

ADMINISTRATIVE LEAVE REFORM ACT

APRIL 25, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CHAFFETZ, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

[To accompany H.R. 4359]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 4359) to amend title 5, United States Code, to provide that Federal employees may not be placed on administrative leave for more than 14 days during any year for misconduct or poor performance, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Administrative Leave Reform Act”.

SEC. 2. LIMITATION ON ADMINISTRATIVE LEAVE.

(a) IN GENERAL.—Subchapter II of chapter 63 of title 5, United States Code, is amended by adding at the end the following:

“§ 6330. Limitation on administrative leave

“(a) IN GENERAL.—During any calendar year, an employee may not be placed on administrative leave, or any other paid non-duty status without charge to leave, for more than 14 total days for reasons relating to misconduct or performance. After an employee has been placed on administrative leave for 14 days, the employing agency shall return the employee to duty status, utilizing telework if available, and assign the employee to duties if such employee is not a threat to safety, the agency mission, or Government property.

“(b) EXTENDED ADMINISTRATIVE LEAVE.—

“(1) IN GENERAL.—If an agency head determines that an employee is a threat to safety, the agency mission, or Government property and upon the expiration of the 14-day period described in subsection (a), an agency head may place the employee on extended administrative leave for additional periods of not more than 30 days each.

“(2) REPORT.—For any additional period of 30 days granted to the employee after the initial 30-day extension, the agency head shall submit to the Committee on Oversight and Government Reform in the House of Representatives, the agency’s authorizing committees of jurisdiction of the House of Representatives and the Senate, and the Committee on Homeland Security and Governmental Affairs of the Senate a report, not later than 5 business days after granting the additional period, containing—

“(A) the name, title, position, office or agency subcomponent, job series, pay grade, and salary of the employee on administrative leave;

“(B) a description of the work duties of the employee;

“(C) the reason the employee is on administrative leave;

“(D) an explanation as to why the employee is a threat to safety, the agency mission, or Government property;

“(E) an explanation as to why the employee is not able to telework or be reassigned to another position within the agency;

“(F) in the case of a pending related investigation of the employee—

“(i) the status of such investigation; and

“(ii) the certification described in subsection (c)(1); and

“(G) in the case of a completed related investigation of the employee—

“(i) the results of such investigation; and

“(ii) the reason that the employee remains on administrative leave.

“(c) EXTENSION PENDING RELATED INVESTIGATION.—

“(1) IN GENERAL.—If an employee is under a related investigation by an investigative entity at the time an additional period described under subsection (b)(2) is granted and, in the opinion of the investigative entity, additional time is needed to complete the investigation, such entity shall certify to the applicable agency that such additional time is needed and include in the certification an estimate of the length of such additional time.

“(2) LIMITATION.—The head of an agency may not grant an additional period of administrative leave described under subsection (b)(2) to an employee on or after the date that is 30 days after the completion of a related investigation by an investigative entity.

“(d) DEFINITIONS.—In this section, the following definitions apply:

“(1) INVESTIGATIVE ENTITY.—The term ‘investigative entity’ means an internal investigative unit of the agency granting administrative leave, the Office of Inspector General, the Office of the Attorney General, or the Office of Special Counsel.

“(2) RELATED INVESTIGATION.—The term ‘related investigation’ means an investigation that pertains to the underlying reasons an employee was placed on administrative leave.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall begin to apply 90 days after the date of enactment of this Act.

(c) RULES OF CONSTRUCTION.—Nothing in the amendment made by subsection (a) shall be construed to—

(1) supersede the provisions of chapter 75 of title 5, United States Code; or

(2) limit the number of days that an employee may be placed on administrative leave, or any other paid non-duty status without charge to leave, for reasons unrelated to misconduct or performance.

(d) CLERICAL AMENDMENT.—The table of sections for subchapter II of chapter 63 of title 5, United States Code, is amended by adding after the item relating to section 6329 the following new item:

“6330. Limitation on administrative leave.”.

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 4359, the Administrative Leave Reform Act brings accountability to the administrative leave process within Executive branch agencies. Currently, there is little uniformity across the federal government in how administrative leave is used. This legislation creates a standard process for the use of administrative leave in cases of misconduct and poor performance, which will help curb the overuse of administrative leave within the federal government.

