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FEW Washington Legislative Update
May 16-31, 2024

IN CONGRESS:

Funding the Government: House Appropriations Chair Tom Cole (R-Okla.) detailed plans on Thursday, May 16, 2024, to mark up a dozen annual spending bills, aiming to approve all of the fiscal 2025 measures in committee by mid-July.

The schedule follows the release of interim funding totals for all 12 bills, which are subject to change. For now, House Republicans plan to adhere to the spending caps set by the debt limit deal President Joe Biden struck with former Speaker Kevin McCarthy last year, while excluding tens of billions of dollars negotiated outside the limits, which were agreed upon by both parties.

Congressional leaders finally passed the Securing Growth and Robust Leadership in American Aviation Act, which the President signed into law on Thursday, May 16, 2024. This bill reauthorizes the Federal Aviation Administration (FAA) through FY 2028, including activities and programs related to airport planning and development, facilities and equipment, and operations.

Diversity, Equity, and Inclusion:

On Thursday, May 16, 2024, H.R. 8423 – Representative Bonamici introduced a bill to amend the Older Americans Act of 1965 was introduced to establish a LGBTQI rural outreach grant program, and for other purposes - was introduced in the House and referred to the House Committee on Education and the Workforce.

Representative Bonamici also introduced another bill on Thursday, May 16, 2024, H.Res.1233 – A bill that Supports the goals and ideals of National Honor Our LGBT Elders Day. The bill was introduced in the House and referred to the Committee on Foreign Affairs, and in addition to the Committee on Energy and Commerce. This resolution supports the goals and ideals of National Honor Our LGBT Elders Day to increase awareness of health disparities and other challenges facing lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) elders.

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ERA – State News Update:

Minnesota State House passes plan to put 'Minnesota Equal Rights Amendment' to voters in 2026

A state constitution contains basic principles that preside over a state, including its governmental powers and the guaranteed rights of its citizens. Minnesota's governing document could have a new provision come 2027. Passed 68-62 early Sunday by the House, and sent to the Senate, HF173/SF37* would ask voters at the 2026 general election if the state constitution should be amended to codify the right to equality. No Senate vote was taken before session ended. The "Minnesota Equal Rights Amendment" ballot question would be: "Shall the Minnesota Constitution be amended to say that all persons shall be guaranteed equal rights under the laws of this state, and shall not be discriminated against on account of race, color, national origin, ancestry, disability, or sex, including pregnancy, gender, and sexual orientation?"

Supporters say the change would ensure such protections cannot be taken away, no matter which party is in charge or which judges are serving on the bench.

Source: (Minnesota Legislature)

Sexual Harassment:

On Tuesday, May 28, 2024, H.R.8577 , a bill was introduced by Del. Eleanor Holmes-Norton to create a national commission to combat workplace sexual harassment, and for other purposes. The bill was introduced in the House and referred to the House Committee on Education and the Workforce.

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Federal Workforce:

The definition of a federal whistleblower could be reshaped in the coming months as the agency charged with enforcing civil service laws is set to rule on a case that it has already flagged as carrying unusual weight.

The case—Reese v. Navy—could be so significant that the Merit Systems Protection Board has asked outside entities to offer their perspectives on it, an entreaty it has not made in nearly a decade. An MSPB official did so because it involves a question of

statute on which the board has never ruled, opening the opportunity to set a new precedent on what constitutes whistleblowing within federal agencies.

An MSPB official added the matter was something the board has never ruled on, and it was the first time the panel will decide on the statute since it was updated. The relevant provision of law forbids agencies from taking any negative action toward an employee for cooperating with or disclosing information to an IG, OSC or other internal investigatory bodies.

OSC, the agency that enforces whistleblower law, issued a brief on the case, calling for an "expansive reading" of the law to "maximize protections for employees and preserve OSC's ability to obtain credible testimony." While the board and federal courts have ruled discrimination cases involving gross mismanagement must go through the EEO process, the agency said that does not apply to the IG and OSC disclosure provision. The law does not carve out any restrictions based on the content of such a disclosure, OSC said.

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Women As a Class:

The Center for American Progress has published a new article on paid leave's ties to public health, Lack of Paid Leave Hurts Americans' Health. The column highlights how Americans without paid leave often postpone or forego needed health care, with profound and potentially devastating consequences for their health.

