

Legislate[®]

Key Legislative Developments Affecting Your Human Resources

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Republicans Gain Senate Majority; Lame Duck Session Ahead

As a result of the mid-term elections, Republicans will control both chambers of Congress beginning in January 2015. The current Congress returns next week to begin its lame duck session, with legislation possible before the end of the year on tax extenders, funding the federal government, and pensions.

Election Results

Tuesday's mid-term elections resulted in Republicans gaining majority party status in the Senate for the next Congress — scheduled to begin in January 2015. With results in Alaska and Virginia not yet final, Republicans will hold at least 52 Senate seats in the 114th Congress.

As expected, the House of Representatives (House) will remain under Republican control in the next Congress, with Republicans holding at least 243 seats. Eleven House races are not yet final.



See our [October 31, 2014 Legislate](#) for key employee benefit issues that are expected to be of interest to the 114th Congress.

Lame Duck Session

Congress returns next week from its election recess facing a host of unresolved issues — including several with employee benefit implications.

Tax Extenders

Several dozen temporary tax provisions expired at the end of 2013 or are set to expire at the end of this year. Among the provisions is a rule that would equalize the monthly dollar amount of mass transit (currently \$130) and parking benefits (\$250) under a qualified transportation fringe benefit program. Also included are special funding rules for multiemployer pension plans enacted under the Pension Protection Act of 2006. See our [April 4, 2014 Legislate](#) for more information on a Senate bill — the EXPIRE Act — which would extend these two benefits provisions and many

other tax extenders until the end of 2015. In contrast to the EXPIRE Act, the House passed legislation earlier this year that would make several tax extenders permanent law, although none involved employee benefits.

The outlook for tax extenders legislation during the remainder of this Congress is uncertain, with the two parties potentially disagreeing over which provisions to extend and for how long. There is a significant likelihood that the extension of expiring tax provisions—including those for qualified transportation fringe benefit programs and multiemployer pension plans—will be left for the new Congress to address. IRS Commissioner John Koskinen has gone on [record](#) warning that if the uncertainty about the extenders continues into December, it could delay the start of the tax filing season and delay refunds.

Affordable Care Act

The federal government is funded through December 14, 2014, pursuant to a [Continuing Resolution](#) (CR) that did not include any controversial funding conditions — such as modifications to the Affordable Care Act. Congressional appropriators are negotiating a government funding bill that would cover the remainder of FY 2015, but time is running short. If agreement cannot be reached, another short-term CR without any controversial conditions will likely be enacted during the lame duck — probably funding the federal government through February or March of 2015. If a short-term CR is enacted during the lame duck, then ACA modifications may be proposed by the new Congress as part of government funding for the rest of FY 2015.

Retirement

Several pension bills could see legislative activity during the lame duck session. The first is S. 2511, which passed the Senate in September and would modify when a cessation of operations at a facility may give rise to PBGC enforcement action. See our [September 19, 2014 Legislate](#) for more information on the changes made by the bill to section 4062(e) of ERISA. The bill is currently pending in the House. Given the unanimous bipartisan support for the bill in the Senate, the bill would probably pass the House if brought up for a vote in that chamber by leadership, and then would likely be signed into law by the president. Whether the bill will be taken up in the House is not yet certain.

Less far along are S. 2855 and H.R. 5381 — which would modify the nondiscrimination tests for frozen defined benefit pension plans. (See our [September 26, 2014 Legislate](#) for more information.) Neither bill has passed either chamber of Congress. The outlook for further legislative activity on the bills by the current Congress is dim as time is running out. The Senate, for example, is likely to be particularly focused in the remaining two months of the 113th Congress on confirmation of presidential executive and judicial branch appointments.

Authors

Drew Crouch, JD, LL.M.
Marjorie Martin, FSPA, EA, MAAA

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