

FEDERAL PHYSICIAN



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Disciplining Non-Vaccinated Federal Employees

On October 1, 2021, the Office of Personnel Management issued a memorandum to agencies on enforcing the federal employee vaccination requirement, Executive Order (EO) 14043. The memo provides agency guidance on the process for disciplining and removing federal employees who refuse to comply with the President's requirement that all get vaccinated by **November 22, 2021**.

Federal employees vaccinated with either the US AstraZeneca or Novavax COVID-19 vaccines are considered in compliance with the mandate.

Federal employees who refuse to get vaccinated or show proof of vaccination by November 8 will be in violation of a lawful order and their agency can begin the enforcement process which begins with a five day counseling period. If after the five days

the employee continues to refuse to get vaccinated, managers are asked to issue a short suspension of 14 days or less. The Administration's guidance says that "Continued non-compliance during the suspension can be followed by proposing removal." The guidance also says that "The only exception is for individuals who receive a legally required exception approved under agency processes."

If removal or termination is required, agencies must follow the required procedural rights to an employee and follow normal processes including agency policy or collective bargaining agreement requirements concerning disciplinary matters and employees should not be placed on administrative leave while disciplinary actions are under way.

The Secretary of the Department of Veterans Affairs, one of the largest federal agencies, has suggested that the process of terminating VA employees and processing employee requests for exceptions

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Federal Physicians and the Impact of COVID

Numerous surveys have been done of medical personnel and COVID; none have been done of federal medical officers. FPA is developing a short anonymous survey of medical officers and the issues they faced during COVID—if you have suggestions for survey questions, please send them to dennis@fedphy.org.

New Telework Guidance for Federal Employees Returning to Office

Earlier this year, the Office of Personnel Management (OPM) issued a 38 page memo with answers to several questions about telework and remote work which was developed in consultation with agency Chief Human Capital Officers. Some of the highlights from the OPM memo are summarized below.

OPM spells out the options available for telework in the memo, which states: "...telework has tended to fall into these categories.

- Routine telework. Under this option, telework occurs as part of an ongoing regular schedule such that employees typically telework on some days and work at their agency worksite on other days during each pay period. They must obtain managerial approval for the schedule (and any

modifications to it), but do not need to obtain additional separate approval for each day they telework.

- Situational telework. Under this option, employees telework occasionally (i.e., it is not part of an ongoing and regular telework schedule) and agencies' policies may require managerial approval each time they telework. Agencies may also approve remote work arrangements. Remote work is a special type of alternative work arrangement by which an employee is scheduled to perform work within or outside the local commuting area of an agency worksite and is not expected to report to an agency worksite on a regular and recurring basis. Employees must obtain managerial approval for remote work arrangements. Given

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may take two to three months.

Employees who have provided notice of their intent to leave their position and are on leave until they depart are not subject to the requirements of the EO.

A recent survey of 3186 current and retired federal employees and some contractors revealed that 53% strongly or somewhat disagreed with the administration's COVID-19 vaccine mandate for federal employees, while 44% strongly or somewhat agreed with it.

The Office of Personnel Management has issued a six page Q&A paper on this latest directive which is available at <https://chcoc.gov/sites/default/files/Enforcement-Guidance-FAQs.pdf>.

Medical and Religious Exceptions to Vaccine Mandate

On October 4, the Safer Federal Workforce Task Force issued new guidance about what to expect if planning to declare a medical or religious exception to the federal vaccine mandate. The Task Force didn't detail exactly what kinds of medical or religious reasons might allow an employee an exception to the federal vaccine mandate, but said agencies should consider the nature of the employee's job responsibilities; and the reasonably foreseeable effects on the agency's operations, including protecting other agency employees and the public from COVID-19, the task force said.

The revised version of the model form employees are to use to request a **religious exception** on those grounds shifts from an earlier focus having employees answer a list of specific questions to a more narrative approach. For example, a former question asking employees to identify any other medicines or product they do not use because of the religious belief has been dropped. And while the new form continues a request to disclose whether the employee has received any other vaccines as an adult, it drops a requirement for them to list which and when.

Further, the new version adds a statement that "An individual's beliefs—or

degree of adherence—may change over time and, therefore, an employee's newly adopted or inconsistently observed practices may nevertheless be based on a sincerely held religious belief."

However, like the earlier version, it stresses that a refusal to be vaccinated must be based on a sincerely held belief; that personal preferences or non-religious concerns about the vaccine do not qualify; and that any intentional misrepresentation "may result in legal consequences, including termination or removal from federal service."

The form to request a **medical exemption** or a delay requires that a medical provider sign a form asking for at least:

- The applicable contraindication or precaution for COVID-19 vaccination, and for each contraindication or precaution, indicate: (a) whether it is recognized by the CDC pursuant to its guidance; and (b) whether it is listed in the package insert or Emergency Use Authorization fact sheet for each of the COVID-19 vaccines authorized or approved for use in the United States;
- A statement that the individual's condition and medical circumstances relating to the individual are such that COVID-19 vaccination is not

considered safe, indicating the specific nature of the medical condition or circumstances that contraindicate immunization with a COVID-19 vaccine or might increase the risk for a serious adverse reaction; and

- Any other medical condition that would limit the employee from receiving any COVID-19 vaccine.

It also instructs the medical provider to describe the condition and to state if it is temporary and if so, when it is expected to end.

