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TOP NEWS STORIES

LEGISLATION TO REPEAL HIGHER PENSION CONTRIBUTIONS FOR NEW FEDS INTRODUCED

A bill introduced last week would repeal higher pension contribution levels for new federal employees hired in 2012 and 2013.

Rep. Donna Edwards (D-MD) sponsored the bill, the Federal Employee Pension Fairness Act (H.R. 5338).

Legislation passed in 2012 and 2013 created disparities between the amount new federal employees contribute to their pensions. The pension contribution amount rose from 0.8% for those hired prior to 2012 to 4.4% for those hired in 2014.

“Federal employees are the backbone of our federal government and agencies. Whether protecting our borders, conducting life-saving medical research, or ensuring our food is safe to consume, public servants perform duties vital to the health, safety, and economic well-being of the American people. Despite their sacrifices and commitment to service, federal employees have experienced a three-year pay freeze, unpaid furloughs, the elimination of cost-of-living increases, and seen their own contributions to their pensions increase by over 500%,” said Rep. Edwards.

“Let’s stop unduly burdening our federal workers,” Edwards stated.

"Federal employees have contributed more than $120 billion toward deficit reduction," National Active and Retired Federal Employees Association (NARFE) President Joseph Beaudoin said, "and passage of this bill would be the first step toward reversing this trend and ensuring we can continue to recruit and retain the best and brightest into public service. Providing our public servants adequate compensation is about more than just fairness, it is about maintaining an efficient and effective federal government."

The legislation is cosponsored by Rep. Gerry Connolly (D-VA), Rep. Elijah Cummings (D-MD), Rep. Eleanor Holmes Norton (D-DC), Rep. Marcy Kaptur (D-OH), Rep. Stephen Lynch (D-MA), Rep. Keith Ellison (D-MN), Rep. Charles Rangel (D-NY), Rep. Matt Cartwright (D-PA), and Rep. Betty McCollum (D-MN).

BILL WOULD GIVE NEW VETERAN FEDS SICK LEAVE

Recently introduced bipartisan legislation would provide wounded warriors with sick leave on day one of their federal employment.

Under current law, new federal employees accrue sick leave during the course of their employment.

The current system imposed a burden on military veterans working for the government, many of whom require ongoing medical care for injuries sustained in battle. Under that system, veteran feds had little option but to take unpaid leave or cancel appointments if they could not get time off.

The Wounded Warriors Federal Leave Act of 2014 (H.R. 5229) addresses this problem by providing former military members injured in combat and who have a service-connected disability rating of 30 percent or higher access to a full year's sick leave – 104 hours of "Wounded Warriors leave"– when they begin their first day of federal employment.

To be eligible for such leave, employees would submit certification of their service-connected disability to their agency as prescribed by the Office of Personnel Management (OPM). Unused "Wounded Warriors leave" would not carry over into the second year of a veteran's federal employment.

"The Wounded Warriors Federal Leave Act of 2014 provides vital federal leave for our heroic and dedicated wounded warriors so that they are able to take the time they need to address their disabilities, while continuing their much appreciated service to our country," said Rep. Stephen Lynch (D-MA), ranking member of the House Subcommittee on the Federal Workforce, U.S. Postal Service, and Census.

"While we can never fully repay the debt incurred by the men and women who put their lives on the line to protect our freedom, I am proud to support this legislation that would provide disabled veterans that enter the federal workforce the opportunity to seek medical treatment for their service-connected disabilities without being forced to take unpaid leave," said Chairman of the Federal Workforce Subcommittee, Rep. Blake Farenthold (R-TX).

The Federal Managers Association (FMA) worked with members of Congress to secure introduction of the legislation after the issue was raised by FMA members at Marine Corps Air Station Cherry Point in North Carolina.

"H.R. 5529 recognizes that newly hired federal employees who are disabled veterans should not have to choose between seeking medical attention and exhausting any leave available. FMA members have seen first-hand the stress this creates in the work environment, as both managers and employees try to meet congressionally-mandated missions and goals. As these disabled veterans served their country on and off the battlefield, it is only right that the federal government provide this much needed leave," said FMA National President Patricia Niehaus.

The bipartisan legislation is also cosponsored by Rep. Elijah Cummings (D-MD), Rep. G.K. Butterfield (D-NC), and Rep. Walter Jones (R-NC).

