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# LAW FIRM NEWS

***February 2008***

### *Our Regular Reminder*

This is a reminder to all our union clients of the various services available from our law firm. Most of our retainer agreements provide for unlimited legal advice, on-site visits and filing and processing of unfair labor practice charges. Please contact us if you would like to have one of us do training, meet with employees, or review a case for arbitration, MSPB or EEOC. We are also just a phone call or an e-mail away if you need help or feedback on any legal issue connected with federal sector employment. In addition, we provide representation to Union members in MSPB appeals, EEO complaints and labor arbitration for reduced or flat fees if there is a chance we can obtain attorney's fees from the agency if we win. You can learn more about our law firm, and check out our very own proposal for real civil service reform legislation *("The Modern System, MS.1.")* online at http://minahan.wld.com.

### *Changes Ahead for "The Firm" This Year*

#### *Barrie rides into the sunset*

As many of you know, Barrie Shapiro has been planning to retire this year, while still youthful and vigorous! Barrie's wife, Rusty (also youthful and vigorous!) has just finished over 30 years as a federal employee with SSA and has opted for a well-earned civil service retirement. Barrie and Rusty love Panama and so they've bought property down there and are building a vast *estancia* with *campesinos* and *vaqueros* (actually, just a house). A new law partner will be joining us in March and Barrie plans to leave the law firm around June.

#### *Tom rides into Denver*

The new law partner is a friend of ours and he's an experienced federal sector labor attorney who is forsaking the "Dark Side" (management) for Truth,

Justice and the American way. His name is Tom Muther (pronounced "*Mew-ther"*- clients who mispronounce Tom's name will see a $300 surcharge on their bills). Tom was born in 1971, when Dan and Barrie were worried about getting drafted and sent to Vietnam. Tom and his wife, Rebecca (also youthful and vigorous; heck, everybody here is youthful and vigorous except Dan) have two young sons, Caleb and Joseph. (Just think: almost a decade until they have to deal with *teenagers!*) Tom grew up in Florida but went to law school at the University of Denver, where he, understandably, got the Colorado bug (at least he didn't change his last name to "Denver"). He was a scholar in law school, he was hired right away by the Department of Justice, he's been an attorney with INS (now, ICE) since 1997 in Florida, Vermont and now Las Vegas. He is leaving Las Vegas as Deputy Chief Counsel, supervising an entire staff of attorneys, to join our humble law firm. His resume shows he's more qualified to work here than Dan or Barrie! We think this will work out great for our law firm and our clients and many of you will get to talk with or meet Tom in the months to come.

### *NSPS: It's Over at Last!*

Federal employees and the unions that represent them will never endure such a struggle for their fundamental rights as began in 2003 with the enactment of the law authorizing the National Security Personnel System (NSPS) for DOD employees. At the time, it looked like the beginning of the end of the merit-based civil service system. But things change and sometimes ordinary people can move mountains. Last month, Congress disemboweled NSPS in the FY 08 DOD appropriations bill and the president signed it as Public Law 110-181. The key pages from section 1106 of that law are attached to this newsletter. It makes NSPS inapplicable to prevailing rate (WG) employees. It makes "non-waivable" all of Chapter 71 (labor relations), Chapter 75 (disciplinary actions) and Chapter 77 (appeals) of title 5 of the U.S. Code. It makes all rules and "implementing issuances" issued under NSPS to date invalid, and it mandates <u>real</u> collective bargaining over anything DOD issues in the future to replace them. Essentially, all that remains of NSPS is DOD's authority to establish a new pay system for GS employees.

### *Comp Time for Travel Time for Wage Grade Employees*

The NSPS law is not the only law that got fixed in the FY 08 DOD appropriations bill (Public Law 110-181). Remember the law Congress passed a few years ago that grants compensatory time to employees for time spent in a travel status outside their normal hours of work? Remember how Congress wrote it so it only applied to General Schedule employees? They just fixed that mistake too. Sections 1110 and 1111 of Public Law 110-181 make the "comp time for travel time" law applicable to Wage Grade as well as General Schedule employees.

