to reform the Department of Veterans Affairs (VA), including expedited firing of career senior executives.

Lawmakers are hoping to approve the legislation and send it to the President for his signature before leaving Washington for a five week August recess.

The [compromise legislation](#), which includes components of reform from bills passed separately in the House and Senate, authorizes \$17 billion to help veterans access care, help the VA hire more doctors and nurses, lease 27 new medical facilities across the country, treat patients who have been unable to access VA care or who live more than 40 miles away from a VA facility, among other provisions.

Reaching a compromise took over six weeks, with House Republic members opposing the high price tag of the measure while Democrats, led by chairman of the Senate VA Committee Bernie Sanders (I-VT) insisting that paying for veterans care is a "cost of war" that should be provided emergency funding.

The original price tag for the Senate legislation was over \$35 billion. The compromise to provide \$17 billion includes \$12 billion in new spending and \$5 billion from efficiencies and savings from the VA's budget.

The legislation also creates an [expedited firing process](#) for VA senior executives with limited appeal rights to the Merit Systems Protection Board (MSPB).

The bill would empower the VA Secretary to [immediately fire any senior executive](#) and cut off all payment of salary at the time of termination. The executive would have seven days to appeal to the MSPB, which then has 21 days to provide an expedited ruling. The ruling must be made by an administrative law judge and cannot be considered by the full three person board of the MSPB or appealed further.

The Senior Executives Association (SEA), a non-profit professional association that advocates for career senior executives, [said](#) that it "continues to take exception to the persistent belief that large numbers of Senior Executives are problem employees who are not held accountable," calling "the [SES] provisions in the compromise legislation are unnecessary at best and optically driven at worst."

HR UNIVERSITY GETS FACELIFT

The federal government's one stop website – HR University (HRU.gov) – for human resources professionals, supervisors, managers, and executives has been redesigned to better serve users.

The Office of Personnel Management (OPM) [announced the updates to HRU](#) in mid-July.

OPM worked with the Chief Human Capital Officers Council (CHCO Council) to refurbish the website. The new website includes:

- A Career Development menu that offers easy access to popular career development tools, such as HR career paths, HR professional roles, the online Individual Development Plan, and the HR customized self-assessment.
- Four new studio resource pages that centralize resources for specific HR subject matters in employee services policy, mentoring, recruitment policy, and work-life.
- Easier access to the Manger's Corner, which has resources for leaders, managers, and executives.
- A training opportunities menu that provides clear access to the full list of free, accredited courses.
- An HRU tour guide that helps users find the tools they need and answer common questions.
- Improved usability and readability on mobile devices.

The HR University website was launched in 2011. It serves as a single portal for resources and training that can be accessed by all government agencies. Over 130 courses are offered and the site has over 50,000 registered users across the government. To date, HRU has saved the government over \$100 million in training costs by having employees trained through HRU.

Last week [OPM announced the addition of a new course](#) to help agencies fulfil Executive Order 13548, Increasing Federal Employment of Individuals with Disabilities. The new course, "[A Roadmap to Success: Hiring, Retaining and Including People with Disabilities](#)," is available on HRU. In accordance with E.O. 13548, this training should be considered required training for human resources personnel and hiring managers, according to OPM.

GAO HIGHLIGHTS TAX NONCOMPLIANCE BY DOD CIVILIANS AND CONTRACTORS

A new Government Accountability Office (GAO) [report](#) found that 83,000 Defense Department (DOD) civilians and contractors who held or were eligible for secret, top secret, or sensitive compartmented information (SCI) clearances had unpaid federal tax debt totaling more than \$730 million as of June 30, 2012.

GAO reports are requested by members of Congress, and Congress has [shown great interest](#) in the tax compliance status of federal employees in recent years.

In their study GAO [looked at security clearances](#) from January 2006 to December 31, 2011 to see if individuals with tax issues were receiving or maintaining security clearances.

