Plans for Workforce Taking Shape Under Trump

Any questions about what candidate Donald Trump had in mind for the federal workforce were answered soon after he was sworn in as President.

Among the first formal actions of his presidency was to order a general hiring freeze, as promised. What had not been explicitly promised, but was signaled, was that the freeze would be just a first step of a wider plan to downsize the government, something not done since the Clinton administration.

Other signs followed: federal operations would be examined for “efficiency” — a byword for cuts — and that federal employee pay and benefits should be “reformed” to bring them in line with private sector trends of recent years. (From an employee’s perspective, those trends have pointed downward.)

Add to that several “my way or the highway” messages to the workforce: curbs on agency communication with the press that had some employees scrambling to understand the laws regarding gag rules and what they might do in response. A warning that employees not willing to get on board with the administration are welcome to leave, etc.

Holman Rule Revived

Meanwhile, the House revived a long-dormant internal rule called the Holman rule that allows a member of Congress to target the pay and jobs of individual employees through an amendment to a spending bill.

While it’s questionable how often that would be attempted, much less enacted, revival of that rule sent an undeniable signal to the federal workforce—which was exactly the intent.

At the same time, the Republican majorities in the House and Senate see in the Trump administration an opportunity to get legislation enacted that the Obama administration had thwarted.

For example, the House Oversight and Government Reform Committee announced plans for a broad review of the civil service system. That is to include relatively uncontroversial topics such as ways to speed up the hiring process as well as thornier issues such as revamping how federal jobs are classified (read: paid) and disciplinary and appeal rights.

Also on the table for the panel are labor-management rights and the two pillars of federal employee benefits: health insurance and retirement.

That is not to say that such changes will be achieved easily, or even at all. Federal employee unions for the most part oppose all such changes, and their allies in Congress will play a key role. That is especially true of Senate Democrats, who are numerous enough to block most legislation there under rules that require 60 votes, not a simple majority, for passage.

A group of more than a dozen of them—large enough to deny that 60-vote margin, if they stick together—has vowed to block any legislation that they consider would erode fair compensation and benefits, union representation rights, or employee due process rights.
However, blocking legislation is far different from gaining a sufficient majority to overturn White House actions, and with a blizzard of memos and orders still coming, the Administration has made it clear it's willingness to take action from the Oval Office.

**Hiring Freeze Starts Taking Shape**

One of the Trump administration’s first executive actions was to order a general federal hiring freeze, effective as of January 22, two days after it took office. A memo barred filling any vacancies in the executive branch that existed as of noon that day, as well as creation of new positions except in limited circumstances except for positions necessary for public safety or national security reasons or certain other exceptions.

It took three sets of follow-up guidance to pin down the implications for current federal employees and the scope of the exceptions.

Employees already on board are still permitted: internal career ladder promotions, but not competitive merit promotions; conversions to career status in programs such as the Veterans Recruitment Act and Pathways Program; placement with job restoration rights (such returning from injury compensation status or returning from active military duty); details to other positions, under certain circumstances.

Defining exactly which positions met the exclusions for national security and public safety was up to individual agencies, and they took different approaches to the task.

**The Defense Department and the Homeland Security Department**, for example, allowed lower level components to pick occupations based on general descriptions of the duties. DoD allowed exceptions for those directly supporting active military operations; those required for cybersecurity, intelligence or space operations; positions involving direct medical care, communicable disease prevention and similar activities; and positions involved in enforcing treaties, providing child care to children of military personnel, and prevention of sexual assault, domestic violence or suicide, among others.

DHS was not even that specific, adding that even going into the review stage it expected that most of it occupations would be exempt.

**The Veterans Affairs Department** meanwhile took a top-down approach, issuing a headquarters-level memo interpreting the “public safety” exception to cover some 100 occupations, including not just front-line health care positions that make up most of its workforce, but also occupations including technician, security guard, food service, pest control, mechanic and cemetery laborer.

Those steps, by the government’s three largest departments that together employ about two-thirds of all federal workers, fell in line with an earlier prediction by the Congressional Budget Office that a freeze with such exceptions would apply only to about two-fifths of federal employees.

For the longer run, the memo ordered OPM and OMB to produce by late April “a long-term plan to reduce the size of the federal government's workforce through attrition.” The memo didn’t say what such a plan should include, but prior Republican proposals have called for filling one of every three vacancies...
in positions not excepted, until the workforce was reduced by 10 percent. Significantly, one of those plans was proposed by Trump’s choice as OMB director, Rep. Mick Mulvaney, R-S.C.

