

Legislate[®]

Key Legislative Developments Affecting Your Human Resources

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PBGC Deficits Renew Calls for Reform; Labor and Employment Bills May Re-emerge in the Next Congress

Record PBGC deficits led lawmakers this week to renew bipartisan calls for multiemployer pension plan reform. In anticipation of the upcoming change in control of the Senate, this week's *Legislate* examines various labor and employment bills that were introduced or co-sponsored in the 113th Congress by Senator Mitch McConnell (R-KY) — who will become the Senate majority leader in January — and are likely to resurface in the 114th Congress.

Multiemployer Pension Plans

The PBGC [2014 annual report](#) released on Monday reports a record \$61.7 billion deficit for its insurance programs. The deficit for the single employer insurance program narrowed to \$19.3 billion (down from \$27.4 billion in 2013). The deficit for the multiemployer insurance program widened to \$42.4 billion (from \$8.3 billion in 2013).

The deficit in the PBGC's multiemployer insurance program resulted in a renewed call for reforms from the leaders of various congressional committees with jurisdiction over pensions:

- [Chairman Ron Wyden \(D-OR\) and Ranking Member Orrin Hatch \(R-UT\)](#) of the Finance Committee
- [Chairman Tom Harkin \(D-IA\)](#) of the Health, Education, Labor, and Pensions Committee
- [Chairman John Kline \(R-MN\)](#) of the Education and Workforce Committee in the House of Representatives (House)

Similar calls for reforms were made earlier this year when the PBGC released its projections report (see our [July 2, 2014](#) and [October 3, 2014](#) editions of *Legislate* for more information on multiemployer pension plan proposals). With a target adjournment date of December 12, 2014, it remains to be seen whether any proposals to assist financially troubled multiemployer pension plans will advance in this Congress.

Senator Wyden has proposed a one-year extension of special funding rules for multiemployer pension plans that sunset at the end of this year. The proposal is part of a bill — the EXPIRE Act — that would extend 54 expired or expiring tax code provisions. However, the bill failed to advance in the Senate earlier this spring and faces an uncertain future between now and December 12. See our [April 4, 2014](#) and [May 16, 2014](#) editions of *Legislate* for more information on the EXPIRE Act.

Labor and Employment Legislation

Senator Mitch McConnell has introduced or co-sponsored a number of bills in the 113th Congress that would address a variety of labor and employment issues — and each are summarized below. Several of the bills were either introduced or co-sponsored by Senator Lamar Alexander (R-TN) — who is expected to be the next chair of the Senate Health, Education, Labor, and Pensions (HELP) Committee. Among other matters, the HELP Committee has jurisdiction over the labor code sections of ERISA and the National Labor Relations Act (NLRA).

Even though none of the bills described below progressed farther than a referral to the committee of jurisdiction, each of them will likely be reintroduced in the next Congress — slated to begin in January 2015 — and are likely to gain some traction with Senator Alexander's leadership of the HELP Committee. Together, the bills address some of the substantive labor and employment issues that Senate Republicans will likely focus on during the next two years. Since none of these bills were co-sponsored by Democrats, it remains to be seen whether the legislation — if reintroduced in the next Congress — would potentially face a filibuster or receive an [up-or-down vote](#).

S. 204 – National Right-to-Work Act

Introduced by Senator Rand Paul (R-KY), and co-sponsored by 27 other senators — including Senator McConnell — the [bill](#) would amend the NLRA and the Railway Labor Act to repeal provisions that allow employers, pursuant to a union security agreement, to require employees to join a union as a condition of employment.

S. 1542 – Rewarding Achievement and Incentivizing Successful Employees (RAISE) Act

Introduced by Senator Marco Rubio (R-FL) — co-sponsored by Senators McConnell, Alexander, and 16 other senators — the [bill](#) would amend the NLRA to allow an employer to pay employees who are represented by a union higher wages or other compensation than provided by the applicable collective bargaining agreement (CBA) without committing an unfair labor practice. Under the bill, the higher wage pay would neither violate the NLRA's prohibition against interfering with employees' collective bargaining rights nor constitute a refusal to bargain.

S. 1626 – Family Friendly and Workplace Flexibility Act of 2013

Introduced by Senator McConnell — and co-sponsored by two other senators — the [bill](#) would amend the Fair Labor Standards Act to permit private-sector employers to provide compensatory time off to employees in lieu of overtime pay. Under the bill, comp time would be provided under a CBA or an agreement between the employer and unrepresented employee at a rate of 1 1/2 hours per hour of employment for which overtime compensation is required. See our [November 15, 2013](#) *Legislate* for more information on the bill.

S. 1712 – Employee Rights Act

Introduced by Senator Orrin Hatch (R-UT) and co-sponsored by 28 senators — including Senators McConnell and Alexander — the [bill](#) would amend the NLRA to require the National Labor Relations Board (NLRB) to conduct secret ballot representation elections, and employee representatives to be elected by a majority of the employees in a unit (not the majority of employees who vote). Other amendments to the NLRA would require that:

- New elections for a bargaining unit be held if the unit experiences turnover, expansion, or alteration by merger above a specified threshold — which would be more than 50% of the unit's employees
- Strikes be approved by secret ballot and by a majority of all bargaining unit employees (regardless of membership status)
- All employees in a bargaining unit have the right to vote by secret ballot to approve a CBA

- The use of an employee's union dues for any purpose not directly related to collective bargaining or contract administration functions be prohibited, unless required as a condition of employment or the employee authorizes it in writing

The bill would also revise NLRB procedures by requiring the board to determine the unit size before a representation election, give 14 days' notice before scheduling a hearing on a question of representation, and review all post-hearing appeals before finding that an issue exists as to representation. Material issues regarding jurisdiction, coverage, unit size, and eligibility of employees would have to be resolved by a regional director or the board before a representation election could be held. In addition, elections would not be final until the board rules on each unresolved pre-election issue and any election issues.

S. 2178 – Workforce Democracy and Fairness Act

Introduced by Senator Lamar Alexander (R-TN) — and co-sponsored by Senator McConnell and 11 other senators — the [bill](#) would amend the NLRA in response to the NLRB's expedited representation election rule that was first proposed in 2011 and essentially re-proposed on February 6, 2014. (See our [August 24, 2011](#) *For Your Information* for more information on the proposed rule.) The changes that would be made by the bill are similar to H.R. 4320 and 4321 — which were approved by the Education and the Workforce Committee in the House in April 2014. See our [April 11, 2014](#) *Legislate* for more information on H.R. 4320 and 4321.

S. 2814 – National Labor Relations Board Reform Act

Introduced by Senator Lamar Alexander (R-TN) — co-sponsored by Senator McConnell and 4 other senators — the [bill](#) would amend the NLRA to change the composition of the NLRB, allow federal district court review of the general counsel's decision to issue a complaint, and reform the appellate review process. Under the bill, board membership would increase from five to six (with equal numbers of Republicans and Democrats), and appointments would be staggered. Four NLRB members would be required for a quorum at all times, and any NLRB determination would have to be approved by a majority of the members present. Notably, the bill would establish timeframes for the board to issue final orders, and would tie future appropriations to case backlog. See our [September 26, 2014](#) *Legislate* for more information on the bill.

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