The guidance lists the CDC-determined "contraindications" as: "severe allergic reaction (e.g., anaphylaxis) after a previous dose or to a component of the COVID-19 vaccine; and immediate allergic reaction of any severity to a previous dose or known (diagnosed) allergy to a component of the COVID-19 vaccine."

Further, it says that "if an individual is allergic to a component of one or more COVID-19 vaccines, that individual may not be allergic to components in all COVID-19 vaccines."

Under EEOC policy an employer must make a "reasonable accommodation" to an employee qualifying for an exception on either medical or religious grounds unless doing so would create an "undue hardship" for the employer.

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The Safer Federal Workforce Task Force

This latest directive and others dealing with COVID-19 and federal employees actually started the day President Biden took office with the issue of Executive Order 13991 creating the Safer Federal Workforce Task Force to “give the heads of federal agencies ongoing guidance to keep their employees safe and their agencies operating during the COVID-19 pandemic.” The task force is led by the White House COVID-19 Response Team, the General Services Administration (GSA), and the Office of Personnel Management (OPM). Task Force members include: the Centers for Disease Control and Prevention (CDC); the Department of Veterans Affairs (VA); the Federal Emergency Management Agency (FEMA); the Federal Protective Service (FPS); the Office of Management and Budget (OMB); and, the United States Secret Service (USSS).

Since the creation of the Task Force the has issued several orders, including the July policy wherein President Biden directed that federal employees and contractors who work on-site at government facilities prove that they have been vaccinated or agree to wear masks and submit to regular COVID-19 testing. A White House statement on the mandate states: “...that to help protect workers and their communities, every federal government employee and onsite contractor will be

asked to attest to their vaccination status. Anyone who does not attest to being fully vaccinated will be required to wear a mask on the job no matter their geographic location, physically distance from all other employees and visitors, comply with a weekly or twice weekly screening testing requirement, and be subject to restrictions on official travel.”

The Task Force website, <https://www.saferfederalworkforce.gov/overview/> has information on every action affecting federal employees and contractors regarding COVID-19.

Court Decisions on Vaccine Mandates

Although vaccination mandates in the private sector largely started with medical settings, they are increasingly expanding to other industries and occupations. And, the U.S. Supreme Court left in place—by declining to review it—an appeals court decision backing a vaccine mandate in a university setting, a potential precedent in the employment setting since both involve decisions about the safety of large numbers of people.

An appeals court said that even with a mandate in place, affected individuals have options available to them other than being vaccinated, including seeking an exception on religious or medical grounds—while generally being subject to additional safety protocols—or choosing

not to attend that university. Those options may be “difficult” but do not amount to the type of coercion prohibited by law, it said.

A Justice Department legal opinion says the law “does not prohibit public or private entities from imposing vaccination requirements...” Federal EEO laws also permit employers to require vaccines for employees entering workplaces.

Admin Leave and COVID Vaccinations

On November 3, the Office of Personnel Management said that agencies... “must grant administrative leave to federal employees who accompany any family member who is receiving a COVID-19 vaccination.” Federal employees are allowed to take four hours of administrative leave each time a family member receives a vaccine shot, up to a total of twelve hours of leave for a family member receiving three shots. The policy was revised to include children aged 5–11. (Booster shots are not authorized for children under the age of 18.)

Resources on COVID-19 Vaccines

The federal government’s website: <https://www.vaccines.gov> provides locations for COVID-19 (and flu) vaccines. In addition, texting a zip-code to GETVAX will also identify vaccines locations.

Former Federal Employees can now be hired at a Higher Salary than when they left Government

The Office of Personnel Management has finalized new regulations making it easier for federal agencies to bring back former employees at a higher salary than when they left government. Currently, federal agencies have the authority to rehire former federal workers outside the competitive hiring process, but they can only offer them positions at the same pay grade they held before they left federal service. Under the rule

that was effective in July, agencies will be able to use that process to rehire former federal workers at higher salaries than when they left government, accounting for the experience and skills they gained through education and the private sector.

Former federal workers who left before reaching the “career tenure” mark of three years in federal service may only return to federal agencies under

this authority within three years of their departure. Those who worked for the government for three years or longer will have no limitation on when they can be rehired at a higher pay grade outside of the competitive process. In order to be eligible to be rehired at a higher pay grade, former federal workers must have been given a fully successful performance rating in their final year of service before leaving government.

budget implications, equity considerations, and other factors, agency remote work policies should clearly outline the level of approval required to institute or execute a remote.”

OPM expects that many more Federal employees will be eligible to telework on a regular basis post-reentry. Agencies should start re-assessing schedules for and frequency of telework, based upon the experiences of the last 15 months, and re-establish them in a way that best meets mission needs (including the agency’s ability to compete for qualified candidates and retain talent).

Determining Telework Eligibility

After determining telework eligibility for all current employees, agencies should make any ongoing determinations of telework eligibility based on job functions, and not managerial preference per se. Agencies should similarly apply equitable, function-based criteria to determine the number of days an employee may telework. In making these determinations, agencies should apply the following factors:

1. Determine telework eligibility for all new employees
2. In general, treat employees performing similar functions similarly
3. Assess workforce data on an ongoing basis to ensure that telework eligibility determinations are being made in accordance with agency policy and applicable law, fairly and equitably, and in a manner that effectively meets the agency’s mission needs.

