



August 4, 2022

The Vice President of the United States
The White House

Hon. Shalanda Young
Director
Office of Management and Budget

Hon. Merrick Garland
Attorney General
United States Department of Justice

Jennifer Klein
Chair
White House Gender Policy Council

Hon. Kiran Ahuja
Director
Office of Personnel Management

Dear Madam Vice President, Attorney General Garland, Director Ahuja, Director Young and Chair Klein:

The DOJ Gender Equality Network (DOJ GEN),¹ a federal employee-run organization that advocates for gender equity and equality in the federal workforce, appreciates the steps the Biden-Harris Administration has taken thus far to offset some of the harm inflicted by the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health*. We agree with President Biden that *Dobbs* constitutes a “giant step backwards in much of our country.”² But we are disappointed that to date—even though the President has issued two important Executive Orders on access to abortion³—no action has been taken to address the particular needs of the Nation’s federal public servants, despite the government’s considerable ability to help its own workforce with access to abortion.

¹ DOJ GEN, a 1,200-member organization at the Department of Justice, was founded in 2016. In pursuit of gender equity and equality in the federal workforce, we have worked to eradicate pay inequities that result from agencies’ hiring practices, convince DOJ’s leadership to address the Department’s systemic sexual harassment problem, push for a comprehensive effort to enhance diversity, and urge Congress to pass paid family leave legislation. DOJ GEN does not speak for the Justice Department or any component thereof. More about us is available at www.dojgen.org.

² Remarks by President Biden on Protecting Access to Reproductive Health Care Services (July 8, 2022), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/07/08/remarks-by-president-biden-on-protecting-access-to-reproductive-health-care-services/>.

³ Executive Order on Securing Access to Reproductive and Other Healthcare Services (EO on Securing Abortion Access) (August 3, 2022), <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/08/03/executive-order-on-securing-access-to-reproductive-and-other-healthcare-services/>; Executive Order 14076, Protecting Access to Reproductive Health Care Services (July 8, 2022), <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/07/08/executive-order-on-protecting-access-to-reproductive-healthcare-services/>.

Barriers to abortion care are nothing new for federal employees.⁴ Now, though, approximately two million federal employees and their dependents have to contend with state abortion bans that are in place or likely will be soon—bans that put hundreds of miles between them and needed healthcare.⁵ For federal employees, as with everyone, these restrictions disproportionately harm women, as well as lower-income workers, workers who live in remote locations, workers with disabilities, and workers of color—the very communities of federal employees this Administration has committed to lift up.⁶ Yet, the federal government has chosen not to follow countless employers in the private sector that support their employees affected by restrictive state laws.⁷ Failing to act quickly to address this issue could hinder the Administration’s work to advance diversity, equity, inclusion, and accessibility in the federal workforce, and harm its efforts to recruit and retain talented employees.

DOJ GEN urges the Administration to begin by taking these steps:

1. *Provide administrative leave to federal workers who need to travel to other states for abortion care.*

In DOJ GEN’s May 18, 2022 letter,⁸ we asked the Administration to consider granting administrative leave to cover the time it takes a federal employee, or an employee’s family member,⁹ to travel to another state for abortion care when their own state outlaws it. This would be a simple step that should have been included in either Executive Order. At a minimum, the Administration should urge agency heads to use their designated authority to grant up to three consecutive days of administrative leave for travel related to abortion care,¹⁰ and ensure the availability and applicability of voluntary leave banks for this purpose.¹¹

⁴ Unlike the majority of American workers with employer-sponsored health insurance who receive abortion coverage, the appropriations rider known as the Hyde Amendment and related bans have for decades carved out most abortion care from our employer-sponsored insurance plans. Megan K. Donovan, *In Real Life: Federal Restrictions on Abortion Coverage and the Women They Impact*, 20 Guttmacher Policy Review 1, 3 (2017), <https://www.guttmacher.org/gpr/2017/01/real-life-federal-restrictions-abortion-coverage-and-women-they-impact>.

⁵ Office of Personnel Management, *Policy, Data, Oversight: Federal Civilian Employment* (September 2017), <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/reports-publications/federal-civilian-employment/> (breaking down number of federal civilian employees by state); Center for Reproductive Rights, *After Roe Fell: Abortion Laws by State*, <https://reproductiverights.org/maps/abortion-laws-by-state/> (focusing on states identified as “hostile” or “illegal”).