Key findings highlighted in the piece include:

- Nearly half (44 percent) of workers with an unmet need for leave—meaning those who needed leave but did not take it—report that they or their loved one postponed needed care.

- Among cancer patients, a four-week delay in needed surgery increases the risk of death by 6 percent to 8 percent, a risk that may be more pronounced with other forms of delayed treatment.

- Women without paid sick time are less likely to get mammograms, Pap tests, or colonoscopies. Conversely, people with access to paid sick time are more likely to get Pap tests and other forms of preventive care.

- In 2022, about 15 percent of employed adults without access to paid sick or medical leave reported having foregone needed medical care in the last 12 months because it was too hard to take time away from work.

- Black women do not take a more than a third of the leave they need for their own health. Disparities in access to leave coincide with disparities in access to timely treatment

Implementation of the Pregnant Workers Fairness Act: Final Regulations

On December 29, 2022, President Biden signed the Pregnant Workers Fairness Act (PWFA) into law. This bipartisan law provides long overdue protection for people who work while pregnant and need workplace accommodations due to the physical and mental effects of pregnancy. Although there has been some protection against pregnancy discrimination in federal law since 1978, this bill fills a gap in the law that had left many workers without necessary, though often minor, and costless, accommodations. Under the new law, pregnant workers are entitled to reasonable accommodations necessitated by pregnancy, childbirth, or related medical conditions, as long as the accommodations do not impose an undue hardship on the employer.

In the PWFA, Congress directed the Equal Employment Opportunity Commission (EEOC) to pass implementing regulations. The EEOC has just released the final version of new regulations, which will become part of 29 C.F.R. part 1636, and which includes a lengthy Interpretive Guidance as an appendix to explain the Commission's interpretation of the issues. In this column, I'll explain the key features of these new regulations and the ways in which the new rules will better address the needs of pregnant workers.

At the federal level, pregnancy discrimination in employment is governed by Title VII, as amended by the Pregnancy Discrimination Act of 1978 (PDA), and, as of 2022, by the Pregnant Workers Fairness Act (PWFA).

Under the PDA, pregnant workers had two basic protections. First, the PDA amended Title VII to provide that discrimination on the basis of "pregnancy, childbirth, or related medical conditions" is an unlawful employment practice. This means that any policy or employment decision that intentionally discriminates against pregnant workers or has a disparate impact on them can be challenged in the same way as discrimination on the basis of any other protected characteristic such as sex or race. More or less, this clause means that employers cannot make decisions based on an employee's pregnant status.

The first clause was designed to put an end to common employment policies and practices that treated all pregnant women as an undifferentiated group and that relied on stereotypes about their ability to work regardless of individual capacity. It also explicitly prohibited employment decisions born of animosity or hostility to pregnant workers, even if stereotypes were not in play.

Second, the PDA provided that women affected by pregnancy, childbirth, or related medical conditions "shall be treated the same treated the same for all employment-related purposes . . . as other persons not so affected but similar in their ability or inability to work." Although this provision was the subject of much litigation, its general meaning is that pregnant employees are entitled to the same accommodations as those with comparable temporary disabilities. But if an employer does not provide accommodations to anyone, it does not have any obligation to accommodate the needs of pregnant workers.

This is true even when the accommodations that a pregnant worker requires are minor and costless. In other words, a pregnant worker had a right not to be discriminated against in the provision of accommodations vis-à-vis other workers but did not have an independent right to workplace accommodations that would enable her to continue working. The lack of an absolute right to accommodation was devastating for many pregnant workers, many of whom lost their jobs, took pay cuts, or suffered physical harm while pregnant, even though their condition could have easily been accommodated.

The new law responded directly to this gap in the PDA. (A more detailed discussion of the relationship between the PDA and the PWFA can be found here.) When first introduced, it promised to "eliminate discrimination and promote women's health and economic security by ensuring reasonable workplace accommodations for workers whose ability to perform the functions of a job are limited by pregnancy, childbirth, or a related medical condition." The PWFA requires employers who are otherwise covered by Title VII to provide reasonable accommodations necessitated by pregnancy, childbirth, or related medical conditions unless doing so would impose an undue hardship on the employer. The PWFA is modeled after the Americans with Disabilities Act, which grants eligible employees an affirmative right of accommodation regardless of how the employer treats others. The new regulations spell out in more detail the rights protected by the PWFA—and the commensurate obligations of employers.

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