



June 22, 2023

The President of the United States
The White House

Jennifer Klein
Chair
White House Gender Policy Council

The Vice President of the United States
The White House

Hon. Merrick Garland
Attorney General
United States Department of Justice

Hon. Kiran Ahuja
Director
Office of Personnel Management

Hon. Shalanda Young
Director
Office of Management and Budget

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

In the year since the Supreme Court eliminated the constitutional right to abortion in *Dobbs v. Jackson Women's Health Organization*, countless pregnant employees have relied on their employers to subsidize their travel to other states, cover their medical costs, and provide designated paid time off so they can access the abortion care they need. But, despite the federal government's efforts to respond to this healthcare crisis, the Administration has provided no support to the nearly two million federal civilian employees and their families who live in states where abortion is illegal or likely will be soon.¹

It is long past time for the nation's largest employer to do everything it can to protect abortion access for our Nation's civil servants.

* DOJ GEN is an employee advocacy group that does not speak for the federal government, any government administration, the Department of Justice, or any component thereof. The views expressed in this document are solely those of DOJ GEN and the signatories, and they do not necessarily reflect the views of the Department of Justice.

¹ 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").

The DOJ Gender Equality Network (DOJ GEN),² a federal employee advocacy group, has sent three letters providing a detailed roadmap³ for how the Administration can deliver for federal employees on Vice President Harris’s promise to “do everything in our power and our ability . . . to ensure that we protect the women of America around some of the most intimate decisions that any human being can make.”⁴ With the exception of the Department of Justice, our recommendations—which major media outlets like the New York Times and CNN covered⁵—have been met with silence from the Administration. In the meantime, the Department of Defense (DoD) announced measures to help military service members and their families obtain abortion care,⁶ so we know there is more the Administration can do for civil servants.

At a time when public support for abortion rights has increased⁷ and employees throughout the country want their employers to do more to ensure abortion access,⁸ the federal government should lead the pack, not lag behind. We again urge the Administration to take the following commonsense steps to help federal civil servants weather this crisis.

² DOJ GEN has approximately 1,300 members from across the Department of Justice. Since our founding in 2016, DOJ GEN has worked diligently to promote gender equity and equality at DOJ and throughout the federal workforce. Among our initiatives, DOJ GEN advocates for expanded abortion access, family-friendly policies and workplace flexibilities, and the eradication of pay inequities and sexual misconduct. Additional information is available at www.dojgen.org.

³ Letter from DOJ GEN to President Biden, Vice President Harris, DOJ, OPM, OMB & White House Gender Policy Counsel (Dec. 7, 2022), <https://bit.ly/449c6eJ>; Letter from DOJ GEN to Vice President Harris, DOJ, OPM, OMB & White House Gender Policy Counsel (Aug. 4, 2022), <https://bit.ly/449x6lr>; Letter from DOJ GEN to OPM, OMB & White House Gender Policy Counsel (May 18, 2022), <https://bit.ly/3pml0Xk>.

⁴ Vice President Kamala Harris, Remarks by President Biden and Vice President Harris at the First Meeting of the Interagency Task Force on Reproductive Healthcare Access (Aug. 3, 2022), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/08/03/remarks-by-president-biden-and-vice-president-harris-at-the-first-meeting-of-the-interagency-task-force-on-reproductive-healthcare-access/>.

⁵ Jessica Schneider, *Justice Department Employees Ask for Expanded Benefits to Protect Abortion Access*, CNN (Aug. 4, 2022), <https://www.cnn.com/2022/08/04/politics/justice-department-employees-abortion-access/index.html>; Katie Benner, *Justice Dept. Employees Urge Administration to Grant Leave for Out-of-State Abortions*, NY Times (May 18, 2022), <https://www.nytimes.com/2022/05/18/us/politics/justice-department-abortion.html>.

⁶ Memo from Sec’y of Defense Lloyd J. Austin to Senior Pentagon Leadership re: Ensuring Access to Reproductive Health Care (Oct. 20, 2022), <https://media.defense.gov/2022/Oct/20/2003099747/-1/-1/1/MEMORANDUM-ENSURING-ACCESS-TO-REPRODUCTIVE-HEALTH-CARE.PDF> (“Sec’y of Defense Memo”).

