

114TH CONGRESS
1ST SESSION

S. 1856

To amend title 38, United States Code, to provide for suspension and removal of employees of the Department of Veterans Affairs for performance or misconduct that is a threat to public health or safety and to improve accountability of employees of the Department, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 23, 2015

Mr. BLUMENTHAL (for himself, Mrs. MURRAY, Mr. SANDERS, Mr. BROWN, Mr. TESTER, and Ms. HIRONO) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to provide for suspension and removal of employees of the Department of Veterans Affairs for performance or misconduct that is a threat to public health or safety and to improve accountability of employees of the Department, 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 “Department of Vet-
5 erans Affairs Equitable Employee Accountability Act of
6 2015”.

1 **SEC. 2. SUSPENSION AND REMOVAL OF DEPARTMENT OF**
2 **VETERANS AFFAIRS EMPLOYEES FOR PER-**
3 **FORMANCE OR MISCONDUCT THAT IS A**
4 **THREAT TO PUBLIC HEALTH OR SAFETY.**

5 (a) IN GENERAL.—Chapter 7 of title 38, United
6 States Code, is amended by adding at the end the fol-
7 lowing new section:

8 **“§ 715. Employees: suspension and removal for per-**
9 **formance or misconduct that is a threat**
10 **to public health or safety**

11 “(a) SUSPENSION AND REMOVAL.—Subject to the
12 provisions of this section, the Secretary may—

13 “(1) suspend without pay an employee of the
14 Department if the Secretary determines the per-
15 formance or misconduct of the employee is a clear
16 and direct threat to public health or safety; and

17 “(2) remove an employee suspended under
18 paragraph (1) if, after such investigation and review
19 as the Secretary considers necessary, the Secretary
20 determines that removal is necessary in the interests
21 of public health or safety.

22 “(b) PROCEDURE.—An employee suspended under
23 subsection (a)(1) is entitled, after suspension and before
24 removal, to—

1 “(1) not later than 30 days after the date of
2 the suspension, a written statement of the specific
3 charges against the employee;

4 “(2) a reasonable opportunity, but not less than
5 7 business days, to answer the charges orally and in
6 writing and to furnish affidavits and other documen-
7 tary evidence in support of the answer;

8 “(3) at the request of the employee, and not
9 later than 15 business days after such request, a
10 formal review by a Department authority duly con-
11 stituted for purposes of this section at which the em-
12 ployee may be represented by an attorney or other
13 representative;

14 “(4) a review of the case by the Secretary be-
15 fore a decision adverse to the employee is made
16 final;

17 “(5) as soon as practicable, a decision of the
18 Secretary with respect to the charges against the
19 employee; and

20 “(6) a written statement of the decision of the
21 Secretary that includes the specific reasons for the
22 decision.

23 “(c) APPEAL.—An employee suspended or removed
24 under subsection (a)—

1 “(1) is entitled to appeal to the Merit Systems
2 Protection Board under section 7701 of title 5; and

3 “(2) may obtain judicial review of a final order
4 or decision of the Merit Systems Protection Board
5 under section 7703 of such title.

6 “(d) RELATION TO OTHER DISCIPLINARY RULES.—

7 The authority provided under this section shall be in addi-
8 tion to the authority provided under section 713 and sub-
9 chapter V of chapter 74 of this title and title 5 with re-
10 spect to disciplinary actions for performance or mis-
11 conduct.

12 “(e) BACK PAY.—

13 “(1) IN GENERAL.—If an employee of the De-
14 partment is subject to a suspension or removal
15 under this section and the Secretary makes a deter-
16 mination described in paragraph (2) with respect to
17 such suspension or removal, the employee shall re-
18 ceive back pay equal to the total amount of pay that
19 such employee would have received during the period
20 that the suspension or removal (as the case may be)
21 was in effect, less any amounts earned by the em-
22 ployee through other employment during that period.

23 “(2) DETERMINATION DESCRIBED.—A deter-
24 mination described in this paragraph with respect to

1 a suspension or removal is a determination that the
 2 suspension or removal—

3 “(A) is not warranted; or

4 “(B) is, under applicable law, rule, regula-
 5 tion, or collective bargaining agreement, a pro-
 6 hibited personnel practice described in section
 7 2302(b) of title 5.

8 “(f) EMPLOYEE DEFINED.—In this section, the term
 9 ‘employee’ means any individual occupying a position
 10 within the Department under a permanent or indefinite
 11 appointment and who is not serving a probationary or trial
 12 period.”.

