

# Legislate<sup>®</sup>

## Key Legislative Developments Affecting Your Human Resources

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## Pension Smoothing Extension Passes House

The House of Representatives passed a transportation funding bill that includes an extension of MAP-21 pension interest rate smoothing. The House also passed a FY 2015 funding bill for the IRS that would block implementation of the individual mandate and associated employer reporting. In the Senate, a bill in response to the Supreme Court's *Hobby Lobby* decision failed to clear a procedural hurdle. Finally, legislation was introduced that would change bankruptcy rules for employees, retirees, and executives.

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### Pension and Retirement

The House of Representatives (House) passed [H.R. 5021](#) this week—[367 for and 55 against](#)—with broad bipartisan support. The bill would provide funding for federal transportation spending, and would partially offset the cost with an extension of MAP-21 pension interest rate smoothing. (See our [July 11, 2014](#) edition of *Legislate* for more information on H.R. 5021.)

Despite the Obama administration's [support](#) of H.R. 5021 as a short-term fix to the Highway Trust Fund, the legislation faces an uncertain future in the Senate. Last week, the Senate Finance Committee approved its own version of transportation spending (also in our [July 11, 2014](#) *Legislate*). That legislation differed with H.R. 5021 as to the length of the extension of MAP-21 smoothing and on the use of other cost offsets (unrelated to employee benefits). It remains to be seen whether the Senate will take up the Senate Finance Committee's proposal, H.R. 5021, or develop an alternative proposal for transportation funding in the weeks ahead. Congress is likely to pass a transportation funding bill before it leaves for August recess.

### Congressional lawsuit against President Obama?

The Rules Committee held a hearing to consider the merits of a [resolution](#) that would authorize the House to file a lawsuit against President Barack Obama and other members of the administration for actions inconsistent with their constitutional duties. If approved by the House, the lawsuit would seek relief—including injunctive relief—with respect to the implementation (or failure to implement) the ACA. During the committee [hearing](#), one concern raised over ACA implementation was the administration's delays of the employer shared responsibility requirement.

## Healthcare

### Affordable Care Act Implementation

The House passed [H.R. 5016](#) this week. The bill would provide funding to several government agencies for FY 2015—which starts October 1—including the IRS. Section 111 of the bill would prohibit the IRS from implementing and enforcing the Affordable Care Act's (ACA) individual mandate and section 6055 reporting for FY2015. (See our March 6, 2014 *FYI Alert* for more information on the obligations of employers to report employee health coverage under section 6055.) The prohibition is not likely to become law — the Administration Policy [statement](#) confirms that President Obama's top advisors would recommend that he veto the legislation, if presented to him. The House, Senate, and Administration must reach agreement on funding the federal government before October 1 to avoid another government shutdown. It remains to be seen whether the House will be able to include modifications to the ACA as a condition to funding the federal government.

### Hobby Lobby Legislative Response

The Senate held a procedural vote on [S. 2578](#) — a bill Democrats introduced in response to the Supreme Court's *Hobby Lobby* decision. (See our July 11, 2014 edition of *Legislate* for more information on the bill.) The procedural vote was the first of several steps before a vote could be held by the Senate on the actual bill itself. A vote on approval of the bill itself (as opposed to a procedural vote that will allow such a vote) is often referred to as an “up or down” vote on the bill. Since the procedural vote [failed](#), it is unlikely that the Senate will hold an up or down vote on S. 2578.

## Proposed Bankruptcy Legislation

Senator Dick Durbin (D-IL) introduced [legislation](#) last week (S. 2589) that would make a number of modifications to Chapter 11 bankruptcy law as it applies to employees and retirees of companies that reorganize in bankruptcy. The modifications would alter payment priorities for unpaid wages and employee benefit plan contributions, and establish a new priority administrative expense for severance pay. The changes are intended to provide greater recoveries and reduce losses for rank-and-file workers, while moderating executive and creditor claims. For example, the legislation would establish that the principal purpose for a chapter 11 bankruptcy is the preservation of jobs to the maximum extent possible. The legislation would also modify bankruptcy rules on back pay awards for WARN Act violations, and would restrict the modification of collective bargaining agreements and employer commitments for retiree pension and health coverage.

New restrictions would be placed on executive compensation programs that would:

- Require disclosure and court approval of executive compensation packages
- Restrict the payment of bonuses and incentive compensation to senior officers and others
- Eliminate retiree benefits for insiders if rank-and-file workers have lost their retirement or health benefits

S. 2589 is not likely to become law in this Congress. Senator Durbin introduced similar legislation in the 111<sup>th</sup> ([S. 3033](#)) and 112<sup>th</sup> ([S. 3381](#)) Congresses, and the legislation in both cases did not move beyond introduction and referral to the Judiciary Committee.

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