

Lawmakers Want to Restore Due Process to Feds in 'Sensitive' National Security Positions

A bipartisan group of lawmakers has introduced a bill to provide due process to federal employees in positions deemed national security “sensitive,” a right stripped away by a federal court earlier this year. Sen. Jon Tester, D-Mont., who chairs the Senate subcommittee that oversees the federal workforce, introduced the bill, which would allow feds in sensitive positions that do not require a security clearance or allow access to classified information to appeal any personnel decision to the Merit Systems Protection Board. Coupled with a proposed rule from the Office of Personnel Management and the Office of the Director of National Intelligence that, according to good government groups, would greatly expand the positions labeled as sensitive, the court ruling created what those groups have called a “one-two attack” against federal employees. “Workers who have their jobs changed or stripped and their livelihoods threatened deserve due process -- it’s as simple as that,” Tester told Government Executive

. “My bill prevents the government from denying federal employees their rights and makes sure the government can’t arbitrarily strip them of their jobs.” Tester recently held a hearing on the issue, in which he expressed his concern that employees with seemingly no impact on national security -- such as a Defense Department commissary clerk -- were in sensitive positions. OPM and ODNI rejected the notion their guidance would expand the sensitive designations, saying the proposal would simply bring clarity and government wide standardization. Federal employee advocates praised the legislation and called for its quick passage. “Taxpayers of all parties and ideologies should rally behind bipartisan legislation introduced in both chambers of Congress to restore independent enforcement for civil service appeal rights of federal workers,” said Tom Devine, legal director for the Government Accountability Project. “Unless this legislation passes, a national security ‘spoils system’ will replace the non-partisan, professional federal labor force that has minimized politics in government since 1883. It also is necessary to preserve justice for federal employees.” J. David Cox, president of the American Federation of Government Employees, also offered his support for the bill, saying that allowing the court decision to hold would give agencies carte blanche to designate a position as sensitive, and then disqualify the employee filling it for any reason without repercussions. “If this decision is allowed to stand, hundreds of thousands of federal employees will be denied basic rights and protections that have been in effect since Congress passed the Civil Service Reform Act in 1978,” Cox said. Some experts believed the bill would create a dangerous scenario, as MSPB would not be positioned to issue a ruling on employees in sensitive positions. “If this bill were to be enacted, Congress would essentially bless...second guessing by an outside, non-expert body,” said Neil McPhie, former MSPB chairman and an attorney managing partner at the law firm Tully Rinckey. Sens. Claire McCaskill, D-Mo., and Chuck Grassley, R-Iowa, are original co-sponsors on the bill, while Del. Eleanor Holmes Norton, D-D.C., has introduced identical legislation in the House.