Whether a reduction could be achieved by normal turnover, as the Trump memo anticipates, is to be seen. Reductions in force may be needed, as well—along with, on the more positive side for workers, buyout and early retirement offers.

Aside from that plan, administration officials signaled that continued pressure on the workforce was ahead. Said a spokesman, “When it comes to the spending side, again, you're looking at a whole-of-government approach at how we look at every department, every agency, every job . . . are these positions necessary? Are they duplicative? Are we using taxpayer money in the best possible way? . . . He’s looking at everything and figuring out if we can make it more effective and efficient.”

**Hiring Freeze Exceptions, from A to R**

OPM-OMB guidance on the federal hiring freeze lists the exemptions in this way:

a. Military personnel in the armed forces and all Federal uniformed personnel, including the U.S. Coast Guard, the Commissioned Corps of the U.S. Public Health Service, and the Commissioned Officer Corps of the National Oceanic and Atmospheric Administration.

b. Filling of positions under programs where limiting the hiring of personnel would conflict with applicable law.

c. Nomination and appointment of officials to positions requiring Presidential appointment, with or without Senate confirmation.

d. Appointment of officials to non-career positions in the Senior Executive Service (SES) or to Schedule C appointments in the Exempted Service, or the appointment of any other officials who serve at the pleasure of the appointing authority (i.e., “appointed” positions of a political/non-career nature).

e. Appointment of seasonal employees and short-term temporary employees necessary to meet traditionally recurring seasonal workloads, provided that the agency informs its OMB Resource Management Office in writing in advance of its hiring plans.

f. Hiring by the U.S. Postal Service.

g. Federal civilian personnel hires made by the Office of the Director of National Intelligence (ODNI) and the Central Intelligence Agency (CIA).

h. Appointments made under the Pathways Internship and Presidential Management Fellows (PMF) Programs (this does not include the Recent Graduates Program). Agencies should ensure that such hires understand the provisional nature of these appointments and that conversion is not guaranteed.

i. Conversions in the ordinary course to the competitive service of current agency employees serving in positions with conversion authority, such as Veteran’s Recruitment Act (VRA) and Pathways Programs.

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j. Appointments made under 5 C.F.R. § 213.3102(r) (time limited positions in support of fellowship or professional/industry exchange programs) provided that the total number of individuals employed under this authority does not exceed the number of employees onboard (hired under this authority) on January 22, 2017.

k. Placement of persons with restoration rights accorded by law, such as restoration after absence with injury compensation and restoration after military duty.

l. Job offers made prior to January 22, 2017, for which the individual has a confirmed start date on or before February 22, 2017. Those individuals should report to work according to their respective designated start dates.

m. Job offers made prior to January 22, 2017, but for which the individual has a confirmed start date that is later than February 22, 2017 (or does not have a confirmed start date), should be decided on a case-by-case basis and must go through an agency-head review. The agency head should review each position to determine whether the job offer should be revoked, or whether the hiring process should continue. Agency heads should consider essential mission priorities, current agency resources, and funding levels when making determinations about whether or not to revoke job offers.

n. Internal career ladder promotions.

o. Reallocations (i.e., noncompetitive reassignments and details) of current Federal civilian employees within an agency to meet the highest priority needs (including preservation of national security and other essential services) are not affected. Details (reimbursable and non-reimbursable) between agencies are also not affected; however, agency leadership should ensure that any reimbursable details between agencies are not being used to circumvent the intent of the hiring freeze.

p. Term and temporary appointments of existing Federal employees may be extended up to the maximum allowable time limit, consistent with the conditions/requirements of the legal authority originally used to appoint the employee.

q. A limited number of voluntary transfers of current SES between agencies, as necessary to secure the leadership capacity of agencies, and where needs cannot be met by reallocation of resources within an agency’s current workforce; however, filling of such vacancies is subject to OPM approval.

r. The head of any agency may exempt any positions that it deems necessary to: i. Meet national security (including foreign relations) responsibilities, or ii. Meet public safety responsibilities (including essential activities to the extent that they protect life and property). Agencies may refer to longstanding guidance, which provides examples of such activities in OMB Memorandum, Agency Operations in the Absence of Appropriations, dated 11/17/1981.

OPM may grant additional exemptions from the hiring freeze for “critical situations” at an agency’s request, with a showing of the need and why it cannot be filled in another way.

Pay and Benefits in Cross Hairs

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The Trump campaign had said little on the topic of federal pay and benefits, other than campaigning on a platform that held to the general GOP view they are too generous, but its characterization of the general hiring freeze as just the first step in what it intended for the workforce was more specific.

