



NOVEMBER 12, 2014
TOP NEWS STORIES

VA SECRETARY ANNOUNCES RESTRUCTURING, FIRING OF 1,000 EMPLOYEES

Robert McDonald, the Department of Veterans Affairs (VA) Secretary, [has announced a massive reorganization plan for the VA](#), dubbed "MyVA."

McDonald also [announced on the CBS program 60 Minutes](#) that over 1,000 VA employees face disciplinary actions, including the potential for termination.

McDonald's press blitz ahead of Veterans Day – the Secretary [participated in several media events last week – serves to push back against those critical of the department](#) for not taking action against employees more swiftly.

McDonald reiterated in his *60 Minutes* appearance that federal employees are granted due process and that the process must be adhered to in order for proposed personnel actions to uphold legal scrutiny.

"We've got to make it stick," McDonald told *60 Minutes*.

During [a CNN interview with Wolf Blitzer](#), McDonald said that if Congress wanted him to fire employees faster and with no due process, he would need a new law.

A House Veterans Affairs Committee [hearing](#) assessing the implementation of the Veterans Access, Choice, and Accountability Act of 2014, scheduled to take place this Thursday, November 13, will likely consider whether new authorities are needed to levy personnel actions. Congress passed that law this summer, which included reforms to VA service and healthcare delivery, while also making it easier to remove Senior Executive Service (SES) employees.

"New plans, initiatives and organizational structures are all well and good, but they will not produce their intended results until VA rids itself of the employees who have shaken veterans' trust in the system. So far VA hasn't done that – as evidenced by the fact that the majority of those who caused the VA scandal are still on the department payroll. I'm disappointed that instead of fully embracing the new firing authorities Congress and President Obama gave VA as part of the Veterans Access, Choice and Accountability Act, the department has shied away from them and even added more bureaucratic red tape such as additional appeals and interminable stints on paid leave. No one doubts that reforming VA is a tough job. But getting rid of failed executives should be the easiest part – not the most difficult," [said](#) Rep. Jeff Miller (R-FL), chairman of the House Veterans Affairs Committee.

"The Senior Executives Association [SEA] firmly believes that employees should be held accountable for their actions but also that they deserve due process and fair and impartial treatment free from political influence. It is difficult to imagine that there are 1000 career federal employees who are deserving of such action as the VA Secretary suggests. Are there no political appointees to be held accountable? Has Congress had no role in the failings in the Department? Is it possible that the lack of sufficient medical staff, along with pressure to meet

appointment time goals, resulted in employees maintaining separate wait lists?” SEA President Carol Bonosaro [said in a statement](#) following Secretary McDonald’s *60 Minutes* appearance.

Secretary McDonald laid out several components of his VA reorganization plan, while acknowledging “that this is a long-term process and we are just beginning to plan how this will all unfold.”

As part of the reorganization, a new VA-wide customer service organization will be established, tasked with ensuring that top-level customer service is being provided to veterans. That organization will be led by a Chief Customer Service Officer who reports to the Secretary. “The mission of the new office will be to drive VA culture and practices to understand and respond to the expectations of our Veteran customers,” [according to the VA press statement](#) on the reorganization plan.

A single regional framework will be established that will simplify internal coordination, facilitate partnering, and enhance customer service. “This will allow Veterans to more easily navigate VA without having to understand our inner structure,” the VA press statement states.

The VA will also establish, with the assistance of partners, a national network of Community Veteran Advisory Councils to coordinate better service delivery with local, state, and community partners.

The VA will also identify opportunities for the organization to realign its internal business processes into a shared services model. With a shared service model, organizations across VA can leverage the same support services while improving efficiency, reducing costs and increasing productivity across the VA.

To gather suggestions and feedback from VA employees on the ongoing reorganization, the VA has established on the agency intranet a web tool, the [My VA Idea House](#).

“I know there are a lot of questions about this effort, and I know that there will be concerns. We don’t have all the answers right now, and that’s why we are reaching to you for your thoughts. This will be a fair and deliberate process, and we need your help to make sure our decisions are the right ones for Veterans,” Secretary McDonald says in concluding his message to all employees.

“While much of what the Secretary is undertaking, including a single web site, will be beneficial, veterans, regrettably, are likely to pay the price for this unprecedented treatment of civil servants,” said SEA’s Bonosaro. “Veterans deserve more.”

FEDERAL BENEFITS OPEN SEASON UNDERWAY

Federal benefits open season kicked off on Monday, November 10.

Federal employees have until December 8 to review, and to [change if desired](#), their health, dental, and vision plan choices to ensure proper coverage for themselves and their families.