### *Surveillance of Union Activities was a ULP*

The NLRB recently issued a ruling in a private sector case that federal sector Union representatives

should keep in mind. *Sprain Brook Manor Nursing Home,* 183 LRRM 1147 (2007), involved the head of the employer's facility regularly watching employees meet with union representatives in the parking lot on her days off. The employer also hired an armed security guard in addition to an unarmed guard right after the union won a representation election. The NLRB decided these tactics amounted to an unfair labor practice.

### *No Income Tax Withholding on Settlement Payments*

The decision of the Arkansas Supreme Court in *Arkansas Dept of Health v. Storey,* 46 GERR 47 (December 13, 2007), is another decision you see now and then from the courts on whether settlement payments made to employees on legal claims against their employers are subject to income tax withholding. The Court concluded, in agreement with some other decisions, that payments like that are not "wages" and so income tax cannot be withheld from them. *Be careful, though. This means only that the employer cannot withhold income tax from the payments, <u>not</u> that the employees do not owe income tax, which they <u>will</u> have to pay at tax time.* OPM's back pay regulations require federal agencies to withhold income tax on back pay awards. Someday, a federal employee will point out how this conflicts with the Internal Revenue Code and he or she may get the use of the entire back pay award a while longer until the deadline for filing tax returns.

### *Even "Vague" Whistleblower Disclosures are Protected*

The MSPB overturned a ruling by one of its administrative judges in *Kinsey v. Dept of Navy,* 2007 MSPB 293 (2007), that an employee's disclosures that were vague and based on "mere rumors" could not be protected from reprisal under the Whistleblower Protection Act. The MSPB said it was sufficient that the employee's allegations of travel fraud were based on his own observations leading him to suspect it and on an admission to him by one of the participants.

### *Employee Cannot be Fired for False Answers to Questions on Job Application when Questions were Illegal*

When MSPB Chairman McPhie dissents in a decision, you know the decision is right! *Evans v. Dept of Homeland Security,* 2007 MSPB 297 (2007), involved an employee who was fired for failing to disclose on his job application all the medications he was taking. The MSPB noted that ever since the enactment of the ADA it has been illegal for employers to ask applicants to disclose medical conditions before the employer extends a job offer to the applicant. The MSPB overturned Mr. Evans' removal on the basis that the questions he was fired for not answering were a form of illegal discrimination under the ADA. Chairman McPhie, naturally, felt the employee's misconduct was worse than the

employer's. Had Chairman McPhie been on the Supreme Court in 1952, he probably would have dissented from the decision in *Rochin v. California,* 342 U.S. 165 (1952), which overturned Mr. Rochin's conviction for possession of morphine capsules that the police had obtained by beating him and forcibly pumping his stomach out.

### *Federal Employee EEO complaints in Court: "Do you feel lucky?"*

It was bound to happen, after the series of appeals court rulings in recent years that federal employees who file their EEO cases in court have to "start from scratch," no matter what happened in the administrative processing of those complaints. The plaintiff in *Hodge v. Potter,* 46 GERR 17 (5th Cir. 2007), was awarded $40,000 in damages by an EEOC AJ for sexual harassment. She considered the award inadequate for what she had endured and filed her EEO case in federal court, asserting that the EEOC's finding of discrimination should be binding on the Postal Service (her employer). The Court ruled that "*de novo* means *de novo"* and after the trial in court, she lost her sexual harassment claim. At that point, said the Court, she was obligated to return to the Government the $40,000 she won on her claim at the EEOC!

### *Credit Hours and Comp Time for Employees on Flexible Work Schedules*

On January 22, 2008, the Federal Circuit issued its decision in *Jane Doe et al. v. United States* (No. 2007-5107), which involved a lawsuit brought by a group of SSA employees claiming that the agency's practice of granting credit hours and compensatory time for overtime violates their rights under the Fair Labor Standards Act (FLSA). Part of the employees' argument was based on a claimed violation of the SSA-AFGE master labor agreement. The Court ruled this is not the kind of "breach of contract with the Government" claim that the courts have the power to decide, and that claims for violations of rights created in labor contracts must be raised through the grievance and arbitration process. On the employees' FLSA claims, the Court agreed that it is up to them if they want to receive overtime pay instead of compensatory time, but if they choose compensatory time it is granted on an "hour for hour" basis and not "time and a half" like overtime pay. Similarly, the Court ruled that "credit hours" earned under a flexible work schedule are not overtime hours and must be earned and used on an "hour for hour" basis.

