

## FTC unsure about impact of federal employee buyout offer

By **Claude Marx and Khushita Vasant**

(February 11, 2025) -- The impact of the Trump administration's deferred resignation offer to employees at the Federal Trade Commission remains unclear as a federal judge postponed the deadline in light of a lawsuit challenging the offer's legality.

The Office of Personnel Management announced a deferred resignation program on Jan. 28, in which employees could resign effective Sept. 30, and still be compensated until then and would not have to work.

The Trump administration said as of Feb. 10 about 65,000 federal employees had accepted the offer. The FTC and OPM didn't say how many FTC employees had requested deferred compensation.

However, on Feb. 6, the deadline for employees to accept the offer, US District Judge George A. O'Toole Jr. delayed the target date until after a hearing set for Feb. 10.

The lawsuit was filed by several labor unions representing federal employees.

The unions sued and said the offer is "arbitrary and capricious," violates the Administrative Procedure Act, and exceeds statutory authority under the Antideficiency Act, and also breaks a law limiting administrative leave for federal workers to 10 days in a calendar year.

The Antideficiency Act bans the expenditure of funds before they are appropriated by Congress.

The suit alleges when issuing the buyout offer, OPM presented conflicting information about employees' rights and obligations if they accept the government's offer. The offer also allegedly violates rules governing federal employees and is "contrary to reasoned practices of government restructuring."

OPM issued a memo refuting some allegations against the program.

"Under the program, employees remain in duty status entitled to their regular pay and benefits. The program does not promise employees additional compensation that might require special congressional appropriations. An employee who has chosen to participate in the deferred resignation program will not be placed at a disadvantage compared to other employees if congressional appropriations lapse," the memo states.

It adds: "In the event of a partial or complete government shutdown, payments to all affected employees (regardless of whether they accepted the deferred resignation offer) would be temporarily paused."

The OPM memo offering the deferred resignation option discloses that for employees who choose to stay, the agency "cannot give you full assurance regarding the certainty of your position or agency." Also, those employees at the FTC who stay will have to be in the office five days a week starting March 3. Currently, employees are required in the office twice during every two-week pay period.

In fact, the "Frequently Asked Questions" page related to the deferred resignation program states employees who choose to take that route are "absolutely" encouraged "to find a job in the private sector as soon as you would like to."

Andrea Scoseria Katz, a constitutional law professor at Washington University in St. Louis, told *FTCWatch* that the deferred resignation plan is a "bad faith effort to circumvent the civil service system." She said it was a creative approach because they are reducing the size of the federal workforce without firing people.

### Suit from NLRB member

The FTC leadership could also face uncertain job security depending on the outcome of a lawsuit filed by a former National Labor Relations Board member whom President Donald Trump dismissed.

Former NLRB member Gwynne Wilcox claims that the firing violates the National Labor Relations Act and the Supreme Court's 1935 ruling in *Humphrey's Executor v. US*, which asserts the president can only remove members of independent agencies for cause.

In her lawsuit, she says Trump's action "defies ninety years of Supreme Court precedent that has ensured the independence of critical government agencies."

"(I) If no challenge is made, the President will have effectively succeeded in rendering the [National Labor Relations Act's] protections — and, by extension, that of other independent agencies — nugatory," according to the complaint.

In his letter on behalf of Trump, Trent Morse, the deputy director of the Office of Presidential Personnel, wrote that Wilcox and NLRB General Counsel Jennifer Abruzzo were being dismissed because they have "not been operating in a manner consistent with the objectives of my administration." It doesn't allege malfeasance.

Constitutional law scholar Katz said while members of the Supreme Court have indicated a desire to overturn *Humphrey's Executor*, the court has carved out restrictions to presidential appointment power over agencies run by multi-member commissions such as the FTC.

In 2020, the high court ruled 5-4 in *Seila Law v. Consumer Financial Protection Bureau* that the agency's structure of having a single director who can only be removed for incompetence or malfeasance is an unconstitutional violation of the president's appointment power.

"When President Trump makes outlandish claims, I could see them [the justices] becoming less deferential," Katz said.

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