

115TH CONGRESS
1ST SESSION

H. R. 3257

To provide certain reforms to promote accountability and efficiency in the civil service, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 14, 2017

Mr. ROKITA (for himself, Mr. BRAT, Mr. LOUDERMILK, and Mr. SMITH of Missouri) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

A BILL

To provide certain reforms to promote accountability and efficiency in the civil service, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Promote Accountability and Government Efficiency
6 Act”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. At-will employment status for new Federal employees.
- Sec. 3. Immediate suspension of employees for misconduct or poor performance.
- Sec. 4. Limitation on appeal rights.

Sec. 5. Restriction of pay raises.

Sec. 6. Forfeiture of CSRS or FERS annuity for any employee convicted of a felony.

Sec. 7. Transfer from Senior Executive Service to General Schedule.

Sec. 8. Limitation on official time and use of Government resources in carrying out union activities.

1 **SEC. 2. AT-WILL EMPLOYMENT STATUS FOR NEW FEDERAL**
 2 **EMPLOYEES.**

3 (a) IN GENERAL.—Notwithstanding any other provi-
 4 sion of law, any employee in the civil service hired on or
 5 after the date that is 1 year after the date of enactment
 6 of this Act shall be hired on an at-will basis. Such an em-
 7 ployee may be removed or suspended, without notice or
 8 right to appeal, from service by the head of the agency
 9 at which such employee is employed for good cause, bad
 10 cause, or no cause at all.

11 (b) CLARIFICATION OF EMPLOYMENT PROTEC-
 12 TIONS.—

13 (1) IN GENERAL.—Notwithstanding the re-
 14 quirements of subsection (a) and consistent with
 15 paragraph (2), this Act shall not be construed to ex-
 16 tinguish or lessen any right or remedy available to
 17 any employee or applicant for employment in the
 18 civil service covered by subsection (a) under any law
 19 listed in paragraph (3).

20 (2) LIMITATION.—No employee or applicant for
 21 employment in the civil service may be awarded by
 22 any court a remedy (including damages, costs, or at-

1 torney fees) under any of the provisions of law listed
2 in paragraph (3) in a dollar amount that, in the ag-
3 gregate, exceeds \$50,000.

4 (3) COVERED LAWS.—The provisions of law ref-
5 erenced in paragraphs (1) and (2) are as follows:

6 (A) Title VII of the Civil Rights Act of
7 1964 (42 U.S.C. 2000e et seq.), prohibiting dis-
8 crimination on the basis of race, color, religion,
9 sex, or national origin.

10 (B) The Age Discrimination in Employ-
11 ment Act of 1967 (29 U.S.C. 621 et seq.), pro-
12 hibiting discrimination on the basis of age.

13 (C) The Fair Labor Standards Act of
14 1938 (29 U.S.C. 201 et seq.), prohibiting dis-
15 crimination on the basis of sex.

16 (D) The Rehabilitation Act of 1973 (29
17 U.S.C. 701 et seq.), prohibiting discrimination
18 on the basis of handicapping condition.

19 (E) The Whistleblower Protection En-
20 hancement Act of 2012 (Public Law 112–199).

21 (F) The provisions of any law, rule, or reg-
22 ulation prohibiting discrimination on the basis
23 of marital status or political affiliation.

1 (G) The Congressional Accountability Act
2 of 1995, in the case of employees of the legisla-
3 tive branch who are subject to such Act.

4 (H) The protections relating to prohibited
5 personnel practices (as that term is defined in
6 section 2302 of title 5, United States Code).

7 (I) Any law protecting the employment
8 rights of veterans.

9 (4) COLLECTIVE BARGAINING.—No collective
10 bargaining unit may be awarded by any court any
11 remedy (including damages, costs, or attorney fees)
12 for any breach of such agreement in an amount that
13 exceeds \$10,000 per occurrence, or \$300,000 in any
14 given calendar year, whichever is least.

15 (5) ENFORCEMENT.—To the extent any remedy
16 of damages, costs, or attorney fees are awarded by
17 a court in an amount that is in excess of the limits
18 of this section, the amount awarded in excess shall
19 be rendered null, void, and unenforceable. Efforts by
20 an employee, applicant for employment, or collective
21 bargaining unit or its members or legal counsel to
22 seek to collect in excess of the statutory amounts, or
23 efforts by any member of an agency to award a rem-
24 edy in excess of these statutory amounts, shall be
25 grounds for immediate separation of the employee or

1 agency personnel, termination of the applicable col-
2 lective bargaining agreement, and a prohibition on
3 hiring such an applicant for a period of 5 years be-
4 ginning on the date of the collection effort in excess.

