

118TH CONGRESS
1ST SESSION

S. 1496

To provide that all Federal employees in the executive branch of the Federal Government are at-will employees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 9, 2023

Mr. SCOTT of Florida (for himself and Mr. SCHMITT) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To provide that all Federal employees in the executive branch of the Federal Government are at-will employees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Public Service Reform
5 Act”.

6 **SEC. 2. AT-WILL EMPLOYMENT FOR FEDERAL EXECUTIVE**
7 **BRANCH EMPLOYEES.**

8 (a) DEFINITIONS.—In this section—

1 (1) the term “adverse personnel action” means,
2 with respect to an employee, a removal, a suspension
3 for more than 14 days, a reduction in grade, a re-
4 duction in pay, or a furlough of 30 days or less;

5 (2) the term “career employee” means any em-
6 ployee who is not a political appointee;

7 (3) the term “covered position” has the mean-
8 ing given the term in section 2302(a)(2)(B) of title
9 5, United States Code;

10 (4) the term “employee”—

11 (A) has the meaning given the term in sec-
12 tion 2105 of title 5, United States Code; and

13 (B) includes—

14 (i) an officer or employee of the
15 United States Postal Service or the Postal
16 Regulatory Commission; and

17 (ii) notwithstanding subsection (b) of
18 section 7425 of title 38, United States
19 Code, any employee described in subsection
20 (a) of such section 7425; and

21 (5) the term “political appointee” means any
22 employee who—

23 (A) is appointed by the President;

1 (B) is a noncareer appointee (as that term
2 is defined in section 3132(a)(7) of title 5,
3 United States Code);

4 (C) occupies a position under schedule C of
5 subpart C of part 213 of title 5, Code of Fed-
6 eral Regulations, or any successor regulations;
7 or

8 (D) occupies any other position in the civil
9 service (as that term is defined in section 2101
10 of title 5, United States Code) that is classified
11 as a political position after the date of enact-
12 ment of this Act under regulations prescribed
13 by the Director of the Office of Personnel Man-
14 agement.

15 (b) AT-WILL EMPLOYMENT.—

16 (1) IN GENERAL.—Notwithstanding any other
17 provision of law, rule, or regulation, and except as
18 provided in paragraph (2), any employee in the exec-
19 utive branch of the Federal Government—

20 (A) shall be considered at-will;

21 (B) may be subject to any adverse per-
22 sonnel action (up to and including removal) for
23 good cause, bad cause, or no cause at all; and

1 (C) may not challenge or otherwise appeal
2 an action described in subparagraph (B), except
3 as provided in subsections (c) and (g).

4 (2) LIMITATION.—An employee may not be
5 subject to any adverse personnel action under this
6 Act for a reason that is prohibited under section
7 2302(b) of title 5, United States Code.

8 (3) PROCEDURES.—

9 (A) IN GENERAL.—The President shall es-
10 tablish procedures to enforce compliance with
11 paragraph (2).

12 (B) RULE OF CONSTRUCTION.—Nothing in
13 this paragraph may be construed to grant an
14 employee the right to review or appeal an ad-
15 verse personnel action outside of the procedures
16 described in subparagraph (A), subsection (g),
17 or subsection (h), as applicable.

18 (c) REMOVAL OF CAREER EMPLOYEES.—With re-
19 spect to the removal of a career employee, the following
20 procedures shall apply:

21 (1) Before the applicable agency removes the
22 career employee—

23 (A) the agency official authorized to pro-
24 pose such action (referred to in this subsection
25 as the “proposing official”) shall provide the ca-

1 reer employee with written notification of the
2 proposed removal and the reasons for the pro-
3 posed removal; and

4 (B) the career employee shall have 14 days
5 to provide a written response to the notification
6 received under subparagraph (A), except that
7 the head of the applicable agency shall have
8 sole and exclusive discretion to alter that re-
9 sponse period on a case-by-case basis.

10 (2) Under procedures prescribed by the applica-
11 ble agency head, in the sole and exclusive discretion
12 of the agency head, an agency official (who, except
13 when the proposing official is the agency head, shall
14 be an agency official other than the proposing offi-
15 cial) (referred to in this subsection as the “deciding
16 official”)—

17 (A) shall review the proposed removal and
18 the response of the career employee under para-
19 graph (1);

20 (B) may, in the sole and exclusive discre-
21 tion of the deciding official, conduct a hearing
22 on the matter; and

23 (C) after the review conducted under sub-
24 paragraph (A), and any hearing conducted

1 under subparagraph (B), shall decide whether
2 to remove or retain the career employee.

3 (3) The determination of a deciding official
4 under paragraph (2) shall be the final decision of
5 the applicable agency with respect to the career em-
6 ployee, unless, not later than 7 days after the date
7 on which the deciding official makes that determina-
8 tion, the agency head reverses the determination of
9 the deciding official, in which case the decision of
10 the agency head shall be the final agency decision.