- Of the 83,000 individuals found to owe backed taxes, 40% (34,000) had a repayment plan with the IRS to pay back their debt. These individuals with repayment plans owed approximately \$262 million (meaning that 60% did not have a repayment plan owed \$468 million).
- Of the 83,000 individuals, 44,500 were federal employees and owed \$363 million.
- Of the 83,000 individuals, 20,400 were given a top-secret clearance owed \$249 million.
- Approximately 76 percent (63,000 individuals) accrued tax debts only *after* the issuance of the security clearance.
- Of the 83,000 individuals, 26,000 (31%) with unpaid federal tax debts were granted access to secret, top secret, or SCI information and owed \$229 million.

"Giving security clearances to individuals who fail to follow the law is unwise and risky. Federal tax cheats with security clearances jeopardize both our national and economic security, and could unnecessarily put our nation's classified information at risk," [said](#) Senator Tom Coburn, ranking member of the Senate Homeland Security and Governmental Affairs Committee.

The Office of the Director of National Intelligence (ODNI) has been working with the Treasury Department, Office of Personnel Management (OPM), and other agencies to improve mechanisms to ensure sufficient information about federal tax compliance can be shared between agencies for security clearance determination and maintenance. Work to develop those mechanisms is ongoing.

FROM THE HILL

SENIOR EXECUTIVE SERVICE REFORM INTRODUCED IN HOUSE

Accountability and reform legislation focused on career Senior Executive Service (SES) employees has been introduced in the House.

The legislation follows [recent hearings examining reform options](#) for the SES and General Schedule (GS).

The Senior Executive Service Accountability Act ([H.R. 5169](#)) was introduced by two members of the House Oversight and Government Reform Committee, Rep. Tim Walberg (R-MI) and committee chairman Darrell Issa (R-CA).

“Scandal after scandal, failure after failure, the American people are tired of seeing federal officials escape accountability,” chairman Issa said at a committee hearing where the [SES and other accountability bills were discussed](#).

The SES bill streamlines the process for removing members of the SES for misconduct, eliminates the provision in current law which allows an SES employee removed for performance and placed in a new federal job from retaining their SES salary, make SES employees subject to suspension of less than 14 days (under the same conditions as the employees they supervise), and doubles the length of the probationary period for new SES (from 1 year to 2 years).

Several Democratic members of the committee, including Reps. Stephen Lynch (D-MA), Eleanor Holmes Norton (D-DC), Gerry Connolly (D-VA) and ranking member Elijah Cummings (D-MD) [objected to certain provisions](#) of the bill, and [offered amendments](#) to improve language. The bill’s sponsors agreed to consider those concerns and bring a new version of the legislation back to the committee for further consideration.

“Of late, Senior Executives have been under enormous scrutiny and deemed by Congress as guilty until proven innocent for a variety of issues that are playing out in the media. Of course the story that is not told is of the thousands things done by Senior Executives on a daily basis that make the government work better for the citizens of this country,” [said Carol Bonosaro](#), president of the Senior Executives Association (SEA).

“Changing laws based on the perceptions of a few high profile cases is not the way to make good policy,” continued Bonosaro, who called on Congress to work with stakeholders and delve into the policy issues around the SES in order to “have a meaningful discussion of reform [absent of political optics and campaign rhetoric](#).”

CAREER TIP OF THE WEEK

FIVE THINGS YOU DON'T WANT TO HEAR FROM THE QUALIFICATIONS REVIEW BOARD

The role of a Qualifications Review Board (QRB) is to give a fair and objective review of each set of ECQs. However, having said that, over the past several years, we have seen QRBs being especially tough. Many clients write their own ECQs without professional guidance, are rejected by the QRB, and then come to us for executive assistance in helping to rewrite their ECQs.