**Ski Red Rocks. Cheap!**

PAGES FROM PUBLIC LAW 110-181

# One Hundred Tenth Congress of the United States of America

**AT THE SECOND SESSION**

***Begun and held at the City of Washington on Thursday, the third day of January, two thousand and eight***

# An Act

To provide for the enactment of the National Defense Authorization Act for Fiscal Year 2008, as previously enrolled, with certain modifications to address the foreign sovereign immunities provisions of title 28, United States Code, with respect to the attachment of property in certain judgments against Iraq, the lapse of statutory authorities for the payment of bonuses, special pays, and similar benefits for members of the uniformed services, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*,

**SECTION 1. SHORT TITLE; TREATMENT OF EXPLANATORY STATEMENT.**

(a) SHORT TITLE.—This Act may be cited as the "National Defense Authorization Act for Fiscal Year 2008".

(b) EXPLANATORY STATEMENT.—The Joint Explanatory Statement submitted by the Committee of Conference for the conference report to accompany H.R. 1585 of the 110th Congress (Report 110–477) shall be deemed to be part of the legislative history of this Act and shall have the same effect with respect to the implementation of this Act as it would have had with respect to the implementation of H.R. 1585, if such bill had been enacted.

**SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.**

(a) DIVISIONS.—This Act is organized into three divisions as follows:

(1) Division A—Department of Defense Authorizations.

(2) Division B—Military Construction Authorizations.

(3) Division C—Department of Energy National Security Authorizations and Other Authorizations.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

"(5) If a person entitled to all or a portion of a death gratuity under paragraph (1) or (4) dies before the person receives the death gratuity, it shall be paid to the living survivor next in the order prescribed by paragraph (1).

"(e) DEFINITIONS.—(1) The term 'contingency operation' has the meaning given to that term in section 1482a(c) of title 10, United States Code.

"(2) The term 'employee' has the meaning provided in section 8101 of this title, but also includes a nonappropriated fund instrumentality employee, as defined in section 1587(a)(1) of title 10.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 81 of such title is amended by inserting after the item relating to section 8102 the following:

"8102a. Death gratuity for injuries incurred in connection with employee's service with an Armed Force.".

**SEC. 1106. MODIFICATIONS TO THE NATIONAL SECURITY PERSONNEL SYSTEM.**

(a) IN GENERAL.—Section 9902 of title 5, United States Code, is amended to read as follows:

**"§ 9902. Establishment of human resources management system**

"(a) IN GENERAL.—The Secretary may, in regulations prescribed jointly with the Director, establish, and from time to time adjust, a human resources management system for some or all of the organizational or functional units of the Department of Defense. The human resources management system established under authority of this section shall be referred to as the 'National Security Personnel System'.

"(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

"(1) be flexible;

"(2) be contemporary;

"(3) not waive, modify, or otherwise affect—

"(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

"(B) any provision of section 2302, relating to prohibited personnel practices;

"(C)(i) any provision of law referred to in section 2302(b)(1), (8), and (9); or

"(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1), (8), and (9) by—

"(I) providing for equal employment opportunity through affirmative action; or

"(II) providing any right or remedy available to any employee or applicant for employment in the public service;

"(D) any other provision of this part (as described in subsection (d)); or

"(E) any rule or regulation prescribed under any provision of law referred to in this paragraph;

"(4) not apply to any prevailing rate employees, as defined in section 5342(a)(2);

"(5) ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any exclusion from coverage or limitation on negotiability established pursuant to law;

"(6) not be limited by any specific law or authority under this title, or by any rule or regulation prescribed under this title, that is waived in regulations prescribed under this chapter, subject to paragraph (3); and

"(7) include a performance management system that incorporates the following elements:

"(A) Adherence to merit principles set forth in section 2301.

"(B) A fair, credible, and transparent employee performance appraisal system.

"(C) A link between the performance management system and the agency's strategic plan.

"(D) A means for ensuring employee involvement in the design and implementation of the system.

"(E) Adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the performance management system.