11 (4) The final decision of an agency under para-
12 graph (3) shall be final and not subject to any ap-
13 peal or challenge, except that the President may
14 overrule that final decision of the agency in accord-
15 ance with such procedures or regulations as the
16 President may prescribe.

17 (d) APPLICATION.—Chapter 43 of title 5, United
18 States Code, shall not apply to any personnel action taken
19 with respect to an employee under this Act.

20 (e) ABOLISHMENT OF MSPB.—

21 (1) IN GENERAL.—Effective on the date of en-
22 actment of this Act, the Merit Systems Protection
23 Board (referred to in this subsection as the
24 “Board”) is hereby abolished.

1 (2) DISPOSAL OF ASSETS, OBLIGATIONS, AND
 2 LIABILITIES.—The Chairman of the Board may take
 3 such actions as are necessary to dispose of the as-
 4 sets, obligations, and liabilities of the Board.

5 (f) TECHNICAL AND CONFORMING AMENDMENTS.—

6 (1) REPEAL.—The following provisions of title
 7 5, United States Code, are hereby repealed:

8 (A) Subchapter I of chapter 12.

9 (B) Section 1212(c).

10 (C) With respect to section 1214, the fol-
 11 lowing provisions:

12 (i) Subsection (b)(1).

13 (ii) Subparagraphs (B) through (D)
 14 of subsection (b)(2).

15 (iii) Paragraphs (3) and (4) of sub-
 16 section (b).

17 (iv) Subsections (c), (g), and (i).

18 (D) Sections 1215 and 1221.

19 (E) Section 4303.

20 (F) Chapter 75.

21 (G) Chapter 77.

22 (2) OTHER AMENDMENTS.—Chapter 71 of title
 23 5, United States Code, is amended—

24 (A) in section 7103(a)(14)—

1 (i) by redesignating subparagraphs
 2 (B) and (C) as subparagraphs (C) and
 3 (D), respectively; and

4 (ii) by inserting after subparagraph
 5 (A) the following:

6 “(B) relating to adverse personnel actions,
 7 as provided by the Public Service Reform Act;”;
 8 and

9 (B) in section 7121(c), by amending para-
 10 graph (3) to read as follows:

11 “(3) any adverse personnel action under the
 12 Public Service Reform Act;”.

13 (g) WHISTLEBLOWER PROTECTIONS.—

14 (1) IN GENERAL.—During the period described
 15 in subsection (c)(1)(B), the Office of Special Counsel
 16 may make a recommendation to the applicable agen-
 17 cy head or deciding official (as described in sub-
 18 section (c)(2)) regarding whether an adverse per-
 19 sonnel action proposed against an individual was in
 20 retaliation for making a disclosure described in sec-
 21 tion 2302(b)(8) of title 5, United States Code.

22 (2) APPEAL.—

23 (A) IN GENERAL.—An individual in a cov-
 24 ered position who is subject to an adverse per-
 25 sonnel action and who claims that action was

1 taken for a reason prohibited under paragraph
2 (8) or (9) of section 2302(b) of title 5, United
3 States Code, may appeal that action to the
4 United States court of appeals in the circuit in
5 which the duty station of the individual is lo-
6 cated.

7 (B) DECISION.—

8 (i) FRIVOLOUS OR BAD FAITH AP-
9 PEAL.—If the court, in an appeal brought
10 by an individual under subparagraph (A),
11 finds that the appeal is brought in bad
12 faith or is frivolous, the annuity of the in-
13 dividual under chapter 83 or 84 of title 5,
14 United States Code, shall be reduced by 25
15 percent.

16 (ii) SUCCESSFUL APPEAL.—If an indi-
17 vidual prevails in an appeal brought under
18 subparagraph (A), the individual shall—

19 (I) be placed, as nearly as pos-
20 sible, in the position the individual
21 would have been in had the adverse
22 personnel action not been taken
23 against the individual; and

24 (II) be reimbursed for—

1 (aa) attorney fees, back pay,
2 and related benefits in accord-
3 ance with section 5596 of title 5,
4 United States Code; and

5 (bb) medical costs incurred,
6 travel expenses, any other rea-
7 sonable and foreseeable con-
8 sequential damages, and compen-
9 satory damages (including inter-
10 est, reasonable expert witness
11 fees, and costs).

12 (h) EEOC APPEALS.—Notwithstanding any other
13 provision of law, including section 717 of the Civil Rights
14 Act of 1964 (42 U.S.C. 2000e–16), an individual who is
15 an employee (or an applicant for a position as an em-
16 ployee) and who alleges that the individual was subject
17 to an adverse personnel action that is a prohibited per-
18 sonnel action described in section 2302(b)(1) of title 5,
19 United States Code, shall seek relief for that action from
20 the Equal Employment Opportunity Commission as if that
21 individual were an employee of an employer, as that term
22 is defined in section 701 of the Civil Rights Act of 1964
23 (42 U.S.C. 2000e).

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