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Key legislative developments affecting your human resources

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Tax and Budget Issues Remain as Congress Prepares to Recess

Summing it up

Last week, the House Committee on Ways and Means held two subcommittee hearings on the Patient Protection and Affordable Care Act (ACA). The first focused on the Internal Revenue Service's (IRS's) ability to implement and administer the ACA, and the second focused on implementation of the health insurance exchanges.

The Office of Management and Budget released its report pursuant to the Sequestration Transparency Act of 2012, which lays out the budget cuts the administration will implement if agreement on a deficit-cutting plan is not reached and the sequester occurs. Legislation was introduced in the House of Representatives that would revise the automatic cuts to defense and domestic spending scheduled to take effect on January 2, 2013. However, news reports suggest that this bill and other budget negotiations are unlikely to move forward before the November elections.

The week in review

Health Care

Last week, the two subcommittees of the House Committee on Ways and Means continued to examine the implementation of various provisions in the ACA. On September 11, the Subcommittee on Oversight held a hearing on the IRS's implementation and administration of the health care law. The hearing focused on three main issues: (1) how the IRS's new responsibilities under the ACA will affect taxpayers and the agency's core revenue-collection mission; (2) the IRS's progress in implementing ACA's provisions; and (3) how the IRS will coordinate with other federal departments, state governments, and stakeholders to implement the ACA's tax provisions. An IRS official testified that the IRS acted immediately to implement many key provisions of the ACA, and confirmed that the IRS is constrained in collecting penalties under the ACA's individual minimum coverage provisions.

While acknowledging the IRS's efforts, other witnesses questioned the agency's ability to effectively implement the ACA's provisions. One witness questioned whether the agency would be able to accurately, and without tremendous administrative burden, calculate the premium tax credit. Another witness questioned whether: (1) differing objectives of the IRS and the Department of Health and Human Services (HHS) can be reconciled; (2) the IRS can finalize ACA regulations to provide individuals and businesses ample time to develop compliance plans; and (3) the IRS has sufficient resources for the 2013 tax season to ensure that taxpayers are not adversely affected by its ACA implementation and administration efforts. Another called for reform of the tax code. Finally, a witness speaking on behalf of the employer community cited an urgent need for additional guidance on: (1) reporting and disclosure obligations; (2) "minimum value" coverage; and (3) wellness program incentives.

On September 12, the Subcommittee on Health held a hearing to discuss implementation of the health insurance exchanges created by the ACA. Notably, no HHS official testified before the subcommittee. Witnesses included Pennsylvania's Insurance Commissioner, representatives of trade associations representing retailers and health insurance plans, a law professor, and a director of a university-based program that is helping states implement ACA provisions. Noting that HHS Secretary Kathleen Sebelius had not yet responded to questions he raised in an August 23 letter, Pennsylvania's Insurance Commissioner testified that lack of information and clear direction from HHS hampers his state's ability to decide whether to implement an exchange. Other witnesses expressed similar concerns and emphasized the need for definitive regulatory guidance. However, the final witness argued that the lack of federal guidance should not hinder implementation of state exchanges, asserting that states are working closely with federal officials on developing exchanges and are taking advantage of the flexibility the ACA offers in implementing them.

Sundry

Last week, Senator Max Baucus (D-MT) continued his efforts to bring the Family and Business Tax Cut Certainty Act of 2012 (S. 3521) to the floor before the elections. The Finance Committee-approved bill contains various tax extenders, and would extend the parity in qualified transportation fringe benefits through December 31, 2013. Although the bill was placed on the Senate calendar, it is unclear whether it will reach the floor for debate and a possible vote before the November elections. According to news reports, the Senate is now expected to be in session only through September 21 and recess until after the elections.

As reported in last week's *legi***slate**, unless Congress and the administration find a way to avoid them, automatic spending cuts of $1.2 trillion over 10 years to defense and domestic programs (known as sequestration) will start on January 2, 2013. Last week, the Office of Management and Budget (OMB) released its report pursuant to the Sequestration Transparency Act of 2012 that details federal spending cuts the administration will implement if the sequester occurs. According to OMB, the sequestration would result in a reduction of 9.4% in nonexempt defense discretionary funding and 8.2% in nonexempt nondefense discretionary funding. It also would impose cuts of 2% to Medicare, 7.6% to other nonexempt nondefense mandatory programs, and 10% to nonexempt defense mandatory programs.

Also last week, Representative Allen West (R-FL) introduced – and the House passed – the National Security and Job Protection Act (H.R. 6365), which would replace the automatic cuts to defense spending but would include cuts to domestic spending. Among other things, the bill would nullify any sequestration order the President may issue to carry out reductions to direct spending for the FY2013 defense function. Remarks by House Speaker Boehner suggest that he was not confident Congress could make progress on the sequester or the soon-to-expire Bush-era tax cuts, but remains committed to reducing spending. However, any action on the debt is unlikely before the elections.

The week to come

Both chambers will be in recess starting September 21, and they are not expected to return until after the elections. Given the enormity of the debt issue, it is certain that there will be plenty of back room dealings to go along with the 'front room' finger-pointing during the recess.

Did you know?

According to the Senate Reference Page, the term pro forma comes from Latin and means "as a matter of form." A pro forma session is a brief meeting of the Senate, sometime lasting only a few minutes. Under the Constitution, neither chamber can adjourn for more than three days without the consent of the other chamber. For political reasons, sometimes consent is withheld. In such circumstances, the chamber will merely hold pro forma sessions and not formally adjourn.

Next week: *Legi***slate** also will be in recess, but look for special reports on each presidential candidate's platforms addressing human resource and benefit issues.

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