The memo states that telework and remote work and not employee entitlements, that authority to telework can be revoked at any time and that employees cannot be forced to telework. When deciding to terminate a telework agreement, a manager should be able to document and demonstrate that:

- The employee’s teleworking directly and negatively impacts the employee’s performance or the performance of the work group/organization.
- Continuation of telework will interfere with remediation of the standards such as the employee’s ability to attain or return to a fully successful performance level.
- The employee’s conduct violates the requirements established in the Telework Enhancement Act or agency policy and thus results in ineligibility for telework.

The agency may set whatever parameters it wishes as to the locations in which remote work may be performed.

Dependent Care Obligations and Telework

The memo addresses dependent care obligations by stating: “An agency that has a general bar on teleworking when there are young children or other persons requiring care and supervision by the employee in the home should reevaluate that policy in light of its experience during the pandemic. In many instances, these policies assume a rigid adherence to specific work hours. Agencies may want to consider offering teleworking employees with dependent care responsibilities a maxiflex work schedule, which is a type of flexible work schedule (FWS) that, when combined with telework, provides the most flexibility to employees who need to address the dual demands of work and caregiving, as well as other personal responsibilities.”

Locality Pay and Telework

The memo addresses the issue of pay when it is possible that an employee’s remote location may be outside the locality pay area by answering the following question: “How will the employee’s official worksite that is the basis for General Schedule locality pay and other location-based pay be determined? A.

The official worksite for a General Schedule employee covered by a telework agreement is the location of the agency worksite for the employee’s position (i.e., the place where the employee would normally work absent a telework agreement), as long as the employee is scheduled to report physically at least twice each biweekly pay period on a regular and recurring basis to that agency worksite. It is up to an agency to determine how often an employee reports into the agency worksite. If an employee is not scheduled to report to the agency worksite at least twice each biweekly pay period on a regular and recurring basis (i.e., is a remote worker), the employee’s official worksite for location-based pay purposes is the alternative work location under the remote work agreement.

if a General Schedule employee is covered by a remote work agreement under which the employee works from home or other specified alternative location fulltime and is not required to report to the agency worksite at least twice each biweekly pay period on a regular and recurring basis, there is no need for a temporary exception, and the employee’s official worksite is the employee’s home or other worksite.

Under a flexible work schedule, a full-time employee may complete their 80-hour biweekly basic work requirement by determining their own work schedule (i.e., work starting and stopping times and breaks) within the limits set by the agency. An agency may limit the number of basic work requirement hours an employee may work on a daily basis (such as, no more than 10 hours per day) or in a workweek. Also, agency-established limits include core hours when an employee is required by the agency to be present for work and flexible hours (or “flexible time bands”) during which the employee may choose to vary their arrival and departure times.

The complete OPM memo is available at: <https://www.chcoc.gov/content/additional-guidance-post-reentry-personnel-policies-and-work-environment>.

GAO Report Documents Impact of COVID on BOP

Earlier this year, the General Accountability Office (GAO) reviewed the impact of COVID on the Bureau of Prisons (BOP) which results in three recommendations: that BOP evaluate communication of COVID-19 guidance, develop an approach to capture and share best practices and lessons learned; and develop an approach to ensure facilities apply these practices as appropriate.

BOP is responsible for the custody and care of about 129,000 federal inmates in BOP-managed facilities, and employed more than 37,000 staff as of May 2021. Because of confined spaces, the prison population is particularly vulnerable during infectious disease outbreaks, such as COVID-19. About \$620 million has been appropriated to or designated by BOP for COVID-19-related efforts.

As of May 2021, BOP's data showed that:

- BOP obligated nearly \$63 million

for personal protective equipment (PPE)—such as masks, hand sanitizers, gloves and COVID-19 testing kits—for staff and inmates.

- 45,660 inmates had tested positive, and 237 inmates had died from the virus. In addition, 6,972 staff members tested positive, with four deaths.
- BOP fully vaccinated about 56 percent of all inmates in BOP-managed facilities (73,050 inmates) and about 50 percent of all staff (19,000 staff)

The GAO report noted that BOP has developed COVID-19 guidance, with input in part from the Centers for Disease Control and Prevention, and periodically updates this guidance, but some BOP staff reported to GAO confusion in how to implement BOP's guidance. In addition, the Department of Justice's Office of Inspector General surveyed BOP staff and reported that of the 28 percent of employees who responded, 59 percent

of respondents thought BOP's guidance was not clear. Routinely evaluating how it communicates its COVID-19 guidance to staff, and modifying its approach as needed based on staff feedback, would help BOP ensure that staff can understand and effectively implement the protocols for COVID-19 and any future public health emergency.

GAO found that COVID-19 has affected inmates and staff: inmates faced reduced access to certain programs, services, visitors and facility spaces. Quarantining procedures have resulted in reduced staff availability and increased the use of overtime. BOP has processes, such as teleconferences among BOP officials and facilities inspections, to identify best practices and lessons learned related to its COVID-19 response. However, BOP does not capture or share, bureau-wide, the lessons and practices discussed at its teleconferences, or have an approach for ensuring facilities apply them, as appropriate.