⁷ Lydia Saad, *Broader Support for Abortion Rights Continues Post-Dobbs*, Gallup (June 14, 2023), <https://news.gallup.com/poll/506759/broader-support-abortion-rights-continues-post-dobbs.aspx>; Laura Santhanam, *Support for Abortion Rights Has Grown in Spite of Bans and Restrictions, Poll Shows*, PBS News Hour (Apr. 26, 2023), <https://www.pbs.org/newshour/health/support-for-abortion-rights-has-grown-in-spite-of-bans-and-restrictions-poll-shows>.

⁸ Catalyst, *Abortion Access and the Workplace: What US Employees Expect from Their Organizations* (2022), <https://www.catalyst.org/research/roe-v-wade-abortion-workplace-survey/>.

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

The federal government’s ability to recruit and retain talented employees will suffer if it does not offer assistance to the civil servants who live in states where abortion access is unavailable, a reality that DoD recognizes.⁹ At a minimum, the Administration should urge agency heads to use their authority to grant up to three consecutive days of administrative leave for travel related to abortion care¹⁰ and ensure the availability and applicability of voluntary leave banks for employees who need to travel for abortion care.¹¹

2. *Cover travel expenses for these employees.*

The Administration should offer travel allowances or otherwise cover the cost of travel related to abortion care for those employees who live in states without abortion access.¹² State abortion bans and the resulting closures of abortion clinics have exacerbated existing inequities by increasing the costs associated with abortion, including finding, arranging, and traveling for care.¹³ Offering travel support would put the Administration in lockstep with DoD and the private employers that have already put these measures in place.¹⁴

As we explained in our August 2022 letter, the Administration has multiple options to offset these inequities by covering the cost of travel. Since then, we learned of another option: given that both DoD and NASA routinely offer their civilian employees available seats on flights,¹⁵ the Administration could explore giving available seats on federal government flights to any civilian federal employees who must travel for abortion care. And to be clear, covering travel expenses would not run afoul of prohibitions on the use of appropriated federal funds related to abortion—the Department of Justice’s Office of Legal Counsel has already determined

⁹ Sec’y of Defense Memo, *supra* note 6 at 2 (state abortion bans “will interfere with our ability to recruit, retain, and maintain the readiness of a highly qualified force”).

¹⁰ 5 C.F.R. § 610.302.

¹¹ 5 C.F.R. §§ 630.1001–630.1016.

¹² Existing regulations would authorize agencies to cover employees’ unexpected abortion-related travel expenses while on temporary duty travel to a state where abortion is illegal. *See* 41 C.F.R. Part 301-13.

¹³ Liza Fuentes, *Inequity in US Abortion Rights and Access: The End of Roe is Deepening Existing Divides*, Guttmacher Inst. (January 17, 2023), <https://www.guttmacher.org/2023/01/inequity-us-abortion-rights-and-access-end-roe-deepening-existing-divides>.

¹⁴ *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>; Sec’y of Defense Memo, *supra* note 6.

¹⁵ *See, e.g.*, Space Available Flight: Basic Rules & Regulations, <https://www.military.com/travel/space-available-flight-rules-regulations.html>.

that the DoD, the Peace Corps, and Medicaid may lawfully use appropriated funds to pay for the cost of travel to obtain abortions.¹⁶

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

Being in a state that bans or heavily restricts abortion can jeopardize federal employees' health and even lives, especially now that doctors in some states must make risky judgment calls to decide whether a patient is sick enough to need abortion-related care.¹⁷ Like the many private sector companies that allow their employees to relocate to states where abortion is legal,¹⁸ the Administration should allay the fears of federal employees by allowing them to opt out of travel or assignment to states that ban abortion. As more and more work can be done remotely, employees should be afforded flexible options whenever feasible.