In general, the legislation creates a 14-day cap on administrative leave when employees are being placed on administrative leave for reasons related to misconduct or poor performance, except under certain circumstances.

In these exceptional circumstances, the legislation permits agencies to make 30-day extensions of administrative leave beyond the 14-day limit. For each extension that an agency makes beyond the initial 30-day extension, the agency must provide a report to the appropriate congressional committees containing details about the individual, including name, title, position, salary, and duties, an explanation for why the individual is on administrative leave, why the individual could not telework or be reassigned, and the status of any pending investigation. Further, the entity conducting the investigation must certify within the report that the investigation is ongoing and requires additional time. Additionally, no individual will be eligible for additional extensions of administrative leave more than 30 days after the completion of the last investigation into the individual.

BACKGROUND AND NEED FOR LEGISLATION

The Office of Personnel Management (OPM) defines administrative leave, or an excused absence, as “an administratively authorized absence from duty without loss of pay or charge to leave.”¹ OPM further notes that “[a]lthough administrative leave is not expressly referenced in title 5, the authority to grant an excused absence derives from the inherent authority for heads of agencies to prescribe regulations for the government of their organizations.”²

While OPM offers some guidance and examples for the use of administrative leave, there is no defining statute or regulation clearly delineating the proper use of administrative leave. This has resulted in varying policies across agencies.

The Government Accountability Office (GAO) highlighted the inconsistent use of administrative leave across the federal government in a 2014 report. GAO found, “agency policies and guidance contained several common activities for granting paid administra-

¹ Office of Personnel Mgmt., *Pay & Leave*, available at <https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/administrative-leave/> (last visited March 9, 2016).

² *Id.* OPM references 5 U.S.C. 301–302 in particular.

tive leave . . . However, variations exist, depending on agency mission and how leave is categorized in agency policy.”³

OPM’s recent guidance makes clear that administrative leave is not intended to be a permanent solution in cases of performance and misconduct issues. Rather, administrative leave should be a temporary measure for agencies to utilize in limited, brief circumstances. When administrative leave is used in relation to poor performance or misconduct prior to an adverse action, OPM advises that: “[w]here absences are for longer than brief periods, administrative leave is generally inappropriate.”⁴ OPM’s guidance also notes that when placing employees on administrative leave for misconduct or performance issues prior to taking adverse action, “[a]n agency should monitor the situation and move towards longer-term actions when it is possible, appropriate, and prudent to do so.”⁵

Despite these intentions, GAO found that some agencies have placed employees on administrative leave for more than a year. In its 2014 report, GAO found that 263 employees within the federal government were on administrative leave between one and three years during the 2011–2013 period. The report also indicates that 538 people were on administrative leave for nine months or more. GAO’s report provides further details of agency use of administrative leave.⁶ GAO also found that the most common reason that agencies used large amounts of administrative leave was for personnel matters, such as investigations of alleged misconduct or criminal actions.

The Committee on Oversight and Government Reform has investigated instances where agencies have placed employees on administrative leave for extended periods of time. For example, the Environmental Protection Agency placed two employees on administrative leave for 1.5 years and 10 months, respectively, pending the completion of Inspector General and Department of Justice investigations, which found that the “employees spent approximately 1 to 6 hours a day viewing and downloading pornography.”⁷

In addition, the National Archives Inspector General was placed on administrative leave for over two years while allegations that he made sexually suggestive and racially offensive comments and altered audits were being investigated.⁸

While administrative leave offers agencies flexibility to address instances where there is a need for a short-term absence or to wait for the completion of an investigation by the Inspector General, it was never meant to be used as an option when agencies do not know how or are reluctant to take adverse action against employees.

When agencies overuse administrative leave, it costs the American taxpayers. While in many cases, some use of administrative leave is necessary and appropriate, some agencies use administra-

³ Gov’t Accountability Office, *Federal Paid Administrative Leave* (October 2014) (GAO–15–79).

⁴ Office of Personnel Mgmt., *Pay & Leave*, available at <https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/administrative-leave/> (last visited March 9, 2016).

⁵ *Id.*

⁶ Gov’t Accountability Office, *Federal Paid Administrative Leave* (October 2014) (GAO–15–79).