CUSTOMS AND BORDER PROTECTION AUTHORIZATION APPROVED BY HOUSE FOR FIRST TIME

A House bill to authorize Customs and Border Protection (CBP) for the first time was approved last week.

CBP had not received congressional authorization for its operations since its creation within the Department of Homeland Security (DHS) in 2002.

The bipartisan CBP authorization legislation (H.R. 3846) would authorize border, maritime, and transportation security responsibilities and functions in DHS and the establishment of CBP. It would also clarify authorities of the CBP commissioner.

The bill was sponsored by Reps. Candice Miller (R-MI), Sheila Jackson Lee (D-TX) and Michael McCaul (R-TX). All three are members of the House Homeland Security Committee. Rep. McCaul is chairman of the committee, and Rep. Miller and Rep. Jackson Lee are chair and ranking member, respectively, of the Border and Maritime Security Subcommittee.

"As an agency with more than 44,000 Federal law enforcement officers, it is critical that Congress provide greater transparency, accountability and oversight to CBP on a routine basis. Authorizing the Department and its components like CBP remains my top priority for the Homeland Security Committee. Next Congress, I intend to lead the first ever DHS authorization through regular order in partnership with my fellow chairmen," said Chairman McCaul.

FROM THE HILL

EXPECT A CONTINUING RESOLUTION IN SEPTEMBER

Congress has left Washington for a five week August recess.

Groundwork is already being laid by congressional leaders and appropriators for a continuing resolution (CR) to fund the government past the end of the fiscal year, which comes on September 30.

Only a handful of legislative days remain on the calendar in September before members leave again to campaign for reelection.

Despite an agreement last winter on top-line funding levels for fiscal years 2014 and 2015, congressional appropriators in the House and Senate have yet to complete consideration and passage of all of their appropriations bills.

The House has made significantly more progress than the Senate, having passed seven appropriations bills. The Senate has not passed a single major appropriations bill, in part due to disagreements about amendments and fears for having members cast tough votes during an election year where the balance of the Senate may flip from Democratic to Republican control.

The result of ongoing congressional gridlock will be yet another CR, and continued budget uncertainty for agencies.

The fact that the coming use of a CR, or omnibus package that wraps together the appropriations bills that each chamber has approved, has been discussed so early ahead of the August recess indicates that members are keen to avoid another government shutdown, although that scenario should not be completely discounted as impossible.

EDUCATE YOURSELF

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Program registration is open to senior EEO professionals in federal, state and local governments, EEO executives from the private sector, and those who seek to move into senior positions. HR executives who have significant responsibilities in managing and implementing an EEO program are also encouraged to attend. Registration is limited to the GS-14 and above population, and equivalents.

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  - Presenter: Fletcher Honemond, Federal Executive Institute
- The Senior Executive Service (SES): How To Get There and Succeed Once There
  - Presenter: Claudia J. Postell, Esq., National Science Foundation

To more information and to register, visit www.eeocleadershipconference.com.

CASE LAW UPDATE

COURT OF FEDERAL CLAIMS DENIES GOVERNMENT'S MOTION TO DISMISS IN SHUTDOWN SUIT

At the end of fiscal year 2013, between October 1 and October 16, 2013, the Congressional budget impasse led to a partial government shutdown. A group of "excepted" government employees were required to work during the shutdown but were not compensated for their work until the next regularly scheduled payday after the shutdown had ended. When that scheduled payday arrived, paychecks only reflected payment for work done through Monday, September 30, 2013, rather than through October 5, 2013. The employees alleged that thy were not paid minimum wage for the week of September 29, 2013 through October 5, 2013 ("the Week") and that the government did not complete payment until two weeks after the scheduled paydays, after the shutdown was over and Congress allocated funds to pay the wages. The employees filed an initial complaint with the Court of Federal Claims on October 24, 2013, and after amending the complaint, settled on three counts. Count one alleged that the government's failure to timely pay excepted employees for the five days resulted in a minimum wage violation under the FLSA. Count Two alleged that in violation of the FLSA, potential plaintiffs – classified as FLSA non-exempt and therefore entitled to overtime under the FLSA – were not paid for overtime work. The third count asserted that FLSA exempt employees are also entitled to overtime hours worked because they weren't paid on a salary basis. The government moved to dismiss on failure to state a claim. On July 31, 2014, the U.S. Court of Federal Claims denied the government's motion to dismiss on Counts One and Two, and granted the government's motion to dismiss on Count Three.