Legislation Introduced to Increase BOP Locality Pay

Congressman Randy Weber (R-TX) has introduced bipartisan legislation to increase the amount of locality pay for BOP employees. The legislation would designate BOP facilities that are not currently in areas

that receive an additional increase in pay (locality pay) at the time of the January pay increase as if they were in the nearest locality pay area. The legislation is being pursued by the Congressional BOP Reform

Caucus. However, BOP facilities that are not located within 100 miles of any locality area would be exempt from the legislation. The bill stipulates that it would be effective 180 days after enactment.

TSP Changes coming in 2022

The Federal Retirement Thrift Investment Board recently announced that in mid-2022 a mobile app will be available that will enable retirement services on-the-go, and creates the ability to have two-way communication with TSP participants. The mobile app is part of the TSP plan to consolidate record-keeping.

In other TSP news, Representatives Richard Neal (D-MA) and Kevin Brady (R-TX), have introduced legislation, the Securing a Strong Retirement Act, which would increase the age, currently 72, when a person is required to start

making withdrawals (Required Minimum Distributions (RMDs)) from their retirement account. The age would increase to 73 on Jan. 1, 2022, and then to 74 in 2029, and 75 in 2032. The bill would increase the annual limit on catch-up contributions from \$6,500 to \$10,000, for people between the ages of 62 and 64.

In the Senate, Sens. Ben Cardin (D-MD) and Rob Portman (R-OH), introduced the Retirement Security and Savings Act (S. 1770) that completely exempts people with less than \$100,000

in retirement savings from RMDs, it exempts Roth balances from RMDs while the participant is alive, would allow the rollover of Roth IRAs into Roth 401(k) accounts, it would increase the age at which minimum distributions kick in to 75 in 2032 and would increase the catch-up contribution limit to \$10,000 for everyone aged 60 and older.

These Senate provisions would be effective January 1, 2022. The Federal Retirement Thrift Investment Board believes that their timetables for implementation is too aggressive.

How COVID-19 Has Increased Risk for Federal Physicians

For all employees of the federal government, the COVID-19 pandemic has upended the ability of federal employees to do their jobs effectively and efficiently. Make no mistake—in one form or another, the pandemic has impacted each and every federal employee. However, some groups of federal employees have been affected in especially significant ways. For instance, employees in federal agencies centered on direct impact with the public have had to vigilantly enforce safety and mitigation techniques. Of course, in the throes of a global health crisis, federal physicians and healthcare workers have been on the frontlines in combatting COVID-19. Accordingly, federal physicians should be familiar with the liability exposures inherent in their positions and how the impact of the pandemic may magnify these exposures.

While many federal physicians have

not had any influence on wide-scale COVID-19 policies, the combination of the perception of the U.S. response and the changeover to a new administration will likely lead to a harsh spotlight on the actions taken to combat COVID-19. Since the beginning of the pandemic in early 2020, there have been consistent calls for a 9/11-style commission focused on the U.S. government's response. While this commission will primarily focus on high-level policy decisions, it may also evolve into a wide-ranging inquiry that could touch upon choices made by individual federal physicians. Through the cutting lens of hindsight, many actions or decisions that were entirely justified at the time may look suspect. The decisions made by federal physicians are subject to administrative investigations and disciplinary actions.

COVID-19 has also had impacts

on the workload and wait times in the federal healthcare system. In VA facilities across the country, the pandemic has impacted in-person visits and increased wait times and patient backlogs. For VA personnel in these facilities, increased patient wait times may very well lead to increased scrutiny from the media or Congress. As we have seen countless times in the past, increased scrutiny on the VA often results in investigations and disciplinary action for VA personnel. Moreover, federal physicians do not have immunity for personal capacity lawsuits or constitutional torts—this means that federal medical personnel can be vulnerable to some types of civil actions (commonly referred to as *Bivens* actions) for alleged violations of an individual's constitutional rights.

In light of all this forthcoming scrutiny and potential commissions, how

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Premiere Professional Liability Insurance



Professional Liability Insurance for Federal Physicians

FEDS PLI covers the exposures that make Federal Physicians vulnerable to:

- Administrative Investigations
- State Medical Board Investigations & Proceedings arising out of the performance of your federal duties
- Disciplinary Actions
- Criminal Investigations
- Civil Lawsuits/Bivens Actions for alleged violations of a patient's constitutional rights

FEDS \$1,000,000 Annual Policy

\$290

Some physicians (and all physicians classified as mgrs & supervisors) are eligible for agency reimbursement up to half the cost for a net premium of

only \$145

FEDS also offers a \$2,000,000 policy for \$390.

There is a reason this coverage is available and affordable to all federal employees. Obtaining counsel or representation experienced in federal matters - after a claim is made against you - will cost many multiples of our annual premium!

**Call the FPA or visit our website at www.fedsprotection.com for more information or to enroll today!
You can even enroll by phone at 866-955-FEDS with payroll deduction available.**

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should federal healthcare personnel, and especially federal physicians, protect themselves? The best way to do so is with a professional liability insurance (PLI) policy from FEDS Protection. FEDS Protection's PLI policy provides \$200,000 of legal representation per incident for administrative actions, which include

employment practices allegations, investigations, disciplinary actions, and proposed removals arising out of the performance of a professional service. FEDS also provides up to \$1 or \$2 million in civil liability protection and up to \$100,000 for criminal defense costs, all for a premium cost starting at \$290 a year. Most physicians and all supervising physicians are eligible

for agency reimbursement up to half the cost for a premium of just \$145 per year plus tax/fees.