"(F) A process for ensuring ongoing performance feedback and dialogue between supervisors, managers, and employees throughout the appraisal period, and setting timetables for review.

"(G) Effective safeguards to ensure that the management of the system is fair and equitable and based on employee performance.

"(H) A means for ensuring that adequate agency resources are allocated for the design, implementation, and administration of the performance management system.

"(I) A pay-for-performance evaluation system to better link individual pay to performance, and provide an equitable method for appraising and compensating employees.

"(c) PERSONNEL MANAGEMENT AT DEFENSE LABORATORIES.—

"(1) The National Security Personnel System shall not apply with respect to a laboratory under paragraph (2) before October 1, 2011, and shall apply on or after October 1, 2011, only to the extent that the Secretary determines that the flexibilities provided by the National Security Personnel System are greater than the flexibilities provided to those laboratories pursuant to section 342 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2721) and section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note), respectively.

"(2) The laboratories to which this subsection applies are—

"(A) the Aviation and Missile Research Development and Engineering Center;

"(B) the Army Research Laboratory;

"(C) the Medical Research and Materiel Command;

"(D) the Engineer Research and Development Command;

"(E) the Communications-Electronics Command;

"(F) the Soldier and Biological Chemical Command;
"(G) the Naval Sea Systems Command Centers;
"(H) the Naval Research Laboratory;
"(I) the Office of Naval Research; and
"(J) the Air Force Research Laboratory.

"(d) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this part referred to in subsection (b)(3)(D) are—

"(1) subparts A, B, E, G, and H of this part; and

"(2) chapters 41, 45, 47, 55 (except subchapter V thereof, apart from section 5545b), 57, 59, 71, 72, 73, 75, 77, and 79, and this chapter.

"(e) LIMITATIONS RELATING TO PAY.—

"(1) Nothing in this section shall constitute authority to modify the pay of any employee who serves in an Executive Schedule position under subchapter II of chapter 53.

"(2) Except as provided for in paragraph (1), the total amount in a calendar year of allowances, differentials, bonuses, awards, or other similar cash payments paid under this title to any employee who is paid under section 5376 or 5383 or under title 10 or under other comparable pay authority established for payment of Department of Defense senior executive or equivalent employees may not exceed the total annual compensation payable to the Vice President under section 104 of title 3.

"(3) To the maximum extent practicable, the rates of compensation for civilian employees at the Department of Defense shall be adjusted at the same rate, and in the same proportion, as are rates of compensation for members of the uniformed services.

"(4) To the maximum extent practicable, for fiscal years 2004 through 2012, the overall amount allocated for compensation of the civilian employees of an organizational or functional unit of the Department of Defense that is included in the National Security Personnel System shall not be less than the amount that would have been allocated for compensation of such employees for such fiscal year if they had not been converted to the National Security Personnel System, based on, at a minimum—

"(A) the number and mix of employees in such organizational or functional unit prior to the conversion of such employees to the National Security Personnel System; and

"(B) adjusted for normal step increases and rates of promotion that would have been expected, had such employees remained in their previous pay schedule.

"(5) To the maximum extent practicable, the regulations implementing the National Security Personnel System shall provide a formula for calculating the overall amount to be allocated for fiscal years after fiscal year 2012 for compensation of the civilian employees of an organization or functional unit of the Department of Defense that is included in the National Security Personnel System. The formula shall ensure that in the aggregate, employees are not disadvantaged in terms of the overall amount of pay available as a result of conversion to the National Security Personnel System, while providing flexibility to accommodate changes in the function of the organization, changes in the mix of employees performing those

functions, and other changed circumstances that might impact pay levels.

"(6) Amounts allocated for compensation of civilian employees of the Department of Defense pursuant to paragraphs (4) and (5) shall be available only for the purpose of providing such compensation.

"(7) At the time of any annual adjustment to pay schedules pursuant to section 5303, the rate of basic pay for each employee of an organizational or functional unit of the Department of Defense that is included in the National Security Personnel System who receives a performance rating above unacceptable or who does not have a current rating of record for the most recently completed appraisal period shall be adjusted by no less than 60 percent of the amount of such adjustment. The balance of the amount that would have been available for an annual adjustment under section 5303 shall be allocated to pay pool funding, for the purpose of increasing rates of pay on the basis of employee performance.