⁶ See, e.g., Executive Order 14035 on Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce; Executive Order 14020 on the Establishment of the Gender Policy Council; OPM Healthcare and Insurance, FEHB Program Carrier Letter, Letter No. 2022-03 (February 17, 2022), <https://www.opm.gov/healthcare-insurance/healthcare/carriers/2022/2022-03.pdf>.

⁷ See, e.g., Emma Goldberg, *These Companies Will Cover Travel Expenses for Employees Abortions*, N.Y. TIMES (June 30, 2022), <https://www.nytimes.com/article/abortion-companies-travel-expenses.html>.

⁸ <https://static1.squarespace.com/static/61f3032d7eb5233ccc782af9/t/62854ff336543b1f47ab89a4/1652903923392/DOJ+GEN+letter+to+Admin+leaders+re+leave+for+abortion+care.pdf>.

⁹ The Office of Personnel Management’s definition of “family member” for leave purposes can be found at 5 C.F.R. § 630.201.

¹⁰ 5 C.F.R. § 610.302.

¹¹ 5 C.F.R. §§ 630.1001–630.1016.

To be sure, the Office of Personnel Management (OPM) did issue a fact sheet reminding federal employees that we may use sick leave for travel time associated with accessing medical care.¹² But that guidance did nothing more than remind federal employees of leave that was already available under OPM regulations;¹³ it did not change the status quo. The fact remains that too many federal employees—particularly those new to federal service who have yet to accrue adequate leave, parents and other caretakers, and those with disabilities—have very little or no sick leave to spare, especially years into a global pandemic. For the same reason the Administration mandated agencies to grant administrative leave for Covid-19 vaccinations—to protect employees’ “health, safety, and physical and mental wellbeing”¹⁴—so too should it provide this support for those who must travel for abortion care.

2. *Cover travel expenses for these employees.*

The high cost of traveling often great distances for abortion care imposes financial burdens on many federal employees that can exceed the actual cost of the procedure. To help facilitate what the Administration has described as the “bedrock right to travel across state lines to seek reproductive healthcare in states where those services remain legal,”¹⁵ the government can and should cover federal employees’ expenses to do so.

Whether travel coverage would come from the Federal Employees Health Benefits Program (FEHBP), an outside benefits provider,¹⁶ a U.S. General Services Administration travel expenses test program,¹⁷ or another funding source, we believe it can be done. In fact, covering federal employees’ travel costs is an idea that the American Federation of Government Employees¹⁸ and 25 U.S. senators¹⁹ have already endorsed.

¹² OPM, June 27, 2022 Fact Sheet, <https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/sick-leave-faqs.pdf>.

¹³ See 5 C.F.R. § 630.401 (an agency must grant sick leave to an employee for the employee or a family member to receive a medical examination or treatment).

¹⁴ Memorandum M-21-25, <https://whitehouse.gov/wp-content/uploads/2021/06/M-21-25.pdf>.

¹⁵ The White House, Fact Sheet: President Biden Issues Executive Order at the First Meeting of the Task Force on Reproductive Healthcare Access (White House Fact Sheet) (August 3, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/03/fact-sheet-president-biden-issues-executive-order-at-the-first-meeting-of-the-task-force-on-reproductive-healthcare-access-2/>.

¹⁶ See, e.g., Meghan McCarty Carino, Marketplace (July 1, 2022), <https://www.marketplace.org/2022/07/01/companies-scramble-to-figure-out-abortion-travel-benefit-privacy-protections/>; Taylor Telford, WASH. POST (July 26, 2022), <https://washingtonpost.com/business/2022/07/26/abortion-travel-coverage-small-business/>.

¹⁷ 5 U.S.C. § 5710.

¹⁸ AFGE Press Release (June 25, 2022), www.afge.org/article/afge-responds-to-supreme-court-decision-overturning-roe-v-wade/ (“The federal government, as a model employer, must immediately agree to provide paid leave and cover the travel costs of any federal or D.C. government employee who must leave their state of residence in order to obtain an abortion.”).

