



Rescind the VA Whistleblower and Accountability Act, and
Oppose Weakening Due Process and Appeals at Additional Agencies

Position: Early returns on the performance of the VA Whistleblower and Accountability Act of 2017 indicate that the bill is failing. Upon the law passing in June 2017, terminations rose at the Department of Veterans Affairs by 60% during the rest of the year. Because the new law provides the authority to terminate federal employees without meaningful due process or appeals rights, the law was used almost exclusively to fire 1,700 low level employees, such as housekeepers, nursing assistants, and food service workers. In contrast, the law, while intended for mid-level and senior managers, was used 4 times during 2017. In addition, it has effectively quashed whistleblowers who now fear reprisal through the loss of due process. The law failed, and it damaged processes critical to VA success.

Despite its failures, some in Congress and the Administration want to expand this failed and nonsensical law to the rest of the Executive Branch. This would remove all systematic protections of the career workforce and open federal workers to political exploitation and corruption.

What the VA Whistleblower and Accountability Act of 2017 did:

- This legislation lowered the burden of proof for misconduct to from “preponderance of the evidence” to “substantial evidence,” which under existing case law can be essentially nothing (i.e. the evidence shows there is less than 1% chance you did what you were disciplined for, and it could still be upheld). This invites retaliation and targeting, using misconduct charges for virtually anything.
- It erodes collective bargaining rights by shortening the timelines for grievances, and shortening the timelines for appeals to the Merit Systems Protection Board (MSPB).
- It eliminates the ability of an MSPB judge to mitigate a penalty proposed by the agency. This is a new restriction of MSPB administrative judges to properly adjudicate.
- It created an internal review board of disciplinary action headed by a political appointee; this appointee need not have any adjudication experience yet will have broad powers to remove employees.
- Even worse, this law allows for the forfeiture of an employee’s pension under certain circumstances; something not allowed in the private sector.

Why the VA Whistleblower and Accountability Act of 2017 is failing:

- It is one of the most disturbing blows to civil service and whistleblower protections.
- It hides mismanagement by scapegoating workers instead of managers, and completely shelters political appointees who oversee the department.
- Veterans will share the pain along with employees as safeguards against retaliation, political corruption, whistleblower protections, and discrimination erode.
- Finally, this law hurts VA employees who are veterans themselves.

Join Senators Baldwin, Blumenthal, Brown, Hirono, Murray and Tester in questioning this failed law, and stop the spread of political exploitation and corruption to the rest of government.