For federal physicians, there is no time like the present to ensure your exposures are covered with FEDS. To learn more about the FEDS program, visit www.fedsprotection.com or call 866.955.FEDS today.

Lessons Learned from the Federal Government's Response to COVID-19

Returning to the office

As cases and deaths continue to decline as a result of COVID-19, members of Congress are urging the administration to return federal employees to their regular offices, suggesting that services to the public are being degraded. The administration is working on new guidance on telework and in-person work as the decrease in infections continue to decline.

However, many agencies are continuing to operate under the earlier administration guidance that "unless it is physically impossible or poses a threat to critical national security interests, generally speaking occupancy in federal workplaces should be no more than 25% of normal capacity during periods of significant or high community transmission"... of the virus. Members of Congress are especially interested in getting employees at the Internal Revenue Service (IRS) and the Veterans Administration (VA) back into their offices. In fact, the IG has said that the agency's "ability to provide adequate assistance to taxpayers continues to be affected by COVID-19."

Report: What was Learned

Earlier this year, the Partnership for Public Service, working with the American Council for Technology-Industry Advisory Group and MeriTalk,

a public-private partnership focused on improving the outcomes of government IT, surveyed 300 federal leaders to identify lessons learned as a result of the government response to the pandemic. Roundtable discussions were held to explore four issues essential to government resiliency: workforce, innovation, technology and security.

The survey found that the majority of agencies continued to deliver on their missions. For example, the IRS distributed billions of dollars in stimulus payments to millions of American in just two months. The VA handled an almost fifteen-fold increase in telehealth appointments for veterans' physical and mental health appointments. The pandemic also highlighted the challenges faced by agencies already struggling with old, out-of-date technologies, retention of high performers and cumbersome rules for budgeting and procurement.

Among the report's recommendations are:

Workforce

Work with individual employees to determine the best option for how, when and where they get their work done, based on personal work styles and circumstances. Use workplace flexibilities to tap into new pools of talent, such as people who live

farther than commuting distance from headquarters. Encouraging collaboration between HR and IT, including training employees to use new technologies.

Innovation

Use proven methods for encouraging innovation and reward employees who identify better ways to do their work and actively and frequently review and revise outdated processes. Use on-line tools that enable users to collaborate to develop, test and refine ideas that solve problems.

Technology

Modernize legacy systems and move them to the cloud, which should be a continuous process. Seek multi-year funding opportunities to support technology modernization. Establish data standards, from file sharing and naming conventions to a common way of identifying customers to encourage sharing among agencies.

Security

Make employee training a continue focus and run security drills and simulations to help employees learn how to recognize and respond to cybersecurity threats. Embrace a zero trust mindset which requires verifying anyone trying to access technology systems.

"No Surprises Act" Protects Federal Employees from Surprise Medical Bills

Effective January 1, 2022, the No Surprises Act provides patients with protection from surprise medical bills for current and retired federal employees under certain circumstances. The 2022 Federal

Employee Health Benefits Program brochures include language regarding the Act.

Two-thirds of all bankruptcies filed in the United States are tied to medical expenses. In a 2019 study by the

Government Accountability Office (GAO) found that the median price charged by air ambulance providers ranged from \$36,400 to more than \$40,000, and over 70% of these transports were furnished

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New Rules on Student Loan Relief for Federal Employees

On October 6, the Department of Education announced a set of actions that, over the coming months, will restore the promise of Public Service Loan Forgiveness (PSLF) Program. The Public Service Loan Forgiveness (PSLF) Program is a promise to provide debt relief to support the employees in public service, including federal employees. The program cancels loans after 10 years of public service, but has not worked as planned for a variety of reasons because too few borrowers received forgiveness, and too many did not receive credit for years of payments they made because of complicated eligibility rules, servicing errors or other technicalities.

OPM will offer a time-limited waiver so that student borrowers can count payments from all federal loan programs or repayment plans toward forgiveness. This includes loan types and payment plans that were not previously eligible.

The Department's announcement offers a temporary opportunity to give borrowers credit for prior payments they made that would not otherwise count toward PSLF. Any prior payments made while working for a qualifying employer will count as a qualifying payment, regardless of loan type

or repayment plan. This Limited PSLF Waiver will apply to borrowers with Direct Loans, those who have already consolidated into the Direct Loan Program, and those with other types of federal student loans who submit a consolidation application into the Direct Loan Program while the waiver is in effect. The waiver applies to loans taken out by students.

The waiver will run through October 31, 2022. That means borrowers who need to consolidate will have to submit a consolidation application by that date. Similarly, borrowers will need to submit a PSLF form—the single application used for a review of employment certification, payment counts, and processing of forgiveness—on or before October 31, 2022 to have previously ineligible payments counted. The Department recommends borrowers take this action through the online PSLF Help Tool, which is available at StudentAid.gov/PSLF.

The Limited PSLF Waiver also addresses another issue, too many payments do not count toward PSLF due to technical requirements around borrowers' choice of payment plan, timing, and amount of the payment. The Department

will automatically adjust PSLF payment counts for payments made on or before October 31, 2021 for borrowers affected by this issue who have already certified some employment for PSLF. Borrowers who have not yet applied for PSLF forgiveness or certified employment but do so by October 31, 2022 will benefit from these temporary rules.