13 (b) CLERICAL AND CONFORMING AMENDMENTS.—

14 (1) CLERICAL.—The table of sections at the be-
 15 ginning of chapter 7 of such title is amended by in-
 16 serting after the item relating to section 713 the fol-
 17 lowing new item:

“715. Employees: suspension and removal for performance or misconduct that
 is a threat to public health or safety.”.

18 (2) CONFORMING.—Section 4303(f) of title 5,
 19 United States Code, is amended—

20 (A) in paragraph (2), by striking “or” at
 21 the end;

22 (B) in paragraph (3), by striking the pe-
 23 riod at the end and inserting “, or”; and

24 (C) by adding at the end the following:

1 “(4) any suspension or removal under section
2 715 of title 38.”.

3 (c) REPORT ON SUSPENSIONS AND REMOVALS.—

4 (1) IN GENERAL.—Not later than one year
5 after the date of the enactment of this Act, the In-
6 specter General of the Department of Veterans Af-
7 fairs shall submit to the Committee on Veterans’ Af-
8 fairs of the Senate and the Committee on Veterans’
9 Affairs of the House of Representatives a report on
10 suspensions and removals of employees of the De-
11 partment of Veterans Affairs made under section
12 715 of title 38, United States Code, as added by
13 subsection (a).

14 (2) ELEMENTS.—The report required by para-
15 graph (1) shall include the following:

16 (A) The number of employees who were
17 suspended under section 715 of title 38, United
18 States Code, as added by subsection (a).

19 (B) The number of employees who were re-
20 moved under such section.

21 (C) A description of the threats to public
22 health or safety that caused such suspensions
23 or removals.

24 (D) The number of suspensions or remov-
25 als, or proposed suspensions or removals, under

1 such section that were of an employee who filed
2 a complaint regarding—

3 (i) an alleged prohibited personnel
4 practice committed by an officer or em-
5 ployee of the Department; or

6 (ii) the safety of a patient at a med-
7 ical facility of the Department.

8 (E) Of the number of suspensions or re-
9 movals described in subparagraph (D), the
10 number of such suspensions or removals that
11 the Inspector General considers to be retaliation
12 for whistleblowing.

13 (F) The number of suspensions or remov-
14 als under such section 715 that were of an em-
15 ployee who was the subject of a complaint made
16 to the Department regarding the health or safe-
17 ty of a patient at a medical facility of the De-
18 partment.

19 (G) Any recommendations by the Inspector
20 General, based on the information described in
21 subparagraphs (A) through (F), to improve the
22 authority of the Secretary of Veterans Affairs
23 to make such suspensions or removals.

1 **SEC. 3. ACCOUNTABILITY OF LEADERS FOR MANAGING**
2 **THE DEPARTMENT OF VETERANS AFFAIRS.**

3 (a) IN GENERAL.—Chapter 7 of title 38, United
4 States Code, is amended by inserting after section 709 the
5 following new section:

6 **“§ 709A. Annual performance plan for political ap-**
7 **pointees**

8 “(a) IN GENERAL.—The Secretary shall conduct an
9 annual performance plan for each political appointee of
10 the Department that is similar to the annual performance
11 plan conducted for an employee of the Department who
12 is appointed as a career appointee (as that term is defined
13 in section 3132(a)(4) of title 5) within the Senior Execu-
14 tive Service at the Department.

15 “(b) ELEMENTS OF PLAN.—Each annual perform-
16 ance plan conducted under subsection (a) with respect to
17 a political appointee of the Department shall include an
18 assessment of whether the appointee is meeting the fol-
19 lowing goals:

20 “(1) Recruiting, selecting, and retaining well-
21 qualified individuals for employment at the Depart-
22 ment.

23 “(2) Engaging and motivating employees.

24 “(3) Training and developing employees and
25 preparing those employees for future leadership roles
26 within the Department.

1 “(4) Holding each employee of the Department
 2 that is a manager accountable for addressing issues
 3 relating to performance, in particular issues relating
 4 to the performance of employees that report to the
 5 manager.”.

6 (b) CLERICAL AMENDMENT.—The table of sections
 7 at the beginning of chapter 7 of such title is amended by
 8 inserting after the item relating to section 709 the fol-
 9 lowing new item:

 “709A. Annual performance plan for political appointees.”.

10 **SEC. 4. ACCOUNTABILITY OF MANAGERS FOR HIRING**
 11 **WELL-QUALIFIED PEOPLE.**

12 (a) IN GENERAL.—With respect to any employee of
 13 the Department of Veterans Affairs that is required to
 14 serve a probationary period at a position in the Depart-
 15 ment, the Secretary of Veterans Affairs shall require the
 16 manager of such employee to determine, not later than
 17 30 days before the end of the probationary period, whether
 18 the employee has demonstrated successful performance
 19 and should continue past the probationary period before
 20 allowing the employee to continue at that position after
 21 the end of the probationary period.

