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Legislate®
Key Legislative Developments Affecting Your Human Resources

Volume 5 | Issue 25 | June 20, 2014

Potpourri: OT, ESOPs, ACA defunding, marketplace subsidies, health transparency, and transportation funding

Recently introduced legislation would change the exemption from overtime pay for certain workers and provide tax breaks to banks in connection with loans to ESOPs. An appropriations subcommittee in the House of Representatives approved FY 2015 funding for the IRS that would prohibit implementation of the health reform law's individual mandate and insurance coverage reporting requirements. HHS released a study this week examining subsidies and competition in the public marketplaces, while the Senate Finance Committee requests public comments on improving health care transparency. In the week ahead, Congress is expected to turn its attention to funding transportation spending.

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Pension and retirement

In the House of Representatives, Rep. Dave Reichert (R-WA) introduced last week H.R. 4837 — the Promotion and Expansion of Private Employee Ownership Act of 2014. The bill would provide a deduction to banks that make a certain type of loan either to (1) an S-corporation that sponsors an ESOP, or (2) an ESOP sponsored by an S-corporation. The loan must be for the acquisition of employer securities by the ESOP, and the deduction for the bank is equal to 50% of the interest received on such loan. The bill would also modify the Small Business Act by restoring certain preferences that no longer apply under present law to a small business once an ESOP that it sponsors acquires a 50% or more ownership stake.

Transportation funding

The tax-writing committees in Congress may consider legislation to pay for federal highway and transportation spending before Congress leaves next Friday for its July 4th recess. A spending offset has not yet been agreed upon. See our May 9, 2014 *Legislate* for more information on Congress' use of pension and retirement provisions in the past to pay for federal spending — including transportation spending.

The bill is co-sponsored by four Republicans and four Democrats.

The prospects for the bill are uncertain. Its cost has not been estimated by the Joint Committee on Taxation (JCT), but it will likely lose revenue. However, its proponents argue that it will help address employee retirement savings needs and be a driver of economic growth and job stability. Interestingly, the bill is somewhat of a reprise of now-repealed section 133 of the tax code. Section 133 provided for a 50% deduction for interest received from certain kinds of loans to ESOPs. Section 133 was repealed as a revenue offset for the Small Business Job Protection Act of 1996, PL 104-188 (section 1602). Its repeal was estimated at the time to raise $2.3 billion. JCT explained the reason for repeal as follows:

> "The Congress believed that the 50-percent exclusion for interest with respect to ESOP loans provided an unnecessary tax benefit to financial institutions for loans they would make without regard to the interest exclusion. The Congress found no evidence that employers that maintain ESOPs have less access to borrowing than other borrowers or that there is a need to provide an incentive to lenders to make money available to ESOPs." (Page 213)

Although it may remain true that all borrowers are similarly constrained in their access to borrowing, it is possible that Congress will agree for now that small business expansion paired with job stability and retirement growth is a worthy experiment.

Health care

Affordable Care Act defunding

A House appropriations subcommittee approved FY 2015 funding for the IRS on Wednesday. The legislation includes a provision that would prohibit the IRS from implementing and enforcing the reform law's individual mandate and section 6055 health insurance coverage reporting (see our March 6, 2014 *FYI Alert* on regulations implementing the reporting requirements for employers). This prohibition will probably pass the House, but is likely to be blocked by the Senate.

Transparency

Senators Ron Wyden (D-OR) — chairman of the Finance Committee — and Chuck Grassley (R-IA) are seeking comments from the public on new ideas for improving overall transparency in health care — particularly quality and value. Comments must be submitted before August 12 via email—data@finance.senate.gov.

Labor and employment

Senator Tom Harkin (D-IA) — chairman of the Senate's Health, Education, Labor, and Pensions

Affordable Care Act

HHS released a report on Wednesday that discusses the impact of subsidies on premium costs and the degree of competition in the federally facilitated public marketplaces. The subsidies are generally available to individuals and families with income between 100 and 400% of the federal poverty line—for 2014, generally $46,680 for a single person and $95,400 for a family of four.

The report found that on average subsidies reduced premiums by 76% — an average reduction from $346 to $82 per month. The degree of reduction varies significantly from state to state, with Mississippi having a 95% average reduction (to $23 per month) and Arizona a 58% reduction (to $113 per month).

The report found that 82% of individuals eligible to purchase coverage have 3 to 11 insurance companies offering coverage in their rating area. The degree of competition varies significantly state by state. In New Hampshire and West Virginia, there is one company offering coverage, while 16 companies offer coverage in New York.

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(HELP) Committee — introduced legislation on Wednesday (S. 2486) that would make significant changes to the Fair Labor Standards Act (FLSA). The bill, co-sponsored by eight other Democrats, would narrow the scope of the exemption from the FLSA's overtime requirements for executive, administrative, and professional workers (the so-called "white-collar" exemptions). By changing both the FLSA's salary level and job duties tests, the bill would substantially expand overtime eligibility for many salaried employees. The bill would likely pass the Senate HELP Committee if a markup was held. Like legislation to increase the federal minimum wage, the bill is unlikely to garner enough support to receive an up or down vote on the Senate floor. (See our May 2, 2014 *Legislate*.)

Among the changes to the FLSA that would be made by the bill are:

- The salary threshold to qualify for the white collar exemptions would be raised from $455 per week to $1,090 per week over several years and indexed to inflation thereafter.
- The current job duties test under applicable DOL regulations would redefine "primary duty" to require an employee to spend at least 50% of his or her time performing exempt duties to be ineligible for overtime pay.
- The salary threshold for the overtime exemption for highly compensated employees would gradually be raised from the current $100,000 to $125,000 and indexed to inflation thereafter.
- FLSA recordkeeping penalties equal to those imposed for minimum wage and overtime pay violations would be established.

Earlier this year, President Barack Obama directed the DOL to narrow the scope of existing exemptions from the FLSA's minimum wage and overtime requirements, and the DOL has set a target date of November 2014 to propose new overtime rules. (See our June 4, 2014 *For Your Information*.) In light of the anticipated regulatory involvement, it is especially unlikely that this bill will move.

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