"(8) Each employee of an organizational or functional unit of the Department of Defense that is included in the National Security Personnel System who receives a performance rating above unacceptable or who does not have a current rating of record for the most recently completed appraisal period shall receive—

"(A) locality-based comparability payments under section 5304 and section 5304a in the same manner and to the same extent as employees under the General Schedule; or

"(B) the full measure of any other local market supplement applicable to the employee if locality-based comparability payments referred to in subparagraph (A) are not generally applicable to the employee.

Nothing in this paragraph shall be construed to make locality-based comparability payments or other local market supplements payable to any category of employees or positions which were ineligible for such payments or supplements (as the case may be) as of the day before the date of the enactment of the National Defense Authorization Act for Fiscal Year 2004.

"(9) Any rate of pay established or adjusted in accordance with the requirements of this section shall be non-negotiable, but shall be subject to procedures and appropriate arrangements of paragraphs (2) and (3) of section 7106(b), except that nothing in this paragraph shall be construed to eliminate the bargaining rights of any category of employees who were authorized to negotiate rates of pay as of the day before the date of the enactment of the National Defense Authorization Act for Fiscal Year 2004.

"(f) PROVISIONS REGARDING NATIONAL LEVEL BARGAINING.—

"(1) The Secretary may bargain with a labor organization which has been accorded exclusive recognition under chapter 71 at an organizational level above the level of exclusive recognition. The decision to bargain above the level of exclusive recognition shall not be subject to review. The Secretary shall consult with the labor organization before determining the appropriate organizational level of bargaining.

"(2) Any such bargaining shall—

"(A) address issues that are—

"(i) subject to bargaining under chapter 71 and this chapter;

"(ii) applicable to multiple bargaining units; and

"(iii) raised by either party to the bargaining;

"(B) except as agreed by the parties or directed through an independent dispute resolution process agreed upon by the parties, be binding on all affected subordinate bargaining units of the labor organization at the level of recognition and their exclusive representatives, and the Department of Defense and its subcomponents, without regard to levels of recognition;

"(C) to the extent agreed by the parties or directed through an independent dispute resolution process agreed upon by the parties, supersede conflicting provisions of all other collective bargaining agreements of the labor organization, including collective bargaining agreements negotiated with an exclusive representative at the level of recognition; and

"(D) except as agreed by the parties or directed through an independent dispute resolution process agreed upon by the parties, not be subject to further negotiations for any purpose, including bargaining at the level of recognition.

"(3) Any independent dispute resolution process agreed to by the parties for the purposes of paragraph (2) shall have the authority to address all issues on which the parties are unable to reach agreement.

"(4) The National Guard Bureau and the Army and Air Force National Guard may be included in coverage under this subsection.

"(5) Any bargaining completed pursuant to this subsection with a labor organization not otherwise having national consultation rights with the Department of Defense or its subcomponents shall not create any obligation on the Department of Defense or its subcomponents to confer national consultation rights on such a labor organization.

"(g) PROVISIONS RELATED TO SEPARATION AND RETIREMENT INCENTIVES.—

"(1) The Secretary may establish a program within the Department of Defense under which employees may be eligible for early retirement, offered separation incentive pay to separate from service voluntarily, or both. This authority may be used to reduce the number of personnel employed by the Department of Defense or to restructure the workforce to meet mission objectives without reducing the overall number of personnel. This authority is in addition to, and notwithstanding, any other authorities established by law or regulation for such programs.

"(2)(A) The Secretary may not authorize the payment of voluntary separation incentive pay under paragraph (1) to more than 25,000 employees in any fiscal year, except that employees who receive voluntary separation incentive pay as a result of a closure or realignment of a military installation under the Defense Base Closure and Realignment Act of 1990 (title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) shall not be included in that number.

