

Legislate[®]

Key Legislative Developments Affecting Your Human Resources

Volume 5 | Issue 31 | August 1, 2014

Congress OK's Smoothing Extension; House Approves ACA Lawsuit

MAP-21 pension smoothing was the focus of a battle between the chambers this week, with the Senate agreeing last night to a transportation funding bill that includes an extension of pension smoothing. This week the House also approved the filing of a lawsuit against the president and the administration over ACA implementation. Legislation was introduced last week that would provide employees with negotiating rights over work schedules, and a Congressional panel examining improvements to the wage and hour regulatory structure held a hearing.

In this article: [Retirement](#) | [Health Care](#) | [Labor and Employment](#)

Retirement

Congress passed transportation funding legislation yesterday ([HR 5021](#)) that partially offset its cost with an extension of MAP-21 pension interest rate smoothing. The legislation is headed next to President Barack Obama, who is expected to sign it into law soon. (See our [August 1, 2014 FYI Alert](#) for more information on the legislation.)

The passage of the same version of HR 5021 by both chambers was the culmination of a chaotic week for pension smoothing that began Tuesday with the Senate stripping out all of the pension smoothing provisions from a transportation funding bill the House of Representatives (House) had passed several weeks ago. (See our [July 11, 2014](#) and [July 18, 2014](#) editions of *Legislate* for more information on the original House-passed bill.) The House added the smoothing provisions back to the legislation yesterday afternoon, and the Senate accepted that change last night.

Health Care

As expected, the House approved [H. Res. 676](#) this week in a largely [party-line vote](#). The resolution permits Speaker John Boehner (R-OH) to file a lawsuit on behalf of the House against President Obama and other members of the administration on the grounds that their actions in implementing the Affordable Care Act (ACA), including failures to act, were inconsistent with their constitutional duties. The administration's action delaying the employer shared responsibility requirements figured prominently during the debate of H. Res. 676.

A lawsuit is likely to be filed by the House later this year. It remains to be seen what relief the suit might request, as the resolution only specifies that “appropriate relief” may be sought. Senate passage of a similar resolution is highly unlikely.

Labor and Employment Law

Last week, the House Education and the Workforce Committee’s Subcommittee on Workforce Protections held a [hearing](#) on “Improving the Federal Wage and Hour Regulatory Structure.” Witnesses at the hearing included representatives of the Government Accountability Office (GAO), a Human Resources management organization, an advocacy organization for low-income and unemployed workers, and a former administrator of the Wage and Hour Division (WHD). GAO testified that FLSA lawsuits have increased significantly over the last decade, with the increase concentrated in three states — Florida, New York, and Alabama — and four industries - accommodations and food services, manufacturing, construction, and miscellaneous services (such as laundry, nail salon, and cleaning services). GAO recommended that the DOL develop a systematic approach to identify areas of confusion that may contribute to noncompliance and improve guidance to employers and workers in those areas.

Several of the other witnesses testified about the practical challenges employers face in complying with the FLSA, and the lack of clear agency guidance on critical issues — such as worker classification. Several of them urged the DOL to shift its focus from enforcement to compliance assistance, and called on the WHD to reinstitute the issuance of opinion letters. Some of the witnesses also expressed concern that the DOL’s current efforts to modernize FLSA regulations on white-collar exemptions and overtime requirements may further complicate employers’ compliance efforts — especially for small employers and nonprofits.

On Wednesday, Rep. Keith Ellison (D-MN) introduced legislation ([H.R. 5280](#)) that would strengthen current employee protections for union activities under the National Labor Relations Act (NLRA) by providing a private right of action for certain violations of the NLRA, and for other purposes. The bill was referred to the Committee on Education and the Workforce, and the Committee on the Judiciary, but is unlikely to advance further.

Employee scheduling rights?

Legislation was introduced last week in the Senate ([S. 2642](#)) that would protect employees against retaliation for requesting changes to their work schedules — including start and finish times, hours required to work or be on call, and work location. The Schedules That Work Act would require employers with at least 15 employees to engage in an interactive process to discuss such requests, and to provide the reason for any denial. Employers would be required to grant requests related to caregiving, education and training, or a second job unless they have a *bona fide* reason not to.

The legislation would also provide special rules for employers of retail, food service, and cleaning employees. For example, the new rules would require employers to set work schedules at least two weeks in advance, and to provide a minimum of four hours pay if the employee reports as scheduled but is given less than four hours of work. Employers would also have to provide an extra hour of pay for shift schedule changes with less than 24 hours’ notice, as well as for each day during which the employee works a split shift.

Even if brought to the floor for a vote, the legislation has little chance of passing the Senate. A companion bill ([HR 5159](#)) has been introduced in the House, and is highly unlikely to be considered by that chamber.

Authors

Drew Crouch, JD, LL.M.

Nancy Vary, JD

Produced by the Knowledge Resource Center of Buck Consultants at Xerox

The Knowledge Resource Center is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, surveys, training, and knowledge management. For more information, please contact your account executive or email fyi@xerox.com.

You are welcome to distribute *FYI*® publications in their entirety. To manage your subscriptions, or to sign up to receive our mailings, visit our [Subscription Center](#).

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.