Here are the top five reasons that applicants have been getting their ECQs rejected:

1. Examples are more than 10 years old
2. Examples are not presented in the Challenge-Context-Action-Result (CCAR) format
3. Examples are too technical and not focused on the applicant's executive potential
4. There is not enough detailed information on how the candidate applied the various leadership competencies
5. Lack of strong and specific results that demonstrate the scope and impact of the candidate's actions

Lee Kelley is an Iraq war veteran and former Army Captain who now serves as the senior writer on [CareerPro Global](#)'s writing team. Leveraging the company's vast expertise in assisting thousands of SES and federal job seekers, Lee has personally developed hundreds of resumes and more than a thousand ECQs. He is also the Director of Training and Veteran Transitions, and has provided USAJOBS resume-writing workshops to hundreds of federal employees and our military. In addition, Lee is an author and executive coach. He co-authored the book *Roadmap to the Senior Executive Service: How to Find SES Jobs, Determine Your Qualifications, and Develop Your SES Application*. His latest book is titled *Inside Marine One: Four U.S. Presidents, One Proud Marine, and the World's Most Amazing Helicopter*.

[Visit CareerProGlobal's website for more information.](#)

MANAGER MATTERS

FOR FEDERAL MANAGERS, WORKSPACE SHARING CAN BE BLESSING AND CURSE

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A trend in government is the rise of federal employees telecommuting and working from home. The increase is spurred by studies showing that working at home can be more productive, morale increasing, and leads to a more effective workforce in general. However, the growing emphasis on telecommuting has correspondingly led to the growth of empty desks in government buildings on any given day. While some agencies have been slow to react to such changes, others have fully embraced what is becoming the "new normal" and have revamped their offices to reflect the reality of less workers being physically present. These changes will ultimately present federal managers and executives with different challenges and opportunities than the old office model culture did in the past.

A recent article in the *New York Times* highlighted one of the agencies leading the charge in adapting to new workplace realities, the General Services Administration (GSA). The agency's downtown Washington, D.C. headquarters recently underwent an overhaul that shifted the building from a staid, cubicle-based bureaucrat's dream to one that looks as if it could house Apple or Google. Because the GSA has been at the forefront of the work from home movement, any given weekday sees a large percentage of the workforce absent. Accordingly, the building has shifted from containing cubicles and private offices to emphasizing shared workplaces, where dozens of employees work in rooms without permanently assigned desks. Most workspaces are now "reserved" by employees for days when they will be working on-site, and may see a different person at a given workspace each day. Teams of employees often reserve spaces together to work on projects, while individual employees can choose to work where they wish within the building.

Within the government, the GSA is clearly in the forefront of adapting to growing work from home rates and in embracing the desk-sharing program. So far, the U.S. Patent & Trademark Office, Department of Agriculture, Department of Homeland Security, Fish and Wildlife Services, and the Broadcasting Board of Governors have also launched desk-sharing initiatives. If trends continue, an increasing number of agencies will begin to at least consider the approach.

For those managers who are or will be overseeing their workforces in a desk-sharing environment, there are challenges. Many employees have worked for years, even decades, at a personal desk, with a familiar space becoming almost a second home. Employees get used to sitting next to certain people, and many employees rely upon a routine in order to manage their day. Desk-sharing environments can disrupt all of that. If your office does undergo a transition to become more open and desk-share friendly, morale can decrease sharply before it goes back up. Federal executives and supervisors need to carefully manage the culture shift. While productivity may go up in the long run, there is a good chance it is disrupted in the short term. Managers can help ease this process by checking in frequently with employees to see how they are adapting, and opening up more to employee suggestions that may aid the team as a whole. Having more employees telework also means that managers need to learn how to effectively check up on employees, even when they are not physically present. The cultural disruptions associated with desk-sharing also may lead to some hostility from employees whose familiar work environment has changed drastically.

Given the pressures such a transition may generate, one of the best ways a federal manager can protect themselves is with a professional liability insurance policy. Having PLI will mean coverage against any EEO complaints, hostile work environment allegations, and similar matters. Any scenario in which employees may become upset can often lead to allegations, however spurious, against management. The FEDS PLI policy will provide you with high-quality legal representation in such matters, and prevent you from having to spend tens of thousands of dollars to defend yourself. Visit www.fedsprotection.com to learn more today.