Next year, the Department will begin automatically giving federal employees credit for PSLF by matching Department of Education data with information held by other federal agencies about the federal workforce. To date, approximately 110,000 federal employees have certified some employment toward PSLF. These matches will help the Department identify others who may also be eligible but cannot benefit automatically, like those with Federal Family Education Loan (FFEL) loans.

Federal employees who have already applied for PSLF and who have had at least some employment certified, will be awarded any additional payments without further action from the employee. If necessary, Federal Student Aid may contact employees, by email, to ask them to certify additional months of employment.

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out-of-network, meaning most or all costs fell to the insured individual alone.

Surprise billing happens when people unknowingly get care from providers that are outside of their health plan's network and can happen for both emergency and non-emergency care. Balance billing, when a provider charges a patient the remainder of what their insurance does not pay, is currently prohibited in both Medicare and Medicaid. This rule will extend similar protections to Americans insured through employer-sponsored and commercial health plans.

Rules developed to comply with the law:

- Bans surprise billing for emergency services. Emergency services, regardless of where they are provided, must be treated on an in-network basis without requirements for prior authorization.
- Bans high out-of-network cost-sharing for emergency and non-emergency services. Patient cost-sharing, such as co-insurance or a deductible, cannot be higher than if such services were provided by an in-network doctor, and any coinsurance or deductible must be based on in-network provider rates.
- Bans out-of-network charges for ancillary care (like an anesthesiologist or assistant surgeon) at an in-network facility in all circumstances.
- Bans other out-of-network charges without advance notice. Health care providers and facilities must provide patients with a plain-language consumer notice explaining that patient consent is required to receive care on an out-of-network basis before that provider can bill at the higher out-of-network rate.

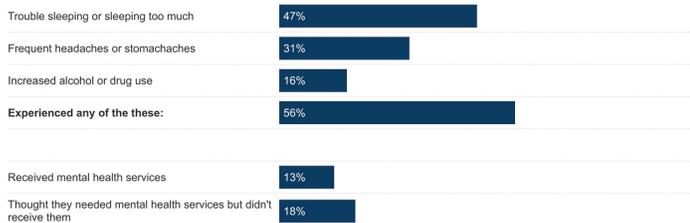
The rules promulgated under the Act do not apply to people with coverage through programs such as Medicare, Medicaid, Indian Health Services, Veterans Affairs Health Care, or TRICARE. These programs already prohibit balance billing.

Survey – COVID’s Impact on Front-Line Health Care Workers

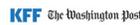
In April, one year into the COVID pandemic, The Washington Post/Kaiser Family Foundation Survey Project released the results of interviews with 1,327 front-line health care workers, those with direct contact with patients and their bodily fluids, which found that a majority of workers experienced adverse mental health impacts from the pandemic.

More Than Half Of Frontline Health Care Workers Say Worry And Stress Related to COVID-19 Has Led To Adverse Health Impacts, Three In Ten Have Needed Mental Health Care

Percent of frontline health care workers who say worry or stress related to COVID-19 has led to each of the following:



NOTE: See Inpline for full question wording
SOURCE: KFF/Washington Post Frontline Health Care Workers Survey (Feb. 11-March 7, 2021)



The major conclusions from the survey follow:

“The coronavirus pandemic has had a major impact on the mental health of frontline health care workers. A majority of frontline health care workers (62%) say worry or stress related to COVID-19 has a negative impact on their mental health. In addition, more than half (56%) of all frontline health care workers say that worry or stress related to COVID-19 has caused them to experience trouble with sleeping or sleeping too much (47%), frequent headaches or stomachaches (31%), or increased alcohol or drug use (16%). In addition, 13% of health care workers say they have received mental health services or medication specifically due to worry or stress related to COVID-19 and an additional one in five (18%) say they thought they might need such services, but did not get them.

The youngest health care workers (18–29 years old) seem to have been hit hardest by working during a global pandemic. Three-fourths of younger frontline health care workers report worry or stress related to COVID-19 has had a negative impact on their mental health and seven in ten say they feel “burned out” about work. These feelings may be directly tied to their work experiences during the COVID-19 pandemic as four in ten of these youngest workers are working in a hospital setting and nearly half (45%) report assisting with patient care such as bathing, cleaning, and housekeeping. And, almost one in eight (13%) of 18–29 year old frontline health care workers say they had at least 10 patients in their direct care who died as a result of COVID-19.

Throughout the past year, news reports have told of hospitals running low on personal protective equipment (PPE) and at over-capacity for the intensive care units. This experience seems relatively common among the hardest hit frontline health care workers. Over half (56%) of health care workers in hospitals say

that their workplace reached over-capacity of ICU beds to treat critical patients, and one third (34%) of health care workers working in either hospitals or nursing homes say that at some point during the pandemic, their workplace ran out of PPE for its employees. And while most health care workers say their employer is “doing about the right amount” or “going above and beyond” when it comes to providing sick leave to employees who had COVID-19 or ensuring employees have the ability to get vaccinated, more than half of health care workers—including a majority of health care workers across different types of health care settings including hospitals (59%), office or clinic (52%), nursing home or assisted care facility (58%), and those who work in patient homes (56%)—say their employer is “falling short” when it comes to providing additional pay for employees who are working in the most high-risk situations.

