

Legislative Bulletin.....July 14, 2010

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H.R. 1722—Telework Improvements Act

Conservative Concerns to H.R. 1722

- ***Another Perk for Federal Employees:*** The unemployment rate continues to hover around 10% percent. However, [federal sector employment is booming](#) at a time when many Americans struggle to find work. Some conservatives may believe it is inappropriate to provide federal employees with an additional fringe benefit when so many private sector jobs remain unavailable.
- ***Lower Productivity:*** Recently, it has been reported that a significant number of federal employees at the [Department of Interior](#), [National Science Foundation](#), and [Securities and Exchange Commission](#) spent numerous hours surfing the Web for pornography at their office. Some conservatives have expressed concern that this and other non-productive practices could get worse if more employees are able to work without any supervision.
- ***Unnecessary Cost:*** Public law already requires federal agencies to “establish a policy under which eligible employees of the agency may participate in telecommuting to the maximum extent.” H.R. 1722 spends another \$32 million to accomplish a dubious goal executive agencies are already tasked with doing.

For additional concerns, see below.

H.R. 1722 - Telework Improvements Act (*Sarbanes, D-MD*)

Order of Business: The legislation is scheduled to be considered on Wednesday, July 13, 2010, under an expected closed rule.

Changes since the Last Time This Legislation was Before the House: None, identical legislation was considered on May 6, 2010, and defeated by a vote of [268-147](#) under suspension of the rules.

Summary: H.R. 1722 would require each federal agency head to establish a policy authorizing employees to telework. This legislation will not require an agency to authorize teleworking for an employee whose duties require daily access to classified information, require daily face-to-face contact with members of the public, and require daily use of equipment at the employee’s regular place of employment, or in cases where teleworking is infeasible.

The Office of Personnel Management shall submit a summary of denials of permission to telework to the Comptroller General for inclusion in their annual report.

The legislation requires that each federal agency designate an officer, known as the “Telework Managing Officer” who will be compensated at a rate not less than the minimum rate of pay for grade GS-15 of the General Schedule. If the agency has less than 100 employees, they may waive the required minimum pay rate. The Telework Managing Officer shall serve as:

- “An advisor on teleworking to the head of such agency and to the Chief Human Capital Officer of such agency (if any);
- “A resource on teleworking for supervisors, managers, and employees of such agency;
- “The primary point of contact for any agency employee who elects to telework, in the event of a telework-related dispute between the employee and a supervisor or manager; and
- “The agency's primary point of contact on teleworking matters for employees of such agency, Congress, and other agencies.”

Other responsibilities of the Teleworking Managing Officer include:

- “Ensuring that the agency's teleworking policy is communicated effectively to employees;
- “Ensuring that electronic or written notification is provided to each employee of specific telework programs and the agency's teleworking policy, including authorization criteria and application procedures;
- “Developing and administering a tracking system for compliance with Governmentwide telework reporting requirements;
- “Providing to the Comptroller General and to the Director of the Office of Personnel Management such information as the Comptroller General may require to prepare the annual reports under section 6505(b);
- “Establishing a system for receiving feedback from agency employees on the telework policy of such agency;
- “Developing and implementing a program to identify and remove barriers to telework and to maximize telework opportunities in the agency;
- “Ensuring that employees are notified of grievance procedures available to them (if any) with respect to any disputes that relate to telework; and
- “Performing such other duties and responsibilities relating to telework as the head of the agency may require.

The Comptroller General shall submit an annual report to the House Oversight and Government Reform Committee, and the Senate Homeland Security and Governmental Affairs Committee. The report shall evaluate the telework policy of each agency, include information about employees who teleworked, evaluate the compliance of each agency with this act, and identify best practices in agency telework programs. This report is required annually for the first four years after this legislation is enacted.

The agency head shall be required by this legislation to see that employees authorized to telework receive proper training as directed by the Teleworking Managing Officer of that agency. No distinction between teleworkers and nonteleworkers is allowed when appraising job performance, training, rewarding, reassigning, promoting, firing or other acts involving managerial discretion.

When determining what constitutes diminished performance in the case of an employee who teleworks, the agency shall consult the performance management guidelines of the Office of Personnel Management.

The General Services Administration, in coordination with the Office of Personnel Management, the Federal Emergency Management Agency, and the Chief human Capital Officers Council shall report to the House Oversight and Government Reform Committee and the Senate Committee on Homeland Security and Governmental Affairs on:

- “The extent to which such incorporation has occurred within each of the respective agencies;
- “The extent to which each agency has conducted continuity of operations tests and exercises incorporating telework for essential and non-essential personnel;
- “The extent to which agencies have used telework in response to emergencies; and
- “Any recommendations the General Services Administration considers appropriate.”

Additional Information: Public Law 106-346 directed each executive branch agency to establish policies for employees to participate in telework programs to the maximum extent possible without diminishing performance. According to the committee, 5 percent of federal employees participated in telework programs in 2008. The purpose of H.R. 1722 seeks to increase the number of federal employees participating in telework programs by directing the OPM to issue regulations that authorize employees to telework and by designating a Telework Managing Officer for each agency to be paid at a GS-15 level, linked [here](#).

Potential Conservative Concerns: Some conservatives may be concerned that this legislation *requires* each federal agency to create a Teleworking Managing Officer. Some agencies may not be big enough to needed this position and creating such a position should be up to the discretion of the agency head and not required by law.

Some conservatives may be concerned that teleworking—working from home or a remote locating—may discourage efficiency among federal employees and reduce the productivity of the federal government. The private sector should be able to dictate the best way to handle employee performance and telecommuting might be a good idea in many instances for employees that get paid by performance. However, some might argue the opposite holds true for federal employees that typically do not have to adhere to a performance based evaluation system.

Additionally, some conservatives have expressed concern that teleworking is another perk for federal employees. Federal employees already enjoy a number of benefits not guaranteed by many private sector employers. In addition, Democrats also made federal workforce benefits even more generous by changing the Federal Employee Retirement System (FERS) to allow employees to count unused sick time towards retirement in 2009. Some conservatives believe it is inappropriate to encourage federal employees to work from home when approximately 15 million Americans remain unemployed.

Committee Action: H.R. 1722 was introduced on March 25, 2009, and referred to the House Oversight and Government Reform Subcommittee on Federal Workforce, Post Office, and the District of Columbia. A full committee markup was held on April 14, 2010, and the bill was approved by voice vote. On May 6, 2010, the bill was defeated in the full House by a vote of [268-147](#) under suspension of the rules.

Administration Position: No Statement of Administration Policy (SAP) is available.

Cost to Taxpayers: CBO estimates that H.R. 1722 “would increase the administrative costs of federal agencies by \$2 million in 2010 and by \$30 million over the 2010-2015 period, assuming the availability of appropriated funds.”

Does the Bill Contain Any Federal Encroachment into State or Local Authority in Potential Violation of the 10th Amendment? No.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: According to committee report, 111-474, H.R. 1722 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

Constitutional Authority: The Oversight and Government Reform committee cites Article I, Section 8 of the Constitution, clause 18 of the Constitution of the United States grants the Congress the power to enact this law.

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