For more information on your specific exposures now, how professional liability insurance protects, or how the FEDS program differs from other insurance programs, please visit the FEDS website and choose the Executive and Managers tab. For more articles like this one, read "Yesterday's Headlines, Today's Coverage" in the bottom left corner on the [FEDS homepage](#).

CASE LAW UPDATE

MSPB REVERSES TARDINESS REMOVAL OF FLEXIBLE SCHEDULE EMPLOYEE

On November 22, 2013, the Department of the Air Force effectuated the removal of a GS-05 Secretary on a charge of "tardiness," based on a total of seven hours and thirty minutes of absence without leave ("AWOL") accumulated on four separate occasions in September and October of 2013. The employee filed a Board appeal, but waived his right to a hearing. An MSPB administrative judge sustained the charge and affirmed the removal on the written record, finding that the employee was scheduled to report for duty at 8:30 a.m., but had been at least one hour late on four occasions, and half an hour late on one occasion. The employee petitioned the Board for full review, and on July 23, 2014, the Board reversed the initial decision and did not sustain the employee's removal.

Although an agency is not required to specifically "label" a charge and may describe actions that amount to misconduct in the charge letter, as the Board noted early in its analysis, once the agency does label an act of alleged misconduct in the charge letter as it did in this case, then the elements of that charge must be proven. The Board found that the agency specifically charged the employee with "tardiness," instead of a more general term without specific elements of proof like "conduct unbecoming" or "improper conduct" which would only necessitate proving the employee "committed the acts alleged in support of the broad label."

While the Board did not dispute the administrative judge's construction of the elements of "tardiness" based on the Federal Circuit's decision in *Bryant v. National Science Foundation*, 105 F.3d 1414, 1416-17 (Fed. Cir. 1997), it held that because the employee only disputed whether the charge should be sustained based on whether his late arrival times constituted tardiness within the parameters of his flexible work schedule, the argument was best construed as one that the agency "failed to meet its burden of proving an element of its charge, i.e., that the appellant was scheduled to report for duty before the arrival times at issue." This differed

significantly from the administrative judge's adjudication of the issue as an affirmative defense of harmful error or action taken not in accordance with the law in that the burden before the administrative judge was on the employee, rather than the agency.

With the "only" question being whether the employee was required to be on duty during the periods for which the agency carried him in AWOL status, the Board turned to his "Maxiflex" schedule, which is defined by the Department of Defense as a "flexible work schedule that contains core hours on fewer than 10 work days in the biweekly pay period and in which an employee has a basic work requirement of 80 hours for the biweekly pay period. The employee may vary the number of hours worked on a given workday or the number of hours each week, within the limits established for the organization."

The Board looked to the record to find what limitations the agency had placed on the flexibility of the employee's schedule, and found that the agency had limited the employee to working between the hours of 7:00 a.m. and 5:00 p.m.

The agency also argued that the employee was required to report for duty "no later than 8:30 a.m. each day because that is the latest that he could arrive at work and complete an 8-hour day with a 30-minute lunch break by 5:00 p.m. However, the Board agreed with the employee that the agency failed to show that it had ever established "core hours" for his work schedule. The Board reviewed that agency's submissions, and found no mention of "core hours," and also found the agency's contention that an 8-hour workday starting no later than 8:30 a.m. was mandatory to be inconsistent with the agency's own definition of "Maxiflex," which explicitly provides that Maxiflex schedules contain core hours on fewer than 10 work days in the biweekly pay period. The Board also noted that the agency had not charged the employee with AWOL on the day he worked only 7 hours and 30 minutes on September 5, 2013, and only charged him after he failed to make up the deficiency in his 80 hour requirement by the end of the pay period. This, according to the Board, was inconsistent with the agency's argument that an 8:30 a.m. arrival time (and an 8-hour workday) would be necessary on any specific day.