The Federal Employees Health Benefit Program (FEHBP) covers 8.2 million employees, retirees, and their family members across the U.S. and the globe.

There are 257 health plans, with 11 available nationwide, for employees to choose from, [according to the Office of Personnel Management](#) (OPM), which administers open season.

Federal employees also have the option during open season to enroll in [Flexible Spending Plans](#) through FSAFEDS. These plans allow employees to set aside pre-tax money to pay for eligible health and dependent

care expenses. FSAFEDS enrollment has been lowered to a \$100 deposit, and up to \$500 of unused FSAFEDS money can be rolled over from one year into the next.

PERSONAL INFORMATION OF 800,000 POSTAL SERVICE EMPLOYEES COMPROMISED IN DATA BREACH

Chinese hackers are thought to be behind a breach of the computer networks at the U.S. Postal Service (USPS), where the personal information on more than 800,000 current and recently retired employees may have been compromised.

Personnel data, including names, birthdates, Social Security numbers, addresses, dates of employment, emergency contact information, and other information on every employee, including the postmaster general, were compromised, [according to an agency press statement](#).

Postal Service transactional data bases in Post Offices and online account information on USPS.com were not affected by the breach, the agency stated.

The agency will provide employees with credit monitoring service for one year at no charge to them, and has issued a [frequently asked questions sheet with more information](#).

“It is an unfortunate fact of life these days that every organization connected to the Internet is a constant target for cyber intrusion activity,” Postmaster General Patrick Donahoe said in a statement. “The United States Postal Service is no different. Fortunately, we have seen no evidence of malicious use of the compromised data and we are taking steps to help our employees protect against any potential misuse of their data.”

The Federal Bureau of Investigation (FBI) is investigating the hack into the USPS computer networks.

[According to The Washington Post](#), the Department of Homeland Security’s (DHS) Computer Emergency Readiness Team (US-CERT) assisted the Postal Service with the network breach mitigation, a [task it recently performed](#) following breaches at the Office of Personnel Management (OPM) and contractor USIS.

While congressional oversight committees were briefed about the USPS breach twice since it occurred in September, agency employees are only finding out now, causing those [lawmakers to question why the agency hadn’t informed its employees sooner](#).

The public reporting on the USPS data breach coincided with the release of a new [analysis by The Associated Press](#) that found at least half of all federal cyber breaches reported since 2010 can be attributed to the actions of federal and postal employees themselves.

The *AP* used Freedom of Information Act (FOIA) requests to gather agency documents about cyber breaches.

“Last year, for example, about 21 percent of all federal breaches were traced to government workers who violated policies; 16 percent who lost devices or had them stolen; 12 percent who improperly handled sensitive information printed from computers; at least 8 percent who ran or installed malicious software; and 6 percent who were enticed to share private information, according to an annual White House review,” the *AP* found.

FROM THE HILL

PRESIDENT NOMINATES LORETTA LYNCH FOR ATTORNEY GENERAL POST

On Saturday [President Obama nominated](#) U.S. Attorney for the Eastern District of New York, Loretta Lynch, to be the nation's next Attorney General.

If confirmed by the Senate, Lynch would replace Attorney General Eric Holder, who [announced in September he would be stepping down](#) when a successor was confirmed.

"It's pretty hard to be more qualified for this job than Loretta. Throughout her 30-year career, she has distinguished herself as tough, as fair, an independent lawyer who has twice headed one of the most prominent U.S. Attorney's offices in the country. She has spent years in the trenches as a prosecutor, aggressively fighting terrorism, financial fraud, cybercrime, all while vigorously defending civil rights," [said President Obama](#) at a White House ceremony announcing Lynch's nomination.

"Loretta might be the only lawyer in America who battles mobsters and drug lords and terrorists, and still has the reputation for being a charming 'people person,'" Obama also stated.

Whether Lynch will receive a vote on her confirmation prior to the conclusion of the 113th Congress, or if she will have to wait until the 114th Congress is sworn in in 2015, is yet to be determined.

Some lawmakers have [expressed their interest in a speedy vote](#) on Lynch's nomination, others, including soon-to-be Majority Leader Mitch McConnell (R-KY), and Sens. Ted Cruz (R-TX) and Mike Lee (R-UT) are [pushing for the vote to be delayed](#).

Sens. Cruz and Lee want Lynch to provide a statement "whether or not she believes the President's executive amnesty plans [on immigration] are constitutional and legal," prior to her receiving a vote in the Senate.