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

The consideration of abortion-related activity that, until *Dobbs*, was constitutionally protected should not hinder anyone's ability to work for the federal government or obtain a security clearance.¹⁹ As discussed in DOJ GEN's August 2022 letter, there is precedent for an Administration shielding prospective and current employees from punitive security clearance consequences when liberty, privacy, and nondiscrimination interests are at stake. Just as President Clinton issued an executive order barring intelligence agencies from refusing to issue security clearances based on sexual orientation in 1995,²⁰ here too the Administration could restrict consideration of abortion-related activity during federal employee background investigations.²¹

¹⁶ See Authority of the Department of Defense to Use Appropriations for Travel by Service Members and Dependents to Obtain Abortions, 46 Op. O.L.C. ___, slip op. at 1, 3–4 (Oct. 3, 2022).

¹⁷ Selena Simmons Duffin, *Doctors Who Want to Defy Abortion Laws Say it's Too Risky*, NPR (November 23, 2022), <https://www.npr.org/sections/health-shots/2022/11/23/1137756183/doctors-who-want-to-defy-abortion-laws-say-its-too-risky>.

¹⁸ See, e.g., Herb Scribner, *These Companies are Helping Employees Access Abortions*, Axios (AUG. 19, 2022), <https://www.axios.com/2022/05/05/abortion-travel-benefit-uber-apple-amazon-lyft>; 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>.

¹⁹ In determining whether an individual is suitable for federal service, an agency may consider criminal conduct. See 5 C.F.R. § 731.202(b)(2).

²⁰ 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>.

²¹ Alternatively, similar to the approach to mental health in background investigations, the Administration could revise questions to clarify that abortion-related activity will not impact determinations. See, e.g., Question 21 in the

5. *Remove the FEHBP abortion coverage ban from appropriations bills.*

Finally, DOJ GEN remains deeply disappointed in the continued exclusion of abortion coverage from the Federal Employee Health Benefits Program (FEHBP) in the Administration’s proposed budgets.²² While we commend the Administration for removing the Hyde Amendment’s ban on comprehensive abortion coverage for Medicaid recipients, we are frustrated that federal employees’ reproductive health needs have not been similarly prioritized in the Administration’s budget-related advocacy.

Restricting federal employees from using health insurance to cover our abortion care except in the most extreme circumstances denies us the full and equal participation in our healthcare decision making afforded others. DOJ GEN members have recounted their shock upon learning that their employer-sponsored health plan does not cover such a vital service as abortion care. After receiving the devastating news that her fetus had a condition “incompatible with life,” one of our members explained: “The worst day of my life was made more traumatic by being told that I would not be supported [by my employer] if I made the incredibly difficult decision to terminate my pregnancy.” Another member said the abortion coverage ban “present[ed] a major barrier” due to the cost of the procedure.

The FEHBP abortion coverage ban demonstrates how out of step the federal government is with the private sector, where the vast majority of insured employees work for an employer that includes abortion coverage in some or all cases.²³ The Administration should encourage Congress to eliminate all bans on comprehensive abortion coverage—including the one that applies to federal employee health insurance plans—from the appropriations package for Fiscal Year 2024. DOJ GEN also urges you to finally remove the FEHBP abortion coverage ban from the Administration’s proposed budget for Fiscal Year 2025.

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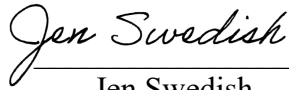
Although DOJ GEN appreciates the Administration’s critical efforts following the *Dobbs* decision, we are frustrated that federal civilian employees have been left behind. It is within your power to implement our proposals—all of which are essential to the health and wellbeing of our Nation’s public servants—and we again ask you to do so without delay.

Questionnaire for National Security Questions (SF 86), https://www.opm.gov/forms/pdf_fill/sf86.pdf (“Mental health treatment and counseling, in and of itself, **is not a reason** to revoke or deny eligibility . . .”) (emphasis in original).

²² Stacey Young & Jen Swedish, *The Government Should Be Ahead of the Curve on Abortion Coverage, Not Behind*, The Hill (Dec. 5, 2022), <https://thehill.com/opinion/healthcare/3762323-the-government-should-be-ahead-of-the-curve-on-abortion-coverage-not-behind/>.

²³ Michelle Long, *et al.*, *Exclusion of Abortion Coverage from Employer-Sponsored Health Plans*, Kaiser Family Foundation (May 12, 2020), <https://www.kff.org/womens-health-policy/issue-brief/exclusion-of-abortion-coverage-from-employer-sponsored-health-plans/>.

Respectfully,



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