22 (b) SUPERVISORS.—With respect to any employee of
 23 the Department that is serving a probationary period at
 24 a supervisory position in the Department, successful per-
 25 formance under subsection (a) shall include demonstrating

1 management competencies in addition to the technical
2 skills required for such position.

3 (c) PERFORMANCE PLAN.—Each annual perform-
4 ance plan conducted for a manager of an employee serving
5 a probationary period shall hold the manager accountable
6 for—

7 (1) providing regular feedback to such employee
8 during such period before making a determination
9 under subsection (a) regarding the probationary sta-
10 tus of such employee; and

11 (2) making a timely determination under sub-
12 section (a) regarding the probationary status of such
13 employee.

14 **SEC. 5. ACCOUNTABILITY OF MANAGERS FOR ADDRESSING**
15 **PERFORMANCE OF EMPLOYEES.**

16 The Secretary of Veterans Affairs shall ensure that,
17 as a part of the annual performance plan of an employee
18 of the Department of Veterans Affairs that is a manager,
19 the manager is evaluated on the following:

20 (1) Taking action to address poor performance
21 and misconduct among the employees that report to
22 the manager.

23 (2) Taking steps to improve or sustain high lev-
24 els of employee engagement.

1 **SEC. 6. IMPROVEMENT OF TRAINING FOR MANAGERS.**

2 The Secretary of Veterans Affairs shall provide to
3 each employee of the Department of Veterans Affairs that
4 is a manager periodic training on the following:

5 (1) The rights of whistleblowers and how to ad-
6 dress a report by an employee of a hostile work envi-
7 ronment, reprisal, or harassment.

8 (2) How to effectively motivate, manage, and
9 reward the employees that report to the manager.

10 (3) How to effectively manage employees who
11 are performing at an unacceptable level and access
12 assistance from the human resources office of the
13 Department and the Office of the General Counsel
14 of the Department with respect to those employees.

15 **SEC. 7. PROMOTIONAL OPPORTUNITIES FOR TECHNICAL**
16 **EXPERTS.**

17 The Secretary of Veterans Affairs shall develop a pro-
18 motional track for employees of the Department of Vet-
19 erans Affairs that the Secretary determines are technical
20 experts to allow such employees to advance in their career
21 without being required to transition to management posi-
22 tions.

1 **SEC. 8. EXPANSION OF DEFINITION OF PERSONNEL ACTION**
 2 **TO INCLUDE PERFORMANCE EVALUATIONS**
 3 **OF EMPLOYEES OF THE DEPARTMENT OF**
 4 **VETERANS AFFAIRS.**

5 Section 2302(a)(2)(A)(viii) of title 5, United States
 6 Code, is amended by inserting “or under title 38” after
 7 “chapter 43 of this title”.

8 **SEC. 9. WRITTEN OPINION ON CERTAIN EMPLOYMENT RE-**
 9 **STRICTIONS AFTER TERMINATING EMPLOY-**
 10 **MENT WITH THE DEPARTMENT OF VETERANS**
 11 **AFFAIRS.**

12 (a) IN GENERAL.—Chapter 7 of title 38, United
 13 States Code, as amended by section 2, is further amended
 14 by adding at the end the following new section:

15 **“§ 717. Written opinion on certain employment re-**
 16 **strictions after terminating employment**
 17 **with the Department**

18 “(a) IN GENERAL.—Before terminating employment
 19 with the Department, any official of the Department who
 20 has participated personally and substantially in an acqui-
 21 sition by the Department that exceeds \$1,000,000 or held
 22 a key position at the Department relating to acquisition
 23 shall obtain a written opinion from an appropriate ethics
 24 counselor at the Department regarding any restrictions on
 25 activities that the official may undertake on behalf of a
 26 covered contractor during the two-year period beginning

1 on the date on which the official terminates such employ-
 2 ment.

3 “(b) COVERED CONTRACTOR DEFINED.—In this sec-
 4 tion, the term ‘covered contractor’ means a contractor car-
 5 rying out a contract entered into with the Department,
 6 including pursuant to a subcontract.”.

7 (b) CLERICAL AMENDMENT.—The table of sections
 8 at the beginning of chapter 7 of such title, as amended
 9 by section 2, is further amended by inserting after the
 10 item relating to section 715 the following new item:

“717. Written opinion on certain employment restrictions after leaving the De-
 partment.”.

