

S. 290 (Moran-Blumenthal)

Increasing the Department of Veterans Affairs Accountability to Veterans Act of 2015

A bill to improve the accountability of employees of the Department of Veterans Affairs, and for other purposes.

Section 2 – Reduction of benefits

- Section 2 of the bill would add a new section 715 to title 38 providing:
 - If an individual is removed from a position at the Department for performance or misconduct, the period of service beginning on the date that the Secretary determines that such individual engaged in activity that gave rise to such action and ending on the date that such individual is removed from the civil service shall not be taken into account for purposes of calculating an annuity with respect to such individual, if the individual is convicted of a felony and the conviction is final, that was related to the individual's performance while employed in the position.
 - If an individual is subject to a removal or transfer action for performance or misconduct but leaves employment at VA prior to the issuance of a final decision with respect to such action, the period of service beginning on the date that the Secretary determines that such individual engaged in activity that gave rise to such action and ending on the date that such individual leaves VA employment shall not be taken into account for purposes of calculating an annuity with respect to such individual, if the individual is convicted of a felony and the conviction is final, that was related to the individual's performance while employed in the position.
 - The Secretary must make an order implementing those requirements not later than seven days after the date the individual is convicted of such a felony.
 - Not later than 30 days after the Secretary issues such an order, the Director of the Office of Personnel Management must recalculate the annuity of the individual.
 - Any individual with respect to whom an annuity is reduced shall be entitled to be paid so much of such individual's lump-sum credit as is attributable to the period of service that is not taken into account under this authority.
- Section 715 would apply to any action of removal or transfer commencing on or after enactment.

Section 3 – Independent review and assessment of management training and appraisal

- Not later than 180 days after enactment, the Secretary would be required to enter into a contract with a nongovernmental entity to review the management training program for individuals employed in VA senior executive positions that is being provided as of the date of enactment and the Department's performance appraisal system for individuals

employed in VA senior executive positions on the day before the day of enactment.

- The review must include the following:
 - A comparison of the training provided by VA to the management training provided for senior executives of other federal departments and agencies and to the management training provided to senior executives in the private sector.
 - Recommendations for improving the management training program
 - Recommendations for improving the performance appraisal system
 - An assessment of VA's ability to attract and develop employees for senior executive service positions
 - An assessment of leadership and management actions of VA resulting from the VA Performance and Accountability Reports from the two most recent fiscal years ending before the date of enactment
 - A review of the Secretary's "Lean Management" strategy
 - An assessment of VA's compliance to laws added or amended by the GPRA Modernization Act of 2010
 - An assessment of the results of the most recent Annual Employee Survey
 - An assessment of the Secretary's efforts to conduct data-driven reviews and develop a results-oriented culture
 - An assessment of the Department of Veterans Affairs Federal Performance Improvement Officer role and oversight function
 - A survey of the morale and satisfaction of VA employees
- The contract must provide that the nongovernmental entity must complete and submit to the Secretary a report containing the findings and conclusions of the review by not later than 180 days after the Secretary and the nongovernmental entity enter into the contract.
- Not later than 60 days after the Secretary receives the report, the Secretary must submit to the Committee on Veterans' Affairs of the Senate and House the report together with a plan for carrying out the recommendations contained in the report.

Section 4 –Administrative leave

- Section 4 would add a new section 717 to title 38 providing:
 - The Secretary may not place any employee that is subject to an investigation for purposes of determining whether they are subject to disciplinary action or against whom any disciplinary action is proposed or initiated on administrative leave for more than a total of 14 days during any 365-day period.
 - The Secretary may waive the 14-day limitation and extend the administrative leave or other paid non-duty if the Secretary submits to the Committee on Veterans' Affairs of the Senate and House a detailed explanation of the reasons the individual was placed on administrative leave and the reasons for the extension of such leave or status.

