



May 18, 2022

Hon. Kiran Ahuja
Director
Office of Personnel Management

Hon. Shalanda D. Young
Director
Office of Management and Budget

Chair Jennifer Klein
White House Gender Policy Council

Dear Director Ahuja, Director Young, and Chair Klein:

The DOJ Gender Equality Network (DOJ GEN)¹ is deeply concerned about the ability of hundreds of thousands of federal employees and their family members to access reproductive healthcare because of restrictive state laws that are already, or may soon be, in effect in their states. We believe that there are actions the federal government, the nation's largest employer, can take to mitigate the harm to Department of Justice employees and other federal workers.

As an initial step, we ask that the Administration swiftly consider requiring federal agencies to grant administrative leave to cover the time it takes an employee, or an employee's family member,² to travel to another state to obtain reproductive healthcare services not available in their own state due to restrictive laws.

There are approximately 150,000 federal employees in Texas and Mississippi, where there is effectively no in-state abortion access *today*.³ There are another 227,000 federal employees in an additional 11 states with so-called "trigger laws" where people will immediately lose in-state access to abortion care if the Supreme Court overturns the constitutional protection

¹ DOJ GEN is an employee-run organization with 1,150 members that has advocated for gender equity and equality at the Justice Department since 2016. In pursuit of that goal, we have worked to eradicate pay inequities that result from DOJ's hiring practices; convince leadership to address the Department's systemic sexual harassment problem; push for a comprehensive effort to enhance diversity; and lobby Congress to pass paid family leave legislation. You can find more about us at www.dojgen.org.

² The Office of Personnel Management's definition of "family member" for leave purposes can be found at 5 C.F.R. § 630.201.

³ Office of Personnel Management, *Policy, Data, Oversight* (September 2017), available at <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/reports-publications/federal-civilian-employment/>.

currently afforded to abortion. There are also 290,000 federal employees in nine more states with abortion bans that could become enforceable, and 131,000 in four states that are expected to ban abortion as quickly as possible.⁴ Some of these states may also pass laws that would criminalize or complicate the provision of other reproductive healthcare services such as fertility treatments and various forms of contraception.⁵

This is a critical matter of gender equity and equality for the Department of Justice and the federal government. We are also troubled by the disproportionate impact these restrictions on reproductive healthcare would have on employees of color, those who work in remote locations, and those from other marginalized communities.

DOJ GEN is confident that providing administrative leave for federal employees' travel to states where they or their family members can access reproductive healthcare would fall well within the Administration's executive authority over agency management.⁶ The Administration mandated agencies to grant federal employees administrative leave so that they or their family members can obtain COVID-19 vaccinations for their "health, safety, and physical and mental wellbeing."⁷ Likewise, the Administration should be able to provide federal workers with a reasonable amount of administrative leave to access reproductive healthcare for their health, safety, and physical and mental wellbeing.

This accommodation would help the Administration move closer to the goals of equity in the federal workforce and reproductive justice outlined in President Biden's Executive Orders.⁸ As you know, sick and annual leave for federal workers is limited, especially in their early years working for the government. We recognize that an accommodation to cover travel time cannot remedy all of the challenges that state laws restricting reproductive healthcare present, but it is a tangible and meaningful form of assistance that the federal government can offer. This action would not run afoul of the Hyde Amendment, which restricts the use of federal funding in most

⁴ *Id.*; Elizabeth Nash & Lauren Cross, *26 States Are Certain or Likely to Ban Abortion Without Roe: Here's Which Ones and Why*, Guttmacher Institute (October 2021), available at <https://www.guttmacher.org/article/2021/10/26-states-are-certain-or-likely-ban-abortion-without-roe-heres-which-ones-and-why>.

⁵ *Id.*; Sarah McCammon, *What would overturning Roe mean for birth control?*, NPR (May 11, 2022), available at <https://www.npr.org/2022/05/11/1097666334/roe-birth-control>.

⁶ Agencies have a broad management authority to grant administrative leave under 5 U.S.C. §§ 301–302.

⁷ Memorandum M-21-25, available at <https://www.whitehouse.gov/wp-content/uploads/2021/06/M-21-25.pdf>.

⁸ *See, e.g.*, Executive Order 14020 on Establishment of the White House Gender Policy Council 14020, available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/03/08/executive-order-on-establishment-of-the-white-house-gender-policy-council/> (establishing the White House Gender Policy Council to, in part, "coordinate Federal Government efforts to advance gender equity and equality, including policies and programs to," in part, "increase access to comprehensive health care, address health disparities, and promote sexual and reproductive health and rights"); Executive Order 14035 on Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce, available at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/25/executive-order-on-diversity-equity-inclusion-and-accessibility-in-the-federal-workforce/>.

cases for an abortion procedure itself, but does not impose restrictions on ancillary accommodations.⁹

Providing employees with administrative leave for travel would put the federal government on a similar footing with large employers throughout the country that are already providing travel assistance to employees who need to cross state lines to obtain reproductive healthcare.¹⁰ These employers know that this is important for recruitment and retention, as well as diversity, equity, inclusion, and access within their workforces. They have also determined that it is simply the right thing to do, which sends a powerful message.

It is crucial that any provision of leave for reproductive healthcare be administered with the maximum amount of privacy possible such that an employee seeking it can be confident that this will not require the knowledge of a supervisor or peers. We believe this can be done.

DOJ GEN appreciates the Administration's commitment to strengthening the federal workforce and protecting Americans' access to reproductive healthcare. We welcome the opportunity to discuss how this action would advance both priorities, and how we can secure it as quickly as possible.

Respectfully,

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⁹ See Consolidated Appropriations Act, 2022, H.R. 2471, available at <http://rules.house.gov/sites/democrats.rules.gov/files/BILLS-117HR2471SA-RCP-117-35.pdf>; see also Guttmacher Institute, *The Hyde Amendment* (May 2021), available at <https://www.guttmacher.org/fact-sheet/hyde-amendment>; Office of Personnel Management, *Healthcare & Insurance FAQs*, available at <https://www.opm.gov/healthcare-insurance/insurance-faqs?cid=0c8d0402-8645-4471-81a2-bd6e5c2404d3>.

¹⁰ See Doyinsola Oladipo, *Factbox: U.S. companies offering abortion travel benefits*, REUTERS (May 12, 2022), available at <https://www.reuters.com/world/us/us-companies-offering-abortion-travel-benefits-2022-05-12/>.

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cc: Office of the U.S. Attorney General