EDUCATE YOURSELF

PRESIDENT NOMINATES LORETTA LYNCH FOR ATTORNEY GENERAL POST

Curious to learn how federal agencies are recruiting and hiring STEM (Science, Technology, Engineering, and Math) job candidates? The White House and OPM have made [STEM recruiting a priority](#).

IAC's November human capital discussion features a panel discussion of several federal human capital executives on agencies' creative outreach programs to communities across the nation to recruit and develop STEM employees. The conversation will focus on current and future STEM landscapes, promising federal and private initiatives, how education is changing and the technology and innovation involved in spurring the next generation workforce.

Presenters will include:

- Ventris Gibson, Associate Deputy Assistant Secretary and CHCO, Office of Human Resources, U.S. Dept. of Health & Human Services (HHS)
- Bernadette Williamson-Taylor, Lead Regulatory Health Education Specialist, Office of the Chief Scientist, U.S Food and Drug Administration (FDA)
- Dr. Susan Singer, Division Director of Undergraduate Education Directorate for Education and Human Resources (EHR), National Science Foundation (NSF)
- Chris Dobyns, Chief of the Office of HR Strategies, National Security Agency (NSA)

Moderator

- James Brown, Executive Director, STEM Education Coalition

Date: Thursday, November 13, 2014

Time: 10:00 AM – 11:30 AM

Location: ICF International – 1725 Eye Street, NW, Washington, DC – Concourse Level

Teleconference: 1-303-218-2664 or 1-800-371-9219; ID 759 153 6404#; no leader PIN required

Cost: Free

Registration: [Register online](#) or email Robert Wright (RWright@actiac.org) and let him know that you will attend the Nov 13 Human Capital SIG meeting either in person or online.

YGL PROFILES

AN INTERVIEW WITH A HEARING OFFICE CHIEF ADMINISTRATIVE LAW JUDGE FOR THE OFFICE OF DISABILITY ADJUDICATION AND REVIEW OF THE SOCIAL SECURITY ADMINISTRATION (SSA)

Q: What motivates you?

A: Challenges, big or small, motivate me. I thrive on the opportunity to tackle challenging situations, develop innovative solutions, and implement actions that produce positive organizational results. In so doing, I get the opportunity to interface with a variety of diverse and creative individuals, whom I influence in overcoming challenges. I also grow from each challenging experience, both personally and professionally.

Q: How did you get to where you are today?

A: Prayer, patience and perseverance. As a young attorney, I accepted some of the most challenging cases, often times with very little pay. Nonetheless, I prepared and litigated for my clients as if they were multimillionaires. I quickly earned a reputation for being a vigorous advocate for my clientele and a successful law practice ensued. Ultimately, my desire to help others led me to government service and I accepted a position at the Department of Defense to serve a country that has provided so much opportunity to me. All of this prepared me for my quest to become an Administrative Law Judge. After an intensely involved application, testing, and interviewing process, I was appointed as an Administrative Law Judge. Soon thereafter, I accepted a position as the Hearing Office Chief Administrative Law Judge.

Q: What strengths do you bring to your organization?

A: I'm a people person. Therefore, I am keenly invested in our office's workforce, and strive daily to ensure that they are well prepared and positioned for the next level of professional attainment. By improving the Agency's talent base in my office, I am helping to promote efficiency, good customer service, and a talented workforce that embraces the agency's vision of providing the highest standard of considerate and thoughtful service for generations to come.

Q: What is the best leadership lesson you have learned?

A: The best leadership lesson that I have learned is that "no man is an island." I can be a great leader, but without dedicated employees who confidently follow my lead, I am like a ship without a sail.

Q: What leadership lessons do you try to convey to your team?

A: While it sounds cliché, I live by the acronym "TEAM," Together Each Achieves More. I try to instill this message daily in my office. I cannot run the office alone. I cannot fulfill every single position

description alone. I need and depend on the efforts and energy of each employee in my office to accomplish the agency's mission. People are more effective if they have a leader who understands their potential and value, and I try to recognize and appreciate my employees every day.

Q: What is a good book you have read recently?

A: I love reading books about leadership, the benefits of perseverance, and success in the face of adversity. Currently, I am reading *One Nation* by Dr. Ben Carson. Additionally, I am fortunate enough to work for an agency that offers its employees audiobooks, through a free exchange program. I am currently listening to *100 Ways to Motivate Others* by Steve Chandler.

Q: What do you look for in potential employees when making hiring decisions?