The survey also finds some optimism among frontline health care workers with most health care workers across workplaces and across race and ethnicity saying that the COVID-19 outbreak in the U.S. is at least “somewhat under control” including one fourth who say it is “mostly under control” or “completely under control.” Nearly six in ten frontline health care workers also say they anticipate the COVID-19 pandemic in the U.S. to be controlled enough so that people can resume normal life by early 2022 or later, while 47% say normal life can resume by mid-fall or sooner—including 5% who say life can safely resume in the U.S. now.”

Younger health care workers are more likely to report negative emotions than their older counterparts. Seven in ten (69%) frontline health care workers between the ages of 18 and 29 say they feel “burned out” compared to 59% of health care workers between the ages of 30 and 49, 43% of those ages 50 to 64 years, and 27% of health care workers who are ages 65 and older. Three in ten frontline health care workers ages 18–29 also report feeling “angry” about going into work these days. A smaller share of younger health care workers (49 years and younger) also report feeling positive emotions, such as hopeful, optimistic or motivated about going to work than their older counterparts (50 and older).

The survey also revealed that “More than one year into a global pandemic, the KFF/Washington Post Frontline Health Care Workers Survey finds three-fourths (76%) of frontline health care workers saying they feel “hopeful” when going to work these days. Majorities also say they feel “optimistic” (67%) and motivated (63%). Yet, about half also say they feel “burned out” (55%) or “anxious” (49%). About one in five (21%) say they feel “angry” when they go to work these days.”

The workers interviewed were employed in hospitals, doctor’s offices, outpatient clinics, nursing home and assisted care facilities and home health care.

The complete survey results is available at <https://www.kff.org/report-section/kff-the-washington-post-frontline-health-care-workers-survey-toll-of-the-pandemic/> Some of the questions on the survey will be included in the upcoming FPA survey.

Agencies Employing Health Care Workers Weigh-in During Largest Annual Survey of Federal Employees

Earlier this year, the Partnership for Public Service and the Boston Consulting Group (BCG) released the latest Best Places to Work in the Federal Government. The Best Places to Work in the Federal Government® rankings offer the most comprehensive assessment of how federal public servants view their jobs and workplaces. The Best Places to Work data is based on the views of more than 928,000 civil servants across the federal government who participated in employee surveys during 2020.

Two agencies on the frontlines during the COVID-19 pandemic, the National Institutes of Health and the Centers for Disease Control and Prevention, had vastly different employee experiences in 2020. NIH remained steady in the rankings, recording a Best Places to Work score of 81.7 out of 100 and placing 63 out of 411 agency subcomponents. The CDC had a score of 72.4, dropping from 81 in the 2019 rankings to 192 in 2020.

The Partnership and BCG use the term employee engagement to refer to the satisfaction and commitment of the workforce and the willingness of employees to put forth discretionary effort to achieve results. The Best Places to Work employee engagement score is derived from the percentage of positive responses to three different Federal Employee Viewpoint Survey questions:

- I recommend my organization as a good place to work.
- Considering everything, how satisfied are you with your job?
- Considering everything, how satisfied are you with your organization?

Many issues influence employee engagement, but effective leadership continues to be the key driver for federal employees as it has been every year since the Best Places to Work rankings were first launched in 2003. This category encompasses employee views on supervisors, fairness, empowerment and senior leaders.

The most recent report emphasizes that fact that Federal employees faced formidable challenges in 2020 due to the devastating COVID-19 pandemic, but Federal agencies rose to the occasion despite the disruptions and hardships, posting a score of 86.1 out of 100 in the Best Places to Work in the Federal Government COVID-19 category that measures employee views on the support they received during the pandemic. This positive response included employee opinions on whether their organizations supported their mental and physical well-being during the pandemic (88.6); whether they received the resources they needed to do their work (88.6); whether their agencies were able to successfully deliver on their missions in the midst of the crisis (85.8); and whether they had leaders who communicated effectively and prioritized their welfare (81.4).

The responses to the 2020 survey occurred between mid-September and early November of 2020, with 59% of respondents reporting that they teleworked every day during the peak of the pandemic compared to just 3% before the pandemic. The 2020 experience provides a pathway for the future of federal work that could involve greater reliance on telework, and enhanced use of technology for internal operations and for the improved delivery of services to the public.

results of the survey on the National Institutes of Health (NIH) and the Centers for Disease Control and Prevention (CDC).

Her analysis noted that the CDC faced tremendous pressure to handle the unprecedented health crisis. “We always have one emergency or another, but we have never had, in our 75-year history, a pandemic of this magnitude,” said Dr. Anne Schuchat, CDC’s former principal deputy director. The agency also faced a barrage of media stories on early mishandling of COVID-19 tests along with political interference in its report releases and publications, a situation that “has taken a toll,” Schuchat said. Criticism of the agency has been “hard on the staff,” she added. “They know how hard they’re working and how hard their peers are working.”

The CDC earned a Best Places to Work score of 91.4 out of 100 in the new COVID-19 employee response category that measured whether employees felt their organization supported their mental and physical well-being, provided the resources they needed to do their work, communicated effectively, and delivered on the mission. The CDC exceeded the government-wide score of 86.1 in this workplace category.