"(B) The Secretary shall prepare a report each fiscal year setting forth the number of employees who received such pay

"(i) ADDITIONAL PROVISIONS RELATING TO PERSONNEL MANAGEMENT.—

"(1) Subject to the requirements of chapter 71 and the limitations in subsection (b)(3), the Secretary of Defense, in establishing and implementing the National Security Personnel System under subsection (a), shall not be limited by any provision of this title or any rule or regulation prescribed under this title in establishing and implementing regulations relating to—

"(A) the methods of establishing qualification requirements for, recruitment for, and appointments to positions; and

"(B) the methods of assigning, reassigning, detailing, transferring, or promoting employees.

"(2) In implementing this subsection, the Secretary shall comply with the provisions of section 2302(b)(11), regarding veterans' preference requirements, as provided for in subsection (b)(3).

"(j) PHASE-IN.—The Secretary may not, in any calendar year, add any organizational or functional unit to the National Security Personnel System which would cause the total number of employees added to such System in such year to exceed 100,000.".

(b) IMPLEMENTATION.—

(1) The requirements of section 9902 of title 5, United States Code, as amended by this section, may be implemented through rules promulgated jointly by the Secretary of Defense and the Director of the Office of Personnel Management after notice and opportunity for public comment or through Department of Defense rules or internal agency implementing issuances. Rules promulgated jointly by the Secretary and the Director under this paragraph shall be treated as major rules for the purposes of section 801 of title 5, United States Code.

(2) Both rules and implementing issuances shall be subject to collective bargaining consistent with the requirements of chapter 71 of title 5, United States Code. Rules promulgated jointly by the Secretary of Defense and the Director of the Office of Personnel Management after notice and opportunity for public comment and in accordance with the requirements of section 801 of such title 5 for a major rule shall be treated in the same manner as government-wide rules for the purpose of such collective bargaining, if such rules are uniformly applicable to all organizational or functional units included in the National Security Personnel System.

(3) Any rules and implementing issuances that were adopted prior to the date of the enactment of this Act—

(A) shall be invalid to the extent that they are inconsistent with the requirements of section 9902 of title 5, United States Code, as amended by this section;

(B) shall not supersede a collective bargaining agreement that was in place prior to the date on which the rule or implementing issuance was promulgated; and

(C) shall be subject to collective bargaining—

(i) in the case of rules which are uniformly applicable to all organizational or functional units included in the National Security Personnel System and issued jointly by the Secretary of Defense and the Director of the Office of Personnel Management

pursuant to subsection 9902(f)(1) of title 5, United States Code (as in effect prior to the enactment of this section), only as to impact and implementation, when applied to employees of the Department of Defense from any bargaining unit;

(ii) in the case of any other rules or implementing issuances, to the extent provided in chapter 71 of title 5, United States Code.

(4) The availability of judicial review of any rules or implementing issuances that were adopted prior to the date of the enactment of this Act shall not be affected by the enactment of this section.

(c) COMPTROLLER GENERAL REVIEWS.—

(1) The Comptroller General shall conduct annual reviews in calendar years 2008, 2009 and 2010 of—

(A) employee satisfaction with the National Security Personnel System established pursuant to section 9902 of title 5, United States Code, as amended by this section; and

(B) the extent to which the Department of Defense has effectively implemented accountability mechanisms, including those established in section 9902(b)(7) of title 5, United States Code, and internal safeguards for the National Security Personnel System.

(2) To the extent that the Department of Defense undertakes internal assessments or employee surveys to assess employee satisfaction with the National Security Personnel System in any such calendar year, the Comptroller General shall—

(A) determine whether such assessments or surveys are appropriately designed and statistically valid; and

(B) provide an independent evaluation of the results of such assessments or surveys.

(3) To the extent that the Department of Defense does not undertake appropriately designed and statistically valid employee surveys, the Comptroller General shall conduct such a survey and provide an independent evaluation of the results.

(4) The Comptroller General shall report the results of each annual review conducted under this subsection to the Committees on Armed Services of the Senate and the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Oversight and Government Reform of the House of Representatives.

**SEC. 1107. REQUIREMENT FOR FULL IMPLEMENTATION OF PERSONNEL DEMONSTRATION PROJECT.**

(a) REQUIREMENT.—The Secretary of Defense shall take all necessary actions to fully implement and use the authorities provided to the Secretary under section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2721), as amended by section 1114 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–315), to carry out personnel management demonstration projects at Department of Defense laboratories that are exempted by section 9902(c) of