11 **SEC. 10. REQUIREMENT FOR CONTRACTORS OF THE DE-**
 12 **PARTMENT EMPLOYING CERTAIN RECENTLY**
 13 **SEPARATED DEPARTMENT EMPLOYEES.**

14 (a) IN GENERAL.—Subchapter II of chapter 81 of
 15 title 38, United States Code, is amended by adding at the
 16 end the following new section:

17 **“§ 8129. Requirement for contractors employing cer-**
 18 **tain recently separated Department em-**
 19 **ployees**

20 “(a) IN GENERAL.—A covered contractor may not
 21 knowingly provide compensation to an individual described
 22 in subsection (b) during the two-year period beginning on
 23 the date on which the individual terminates employment

1 with the Department unless the covered contractor deter-
2 mines that the individual—

3 “(1) has obtained the written opinion required
4 under section 717(a) of this title; or

5 “(2) has requested such written opinion not
6 later than 30 days before receiving compensation
7 from the covered contractor.

8 “(b) INDIVIDUAL DESCRIBED.—An individual de-
9 scribed in this subsection is any official of the Department
10 who has participated personally and substantially in an
11 acquisition by the Department that exceeds \$1,000,000 or
12 held a key position at the Department relating to acquisi-
13 tion.

14 “(c) COVERED CONTRACTOR DEFINED.—In this sec-
15 tion, the term ‘covered contractor’ means a contractor car-
16 rying out a contract entered into with the Department,
17 including pursuant to a subcontract.”.

18 (b) APPLICATION.—The requirement under section
19 8129(a) of title 38, United States Code, as added by sub-
20 section (a), shall apply with respect to any entity that en-
21 ters into a contract with the Department on or after the
22 date of the enactment of this Act.

23 (c) CLERICAL AMENDMENT.—The table of sections
24 at the beginning of chapter 81 of such title is amended

1 by inserting after the item relating to section 8128 the
 2 following new item:

“8129. Requirement for contractors employing certain recently separated Department employees.”.

3 **SEC. 11. LIMITATION ON ADMINISTRATIVE LEAVE FOR EM-**
 4 **PLOYEES OF THE DEPARTMENT OF VET-**
 5 **ERANS AFFAIRS.**

6 (a) IN GENERAL.—Chapter 7 of title 38, United
 7 States Code, as amended by section 9, is further amended
 8 by adding at the end the following new section:

9 **“§ 719. Administrative leave limitation and report**

10 “(a) LIMITATION APPLICABLE TO EMPLOYEES
 11 WITHIN THE DEPARTMENT.—(1) The Secretary may not
 12 place any covered individual on administrative leave for
 13 more than a total of 14 business days during any 365-
 14 day period.

15 “(2) The Secretary may waive the limitation under
 16 paragraph (1) and extend the period of administrative
 17 leave of a covered individual if the Secretary submits to
 18 the Committee on Veterans’ Affairs of the Senate and the
 19 Committee on Veterans’ Affairs of the House of Rep-
 20 resentatives a detailed explanation of the reasons the cov-
 21 ered individual was placed on administrative leave and the
 22 reasons for the extension of such leave. Such explanation
 23 shall include the name of the covered individual, the loca-

1 tion where the covered individual is employed, and the job
2 title of the covered individual.

3 “(3) In this subsection, the term ‘covered individual’
4 means an employee of the Department—

5 “(A) who is subject to an investigation for pur-
6 poses of determining whether such individual should
7 be subject to any disciplinary action under this title
8 or title 5; or

9 “(B) against whom any disciplinary action is
10 proposed or initiated under this title or title 5.

11 “(b) REPORT ON ADMINISTRATIVE LEAVE.—(1) Not
12 later than 30 days after the end of each fiscal year, the
13 Secretary shall submit to the Committee on Veterans’ Af-
14 fairs of the Senate and the Committee on Veterans’ Af-
15 fairs of the House of Representatives a report listing the
16 name of each employee of the Department (if any) who
17 has been placed on administrative leave for a period longer
18 than 7 business days during such fiscal year.

19 “(2) Each report submitted under paragraph (1)
20 shall include, with respect to each employee listed in such
21 report, the position occupied by the employee, the number
22 of business days of such leave, and the reason that such
23 employee was placed on such leave.

24 “(3) In submitting each report under paragraph (1),
25 the Secretary shall take such measures to protect the pri-

1 vacy of the employees listed in the report as the Secretary
2 considers appropriate.