It said: "Federal employee health and retirement benefits continue to be based on antiquated assumptions and require a level of generosity long since abandoned by most of the private sector. Those costs are unsustainable for the federal government, just as they are proving to be unsustainable for state and local governments with similar health and retirement packages."

While the administration offered no further specifics, there was a general expectation that it would look to proposals raised by some Republicans in Congress and the conservative community for years. These include raising the required contribution toward retirement for all current employees, basing future annuities on the highest five consecutive salary years rather than the highest three, basing retiree COLAs on a less generous inflation index and reducing the payout in the TSP’s most popular fund, the government securities G fund.

All of those would produce budgetary savings in the relative short-run, a key consideration in the congressional budget process, which focuses on one-, five-, and 10-year timeframes.

Another option on retirement that has come to the fore, is to eliminate the defined benefit annuity for employees hired after a future date, providing them with only the TSP - possibly with a more generous government contribution than FERS employees receive today.

House GOP leaders on civil service issues have increasingly moved toward that TSP-only idea and while the White House hasn’t been specific, and that could become an element of a larger civil service reform package. (As part of a budget bill it would have little impact because most of the savings to the government would happen far in the future.)

**Vouchers?**

On health insurance, the most commonly raised idea by Republicans in Congress has been instituting a “voucher” system for the employer contribution toward FEHB premiums. Currently, the government share is calculated according to a two-part formula that results in the government paying about 70 percent of the total premium cost.

Under a voucher system, there would be a dollar amount employer contribution, which would be increased annually only by the general rate of inflation, not the usually much higher rate of inflation in health care.

Such an idea could be tied to a budget bill, or potentially to legislation to repeal and replace the Affordable Care Act, aka Obamacare.

**Pay for Performance**

Another expected emphasis of the Trump administration regarding the federal workforce is a closer link between performance ratings and both basic salary and awards, a long-standing theme of Republicans regarding the civil service.
The Bush administration gained passage of laws to install pay for performance systems in two major departments, DHS and DoD, but the former never got off the ground before being canceled even during his administration and the latter operated only a few years before meeting the same fate early in the Obama administration.

During that time these pay systems were commonly derided by employees who saw favoritism behind ratings and awards, so handling that perception will be critical if the Trump administration takes a crack at it.

Regardless, attempting to revive such major programs could be a long and difficult process, given the opposition of unions and Democrats in Congress. However, such an effort might start on a smaller scale. One idea circulating in Congress would ban an employee who does not receive a score of four or five out of five (or an equivalent rating) on his or her latest performance review from receiving a pay raise.

Also, the White House could act on its own to steer various types of incentive payments to only the top performers. Republicans have criticized agencies in recent years for paying awards on an overly broad basis, suggesting that agencies are not making distinctions between levels of performance.

**VA Could be Test Case on Appeal Rights**

The VA has been something of a poster child in recent years for what is allegedly wrong with the federal employee disciplinary and appeals processes. Numerous bills have been offered – usually with Republican - in the wake of a scandal there that never seems to end, involving manipulation of patient wait time records and the dearth of penalties for employees at all levels involved in it.

The Trump campaign took up that same theme, calling for legislation to shorten the notice and appeals processes, and early in 2017 such legislation was again introduced in Congress.

Those proposals long have been viewed as a model for potential application across the government after being tested there for a time, but other bills already are pending to do much the same government-wide.

Under one for example, an agency could take a personnel action including firing against an employee for performance or conduct reasons with as little as seven days but no more than 21 days of notice, the employee would have only seven days to file any appeal at MSPB, and the MSPB hearing officer would have to issue a decision within 30 days or else the agency’s action would prevail by default.

Further, during an appeal, the MSPB generally could not stay any removal and in that time the individual could not receive any pay or other form of compensation.

**Official Time**

Also under scrutiny already is “official time,” which is on-the-clock working time that employees serving as union officials can spend on certain union duties. Republicans have pushed for years to end that practice, which unions—and their Democratic allies in Congress—stress was placed in law to make up for the obligation of unions to represent all bargaining unit employees regardless of whether they pay dues. Eliminating it thus would require a change in law.

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Much easier to reverse would be the Obama administration executive order telling agencies get unions involved before certain workplace decisions are made, to collaborate more over workplace practices, and to bargain over areas where negotiations are at management’s discretion. A similar Clinton administration executive order was overridden by the Bush administration in its early months and the pattern is likely to continue here.