The court opened its analysis by exploring the history of FLSA, which governs minimum wage and overtime compensation, and is administered by the Department of Labor. In 1974, the court noted, the FLSA was extended to reach federal employees. The court observed that while the employees are federal workers subject to OPM regulations rather than the Department of Labor corollaries, Department of Labor regulations may apply to cases involving federal employees when there is no correlative OPM regulation.

In a matter of first impression, the court considered the legal question of whether the federal employees could recover under the FLSA for "a short delay in the payment of their wages." The summarized the government's argument, which asserted that FLSA is designed to protect low wage workers and is not designed to apply to employees whose pay was delayed only a short time, and that the employees lacked authority for their claim because FLSA and OPM regulations do not require payment of wages on a particular day.

The court found that FLSA requires that "[e]very employer…pay to each of his employees who in any workweek is engaged in commerce…wages at the following rates…$7.25 an hour" and that the OPM minimum wage regulation provided that an agency "shall pay each of its employees' wages at rates not less than the minimum wage…for all hours of work..." The court agreed with the employees that the "usual rule" for a missed regular payday applies, rather than considering the legal constraint of the Anti-Deficiency Act (which caused the short delay) in applying the "totality of the circumstances" standard the government wished to use.

According to the court, a violation of the FLSA occurred when the employees were not paid on time. Citing the Supreme Court's decision in *Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697 (1945) and the Ninth Circuit's decision in *Biggs v. Wilson*, 1 F.3d 1537, 1540 (9th Cir. 1993), the claims court determined that, as a bright line rule, a violation of the FLSA occurs on the date of a missed payday.

The court also held that finding a violation of the FLSA under the circumstances of the government shutdown is consistent with the purpose of FLSA. While the government argued that the FLSA was not intended to apply to government workers facing a modest delay in the receipt of their pay, the employees countered that Congress extended FLSA's protections to federal employees in 1974 without limiting protections, and that the government's insistence that the FLSA is only intended to protect low wage workers ignored the reality that many of the employees bringing the action were GS-04 and GS-05 employees, who have annual salaries ranging from "about $28,000 to about $41,000."

The court took notice of the government's "misguided" argument, and stated that Congress clearly intended to protect federal workers: "[a]s must other employers, the government must pay minimum wages and overtime compensation to its employees, according to the plain language of the FLSA." Finding that a ruling for the plaintiff employees in this case was consistent with the purpose of FLSA, the court stated that the purpose of the Act was "to protect all covered workers from substandard wages."

However, as to Count 3, the court held that the employees failed to state a claim with respect to FLSA exempt employees being covered by the FLSA overtime provision when they were temporarily paid on a non-salary basis, and dismissed Count 3.

While the court noted that whether liquidated damages for violations in Count One and Count Two are appropriate will depend on whether the government can demonstrate good faith and a reasonable basis for believing it was compliant with the FLSA, it determined that it would be inappropriate to make that determination on a motion to dismiss. Rather, the court stated, the government's opportunity to establish this defense will "come later on summary judgment or at trial."

For the above stated reasons, the U.S. Court of Federal Claims denied the United States' motion to dismiss for failure to state a claim as to Counts One and Two, and granted the United States' motion to dismiss for failure to state a claim as to Count Three.

You can read the full motion to dismiss opinion and order in *Martin, Jr. v. United States* 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.

YGL PROFILES

AN INTERVIEW WITH DIRECTOR OF REGIONAL GRANT OPERATIONS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES

Mr. Ken Sosne is a manager with more than 20 years of Federal Government service with both the Judiciary and the Executive Branch (cabinet and non-cabinet level agencies). He has experience as a budget analyst, grants officer, administrative officer, and resource manager supporting a variety of programs including, the Federal Public Defender program, Immigration and Border Officers, disability research, and civilian social support and poverty programs. He is currently at the Department of Health and Human Service (HHS), Administration for Children Families.

1. **What is the best leadership lesson you've learned?**

   One needs to patient and watch how others command a room.

2. **How did you get to where you are today?**

   I always was willing to work hard, forget about the hours I was putting in, and dealt fairly with others.

3. **What leadership lessons do you try to convey to your team?**

   Fairness, keep your eye on the mission, and always remember your oath of public service.

4. **What do you look for in potential employees when making hiring decisions?**

   I look for a strong educational background, well-rounded portfolio, and an individual with a sense of both self and leadership.