5 (c) APPEAL.—

6 (1) IN GENERAL.—Any employee or applicant
7 for employment who is subject to subsection (a) and
8 who seeks a remedy under any law listed in sub-
9 section (b)(2) with respect to an adverse personnel
10 action may appeal under the procedures set forth in
11 title 5, United States Code, including appealing such
12 action to the Merit Systems Protection Board or the
13 Office of the Special Counsel.

14 (2) LIMITATION.—An employee or applicant for
15 employment may appeal an adverse personnel action
16 only to a single agency, and may not thereafter
17 bring any appeal pertaining to such dismissal before
18 any other agency. An employee or applicant for em-
19 ployment who files multiple appeals of an adverse
20 personnel action shall have any remedy for the claim
21 limited to not more than \$1000 in the aggregate (in-
22 cluding damages, costs, or attorney fees).

23 (d) APPLICATION.—This section shall apply with re-
24 spect to any employee hired, or any individual who be-

1 comes an applicant for employment, on or after the date
2 that is 1 year after the date of enactment of this Act.

3 (e) REGULATIONS.—Not later than 180 days after
4 the date of enactment of this section, each agency or in-
5 strumentality of the Government to which this section ap-
6 plies shall develop operating standards consistent with the
7 requirements of this section, including standards with re-
8 spect to—

9 (1) notifying any employee hired on or after
10 date specified in subsection (a) that such employee
11 is an at-will employee;

12 (2) determining which senior positions within
13 such agency or instrumentality have the authority to
14 separate an at-will employee from service; and

15 (3) ensuring adequate oversight is in place to
16 ensure that any separation of an at-will employee is
17 not a result of discrimination or other violation of
18 any law listed under subsection (b).

19 (f) REGULATIONS.—Not later than 180 days after
20 the date of enactment of this section, each agency or in-
21 strumentality of the Federal Government to which this
22 section applies shall develop operating standards con-
23 sistent with the requirements of this section, including
24 standards with respect to—

1 (1) notifying any employee hired on or after
2 date specified in subsection (a) that such employee
3 is an at-will employee;

4 (2) determining which senior positions within
5 such agency or instrumentality have the authority to
6 separate an at-will employee from service; and

7 (3) ensuring adequate oversight is in place to
8 ensure that any separation of an at-will employee is
9 not a result of discrimination or other violation of
10 any law listed under subsection (b).

11 (g) DEFINITIONS.—In this section:

12 (1) CIVIL SERVICE.—The term “civil service”
13 has the meaning given such term in section 2101 of
14 title 5, United States Code.

15 (2) EMPLOYEE.—The term “employee” has the
16 meaning given such term in section 2105 of such
17 title, and includes any officer or employee of the
18 United States Postal Service or the Postal Regu-
19 latory Commission.

20 (3) PERSONNEL ACTION.—The term “personnel
21 action” has the meaning given such term in section
22 2302(a)(2)(A) of such title.

23 (4) VETERAN.—The term “veteran” has the
24 meaning given that term under section 2108(1) of
25 such title.

1 **SEC. 3. IMMEDIATE SUSPENSION OF EMPLOYEES FOR MIS-**
2 **CONDUCT OR POOR PERFORMANCE.**

3 (a) IN GENERAL.—Chapter 75 of title 5, United
4 States Code, is amended by adding at the end the fol-
5 lowing:

6 “SUBCHAPTER VI—IMMEDIATE SUSPENSION
7 FOR MISCONDUCT OR POOR PERFORMANCE

8 “§ 7551. Definitions

9 “In this subchapter—

10 “(1) the term ‘employee’ has the meaning given
11 such term in section 7501(1) and includes any em-
12 ployee of the United States Postal Service or the
13 Postal Regulatory Commission, but does not include
14 any at-will employee (as determined under section 2
15 of the Promote Accountability and Government Effi-
16 ciency Act); and

17 “(2) the term ‘suspend’ means the placing of
18 any employee, for misconduct or poor performance,
19 in a temporary status without duties.

20 “§ 7552. Immediate suspension for misconduct or
21 poor performance

22 “(a) Under regulations prescribed by the Office of
23 Personnel Management, the head of an agency may sus-
24 pend (with or without pay) an employee of such agency
25 if the head determines that the misconduct or performance

1 of the employee warrants such suspension. The period of
2 any such suspension shall be determined by the head.

