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Key Legislative Developments Affecting Your Human Resources

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House continues ACA scrutiny and CBO releases options report to budget conferees, while Senate prepares to debate minimum wage hike

The House of Representatives continued its scrutiny of the Affordable Care Act with more hearings on the technical difficulties with the rollout of the public marketplaces. The House also approved legislation that would permit insurers in the individual insurance market (but not the group market) to issue coverage in 2014 that is not eligible for grandfathering under the ACA. The Congressional Budget Office briefed budget committee conferees on fiscal issues and also released an options report that includes reductions to tax incentives for employee benefit plans as a means of reducing the federal deficit. The Senate is expected to turn its attention in the week ahead to debate on a bill that would increase the federal minimum wage, and the House will likely continue to focus on ACA implementation.

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Week in review

Health Care

Public marketplaces. The House of Representatives (House) resumed scrutiny of the rollout of the public marketplaces established by the Affordable Care Act (ACA), and in particular the technical problems with www.healthcare.gov, the online enrollment portal for the federally facilitated marketplaces. The Oversight & Government Reform Committee held a hearing on November 13 at which information technology officials with the administration, as well as experts from the private sector and the Government Accountability Office, testified. The testimony revealed that the administration is still targeting November 30 as the date by which the vast majority of users will have a smooth experience with the online portal. Members of the committee also expressed concerns with the security of information held by the website. A subcommittee of the Energy and Commerce Committee held a hearing on November 14, at which private sector experts testified on implementation problems with the ACA, and a former government official expressed doubts on the ability of the administration to meet the November 30 target. Other witnesses alternatively praised and condemned the ACA's market reforms and Medicaid expansion.

This week the administration also released data on enrollment in the public marketplaces. This information was repeatedly requested by members of Congress during the hearings on the rollout of the public marketplaces during the last several weeks. The administration reported that 106,185 individuals had selected health insurance plans in the public marketplaces as of November 2. This figure includes both federally facilitated and state-run marketplaces, and includes individuals who have paid their first premium and those who have selected a policy but not yet completed enrollment by paying their first premium.

Grandfathered plans in the individual market. On November 15, the House approved legislation (H.R. 3350) that would address insurance policies issued in the individual market that do not qualify for grandfathering under the ACA. The legislation does not apply to group market coverage. The legislation would permit insurance companies that offered policies in the individual market on January 1, 2013 to continue to offer those policies during 2014. Under the legislation, such policies would satisfy the individual mandate. In contrast, the administration announced yesterday that it would permit insurance companies to renew certain nongrandfathered policies in the individual and small group markets that are not compliant with the ACA. (See our *FYI Alert* dated November 14, 2013.)

Did you know?

Under the ACA, beginning in 2014, policies in the individual market must cover essential health benefits, unless they are grandfathered. Employer group health plans, regardless of grandfathered status, are not required to cover essential health benefits, but if they do, beginning 2014, they cannot impose any lifetime or annual limits

Tax reform

Budget Conference Committee. The budget conference committee held its second public meeting on November 13. The committee, made up of members from the House and Senate, is tasked with reconciling budgets that were passed by the two chambers earlier this year to avoid another shutdown. As part of establishing FY14 spending limits, the conference committee may tackle key budget issues including sequestration, federal debt and deficit reduction, and tax and entitlement reform. The focus of the meeting was testimony from Douglas Elmendorf, Director of the Congressional Budget Office (CBO), who reviewed near-term and long-term economic and budget challenges facing the country. Elmendorf noted the mismatch between federal government spending and revenue that will lead to higher deficits and debt over the next decade and beyond. During the meeting, several Democratic committee members expressed general support for closing tax loopholes to lower the deficit, but offered few specifics — the only loophole mentioned involved deductions for employers who shift jobs overseas. Republican committee members who mentioned tax loopholes generally favor closing loopholes in the context of broader tax reform, but it is unlikely that the committee would actually reach agreement on a specific tax reform package. Instead, the committee report — if it addresses tax reform at all — might provide broad parameters to the tax-writing committees, such as the due date for committee action. The committee's report is due to Congress December 13, and government funding for FY2014 expires January 15, 2014.

