

## **Federal Employee Civil Service Protections Outdated? The Experts Speak.**

Joe Davidson, Washington Post

July 7, 2017

<https://www.washingtonpost.com/news/powerpost/wp/2017/07/07/federal-employee-civil-service-protections-outdated-the-experts-speak/>

The Department of Veterans Affairs [Accountability and Whistleblower Protection Act](#) is a game-changer for the federal workforce and a reason to worry about the future of due process for federal employees.

At the legislation's recent White House signing ceremony, President Trump put the government's workforce in general on notice when he said "outdated laws kept the government from holding those who failed our veterans accountable."

Trump is not alone when complaining about outdated civil service laws. While they might not agree with him, it's notable that only 29 percent of feds think "steps are taken to deal with a poor performer who cannot or will not improve," according to the 2016 [Federal Employee Viewpoint Survey](#).

The new law is the latest move to fire feds faster by cutting their appeals process. It seriously damages civil service protections for VA employees, especially senior executives, and opens the door for similar measures to spread across the government. By eliminating the right of VA Senior Executive Service members to appeal adverse actions such as terminations, suspensions and demotions to an outside agency, the law eviscerated the long-standing principle of neutral review by a third party.

The time to appeal adverse actions was cut for all department staffers. Managers now can base those actions on weaker evidence than was allowed previously. It's important to note that fired employees are off the rolls and not paid before appeals are considered

by the Merit Systems Protection Board (MSPB), an independent agency that hears claims from federal employees.

Significantly, the bill won overwhelming bipartisan support. It [passed the House 368 to 55](#), with Democrats providing all but one of the dissenting votes.

But with 137 Democrats approving the legislation, federal employee unions that strongly opposed the measure must know they can't always count on their blue congressional allies.

One way to speed the process is to boost the MSPB, which rules against employees about 84 percent of the time. The average case processing time for initial appeals jumped from 89 days in fiscal 2010 to 499 days in 2015. Thousands of furlough appeals caused the increase, and there was a drop to 331 days in 2016. Yet, with layoffs planned under Trump's proposed budget, appeals could rise again. Increasing MSPB staffing could speed the process.

As part of the Federal Insider's ongoing look at efforts to undermine federal workplace protections, we sought the views of several experts, including those who might disagree with that characterization. We asked if civil service protections are "outdated" and how the federal disciplinary process could improve.

Here is some of what they had to say.

Teresa W. Gerton, the National Academy of Public Administration: "Civil service protections remain an absolutely essential bedrock for our professional public service workforce... With that premise, it is absolutely essential that we stop conflating the term 'accountability' in the public workforce with 'the ability to fire.' Instead, we should reclaim the idea that our leaders should be held responsible for achieving results and provide them a civil service system that allows them to get hiring, training, and retaining right."

Robert M. Tobias, American University: "The question is whether increasing the speed of reviewing decisions to discharge VA employees will increase organizational

performance? I think the answer is no.” Existing law is not “a barrier to promptly discharging poor performers.”

Dan G. Blair, former Office of Personnel Management acting director under former president George W. Bush: “Firing and disciplining a federal employee can be done ... Yet the current process is tilted in favor of the employee ... Due process and fundamental fairness can be ... achieved by streamlining this process.”

Matt Biggs, International Federation of Professional and Technical Engineers: “The point is that managers already have the authority to discipline and ultimately fire employees, but in order to do so they actually need to use the many authorities they already have. The due process protections are correctly there so good employees are not victims of unjust retaliation.”

Randy L. Erwin, National Federation of Federal Employees: “Federal Civil Service protections are absolutely not outdated. In this political climate and with this Administration ... the apolitical federal workforce needs better protections so the work being done for the American people is not compromised for personal or political gain.”