¹⁹ June 7, 2022 letter to President Biden, <https://www.warren.senate.gov/imo/media/doc/2022.06.07%20Letter%20to%20POTUS%20on%20Abortion%20EO.pdf> (“The Office of Personnel Management could explore requirements that all federal employees are provided paid time off and reimbursement for expenses necessary to access abortion.”).

Like providing federal employees with administrative leave, covering travel expenses would not run afoul of the Hyde Amendment, which restricts only the use of federal funding for most abortion procedures themselves—not ancillary benefits. While any abortion-related action the Administration takes will likely face legal challenges, we urge you to stand up for reproductive justice and the needs of public servants by not yielding to the possibility of meritless claims.²⁰

3. *Allow federal employees to opt out of travel or relocation to states that ban abortion.*

The government should allow federal employees to opt out of work-related travel or assignments to states that ban medically necessary miscarriage management and abortion care, if they are or may become pregnant. Being in a state that bans abortion poses a significant threat to pregnant employees by stripping their access to comprehensive reproductive health care.²¹ As President Biden pointed out, there have already been “numerous reports of women denied health- and life-saving emergency care, as providers fearful of legal reprisal delay necessary treatment for patients until their conditions worsen to dangerous levels.”²² Federal employees should not be required to choose between their job performance and their health and safety.

Temporary work travel to any location is increasingly avoidable as more and more work can be done remotely, and employees should be offered remote options when they are feasible. When they are not, and when federal employees would face health threats in states that ban medically necessary miscarriage management and abortion care, agencies should allow them to opt out without penalty. This includes stays, which can last weeks or months, at federal training centers located in states without comprehensive reproductive health care, such as the Justice Department’s National Advocacy Center in South Carolina and the Federal Law Enforcement Training Center facilities in South Carolina and Georgia.²³

We are particularly concerned about employees whose duty stations are in states that ban abortion care. Just as private companies have done,²⁴ the government should establish a process

²⁰ We hope that President Biden’s desire to advance abortion access “through Medicaid for patients traveling across State lines for medical care” serves as an acknowledgement that the Hyde Amendment would not prohibit similar support for federal employees. EO on Securing Abortion Access, *supra* note 3 at Sec. 3.

²¹ See, e.g., Pam Belluck, *They Had Miscarriages, and New Abortion Laws Obstructed Treatment*, N.Y. TIMES (July 17, 2022), <https://www.nytimes.com/2022/07/17/health/abortion-miscarriage-treatment.html>; Carrie Feibel, *Because of Texas Abortion Law, Her Wanted Pregnancy Became a Medical Nightmare*, NPR (July 26, 2022), <https://www.npr.org/sections/health-shots/2022/07/26/1111280165/because-of-texas-abortion-law-her-wanted-pregnancy-became-a-medical-nightmare>.

²² EO on Securing Abortion Access, *supra* note 3 at Sec. 1.

²³ South Carolina and Georgia ban abortion after six weeks, before many people even know they are pregnant. Guttmacher Inst., Interactive Map: US Abortion Policies & Access After Roe (July 27, 2022), <https://states.guttmacher.org/policies/>.

²⁴ Todd Spangler, *Google Tells U.S. Employees They Can Relocate to States Where Abortion is Legal*, VARIETY (June 24, 2022), <https://variety.com/2022/digital/news/google-employees-abortion-rights-relocate-1235303248/>; Jordan Novet, *Salesforce Offers to Relocate Employees and Their Families After Texas Abortion Law Goes Into Effect*, CNBC (September 10, 2021), <https://www.cnbc.com/2021/09/10/salesforce-offers-to-relocate-employees-from-texas-after-abortion-bill.html>.

to allow employees, when possible, to relocate to states where abortion is legal because the *Dobbs* decision has caused a change in circumstances. Additionally, federal employees should be able to reject an assignment or reassignment without penalty if the new location bans abortion.

In addition, pregnant employees who must work in these states must be guaranteed emergency travel accommodations to access comprehensive reproductive health care to ensure that their service to the federal government does not cost them their lives. The government should be able to offer such emergency travel based on a pregnant employee's special needs²⁵ or under a General Services Administration travel expenses test program.²⁶ Attorney General Garland promised that the Justice Department "will use every tool at [its] disposal to ensure that pregnant women get the emergency medical treatment to which they are entitled under federal law."²⁷ We expect no less from the federal government when its own employees experience medical emergencies.