A: I look for leadership qualities because the one asset that will appreciate in any organization, and ensure its growth potential and success, is the right people. Additionally, I look for energetic individuals who are talented and eager to roll up their sleeves to tackle a diverse array of circumstances.

Q: What is your weakness and how do you compensate for it?

A: I am a very hard worker and dedicated to getting the job done right. As such, I often forget to take some time for myself. I am trying to leave a bit earlier at the end of the day, but that is not always possible, given my position.

Q: Tell me something your coworkers do not know about you.

A: Despite my tendency to work long hours, I am an avid hunter and angler. I am striving to find opportunities to get back into nature.

Q: How do you involve your employees to ensure everyone is on board with a new idea?

A: I strive to introduce the new idea using honest and open dialogue in a manner that shows the employees how the idea benefits each of them. Human nature makes us all somewhat resistant to change. We get in a comfort zone that becomes difficult to penetrate and often ask, "What's in it for me?" when new ideas are introduced. I challenge those that I lead, as well as myself, to step outside the comfort zone and ask, "What is in it for those we serve?" Thereafter, I strive daily to improve upon how we serve not only our external customers, but also the internal customers, to include our executive management and coworkers.

Q: What is your latest goal or ambition and how do you plan to go about achieving it?

A: My goal is to continue to improve myself, those in my circle of influence, and the organization that I serve. To do so, I remain ready to embrace new ideas and changing technology. When people become stagnant in their quest for improvement, they lose their will to succeed.

Q: What is the most important thing you have learned in your career?

A: In order to be effective and successful, you must employ "next level" thinking. I am always striving to perfect my skills and prepare myself not only for the daily challenges at hand, but also for those that

are to come in terms of the next level of professional growth and responsibility. One should never remain stagnant.

This article was written by Linnie 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.

CASE LAW UPDATE

MSPB FINDS WHISTLEBLOWER PROTECTION APPEAL RIGHTS BASED ON USE OF GRIEVANCE ARE NOT RETROACTIVE

In an OSC complaint, a Federal Deposit Insurance Corporation employee claimed that after making three disclosures in administrative grievances, he was subject to reprisal by agency employees. After OSC decided to terminate an investigation into the complaint, the employee petitioned the Merit Systems Protection Board for review of his Individual Right of Action (“IRA”) appeal. An MSPB administrative judge dismissed the appeal without prejudice to refiling pending the Board’s decision in *Hooker v. Department of Veterans Affairs*, 120 M.S.P.R. 629 (2014), which contemplated whether the expanded IRA appeal provisions in the Whistleblower Protection Enhancement Act (“WPEA”) should be applied retroactively. Since all of the material events in this case occurred before the relevant provisions of the WPEA took effect on December 27, 2012, the employee’s petition was dismissed. After the decision in *Hooker*, however, it was refiled, and the administrative judge ordered the employee to show cause why his appeal should not be dismissed for lack of jurisdiction, since the analysis in *Hooker* regarding retroactivity “appear[ed] equally applicable” to the facts in the employee’s case. After the employee responded, the administrative judge dismissed the IRA appeal for lack of jurisdiction, finding that the alleged reprisal for grievance activity could potentially be a prohibited personnel practice (“PPP”) as described in 5 U.S.C. § 2302(b)(9), but that since *Hooker* had not given retroactive effect to extension of IRA appeal rights for reprisal claims based on 5 U.S.C. § 2302(b)(9), the Board lacked jurisdiction. The administrative judge also found that to the extent that the employee was alleging reprisal for whistleblowing disclosures outside of the context of the internal grievance process submitted to OSC, he had not exhausted his administrative remedies. The employee appealed to the full Board. On November 6, 2014, the Board denied the employee’s petition for review, affirmed the initial decision, and dismissed the employee’s appeal for lack of jurisdiction.

Regarding the employee’s additional allegations of reprisal, which he claimed resulted from disclosures made both inside and outside of the grievance process, the Board found that the Board only had jurisdiction over those disclosures that the employee included in his OSC complaint, since there was no evidence that the employee had ever exhausted his administrative remedies when it came to these new, different allegations.

The Board turned to the employee’s argument that his disclosures should be governed by 5 U.S.C. § 2302(b)(8) rather than the section of the statute concerning the exercise of grievance rights protected under subsection (b)(9)(a), in which he stated that “it simply does not matter that the protected disclosures were made within the grievance process when they otherwise establish the type of fraud, waste or abuse that the WPA was intended to reach.” After considering the employee’s argument, the Board found that although employees are not disqualified from pursuing an IRA appeal based on reprisal for making disclosures to OSC if they have also raised them as part of a grievance, the employee in this case had only been able to allege reprisal as a result of grievance activity, rather than disclosures of information in other contexts.