3 “(b) An employee who is suspended under subsection
4 (a) is entitled, after suspension, to—

5 “(1) a written notice, not later than 10 days
6 after the first day of such suspension, stating the
7 specific reasons for the suspension;

8 “(2) a reasonable time, but not less than 10
9 days, to answer orally and in writing and to furnish
10 affidavits and other documentary evidence in sup-
11 port of the answer;

12 “(3) be represented by an attorney or other
13 representative; and

14 “(4) a review of the case by the agency head
15 and a written final decision and the specific reasons
16 therefor at the earliest practicable date.

17 “(c) An employee against whom an action is taken
18 under this section is entitled to appeal to the merit sys-
19 tems Protection Board under section 7701 of this title.
20 During such appeal, the Merit Systems Protection Board
21 may not take any action to reinstate the employee to the
22 position of employment from which such employee is sus-
23 pended until the date of the final decision of such appeal.

24 “(d) Copies of the notice of proposed action, the an-
25 swer of the employee if written, a summary thereof if

1 made orally, the notice of decision and reasons therefor,
 2 and any order affecting the suspension, together with any
 3 supporting material, shall be maintained by the agency
 4 and shall be furnished to the Merit Systems Protection
 5 Board upon its request and to the employee affected upon
 6 the employee's request.

7 “(e) In the case of critical necessity, the head of an
 8 agency may immediately replace any employee suspended
 9 under subsection (a) without regard to sections 3309
 10 through 3318.”.

11 (b) CLERICAL AMENDMENT.—The table of sections
 12 for chapter 75 of title 5, United States Code, is amended
 13 by adding at the end the following:

“SUBCHAPTER VI—IMMEDIATE SUSPENSION FOR MISCONDUCT OR POOR
 PERFORMANCE

“7551. Definitions.

“7552. Immediate suspension for misconduct or poor performance.”.

14 **SEC. 4. LIMITATION ON APPEAL RIGHTS.**

15 Notwithstanding any other provision of law, an em-
 16 ployee (as that term is defined in section 2(g)(2)) or appli-
 17 cant for employment may not appeal an adverse personnel
 18 action to more than 1 agency.

19 **SEC. 5. RESTRICTION OF PAY RAISES.**

20 (a) IN GENERAL.—Notwithstanding any other provi-
 21 sion of law, an employee may not receive an increase in
 22 annual rate of pay if such employee—

1 (1) did not receive at least a score of 4 or 5 out
2 of 5 (or an equivalent rating with respect to a per-
3 formance appraisal system that does provide for
4 such a scoring system) on such employee's latest
5 performance review under the performance appraisal
6 system applicable to such employee; and

7 (2) the number of employees receiving a score
8 of 4 out of 5 (or an equivalent rating with respect
9 to a performance appraisal system that does provide
10 for such a scoring system) does not exceed 50 per-
11 cent of all employees in that agency.

12 (b) REPORT.—Not later than 1 year after the date
13 of enactment of this Act, the Director of the Office of Per-
14 sonnel Management shall submit to Congress a report that
15 contains recommendations for a single-agency rating sys-
16 tem.

17 (c) COLLECTIVE BARGAINING AGREEMENTS.—

18 (1) APPLICATION.—The requirements of this
19 section shall apply to any collective bargaining
20 agreement entered into by the head of an agency on
21 or after the date of enactment of this Act.

22 (2) GRIEVANCE.—In the case of an employee
23 covered by a collective bargaining agreement re-
24 ferred to in paragraph (1), a grievance filed on be-
25 half of such employee that results in an increased

1 performance rating for such employee may not result
 2 in an increase in annual rate of pay for such em-
 3 ployee.

4 (d) DEFINITION.—In this section, the term “em-
 5 ployee” has the meaning given such term in section 2105
 6 of title 5, United States Code, and includes any officer
 7 or employee of the United States Postal Service or the
 8 Postal Regulatory Commission.