⁷ Environmental Protection Agency Office of the Inspector General, *FYI 2015 EPA Management Challenges* (May 28, 2014) (15–N–0164).

⁸ Lisa Rein, *Embattled National Archives IG to Retire after Probe Finds Misconduct*, WASH. POST, Aug. 4, 2014, <https://www.washingtonpost.com/news/federal-eye/wp/2014/08/04/embattled-national-archives-ig-to-retire-after-probe-finds-misconduct/>.

tive leave to avoid dealing with hard problems, or to allow a problem to be swept under the rug. By allowing employees to remain on administrative leave indefinitely, agencies are effectively asking taxpayers to pay people not to work. The Committee believes that this is unacceptable.

To address this problem, H.R. 4359 works to curb agency overuse of administrative leave. Specifically, the bill creates a clear statutory intent that administrative leave should not be a permanent duty status. Second, it requires agencies to almost immediately begin considering how to handle individuals placed on administrative leave. Third, it increases accountability within agencies by requiring agency heads to approve extensions of its use beyond 14 days, and after 44 days, to certify to Congress the specific reason that an employee must remain on administrative leave. Fourth, it will prohibit the indefinite use of administrative leave. Under this bill, agencies can move forward with an indefinite number of extensions to allow for the completion of investigations into possible misconduct or performance problems. However, once those investigations are completed, agencies must take action to remove the employee from administrative leave in short order.

Prior to House consideration, the Committee plans to make further refinements to the legislation based on comments received from the Council of the Inspectors General on Integrity and Efficiency.

LEGISLATIVE HISTORY

H.R. 4359, the Administrative Leave Reform Act, was introduced by Congressman Jason Chaffetz (R-UT) on January 11, 2016, and referred to the Committee on Oversight and Government Reform.

On March 1, 2016, the Committee on Oversight and Government Reform ordered H.R. 4359 favorably reported, with an amendment offered by Congressman Stephen Lynch (D-MA), by voice vote.

SECTION-BY-SECTION

Section 1. Short title

Designates the short title of the legislation as the “Administrative Leave Reform Act.”

Section 2. Limitation on administrative leave

Amends title 5 of United States Code to require that an employee may not be placed on administrative leave, or other paid non-duty status without charging leave, for more than 14 total days for reasons relating to misconduct or performance.

Provides the employing agency with the ability to extend an employee’s time on administrative leave for misconduct or poor performance in increments of 30 days.

For each 30-day extension after the first 30-day extension, the agency must provide: a report to Congress that explains the reasons this employee remains on administrative leave; the reasons the employee cannot telework or be reassigned to another position; the status of any investigation regarding the employee with an estimate of the time needed to complete the investigation; and a description of the employee’s employment information and work responsibilities.

If the agency grants an extension of administrative leave (beyond an original 30-day extension) to accommodate the need for additional time to complete an investigation, then the investigating entity must certify that additional time is needed to complete the investigation.

The agency head may not grant an additional period of administrative leave to an employee on or after the date that is 30 days after a completed investigation.

Establishes that the bill will take effect 90 days after the date of enactment.

This bill shall not be construed to supersede the provisions of chapter 75 of title 5, United States Code, or limit the number of days an employee may be placed on administrative leave, or other paid non-duty status without charge to leave, for reasons unrelated to misconduct or performance.

EXPLANATION OF AMENDMENTS

During Full Committee consideration of the bill, Congressman Stephen Lynch (D-MA) offered an amendment in the nature of a substitute to the bill, which is reflected in the above section-by-section. The Lynch amendment was adopted by voice vote.

COMMITTEE CONSIDERATION

On March 1, 2016, the Committee met in open session and ordered reported favorably the bill, H.R. 4359, as amended, by voice vote, a quorum being present.

ROLL CALL VOTES

No roll call votes were requested or conducted during Full Committee consideration of H.R. 4359.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104-1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill amends title 5, United States Code, to provide that Federal employees may not be placed on administrative leave for more than 14 days during any year for misconduct or poor performance. As such, it does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goal or objective of the bill is to amend title 5, United States Code, to provide that Federal employees may not be placed on administrative leave

for more than 14 days during any year for misconduct or poor performance.

