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October 19, 2015

VIA ELECTRONIC TRANSMISSION

Jeh Johnson
Secretary
Department of Homeland Security
301 7th Street SW, Mail Stop 0150
Washington, DC 20528-0150

Dear Secretary Johnson:

On October 21, 2014, I sent a letter to the Department of Homeland Security (DHS), along with then-Chairman Darrell Issa, requesting information on the department's use of administrative leave.¹ Information provided by DHS and other federal agencies confirmed the finding of a report issued by the Government Accountability Office (GAO) that agencies are placing employees on extended periods of administrative leave for personnel-related matters, such as a pending disciplinary action or investigation into alleged misconduct.²

In order to understand the circumstances in which agencies are using extended periods of administrative leave and ensure the appropriate use of such leave, for all employees identified in GAO's report as having been on paid administrative leave for over one year, and employees on administrative leave for more than one year at the time

¹ Letter from Charles E. Grassley, Ranking Member, U.S. Senate Comm. on the Judiciary, Darrell Issa, Chairman, House Comm. on Oversight and Gov't Reform, to Jeh Johnson, Sec'y, U.S. Dep't of Homeland Sec. (Oct. 21, 2014).

² U.S. Gov't Accountability Office, GA0-15-79, *Federal Paid Administrative Leave: Additional Guidance Needed to Improve OPM Data* (2014).

of your response, I asked “for each employee a detailed narrative of the circumstances surrounding the extended paid leave,” including, among other things:

- reason for being placed on administrative leave,
- a full explanation of why reassignment to other duties or another location was not an appropriate alternative to paid leave, and
- a full explanation of why the employee was not placed on some form of unpaid leave.

DHS provided responses to my questions on January 17, 2015.³ DHS reported 88 employees who had been placed on paid administrative leave for over a year or more:

- Four of these employees were on administrative leave for approximately 3 years or more, 2 of whom continued to be on administrative leave at the time of DHS’ response.
- An additional 17 employees were reportedly on administrative leave for approximately 2 years or more, including 5 who remained in this status at the time of DHS’ response.
- These 88 employees were across the department’s components, suggesting systemic misuse of paid administrative leave.

Unfortunately, DHS’ explanation of the reasons for such extended periods of paid leave were too broad and vague to assess whether other actions might have been more appropriate. DHS failed to explain how it met applicable OPM authority to use administrative leave “for those rare circumstances” in which the employee “may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests,” or how its actions were consistent with the numerous GAO decisions cited in my letter limiting administrative leave to brief duration. DHS also failed to explain why such extended amounts of time were needed to conduct investigations into security issues, misconduct, or fitness for duty.

Accordingly, please provide a detailed narrative of the circumstances surrounding the employees’ extended paid leave. For each employee who was included in the department’s response of January 17, 2015, and any additional employees on administrative leave for more than one year since the time of DHS’ response, please provide the information originally requested last year, including a full account of the

³ Letter from Jeh Charles Johnson, Sec’y, U.S. Dep’t of Homeland Sec., to Charles E. Grassley, Chairman, U.S. Senate Comm. on the Judiciary (Jan. 17, 2015).

circumstances surrounding each employee's use of administrative leave. In particular, please provide:

1. Position title and GS level.
2. Employee division/office/component.
3. Total compensation received while on administrative leave.
4. Reason for being placed on administrative leave.
5. Exact length of time on administrative leave.
6. Current status of the employee (i.e. reassigned, demoted, terminated, still on administrative leave, etc.)
7. A full explanation of why reassignment to other duties or another location was not an appropriate alternative to paid leave.
8. A full explanation of why the employee was not placed on some form of unpaid leave.

The reason for being placed on administrative leave and the full explanations requested should include the following:

9. Misconduct reasons: the specific misconduct alleged and/or under investigation.
10. Security cases: the specific security concerns or incidents at issue.
11. Fitness-for-duty examination: specific medical issues that prevented the employee from remaining safely in the workplace.
12. Whether the employee posed an immediate threat to safety, the agency mission, or to government property, and a full explanation of who determined that the employee posed such a threat and on the basis of what evidence was the determination made.
13. A full and detailed explanation of why the seriousness of the issues necessitated administrative leave for over one year, but were insufficient to support an indefinite suspension action or other form of unpaid leave.
14. A full and detailed explanation justifying the length of administrative leave, including all relevant dates and entities involved: when incidents took place; when determinations to place the employee on administrative leave were made and by whom; when investigations began, who conducted them, and the findings; and when adverse actions were proposed and taken. Your responses to this question should fully account for the duration of the administrative leave, noting gaps in investigative or other activity where they occur.
15. Other specific positions or duties that were considered for temporary reassignment, including, where applicable, in other departmental components.

Lastly, your letter of January 17, 2015 stated that, at your direction, the department is strengthening its administrative leave policy and internal controls to ensure its appropriate application. Please provide an update on the outcome of that effort.

16. What actions did the department undertake to strengthen its administrative leave policy?
17. What changes were made as a result of these actions? Please provide copies of any updates to policy or procedures.
18. What changes were made to internal controls to ensure appropriate application of DHS' administrative leave policy?

Please provide your responses by November 2, 2015. Should you have any questions, please contact DeLisa Lay of my Committee staff at (202) 224-5225. Thank you for your cooperation in this important matter.

Sincerely,



Charles E. Grassley Chairman
Senate Committee on the Judiciary

cc:

The Honorable Patrick Leahy
Ranking Member
Senate Committee on the Judiciary