5. **What do you do after work for fun or to relax?**

   I enjoy spending time with my wife, cooking, and going out to our beach home that someday will be our retirement venue.

6. **What is the best mistake you've ever made?**

   Being too forthright in a meeting and getting a strong rebuttal, thereby allowing me to learn to listen better.

7. **Describe your average day in 10 words or less.**

   Overbooked, stressful, too many competing priorities and rewarding at times.

8. **What strengths do you bring your organization?**

I have the ability to gain trust and bring my many years of experience to an organization to share a unique viewpoint and to enhance collaboration. I am able to facilitate communications between teams.

9. **What career accomplishment are you most proud of and why?**

   I am most proud of utilizing my strong education background to support a public mission and the ability I have had to hire the best and the brightest.

10. **What is the most important thing you have learned in your career?**

    I have learned that a strong education is important. Also, to place an emphasis on risk taking and maintaining a strong support network of colleagues and family as you move up the ladder.

11. **What was the biggest career risk you took? Did it turn out positively or negatively for you? What did you learn?**

    Bidding for my GS-15 manager's position and finding out that being a federal manager is very difficult but can be rewarding has been the biggest career move for me. It turned out positively in that I perform well under trial-by-fire and was able to utilize the additional training I gained from previous work opportunities. I learned not everything is what it seems and you need to be resilient.

12. **What motivates you?**

    The mission of my current agency, HHS, motivates me. I support the Head Start and Technical Assistance to Needy Families programs. In addition, I have been lucky to have had a good federal career, and am now looking to the rewards in a retirement phase that I plan to spend involved with a new career teaching or helping non-profits and social justice organizations.

Mr. Ken Sosne is a manager with more than 20 years of Federal Government service with both the Judiciary and the Executive Branch (cabinet and non-cabinet level agencies). He has experience as a budget analyst, grants officer, administrative officer, and resource manager supporting a variety of programs including, the Federal Public Defender program, Immigration and Border Officers, disability research, and civilian social support and poverty programs. He is currently at the Department of Health and Human Service (HHS), Administration for Children Families.

Written by Lynnie Martin, Young Government Leaders.

Young Government Leaders is a non-profit professional organization founded and led by young government employees. YGL strives to build a community of leadership for young feds through professional development events, networking opportunities, social events, seminars, fellowships and scholarships.

GEICO'S GOOD STUFF

OPM PROPOSES EXPANDING FEHB ELIGIBILITY TO SEASONAL, INTERMITTENT EMPLOYEES

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

Under a proposed new rule temporary, seasonal, and intermittent full-time federal employees would receive eligibility to enroll in the Federal Employees Health Benefits (FEHB) Program.

The Office of Personnel Management (OPM) announced the proposed rule in the Federal Register on July 29.

Currently, most federal employees on temporary appointments become eligible for FEHB coverage after completing one year of current continuous employment, and they do not receive an employer contribution to their premium. Those working on seasonal schedules for less than six months a year or on intermittent schedules are excluded from eligibility.

Under the proposed rule, employees on temporary appointments, employees on seasonal schedules who will be working less than six months per year, and employees working intermittent schedules would be eligible to enroll in a FEHB health plan if the employee is expected to work a full-time schedule of 130 or more hours in a calendar month. They would also receive an employer contribution to their coverage.

Employees will be notified of their eligibility to apply for FEHB coverage and will have sixty days to enroll in FEHB so that coverage becomes effective no later than January 2015.

OPM will accept public comments on the proposed rule until August 28, 2014.

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HEARD INSIDE THE BELTWAY

Sometimes work in Washington can be discouraging. Sometimes it seems as if the agenda that you're trying to pursue helping working families and middle-class families -- sometimes it seems that's not the priorities up on Capitol Hill. But if you remember why you got into this work in the first place, if you remember that this is not just a job but it should also be a passion…that it should also be part of giving back, that you shouldn't just be checking in and punching the clock, but every single day there's somebody out there who could use your help -- and I know when they get that help -- and they write letters to me and they'll tell me, you know what, you transformed my life -- there's no better feeling on Earth than that feeling that you somehow played a small part in a family succeeding.

President Obama speaking with Department of Housing and Urban Development (HUD) employees on July 31

WEEKLY LEADERSHIP REFLECTION

It must be considered that there is nothing more difficult to carry out, nor more doubtful of success, nor more dangerous to handle, than to initiate a new order of things.

Nicolo Machiavelli