- The detailed explanation must include the individual’s position and the location where the individual is employed.
 - Not later than 30 days after the end of each fiscal year, the Secretary must submit to the Committee on Veterans’ Affairs of the Senate and House a report listing the name of any employee who has been placed on administrative leave for a period longer than 14 business days during such fiscal year.
 - The report must include, with respect to any employee listed in such report, the position occupied by the employee, the number of business days of leave, and the reason that the employee was placed on such leave.
 - The Secretary must take efforts to protect the privacy of the employees listed in the report as the Secretary considers appropriate.
 - For purposes of these requirements, the term “administrative leave” would mean leave without loss of pay or charge to leave for which the employee is placed due to an investigation on or for whom any disciplinary action is proposed or initiated and includes any type of paid non-duty status.
- New section 717 would apply to any period of administrative leave commencing on or after enactment.
- The reporting requirement in section 717 would begin to apply in the first quarter that ends after the date that is 180 days after enactment.

Section 5 – Accountability of leaders – managing

Section 5 would add a new section 710 to title 38 providing:

- The Secretary must conduct an annual performance plan for each political appointee that is similar to the annual performance plan conducted for an employee who is appointed as a career appointee within the Senior Executive Service.
- Each annual performance plan must include an assessment of whether the appointee is meeting the following goals:
 - Recruiting, selecting, and retaining well-qualified individuals for employment.
 - Engaging and motivating employees.
 - Training and developing employees and preparing those employees for future leadership roles within VA.
 - Holding each employee that is a manager accountable for addressing issues relating to performance, in particular issues relating to the performance of employees that report to the manager.

Section 6 – Accountability of managers – hiring

- In a freestanding provision, section 6 would add the following requirements:

- With respect to any VA employee who is required to serve a probationary period, the Secretary must require the manager to determine, not later than 30 days before the end of the probationary period, whether the employee has demonstrated successful performance and should continue past the probationary period before allowing the employee to continue at that position after the probationary period.
- With respect to any VA employee who is serving a probationary period at a supervisory position, successful performance must include demonstrating management competencies in addition to the technical skills required for such position.
- Each annual performance plan conducted for a manager of an employee serving a probationary period must hold the manager accountable for providing regular feedback to the employee during the probationary period before making a determination regarding the probationary status of the employee and making a timely determination regarding the probationary status of the employee.

Section 7 – Accountability of managers – performance of employees

- In a freestanding provision, section 7 would add the following requirements:
 - The Secretary must ensure that, as a part of the annual performance plan of an employee who is a manager, the manager is evaluated on:
 - Taking action to address poor performance and misconduct among the employees that report to the manager.
 - Taking steps to improve or sustain high levels of employee engagement.

Section 8 – Definition of personnel action

- Section 2302(a) of title 5 currently defines “personnel action” for purposes of determining whether a prohibited personnel practice has occurred.
- Section 8 of the bill would amend section 2302(a) of title 5 to include a performance evaluation under title 38 as a personnel action.

Section 9 – Employment restrictions

- Section 9 would add a new section 719 to title 38 providing:
 - Before terminating employment with VA, any official who has participated personally and substantially in an acquisition by VA that exceeds \$10,000,000 must obtain a written opinion from an appropriate ethics counselor at VA regarding any restrictions on activities that the official may undertake on behalf of a VA contractor or subcontractor during the two-year period beginning on the date the official terminates employment.

Section 10 – Contractors

- Section 10 would add a new section 8129 to title 38 providing:

- A VA contractor or subcontractor may not knowingly provide compensation to any VA official who has participated personally and substantially in an acquisition by VA that exceeds \$10,000,000 during the two-year period beginning on the date on which the individual terminates employment with VA unless the contractor determines that the individual has obtained a written opinion from a VA ethics counselor or has requested such written opinion not later than 30 days before receiving compensation from the contractor.
- This requirement would apply with respect to any entity that enters into a contract with VA on or after enactment.

Section 11 – Restoration of Prior Reporting Fee Multipliers

- In a freestanding provision, section 11 would:
 - Decrease the rates of the reporting fees that are paid to educational institutions.