

FY 2015 Funding Up Ahead; NLRB Policies Examined by Congressional Panel

Congress returned from its August recess this week. The Appropriations Committee in the House of Representatives released a short-term government funding measure, which notably did not include any changes to the Affordable Care Act. A subcommittee of the House's Education and the Workforce Committee examined NLRB policies relating to franchise businesses. Next week, two congressional committees will study retirement plan issues — including multiemployer pension plans.

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Health Care

The Appropriations Committee in the House of Representatives (House) released a [continuing resolution](#) (CR) this week that would fund the federal government through December 11, 2014 ([H.J. Res. 124](#)). It also prepared a [summary](#) of the CR — observing that the resolution is free of controversial riders, maintains current levels of federal spending, and does not seek to change existing federal policies. For health care, the CR is notable because it does not include any modifications to the Affordable Care Act (ACA). The House is expected to vote on the CR next week.

Retirement

Next week there are two hearings scheduled on retirement, both of which will be covered in our next edition of *Legislate*. On September 16, the Senate Finance Committee will hold a [hearing](#) in connection with the committee's work on comprehensive tax reform. The hearing, titled "Retirement Savings 2.0: Updating Savings Policy for the Modern Economy," is expected to focus on retirement security and additional measures that can help Americans save for retirement.

ACA modification bill passes the House.

This week the House passed [HR 3522](#) — the Employee Health Care Protection Act. The bill would permit health insurance companies to continue offering in 2014 (and through 2018) policies that had been in effect in the group market on any date during 2013. The Congressional Budget Office [estimates](#) that the bill would have a small deficit reduction impact — a little over \$1 billion over ten years. The Senate is not likely to take up the measure, and the White House has [indicated](#) the president would veto the legislation.

On September 17, the House Ways and Means Subcommittee on Select Revenue Measures will hold a [hearing](#) on defined benefit pension plans offered by private employers. The hearing will focus on challenges facing employers, employees, and retirees who rely on these plans for retirement security. The hearing will examine multiemployer pension plan funding rules and selected issues affecting single employer plans.

Labor and Employment

This week a subcommittee of the House's Education and the Workforce Committee held a [hearing](#) titled "Expanding Joint Employer Status: What Does it Mean for Workers and Job Creators?" The hearing focused on the recent announcement by NLRB General Counsel Richard Griffin that, under the National Labor Relations Act, McDonalds, Inc. is a joint employer with its franchisees. The subcommittee heard from a variety of witnesses, including a lawyer who advises employers, a law professor, and business persons in franchise relationships. Some of the witnesses expressed concern that the expansive joint employer standard advocated by the NLRB's general counsel would unnecessarily sweep away decades of settled labor law, destroy the franchise model, hurt small businesses, and cost jobs. Others expressed concern that franchisees would have significantly reduced autonomy over their businesses — making the franchise relationship less appealing to potential franchisees. One witness expressed support for the general counsel's re-examination of the traditional joint employer standard given the growth of temporary staffing and franchising arrangements.

EEOC hearing is scheduled.

Next week, a subcommittee of the House's Education and the Workforce Committee will hold a [hearing](#) on introduced EEOC legislation. We'll cover that hearing in next week's *Legislate*.

On Monday of next week, the Senate is [expected](#) to hold a [cloture](#) vote on the proposed Paycheck Fairness Act ([S.2199](#)), which was introduced by Sen. Barbara Mikulski (D-MD) in April. The bill would amend the portion of the Fair Labor Standards Act known as the Equal Pay Act (EPA) to revise remedies for, enforcement of, and exceptions to prohibitions against sex discrimination in wages. Among other things, the bill would require employers to show that pay differentials between male and female workers had a business justification and were based on *bona fide* factors other than sex. In addition to making it more difficult for employers to use the

"other than sex" defense to a wage discrimination claim, the bill would expand the damages available under the EPA and make it easier to bring class action suits against employers. (See our [April 11, 2014 Legislate](#) for further details about this bill and the cloture vote that failed earlier this year.)

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