We recognize that allowing employees to opt out of work-related travel or assignments to states that ban abortion—just like providing administrative leave and travel coverage—may compromise those employees' privacy. It is crucial that the government administer such options with the maximum amount of privacy possible to ensure that employees would not be required to disclose health information to their supervisor or peers.

4. *Restrict the consideration of abortion-related activity during federal employee background investigations.*

DOJ GEN believes that access to safe and legal abortion care is not only a "fundamental right[],"²⁸ but also a human right—one that governments must protect to "eliminate discrimination against women and to ensure women's right to health as well as other fundamental human rights."²⁹ As a corollary, obtaining abortion care or helping others do so in states that fail to respect this right should not exclude anyone from federal service as a result of an agency's adverse suitability determination,³⁰ or prevent them from obtaining a security clearance.

There is precedent for an Administration to shield prospective and current employees from punitive clearance consequences when liberty, privacy, and equal protection interests are at

²⁵ Fed. Travel Reg. Part 301-13. *See also* Fed. Travel Reg. Bulletin 22-03, Applicability of Fed. Travel Reg. Part 301-13 to Employees Who Are Nursing (October 20, 2021).

²⁶ 5 U.S.C. § 5710.

²⁷ Press Release, Justice Department Sues Idaho to Protect Reproductive Rights (August 2, 2022), <https://www.justice.gov/opa/pr/justice-department-sues-idaho-protect-reproductive-rights>.

²⁸ White House Fact Sheet, *supra* note 15.

²⁹ Office of the United Nations High Commissioner for Human Rights, *Information Series on Sexual and Reproductive Health and Rights: Abortion* (2020), https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/SexualHealth/INFO_Abortion_WEB.pdf.

³⁰ In determining whether an individual is suitable for federal service, an agency may consider criminal conduct. 5 C.F.R. § 731.202(b)(2).

stake, such as when President Clinton issued an executive order barring intelligence agencies from refusing to issue security clearances based on sexual orientation in 1995.³¹ As was the case then, the government should not use conduct that may violate draconian and discriminatory state laws as a further cudgel against prospective or current federal employees. Doing so advances no legitimate government interest, and will only serve to diminish the strength and diversity of the workforce by reducing the number of women who qualify for public service.

5. *Continue the fight to defeat the Hyde Amendment.*

Although none of DOJ GEN's proposals implicate the Hyde Amendment, the policy does significantly restrict abortion access for millions of people throughout the country, including federal employees.³² Almost every year since 1983, the amendment has prohibited health insurance coverage for abortion care for the eight million civilian federal employees, their dependents, and retirees who receive health insurance through FEHBP, requiring them to pay out of pocket except in narrow circumstances.³³ The policy has been unjust since it was first implemented but it is especially pernicious now.

Excluding abortion coverage from FEHBP frustrates the goal of gender equity in the federal government by disproportionately burdening women. Abortion is one of the most common medical procedures undergone by women; in 2020, about one in five pregnancies ended in abortion.³⁴ Yet, federal employees without insurance coverage for abortion are forced to pay out of pocket. Not accounting for travel expenses, an abortion at 10 weeks costs about \$550,³⁵ and the cost only increases as pregnancy progresses, with an abortion at 20 weeks averaging \$1,670.³⁶ For many federal employees, especially the thousands who live around the federal poverty level, this expense can pose a major barrier.³⁷

³¹ Executive Order 12968 on Access to Classified Information (August 2, 1995), <https://www.govinfo.gov/content/pkg/FR-1995-08-07/pdf/95-19654.pdf>.

³² Donovan, *supra* note 4 at 3 (Hyde and other abortion-coverage bans affect enrollees in federal insurance programs (Medicaid, Medicare, Children's Health Insurance Program); federal employees and their dependents (through the Federal Employee Health Benefits Program, TRICARE, and the health care system operated by the Department of Veterans Affairs); and people who rely on the federal government to provide their health care (Indian Health Services, Peace Corps, Federal Bureau of Prisons, and Immigration and Customs Enforcement)).

³³ NARAL Pro-Choice America, *Abortion-Coverage Ban on the Federal Employees Health Benefits Program* (January 1, 2017), <https://www.prochoiceamerica.org/wp-content/uploads/2017/01/2.-Abortion-Coverage-for-Women-Enrolled-in-FEHB-Program.pdf>.

