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Key Legislative Developments Affecting Your Human Resources

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Uncertain Road Ahead for Multiemployer Plans

With Congress in recess until after the November 4 mid-term elections, this week's *Legislate* reviews activity on multiemployer pension plans. Legislation on a key industry proposal has yet to be introduced, but two bills addressing mineworker plan funding and expiring Pension Protection Act rules could see further congressional activity. A recent hearing demonstrates Congress is interested in funding issues facing multiemployer pension plans.

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Anticipated Legislation

A key recommendation for legislative action to address multiemployer plan concerns is a proposal to reform the multiemployer pension plan system that was published by the National Coordinating Committee for Multiemployer Plans (NCCMP). The proposal — titled Solutions not Bailouts — was developed by a special commission convened by NCCMP comprised of several dozen employers, unions, and organizations representing both parties. The proposal's theme centers on preservation to strengthen the current system, remediation to assist deeply troubled plans, and innovation to foster new plan designs. Specifically, the proposal includes a number of recommended legislative changes — ranging from technical changes to the Pension Protection Act of 2006 (PPA) to rules that would permit new benefit plan designs. Also included is a controversial provision that would allow certain distressed multiemployer pension plans facing inevitable insolvency to suspend the accrued benefits of plan participants — including retirees in pay status, but only with PBGC approval. (See our January 3, 2014 *Legislate* for more information on the NCCMP proposal.)

With Congress in recess until after the November 4 mid-term elections and the next Congress scheduled to begin in January 2015 after the short lame duck session, the outlook for introduced legislation on the NCCMP proposal — and any congressional action on such legislation — is bleak for the remainder of this year. Multiemployer pension plan funding is likely to be a key retirement topic for the new 114th Congress — especially given projections by the

Congressional Budget Office (CBO) that the PBGC's multiemployer pension plan program is facing insolvency as soon as 2021. (See our April 17, 2014 *Legislate* for more information on the CBO projections.) The PBGC has also repeatedly published similar estimates.

However, there is a chance that Congress might act on two other bills involving multiemployer plan funding during the lame-duck session of the 113th Congress:

- S. 468 — the Coal Accountability and Retired Employee Act of 2013 (CARE Act). Among other changes, the bill would transfer funds from coal mine operator-paid reclamation fees to the 1974 United Mineworkers of America Pension Fund. The legislation is sponsored by Senator Jay Rockefeller (D-WV), who is retiring at the end of the 113th Congress.
- S. 2260 — the Expiring Provisions Improvement, Reform, and Efficiency Act of 2014 (EXPIRE Act). This legislation, sponsored by Senator Ron Wyden (D-OR), would extend approximately 54 expiring, or soon to expire, tax code provisions (collectively referred to as "tax extenders" legislation). Among the proposed extensions is a one-year extension of the 2014 sunset dates in the Pension Protection Act of 2006 for special funding rules for endangered and critical status multiemployer pension plans (yellow and red zone plans). See our April 4, 2014 *Legislate* for more information on the multiemployer plan provisions of the EXPIRE Act.

The outlook for both bills likely depends on whether there is a change in the majority party in the Senate after the mid-term elections. Currently, Democrats are in the majority, but there is a chance that Republicans may be the majority in the next Congress. If the status quo remains, then Senate consideration of both bills is possible during the lame duck. If the Senate majority does change, then Senate action is less likely — the focus of the Senate in that case will probably be confirmation of presidential executive and judicial branch nominations. The outlook in the House is less certain. Rep. Nick Rahall (D-WV) introduced the CARE Act in the House (H.R. 980), but the bill has no Republican co-sponsors. A similar bill (H.R. 2918) was introduced by Rep. David McKinley (R-WV) and has 75 co-sponsors (Republicans and Democrats), but there is no companion bill in the Senate. To date, the House of Representatives (House) has taken an incremental approach to tax extenders legislation — passing only a few of the 54 expiring provisions and making them permanent — but none of these bills include the expiring PPA multiemployer plan funding provisions.

Congressional Hearings

The Education and the Workforce Committee in the House held a series of hearings on the funding of multiemployer pension plans, with the most recent occurring last October (see our November 1, 2013 *Legislate* for more information on the hearing). Last month, the Ways and Means Committee in the House also examined the funding of multiemployer plans as part of a hearing that focused on private sector defined benefit pension plans. The Education and the Workforce Committee and the Committee on Ways and Means are the two committees in the House with jurisdiction over multiemployer pension plans. In the Senate, the Finance Committee and the Health, Education, Labor, and Pensions (HELP) Committee have jurisdiction over the plans.

Two witnesses testified on multiemployer plan issues at the Ways and Means hearing, which was convened by the Select Revenue Measures Subcommittee on September 17. The first witness represented a large employer that contributes to multiemployer pension plans. The key points made by the witness included:

- The system is threatened by a number of pension plans that are headed towards insolvency — plans that cover an estimated 1.5 million participants.

- The troubled plans threaten the solvency of the PBGC's insurance program for multiemployer pension plans, with the witness citing to the PBGC's recent FY 2013 Projections Report and estimates by CBO that the PBGC program will be insolvent by approximately 2021.
- The NCCMP's proposal for allowing benefit suspensions — albeit painful — would allow distressed plans to avoid insolvency, and in turn prevent the collapse of the PBGC's insurance program for multiemployer plans.
- Congress must act now. The witness warned that legislative changes to help troubled plans must be enacted well in advance of 2021.

The second witness to testify on multiemployer pension plans was an independent consulting actuary. This witness expressed concern that multiemployer pension plan liabilities are significantly understated — by perhaps as much as 50%. The witness explained that this is because plan actuaries are using a discount rate for determining the present value of plan liabilities that is too high due to client pressure for low valuations. The witness thought that valuations should instead be made by actuaries employed by an entity that guarantees multiemployer pension plan benefits.

Additional hearings are possible in the months ahead and particularly in the new Congress. Several congressional committee chairs have issued statements on the multiemployer funding problem including Chairman Tom Harkin, (D-IA) of the HELP Committee, and Chairman Ron Wyden (D-OR) of the Finance Committee (individually on the 2013 PBGC report and in his opening statement during his committee's markup of the EXPIRE Act in April).

And back in June, several Education and the Workforce committee leaders issued this promising joint statement in response to the PBGC report:

"The latest PBGC report confirms in stark detail the significant challenges confronting the multiemployer pension system. The systemic crisis we face threatens countless workers, employers, and retirees, and could ultimately harm American taxpayers, as well. We have an obligation to advance reforms that will modernize the system, encourage employer participation, protect taxpayers, and offer new tools to help rescue troubled plans. We continue to work together to find common ground and a responsible legislative solution. The American people deserve nothing less."

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