The agency produced two memoranda which they argued informed the employee of limitations on his work schedule. The Board found that the first memorandum was "confusing at best" and "internally contradictory" in that it stated that the employee has a flexible work schedule but also appeared to set forth a fixed work schedule. It also, according to the Board, conflicted with a second memorandum, which stated that the employee would "normally" work an 8-hour day between 7:00 a.m. and 5:00 p.m.

The Board also addressed the agency's premise that the employee failed to meet his 80-hour pay period requirement because he was tardy. In the Board's view, the employee could have met the requirement despite his "late" arrivals by working more hours on another day and that it was the sum of his actions over a pay period, rather than any specific tardiness, that caused the employee to fail to meet the pay period requirement.

Stating that the case was not about "whether the agency has the authority to set the [employee's] work schedule or to place limits on any flexible schedule," the Board pointed out that a "tardiness" case is about what schedule the agency "actually" sets for an employee. Because the agency failed to provide sufficient evidence for the Board to make a finding on the issue, and in the Board's view did not seem to comprehend the employee's work schedule itself, the Board would not sustain the agency's charge or the employee's removal.

For the above stated reasons, the Merit Systems Protection Board ordered the agency to retroactively cancel the employee's removal and restore the employee to his position, granting the employee back pay, interest, and benefits.

[You can read the full case, *Hollingsworth v. Department of the Air Force*, 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.

GEICO'S GOOD STUFF YOUNG PUBLIC SERVICE LEADERS HONORED

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

Last week up-and-coming government employees working at the federal, state, county, and local level were honored at the [NextGen Public Service Awards](#) ceremony in Washington, D.C.

The awards were given jointly by [GovLoop](#) and [Young Government Leaders](#) (YGL), in advance of the [2014 Next Generation of Government Summit](#).

Awards were bestowed upon five individuals and one group for their accomplishments. Federal employees won three individual categories and one group category, with a state and a local government employee each winning one category.

[Award categories included](#): the NextGen Exemplary Leadership Award, the NextGen Innovator of the Year Award, the NextGen Courage Award, the NextGen Silent Hero Award, the NextGen Advocate Award, and the NextGen Exemplary Group Award.

[Desmond Proctor](#), the youngest Deputy United States Marshal in U.S. history, won the NextGen Exemplary Leadership Award for his role leading a first responder team during the Navy Yard shooting last year. Allison Gillus earned the NextGen Courage Award for her work producing briefing books and providing White House interagency support on behalf of the Department of Homeland Security (DHS). [Mika Cross](#) was recognized with the NextGen Silent Hero Award for her work behind the scenes on human capital and work-life initiatives at the Department of Agriculture (USDA) and the Office of Personnel Management (OPM). The Whistleblower Protection Program of Region 7, of the Labor Department's Occupational Safety and Health Administration (OSHA) received the NextGen Exemplary Group Award for reducing a significant backlog of cases in a short timeframe.

[Behrang Abadi](#), the City of Santa Monica's web development manager, earned the NextGen Innovator of the Year for using technology to improve service delivery to citizens of the city. [Karen Robinson](#), executive director of the Texas Department of Information Resources (Texas CIO), received the NextGen Advocate Award for her dedication to cultivating talent and mentoring future leaders.

FEDmanager salutes the award winners and all finalists for their contributions to government and society through their dedication to public service.

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HEARD INSIDE THE BELTWAY

The United States Congress today, in my view, is a dysfunctional institution. There is major issue after major issue where virtually nothing is happening. The important point is we are here together having done something that happens quite rarely in the United States Congress.

Senator Bernie Sanders (I-VT), chairman of the Senate Veterans Affairs Committee, [announcing](#) compromise legislation to address issues at the Department of Veterans Affairs

WEEKLY LEADERSHIP REFLECTION

How difficult the task to quench the fire and the pride of private ambition, and to sacrifice ourselves and all our hopes and expectations to the public weal! How few have souls capable of so noble an undertaking!

Abigail Adams - letter to John Adams (10 July 1775)