3 “(c) ADMINISTRATIVE LEAVE DEFINED.—In this
4 section, the term ‘administrative leave’—

5 “(1) means leave without loss of or reduction in
6 pay, leave to which an employee of the Department
7 is otherwise entitled, or credit for time or service;
8 and

9 “(2) includes any type of paid non-duty sta-
10 tus.”.

11 (b) APPLICATION.—

12 (1) ADMINISTRATIVE LEAVE LIMITATION.—
13 Subsection (a) of section 719 of title 38, United
14 States Code (as added by subsection (a)), shall apply
15 to any period of administrative leave (as defined in
16 such section) commencing on or after the date of the
17 enactment of this Act.

18 (2) REPORT.—The report under section 719(b)
19 of such title (as added by subsection (a)) shall apply
20 beginning in the first quarter that ends after the
21 date that is 180 days after the date of the enact-
22 ment of this Act.

23 (c) CLERICAL AMENDMENT.—The table of sections
24 at the beginning of chapter 7 of such title, as amended

1 by section 9, is further amended by adding at the end the
 2 following new item:

“719. Administrative leave limitation and report.”.

3 **SEC. 12. IMPROVEMENT OF MEDICAL OVERSIGHT WITHIN**
 4 **THE DEPARTMENT OF VETERANS AFFAIRS.**

5 (a) IN GENERAL.—Subchapter II of chapter 73 of
 6 title 38, United States Code, is amended by inserting after
 7 section 7324 the following new section:

8 **“§ 7324A. Periodic reports on programs, operations,**
 9 **and other functions of the Veterans**
 10 **Health Administration**

11 “(a) REPORT ON PROGRAMS AND OPERATIONS.—Not
 12 later than 60 days after the date of the enactment of the
 13 Department of Veterans Affairs Equitable Employee Ac-
 14 countability Act of 2015, and periodically thereafter, the
 15 Office of the Medical Inspector of the Veterans Health Ad-
 16 ministration shall submit to the Secretary, the Under Sec-
 17 retary for Health, the Committee on Veterans’ Affairs of
 18 the Senate, and the Committee on Veterans’ Affairs of the
 19 House of Representatives a report on any problems or de-
 20 ficiencies encountered by the Department in carrying out
 21 the programs and operations of the Veterans Health Ad-
 22 ministration, including any recommendations for correc-
 23 tive action.

24 “(b) SUBMITTAL OF OTHER REPORTS.—The Office
 25 of the Medical Inspector shall submit to the Committee

1 on Veterans' Affairs of the Senate and the Committee on
 2 Veterans' Affairs of the House of Representatives each re-
 3 port prepared by the Office in carrying out the functions
 4 of the Office not later than 30 days after completing such
 5 report.

6 “(c) PROTECTION OF PRIVACY.—The Office of the
 7 Medical Inspector shall, in carrying out the requirements
 8 of this section, protect any medical or other personally
 9 identifiable information obtained by the Office from dislo-
 10 sure or misuse in accordance with all laws on privacy ap-
 11 plicable to such information.”.

12 (b) CLERICAL AMENDMENT.—The table of sections
 13 at the beginning of chapter 73 of such title is amended
 14 by inserting after the item relating to section 7324 the
 15 following new item:

“Sec. 7324A. Periodic reports on programs, operations, and other functions of
 the Veterans Health Administration.”.

16 **SEC. 13. COMPTROLLER GENERAL REPORT ON PERFORM-**
 17 **ANCE AND ACCOUNTABILITY OF EMPLOYEES**
 18 **OF DEPARTMENT OF VETERANS AFFAIRS.**

19 Not later than 15 months after the date of the enact-
 20 ment of this Act, the Comptroller General of the United
 21 States shall submit to the Committee on Veterans' Affairs
 22 of the Senate and the Committee on Veterans' Affairs of
 23 the House of Representatives a report on the following:

1 (1) The implementation by the Department of
2 Veterans Affairs of section 713 of title 38, United
3 States Code, including the following:

4 (A) An assessment of the impact of the im-
5 plementation of section 713 of title 38, United
6 States Code, on the performance and account-
7 ability of employees of the Department.

8 (B) An assessment of the impact of the
9 implementation of such section on recruitment
10 and retention of employees of the Department,
11 particularly employees within the Senior Execu-
12 tive Service.

13 (2) An assessment of the policies of the Depart-
14 ment for dealing with issues relating to the perform-
15 ance of employees of the Department, including rec-
16 ommendations on addressing performance and mis-
17 conduct issues in an expedited manner.

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