The National Institutes of Health found there was no better or easier time to get employees behind its mission than during COVID-19, said Beth Chandler, deputy director with the Office of Human Resources—leading to high marks in the employee COVID-19 response category with a score of 94.2 out of 100. One of the keys to employee engagement at NIH in 2020 was making sure everyone across the organization understood they were part of the effort to fight COVID-19, whether they worked in the hospital, the lab or in an administrative or facilities position, Chandler said.

The NIH earned a Best Places to Work score of 94.2 out of 100 and the Food and Drug Administration earned a score of 93.3 in the COVID-19 employee response category. Both agencies exceeded the government-wide score of 86.1 in this workplace category.

Here are the rankings, out of 411 total agency subcomponents, for those agencies that employ a large number of federal physicians.

51	Health Resources and Services Administration, Department of Health and Human Services
63	National Institutes of Health, Department of Health and Human Services
80	Food and Drug Administration, Department of Health and Human Services
86	Agency for Healthcare Research and Quality, Department of Health and Human Services
93	Centers for Medicare and Medicaid Services, Department of Health and Human Services
192	Centers for Disease Control and Prevention
264	Veterans Benefit Administration, Department of Veterans Affairs
326	Indian Health Service, Department of Health and Human Services
352	Defense Health Agency, Office of the Secretary of Defense, Joint Staff, Defense Agencies and Department of Defense Field Activities
361	U.S. Army Medical Command, Department of the Army
387	Federal Bureau of Prisons (BOP), Department of Justice *
410	Substance Abuse and Mental Health Services Administration, Department of Health and Human Services

*According to BOP, there are about 3,000 health care positions out of a total of about 36,000 employees.

Compare Agencies

Overall Results

2020 Index Score	Defense Health Agency	Centers for Disease Control and Prevention	Food and Drug Administration	National Institutes of Health	Department of Veterans Affairs
Overall	61.4	72.4	79.8	81.7	70.0

Results by Category

2020 Category Score	Defense Health Agency	Centers for Disease Control and Prevention	Food and Drug Administration	National Institutes of Health	Department of Veterans Affairs
Effective Leadership	59.5	67.2	72.5	76.4	64.7
Effective Leadership: Empowerment	53.3	62.8	66.2	68.1	58.0
Effective Leadership: Senior Leaders	55.2	60.5	68.2	75.4	59.5
Effective Leadership: Supervisors	69.2	84.0	85.0	84.5	75.9
Employee Skills-Mission Match	75.2	79.0	82.0	84.2	76.8
Pay	59.4	71.7	67.8	70.4	0.0
Teamwork	67.5	78.4	80.5	81.1	0.0
Innovation	63.8	76.0	73.7	78.1	66.3
Training and Development	0.0	0.0	0.0	0.0	0.0
Work-Life Balance	71.1	79.1	78.3	79.7	73.0
Recognition	54.9	70.9	71.4	74.0	0.0
COVID Overall	81.8	91.4	93.3	94.2	0.0
COVID: Supportive Leaders	74.4	88.4	91.4	93.1	0.0
COVID: Employee Well-Being	81.5	94.5	94.4	95.9	0.0
COVID: Job Resources	84.5	93.7	94.7	95.6	0.0
COVID: Agency Performance	86.6	88.9	92.7	92.2	0.0



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Recent Legal Decision Affects the Termination of a Federal Employee

In August, the U.S. Court of Appeals for the Federal Circuit ruled that the Department of Veterans Affairs (VA) used a too-low standard to justify the firing of an employee. This was a case involving the VA Accountability and Whistleblower Protection Act passed by Congress in 2017. The case involved the issue of the “burden of proof” which refers to the level of evidence needed to be shown by a federal agency in order to prove the allegations in an adverse action (e.g. removal, demotion or suspension over 14 days in length).

The burden of proof needed for a federal agency to prove their case at the MSPB depends on the type of federal employee appeal. In adverse action cases like those where a federal employee has been removed based on misconduct a federal agency has to prove the allegations that were made by a preponderance of the evidence. In cases involving performance like those where a federal employee has been removed following the failure to successfully complete a Performance Improvement Plan (PIP), the burden of proof is referred to as substantial evidence.

In the VA case, the substantial standard

was used which the Court decided did not apply to the specific VA case. The Court also said that the VA must consider the Douglas Factors which must be used by all federal agencies in employee disciplinary cases. *Douglas v. Veterans Administration* is the seminal decision in which the Merit Systems Protection Board determined the 12 factors for determining whether the penalty imposed by an agency in a disciplinary action is appropriate under the circumstances.

The twelve factors are:

The nature and seriousness of the offense—and its relation to the employee’s duties, position, and responsibilities—including whether the offense was intentional, technical, or inadvertent; was committed maliciously or for gain; or was frequently repeated.

The employee’s job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.

The employee’s past disciplinary record.

The employee’s past work record, including length of service, performance on the job, ability to get along with fellow

workers, and dependability.

The effect of the offense upon the employee’s ability to perform at a satisfactory level and its effect upon supervisors’ confidence in the employee’s work ability to perform assigned duties.

Consistency of the penalty with those imposed upon other employees for the same or similar offenses.

Consistency of the penalty with any applicable agency table of penalties.

The notoriety of the offense or its impact upon the reputation of the agency.

The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question.

The potential for the employee’s rehabilitation.

Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, or harassment; or bad faith, malice or provocation on the part of others involved in the matter.

The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.