

More Co-Sponsors on Health Care Reform Law Amendments; Tax Extensions; and Regulatory Freeze

Welcome to *legislate*, a weekly roundup of events on Capitol Hill that affect employee benefits and human resources. *Legislate* also will identify important legislative trends and provide tutelage on how Congress works. Finally, be on the lookout for special issues of *legislate* on hot topics such as the health and retirement platforms of the 2012 presidential candidates.

Summing it up

Last week, the House of Representatives' (House) Committee on Appropriations' Labor, Health and Human Services, Education and Related Agencies Subcommittee approved a draft fiscal year 2013 funding bill that would undercut health care reform implementation. On the Senate side, although no significant employee benefit legislation was introduced last week, a number of Republican senators added their names as co-sponsors to existing legislation to amend or repeal parts of the health care reform law. Senator Harry Reid (D-NV) introduced legislation to keep the Bush-era tax cuts for families earning less than \$250,000 annually. Senator Orrin Hatch (R-UT) also introduced legislation to extend all of the Bush-era tax cuts. Extension of the Bush-era tax cuts surely will be front and center for the remainder of the session, and most likely will overshadow this week's hearing on the burdens of Sarbanes-Oxley and a House vote on a bill to significantly limit federal agencies' regulatory activity.

The week in review

Health Care

The House Committee on Appropriations' Labor, Health and Human Services, Education, and Related Agencies Subcommittee approved a [draft fiscal year 2013 Labor, Health and Human Services funding bill](#). According to the [press release and bill summary](#), several provisions would stop the implementation of the health care reform law, including rescinding the previous year's mandatory funds and prohibiting the use of any new discretionary funds to implement the health care reform law. This is one of the many bills that the Republicans in the House have put forward to stop the health care reform law. However, It is unlikely that the Democratically controlled Senate would agree to this funding proposal. If no agreement is reached, the current funding levels would generally be maintained through a continuing resolution.

On the Senate side, although no new health care legislation relating to employer plans was introduced last week, a number of senators added their names as co-sponsors to existing bills that would amend or repeal certain provisions

of the health care reform law. Senators Lisa Murkowski (R.-AK), Jon Kyl (R-AZ), John Thune (R-SD), and John Boozman (R-AR) co-sponsored the [Medical Device Access and Innovation Protection Act](#) (S. 17), which would repeal the health care reform law's medical device tax. Senators Murkowski, Marco Rubio (R-FL), and Lamar Alexander (R-TN) co-sponsored the [American Liberty Restoration Act](#) (S. 19), which would repeal the health care reform law's individual mandate. Finally, Senator Richard Burr (R-NC) co-sponsored the [Jobs and Premium Protection Act](#) (S. 1880), which would repeal the law's tax on health care insurers. Although it is unlikely that these bills will pass the Senate – let alone become law – members of Congress are sponsoring bills to clarify their positions on the health care reform law following the Supreme Court ruling and before the November election.

Labor and Employment

Senator Boozman co-sponsored the [National Right to Work Act](#) (S. 2173), which would repeal provisions of the National Labor Relations Act and the Railway Labor Act that permit employers to require union membership as a condition of employment under a union security agreement. Although it is unlikely that this legislation will move in a Democratic-controlled Congress, it does show Senator Boozman's position on this particular labor issue.

Sundry

On July 17, Senator Reid introduced the [Middle Class Tax Cut Act](#) (S. 3393), which, among other things, would extend the Bush-era tax cuts for one year for individuals earning less than \$200,000 annually and families earning less than \$250,000 annually. On July 18, Senator Hatch introduced the [Tax Relief Act of 2012](#) (S. 3401), which, among other things, would extend the Bush-era tax cuts for all individuals. Depending on what passes, employers may have to adjust their payroll systems for federal income tax withholding.

The week to come

Executive Compensation

The House Financial Services Committee's Capital Markets and Government Sponsored Enterprises Subcommittee announced that it will hold a hearing July 26 on the "burdens and benefits" of the 2002 Sarbanes-Oxley Act. The agenda is not yet available, but it would not be surprising if executive compensation issues were included.

Labor and Employment

On July 25, 2012, the House Education and the Workforce Committee's Subcommittee on Health, Employment, Labor, and Pensions will hold a hearing "Examining Proposals to Strengthen the National Labor Relations Act." It is unlikely that this hearing will result in any viable legislation.

Sundry Items

Signaling the Republicans' position on regulatory activity, the House is expected to vote on the [Regulatory Freeze for Jobs Act of 2012](#) (H.R. 4078), which combines seven bills that prohibit or revamp the issuance of regulatory guidance. If passed, this bill would have an adverse impact on the implementation of certain laws, such as the Affordable Care Act. In part, H.R. 4078 would prohibit any federal agency from taking significant regulatory action from the date of

enactment of H.R. 4078 into law until the Secretary of Labor sends a report to the Director of the Office of Management and Budget stating that the average monthly unemployment rate for any quarter beginning after enactment is 6% or less. H.R. 4078 permits presidential waivers to allow for significant regulatory action that may be necessary because of an imminent threat to public health or safety, or other emergency; for the enforcement of criminal or civil rights laws; for national security; or for the implementation of an international trade agreement. H.R.4078 also provides for congressional waivers and exceptions for regulations that repeal current regulations. H.R. 4078 may even prohibit agencies from issuing general guidance because the bill defines regulatory action as “substantive action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, including a notice of inquiry, an advance notice of proposed rulemaking, and a notice of proposed rulemaking.” Even if this bill were to pass in the House, it is unlikely to garner enough support in the Senate to pass.

Did you know?

According to the [Senate Virtual Reference](#) page, cloture is the only way to break a filibuster and it takes 60 votes to invoke cloture. The cloture rule has created confusion by leading some to believe that it takes 60 affirmative votes in the Senate to pass a bill, when in fact it takes 51.

Next week: What is unanimous consent?

This legislate is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.