DUPLICATION OF FEDERAL PROGRAMS

No provision of this bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting this bill does not direct the completion of any specific rule makings within the meaning of 5 U.S.C. 551. However, the Director of the Office of Management and Budget is directed to issue guidelines.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the

Committee has received the following cost estimate for this bill from the Director of Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 24, 2016.

Hon. JASON CHAFFETZ,
*Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4359, the Administrative Leave Reform Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Dan Ready.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 4359—Administrative Leave Reform Act

H.R. 4359 would limit to 14 days the amount of time an agency could place an employee on administrative leave while investigating employee misconduct or performance. Extensions to the 14-day period would be allowable under H.R. 4359, but agencies granting such extensions would have to submit a report to certain Congressional committees detailing their rationale.

The limitation on the length of administrative leave would not change the amount agencies pay to employees under investigation and CBO does not expect the number of reports to Congressional committees or their costs to be significant. Therefore, CBO estimates that enacting H.R. 4359 would have no significant budgetary effect.

Because enacting H.R. 4359 would not affect direct spending or revenues, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 4359 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year period beginning in 2027.

H.R. 4359 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Dan Ready. The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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SUBPART E—ATTENDANCE AND LEAVE

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CHAPTER 63—LEAVE

SUBCHAPTER I—ANNUAL AND SICK LEAVE

Sec.
6301. Definitions.

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SUBCHAPTER II—OTHER PAID LEAVE

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6330. *Limitation on administrative leave.*

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SUBCHAPTER II—OTHER PAID LEAVE

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§ 6330. *Limitation on administrative leave*

(a) *IN GENERAL.*—During any calendar year, an employee may not be placed on administrative leave, or any other paid non-duty status without charge to leave, for more than 14 total days for reasons relating to misconduct or performance. After an employee has been placed on administrative leave for 14 days, the employing agency shall return the employee to duty status, utilizing telework if available, and assign the employee to duties if such employee is not a threat to safety, the agency mission, or Government property.

(b) *EXTENDED ADMINISTRATIVE LEAVE.*—

(1) *IN GENERAL.*—If an agency head determines that an employee is a threat to safety, the agency mission, or Government property and upon the expiration of the 14-day period described in subsection (a), an agency head may place the employee on extended administrative leave for additional periods of not more than 30 days each.

(2) *REPORT.*—For any additional period of 30 days granted to the employee after the initial 30-day extension, the agency head shall submit to the Committee on Oversight and Government Reform in the House of Representatives, the agency's authorizing committees of jurisdiction of the House of Representatives and the Senate, and the Committee on Homeland Security and Governmental Affairs of the Senate a report, not later than 5 business days after granting the additional period, containing—

(A) the name, title, position, office or agency subcomponent, job series, pay grade, and salary of the employee on administrative leave;

(B) a description of the work duties of the employee;

(C) the reason the employee is on administrative leave;

(D) an explanation as to why the employee is a threat to safety, the agency mission, or Government property;

(E) an explanation as to why the employee is not able to telework or be reassigned to another position within the agency;

(F) in the case of a pending related investigation of the employee—

- (i) the status of such investigation; and
 - (ii) the certification described in subsection (c)(1);
- and

(G) in the case of a completed related investigation of the employee—

- (i) the results of such investigation; and
- (ii) the reason that the employee remains on administrative leave.

(c) *EXTENSION PENDING RELATED INVESTIGATION.*—

(1) *IN GENERAL.*—If an employee is under a related investigation by an investigative entity at the time an additional period described under subsection (b)(2) is granted and, in the opinion of the investigative entity, additional time is needed to complete the investigation, such entity shall certify to the applicable agency that such additional time is needed and include in the certification an estimate of the length of such additional time.

(2) *LIMITATION.*—The head of an agency may not grant an additional period of administrative leave described under subsection (b)(2) to an employee on or after the date that is 30 days after the completion of a related investigation by an investigative entity.

(d) *DEFINITIONS.*—In this section, the following definitions apply:

(1) *INVESTIGATIVE ENTITY.*—The term “investigative entity” means an internal investigative unit of the agency granting administrative leave, the Office of Inspector General, the Office of the Attorney General, or the Office of Special Counsel.

(2) *RELATED INVESTIGATION.*—The term “related investigation” means an investigation that pertains to the underlying reasons an employee was placed on administrative leave.

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