³⁴ Rachel K. Jones, *et al.*, *Long-Term Decline in US Abortions Reverses, Showing Rising Need for Abortion as Supreme Court Is Poised to Overturn Roe v. Wade*, Guttmacher Inst. (June 15, 2022), <https://www.guttmacher.org/article/2022/06/long-term-decline-us-abortions-reverses-showing-rising-need-abortion-supreme-court>.

³⁵ Elizabeth Witwer, *et al.*, *Abortion Service Delivery in Clinics by State Policy Climate in 2017*, 2 Contraception: X 1, 4 (2020), <https://www.guttmacher.org/article/2020/10/abortion-service-delivery-clinics-state-policy-climate-2017>.

³⁶ *Id.* at 3.

³⁷ U.S. Dept. of Health & Human Servs., *HHS Poverty Guidelines for 2022*, <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>; OPM, FedScope (December 2021), <https://www.fedscope.opm.gov/>.

We commend the Administration for speaking out against the Hyde Amendment and related bans,³⁸ and excluding them from its proposed budget for fiscal year 2023.³⁹ We encourage the Administration to continue prioritizing the exclusion of these bans as the appropriations process continues. The Administration should also push for a permanent repeal of the Hyde Amendment and similar abortion-coverage bans through passage of the Equal Access to Abortion Coverage in Health Insurance (EACH) Act.⁴⁰

6. *Integrate advocates for federal employees into the Administration’s response.*


We are grateful for the Administration’s formation of numerous task forces to work on mitigating the fallout from *Dobbs*, including the interagency Task Force on Reproductive Health Care Access and the Justice Department’s Reproductive Rights Task Force. But to our knowledge, these task forces do not include members whose role is to represent the interests of federal employees. This serious omission by the nation’s largest employer can be fixed by giving federal-employee advocates a seat at the table.


* * *

As the Administration continues responding to *Dobbs*’ foreseeably tragic consequences, we ask you to make the well-being, health, and lives of our Nation’s public servants a top priority by doing everything in your power to protect our access to abortion. Achieving the Administration’s stated goal of becoming a “model employer and being competitive in the labor market”⁴¹ demands nothing less.

Respectfully,

DOJ GEN Abortion Access Working Group


Stacey Young
President, DOJ GEN
Civil Rights Division


Jen Swedish
Civil Rights Division

³⁸ Molly Longman, *Why Kamala Harris Feels “Optimistic” About The Future of Abortion Rights*, REFINERY29 (July 26, 2022), <https://www.refinery29.com/en-us/2022/07/11064667/kamala-harris-midterm-elections-abortion-access>.

³⁹ Alanna Vagionos, *Biden’s Budget Would Scrap Decades-Old Rule And Permit Federal Funding of Abortions*, HUFFPOST (March 29, 2022), https://www.huffpost.com/entry/biden-budget-federal-funding-of-abortions-hyde-amendment_n_62434342e4b0e44de9ba42c1.

⁴⁰ H.R. 2234, 117th Cong. (2021); S.1021, 117th Cong. (2021).

⁴¹ The Biden-Harris Management Agenda Vision (November 18, 2021), https://assets.performance.gov/PMA/Biden-Harris_Management_Agenda_Vision_11-18.pdf.

Laura Varela-Addeo
Civil Rights Division

Devin Le Brun Cusack
Federal Bureau of
Investigation

Julia Quinn
Civil Rights Division

Crista Colvin
Bureau of Prisons

Allena Martin
Civil Rights Division

Alyson Schwartz
Civil Rights Division

Lindsay Dunn
Civil Division

Mary Mason
Civil Division

Michelle Spatz
Environment and Natural
Resources Division

Sejal Jhaveri
Civil Rights Division

Marisa Nash
Bureau of Prisons

Patricia Stasco
Civil Rights Division

Melanie Krebs-Pilotti
Antitrust Division

Michelle Parikh
Criminal Division

Joy Welan
Civil Rights Division

Erica Lacy
Office on Violence
Against Women

Colleen Phillips
Civil Rights Division

Anna Young
Civil Rights Division

Amit Kumar
Justice Management
Division