The Board held that under the law in effect at the time of the events at issue in this case, the Board lacked IRA jurisdiction over his claims. The WPEA, made effective after the events at issue, grants jurisdiction to the Board

for violations of § 2302(b)(9)(a), which prohibits employees from taking or threatening to take any personnel action against any other employee because of the exercise of any appeal, complaint, or grievance right. But in *Hooker*, the Board explained, it used the analytical framework set forth in *Landsgraf v. USI Film Products*, 511 U.S. 244 (1994) to determine that the retroactive application of these new IRA appeal rights would be “impermissible because it would increase a party’s liability for past conduct as compared to pre-WPEA liability.

The Board stated that in *Hooker*, it declined to make retroactive a new Board appeal right established by the WPEA in IRA appeals for employees who allege a personnel action had been taken as a result of a PPP described in section 2302(b)(9)(A)(i), and that consistent with that decision, it would decline to make retroactive a new Board appeal right in this instance, even though the appeal was docketed after the effective date of the WPEA. The Board concluded that “even assuming that the [employee] had made a nonfrivolous allegation that he engaged in activity that would now be considered protected under 5 U.S.C. § 2302(b)(9)(A)(i),” the employee could not bring an IRA appeal on that basis regarding events that occurred before the effective date of the WPEA.

Finally, the Board considered a draft anti-harassment policy that the employee included with his petition for review, but found that even if it was properly viewed as new evidence, it was not of sufficient weight to warrant an outcome different from that of the initial decision.

For the above stated reasons, the Merit Systems Protection Board denied the petition for review, affirmed the initial decision as modified, and dismissed the appeal for lack of jurisdiction.

[You can read the full case, *Miller v. Federal Deposit Insurance Corporation*, 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 PRESIDENT OBAMA ANNOUNCES SUPPORT FOR NET NEUTRALITY

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

President Obama has issued a [statement on net neutrality](#), in which he publicly asks the Federal Communications Commission (FCC) to “implement the strongest possible rules to protect net neutrality.”

Net neutrality is the principle that internet service providers (ISPs) and government should treat all data on the internet equally not discriminating or charging differentially by user, content, site, platform, application, type of attached equipment, or mode of communication.

Net neutrality is also consistent with the idea of an “[Open Internet](#).”

The FCC is charged with regulating the internet and ISPs, and for several months has held an open public comment period to inform new rules on net neutrality. Millions have written public comments to the FCC.

The President asks the FCC to adhere to four bright-line rules:

- **No blocking.** If a consumer requests access to a website or service, and the content is legal, your ISP should not be permitted to block it. That way, every player — not just those commercially affiliated with an ISP — gets a fair shot at your business.
- **No throttling.** Nor should ISPs be able to intentionally slow down some content or speed up others — through a process often called “throttling” — based on the type of service or your ISP’s preferences.
- **Increased transparency.** The connection between consumers and ISPs — the so-called “last mile” — is not the only place some sites might get special treatment. So, I am also asking the FCC to make full use of the transparency authorities the court recently upheld, and if necessary to apply net neutrality rules to points of interconnection between the ISP and the rest of the Internet.
- **No paid prioritization.** Simply put: No service should be stuck in a “slow lane” because it does not pay a fee. That kind of gatekeeping would undermine the level playing field essential to the Internet’s growth. So, as I have before, I am asking for an explicit ban on paid prioritization and any other restriction that has a similar effect.

FCC Chairman Tom Wheeler [issued a statement](#) in response to the president’s, where he noted the President’s statement would be included in the public comment record.

“I am grateful for the input of the President and look forward to continuing to receive input from all stakeholders, including the public, members of Congress of both parties, including the leadership of the Senate and House committees, and my fellow commissioners. Ten years have passed since the Commission started down the road towards enforceable Open Internet rules. We must take the time to get the job done correctly, once and for all, in order to successfully protect consumers and innovators online,” Wheeler stated.

These good government stories are brought to you by GEICO. If you think this is good, click [here](#) and get a free quote – you could get some good news yourself!

HEARD INSIDE THE BELTWAY

There is no possibility of a government shutdown. Remember me? I’m the guy that gets us out of government shutdowns.

Sen. Mitch McConnell (R-KY), who will become Senate Majority Leader in the 114th Congress, in an [interview with TIME](#) the day after the election

WEEKLY LEADERSHIP REFLECTION

There is nothing so useless as doing efficiently that which should not be done at all.

Peter Drucker