

Legislate[®]

Key Legislative Developments Affecting Your Human Resources

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Mid-term Elections Preview

Mid-term elections for the Senate and the House of Representatives will take place next Tuesday. This week's *Legislate* provides an overview of key employee benefits issues the next Congress will face and highlights the ten closest races that may change the balance of power in the Senate. A change in control of the House appears less likely.

Background

Polls continue to show that the mid-term elections on Tuesday, November 4 may change control of the Senate. The Democrats — currently the majority party — hold 53 seats. The remaining 47 seats are held by two Independents who caucus with the Democrats, and 45 Republicans. The Senate last changed its majority party eight years ago — in the 2006 mid-term elections.

Unlike the Senate, control of the House of Representatives (House) does not seem to be in play in the upcoming mid-term elections. The 435 member House is currently controlled by Republicans with 233 seats to the Democrats' 199 seats. There are also three vacancies. While possible, it is not likely the election results will change the Republicans' current majority party status.

Key Issues in the Next Congress

The legislative outlook for the next Congress — the 114th — depends on whether there is a change of control in the Senate. Early tests for the new Congress in 2015 will be the federal debt limit — which will be reached in March 2015 — and possibly funding the federal government, if the lame duck session of the 113th Congress does not enact appropriations legislation for the rest of FY 2015.

Senate Filibuster Constraints on Majority Party Control

Under the Senate's filibuster rules, at least 60 votes are generally required to end debate and proceed to an up or down vote. Tuesday's elections are not likely to result in a 60 seat or more majority for the Republicans or the Democrats.

It is possible that the filibuster rules are changed in the next Congress — changes were made during this Congress that limit the filibuster of confirmation votes for certain presidential appointments (see our [November 22, 2013](#) *Legislate* for more information).

Status Quo

If the mid-term elections result in the status quo — with Democrats retaining the majority in the Senate and Republicans in the House — the next Congress will likely be similar to the last. Both chambers will have different agendas and legislative priorities. For example, the Senate might focus again on income inequality issues, while the House might look to lessen regulatory burdens and repeal or replace the Affordable Care Act (ACA) in some form. As a result, gridlock will probably continue and legislation likely to pass such a Congress would be the bare minimum necessary to keep the federal agencies and programs running.

While we would expect such a Congress to enact appropriations legislation to fund the federal government and temporary patches to provide funding for programs such as the highway trust fund, few legislative changes to the ACA would likely pass. Retirement legislation that raises revenue — such as PBGC premium hikes — might get enacted, but probably as a means of offsetting federal deficits and spending. Although tax reform will likely be a focus of the congressional tax-writing committees, the House and Senate are unlikely to agree on top-line goals for reform — for example, whether tax reform should be revenue neutral or whether it should raise revenue.

Republican Congress

A new agenda and different legislative priorities would be expected to accompany a change in the majority party in the Senate and status quo in the House. In view of that, clashes between the White House and a Republican Congress would be highly likely.

If the mid-term elections result in a Republican majority in both chambers, expected key policy objectives of such a Congress that could impact tax and employee benefits include:

- Tax reform — see our [February 27, 2014 FYI Alert](#) for more information on a comprehensive tax reform plan proposed by retiring House Ways and Means Committee Chairman Dave Camp (R-MI), which includes significant changes for retirement plans, executive compensation, and fringe benefits.
- Repeal and replacement of the ACA — see our [September 25, 2013](#) and [January 31, 2014](#) editions of *Legislate* for more information on two proposed ACA replacement plans.
- Entitlement reform — for example, the House's [FY2015 federal budget](#) proposed reforming Medicare for younger workers by offering them a choice of federally subsidized plans on a new Medicare exchange starting in 2024.

Changes to the Senate's current filibuster rules and the use of special procedural rules — referred to as budget reconciliation — may reduce procedural constraints on passing legislation in that chamber. However, fundamental changes to the income tax and the ACA enacted by a Republican Congress might not cross the finish line given the president's veto power.

Close Senate Races

The following races are currently very close and a number of them could tip the balance of power in the Senate. Two of the states require runoff elections if no candidate garners a sufficient percentage of the vote — Georgia and Louisiana require that a candidate receive more than 50% of the vote. If control of the Senate hinges on one or both of these states, the results may not be known until as late as January 6, 2015. In the meantime, here are a number of races to watch.

Alaska

Dan Sullivan (R) is running against the incumbent, Mark Begich (D).

Arkansas

Tom Cotton (R) is challenging the incumbent, Mark Pryor (D).

Colorado

Cory Gardner (R) is running against the incumbent, Mark Udall (D).

Georgia

With Senator Saxby Chambliss (R) retiring, this is an open seat contest among Michelle Nunn (D), David Perdue (R), and Amanda Swafford (L). If no candidate receives more than 50% of the vote, a runoff election will be held on January 6.

Iowa

With Senator Tom Harkin (D) retiring, Joni Ernst (R) and Bruce Braley (D) are vying for an open seat.

Kansas

Greg Orman (I) is running against the incumbent, Pat Roberts (R). According to Mr. Orman's [campaign website](#), if one party is clearly in the majority, he would seek to caucus with that party if elected.

Kentucky

Alison Lundergan Grimes (D) is challenging the incumbent and current Senate Minority Leader, Mitch McConnell (R).

Louisiana

The incumbent, Mary Landrieu (D), is defending her seat against Bill Cassidy (R) and Rob Maness (R) in Louisiana's open primary — under which all candidates of all parties are listed on the ballot. If no candidate receives more than 50% of the vote, a runoff will be held December 6 between the two candidates who received the most votes.

New Hampshire

Former Massachusetts Senator Scott Brown (R) is challenging the incumbent, Jeanne Shaheen (D).

North Carolina

In what is expected to be the most expensive Senate race in history, the incumbent, Kay Hagan (D), is defending her seat against Thom Tillis (R) and Sean Haugh (L). Total spending by the candidates, political parties, and outside groups is likely to top \$100 million.

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