9 **SEC. 6. FORFEITURE OF CSRS OR FERS ANNUITY FOR ANY**
 10 **EMPLOYEE CONVICTED OF A FELONY.**

11 (a) IN GENERAL.—Subchapter II of chapter 83 of
 12 title 5, United States Code, is amended by adding at the
 13 end the following:

14 **“§ 8323. Forfeiture of annuity for felony conviction**

15 “(a)(1) An individual appointed to the service who
 16 is not subject to the requirements of section 2 of the Pro-
 17 mote Accountability and Government Efficiency Act may
 18 not be paid an annuity or retired pay on the basis of the
 19 service of the individual which is creditable toward the an-
 20 nuity if the individual was finally convicted of a felony of-
 21 fense.

22 “(2) For purposes of paragraph (1), the term ‘felony
 23 offense’ means any felony offense committed by the indi-
 24 vidual that is related to the performance of any position
 25 within the service occupied by such individual.

1 “(b) An individual who is an at-will employee (as de-
 2 termined under section 2 of the Promote Accountability
 3 and Government Efficiency Act) may not be paid an annu-
 4 ity on the basis of the service of the individual which is
 5 creditable toward the annuity if the individual was finally
 6 convicted of a felony offense—

7 “(1) when such individual was performing cred-
 8 itable service (as that term is defined in section
 9 8332 or 8411); or

10 “(2) after such individual has separated from
 11 the service, but only if such offense is related to the
 12 performance of any position within the Government
 13 formerly occupied by such individual.

14 “(c) In this section, the term ‘finally convicted’ has
 15 the meaning given such term in section 8332(o)(A)(6).”.

16 (b) CLERICAL AMENDMENT.—The table of sections
 17 of subchapter II of chapter 83 of title 5, United States
 18 Code, is amended by adding after the item relating to sec-
 19 tion 8322 the following new item:

“8323. Forfeiture of annuity for felony conviction.”.

20 **SEC. 7. TRANSFER FROM SENIOR EXECUTIVE SERVICE TO**
 21 **GENERAL SCHEDULE.**

22 (a) IN GENERAL.—Subchapter VIII of chapter 33 of
 23 title 5, United States Code, is amended—

24 (1) by redesignating section 3397 as section
 25 3398; and

1 (2) by inserting after section 3396 the fol-
2 lowing:

3 **“§ 3397. Transfer to General Schedule positions**

4 “(a) Notwithstanding any other provision of law, the
5 head of any agency may transfer a covered individual to
6 a position within the General Schedule (subchapter III of
7 chapter 53).

8 “(b) Notwithstanding any other provision of law, in-
9 cluding the requirements of section 3594, any covered in-
10 dividual transferred to a General Schedule position under
11 subsection (a) shall, beginning on the date of such trans-
12 fer, receive the annual rate of pay applicable to such posi-
13 tion.

14 “(c) In this section, the term ‘covered individual’
15 means an individual occupying a senior executive service
16 position who is not an at-will employee (as determined
17 under section 2 of the promote accountability and govern-
18 ment Efficiency Act).”.

19 (b) CLERICAL AMENDMENT.—The table of sections
20 of subchapter VIII of chapter 33 of title 5, United States
21 Code, is amended by striking the item relating to section
22 3397 and inserting the following new items:

 “3397. Transfer to General Schedule positions.”.

1 **SEC. 8. LIMITATION ON OFFICIAL TIME AND USE OF GOV-**
2 **ERNMENT RESOURCES IN CARRYING OUT**
3 **UNION ACTIVITIES.**

4 (a) IN GENERAL.—Section 7131 of title 5, United
5 States Code, is amended to read as follows:

6 **“§ 7131. Limitation on official time**

7 “(a) In carrying out any activities relating to the in-
8 ternal business of a labor organization (including the solici-
9 tation of membership, elections of labor organization offi-
10 cials, and collection of dues), an employee may not—

11 “(1) perform such activities unless such em-
12 ployee is in a non-duty status; or

13 “(2) use any Government property (including
14 office space or computers).

15 “(b) Employees engaging in such activities must
16 truthfully and accurately account for their time spent in
17 carrying out such activities, and may not engage in any
18 political activities that may impact such employee’s Agen-
19 cy.

20 “(c) Documents, communications and things pre-
21 pared by or in the possession of employees engaged in any
22 activity relating to a labor organization that is engaged
23 in collective bargaining activities with said employee’s
24 Agency shall maintain the records of such activities for
25 a period of at least two years or the term of the collective
26 bargaining agreement, plus six months, and produce cop-

1 ies of such records in response to Freedom of Information
2 Act requests.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 for chapter 71 of title 5, United States Code, is amended
5 by striking the item relating to section 7131 and inserting
6 the following new item:

“7131. Limitation on official time.”.