CBO options report. At the conclusion of the budget conference committee's meeting, CBO released a budget options report on measures that would help balance the federal budget and reduce deficits. The options are not recommendations by CBO nor are they an exhaustive list of budget options for Congress, but rather are intended to reflect a range of possibilities including both tax and spending policies. The likelihood of these options becoming law is remote, but the debate over federal spending and the deficit in the next several months will likely include references to options described in the CBO report. Among the options identified by CBO that would impact employers and the employee benefits they currently provide are:

- Treating employer contributions for income-replacement programs (such as worker's compensation, disability, and unemployment insurance) as taxable employee compensation for income and payroll tax purposes, with a gradual exclusion from tax for income-replacement benefits received by an employee. The option would raise $326 billion over ten years.
- Limiting elective deferrals to 401(k), 403(b), and 457(b) governmental plans to $15,500 per year (the limit for 2013 and 2014 is $17,500), and $5,000 for IRAs (the 2013 and 2014 limit is $5,500), with elimination of catch-up contributions. The option would also convert the current section 415 per-employer limit on contributions to defined contribution plans to a per-taxpayer limit and lower the limit to $46,000 (the limit is $51,000 for 2013; $52,000 for 2014). The option would raise $89 billion over ten years.
- Increasing the taxable wage base for the Social Security payroll tax (OASDI portion of FICA) to $177,500 in 2014 (the wage base is $113,700 for 2013; $117,000 for 2014). On net, after considering the increased benefits from the higher wage base, the option would reduce federal budget deficits by $460 billion over ten years.
- Increasing the HI payroll tax on total earnings by 1.0%. The tax rate for both employers and employees would increase by 0.5% to 1.95% (not taking into account the ACA's rate increase for high-earners). The option would raise $859 billion over ten years.
- Increasing PBGC premiums for private pension plans by ratcheting up flat-rate premiums or switching to a premium based on the amount guaranteed and by raising variable-rate premiums with increases to the base charge (using $25 rather than $19 per $1,000 in 2015) or adding risk-based factors. The combined options would yield $5 billion over ten years.
- Accelerating the effective date of the ACA's tax on high-cost plans from 2018 to 2015, while lowering the dollar thresholds at which the tax applies in 2018 and beyond (in 2015, $7,790 for self-only coverage and $19,910 for family coverage). The option would reduce federal deficits by $240 billion over ten years. An alternative option would repeal the ACA's high-cost plan excise tax and instead place dollar limits on the income and payroll tax exclusion for employer-paid health insurance premiums and contributions to FSAs, HRAs, and HSAs (in 2015, any contributions that employers or workers made for health insurance and for health care costs that together exceed $6,420 for self-only coverage and $15,620 for family coverage). This alternative would decrease federal deficits by $537 billion over ten years.

Week ahead

Health Care

The House is likely to continue its scrutiny of the rollout of the ACA's public marketplaces with hearings and possibly more legislation.

Labor and Employment

The Senate will likely begin deliberations on two bills that would amend the Fair Labor Standards Act (FLSA). S. 460, which is generally supported by Democratic senators, would increase the federal minimum wage in three steps, with automatic annual cost of living increases for later years based on the consumer price index for urban wage earners and clerical workers (CPI). The minimum wage would increase from $7.25 to $8.20 per hour two months after enactment, to $9.15 one year after enactment, and to $10.10 two years after enactment. Any future annual increases would be tied to the CPI. Among other changes to the FLSA, S. 1626 (the Family Friendly and Workplace Flexibility Act of 2013) would permit private sector employees to elect to receive compensatory paid leave in lieu of monetary overtime, at a rate not less than one-and-a-half hours for each hour of overtime. The bill, which was introduced by Republican Minority Leader Mitch McConnell, would cap accrual of compensatory time at 160 hours and require overtime compensation for time in excess of 160 hours. Unused compensatory time would have to be paid out annually and also on termination. The bill would also permit employers to establish a "flexible credit hour" program under which a participating employee can agree to reduce the number of hours the employee works in a subsequent day or week at a rate equal to one hour for each hour of overtime worked. A participating employee would be able to accrue up to 50 flexible credit hours, and would receive overtime compensation for flexible credit hours over 50. Unused flexible credit hours would be paid out annually as unpaid overtime compensation.

Authors
Drew Crouch, JD, LLM
Nancy Vary, JD

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