

# Legislate<sup>®</sup>

## Key Legislative Developments Affecting Your Human Resources

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## Labor, Employment, and Fringe Benefits in the Spotlight

Both chambers of Congress are on recess this week. This edition of *Legislate* reviews labor, employment, and fringe benefit legislation introduced in the first six weeks of the 114<sup>th</sup> Congress.

In this article: [Labor and Employment](#) | [Fringe Benefits](#)

### Labor and Employment

Since the new Congress convened last month, both sides of the aisle have shown continued interest in a number of labor and employment bills that were introduced — but failed to advance — in the 113<sup>th</sup> Congress. Some have already been reintroduced in the 114<sup>th</sup> Congress. While some are still unlikely to pass the Republican-controlled Congress, others are now more likely to pass both chambers if put to a vote.

Democrats have already reintroduced the Healthy Families Act ([S 497](#) and [HR 932](#)) in both chambers. This legislation, which has been introduced in every Congress since 2004, would [require](#) employers to provide seven days of paid sick leave to employees. As in past sessions, it has little chance of becoming law this year.

Republicans have introduced [S 233](#) and [HR 465](#) — the Working Families Flexibility Act of 2015 — that would amend the Fair Labor Standards Act to permit private-sector employers to provide employees with compensatory time off in lieu of overtime pay — at a rate of 1½ hours per hour of overtime earned. This legislation — similar to legislation (S 1626) introduced in the last Congress by Senate Majority Leader Mitch McConnell (R-KY) — is likely to pass both chambers of Congress if put to a vote. (See our [November 15, 2013 Legislate](#) for more information on S 1626.) Although the White House has not yet signaled whether it is opposed to these bills, support would seem contrary to its efforts to raise the federal minimum wage and expand overtime eligibility to workers who are currently exempt.

Also re-emerging in this Congress are several bills intended to bring greater transparency and accountability to the EEOC. Each of these bills was introduced in the prior Congress (see our [September 19, 2014 Legislate](#) for further information on these bills):

- [HR 548](#) – The Certainty in Enforcement Act of 2015 would amend the Civil Rights Act of 1964 to provide that employers may use credit or criminal record background checks as required by federal, state, or local law, and



such use may not be the basis for a disparate impact claim against the employer — a legislative response to recent EEOC enforcement action on employer use of criminal background checks.

- [HR 549](#) – The Litigation Oversight Act of 2015 would require the EEOC commissioners to approve (by a majority vote) commencing or intervening in litigation involving multiple plaintiffs or systemic discrimination. It would also require the EEOC to post on its public website: (1) information on such litigation, including the allegations and causes of action; and (2) each commissioner's vote to commence or intervene.
- [HR 550](#) – The EEOC Transparency and Accountability Act would require public disclosure of information about each court case brought by the EEOC after a judgment is made on any cause of action (including, for example whether the agency was ordered to pay fees and costs or sanctions were imposed). The bill would require the agency to exhaust its conciliation obligations before filing an enforcement action, and would allow courts to determine whether the EEOC has engaged in a *bona fide* conciliation effort. Finally, the bill would require the EEOC inspector general to investigate and report to Congress on any court-imposed sanctions, fees, or costs on the EEOC and steps being taken to reduce such instances.

EEOC enforcement activity on wellness programs has also been the subject of congressional interest recently (see our *Legislate* from [January 30, 2015](#) that covers a recent Health, Education, Labor, and Pensions (HELP) Committee hearing on this topic). Further hearings on the EEOC and its enforcement agenda are likely in the months ahead.

Four labor bills that were introduced in the prior Congress (see our [November 21, 2014](#) *Legislate* for more information on these bills) have already been reintroduced:

- [S 248](#) and [HR 511](#) – The Tribal Labor Sovereignty Act of 2015 would amend the National Labor Relations Act (NLRA) to exclude any enterprise or institution owned and operated by Indian tribes on tribal land from its coverage.
- [S 288](#) – The National Labor Relations Board Reform Act would amend the NLRA to change the composition of the NLRB by requiring the board to have six members (with equal numbers of Republicans and Democrats) and a quorum of four members at all times. The bill would also permit district court review of the general counsel's decision to issue a complaint, and reform the appellate review process. (For more on S 2814, introduced in the prior Congress, see our [September 26, 2014](#) *Legislate*.)
- [HR 612](#) – The National Right-to-Work Act would amend the NLRA and the Railway Labor Act to repeal the ability of employers to require — under a union security agreement — employees to join a union as a condition of employment.
- [S 507](#) and [HR 1003](#) – The [Rewarding Achievement and Incentivizing Successful Employees \(RAISE\) Act](#) would amend the NLRA to [permit](#) employers to pay higher wages than are required to be paid under a collective bargaining agreement.

The HELP Committee held two hearings recently on labor topics — specifically on the impact that new union election rules and a redefinition of the NLRB's long-standing joint employer standard would have on employers (see our [February 13, 2015](#) *Legislate* for more information on these hearings). More labor-related hearings are likely in the future.

### Chances for EEOC and NLRB legislation?

While the bills introduced to date would likely pass both chambers of Congress if put to a vote, the White House is likely to oppose the measures. The chances for enactment this year are small for stand-alone bills, but it's possible that one or two might cross the finish line as enacted legislation if included in must-pass legislation.

Two of the bills introduced to date involve the Davis-Bacon Act requirement that certain federal contractors and subcontractors pay a prevailing wage to their employees. [HR 987](#), the reintroduced Davis-Bacon Repeal Act, would [repeal](#) the prevailing wage requirement under federal, public works contracts entirely. [HR 924](#), the Responsibility in Federal Contracting Act, would [require](#) the calculation of wages for public works projects by the Bureau of Labor Statistics — not the DOL's Wage and Hour Division (WHD), whose wage calculation methods have been criticized for inaccurate, inflated wage rates. Even if passed by Congress, outright repeal of the prevailing wage requirement is not likely to become law this year. A presidential veto can be expected and there are not likely sufficient votes for an override. Nonetheless, congressional hearings are possible in the year ahead to explore the WHD's prevailing wage calculation methods.

## Fringe Benefits

Several bills have been filed since January that would create new or expand existing favorable tax rules for fringe benefits related to dependent care:

- [S 74](#) – The Dependent Care Savings Account Act of 2015 would amend the Internal Revenue Code to create a new type of tax-preferred savings vehicle for dependent care expenses, with annual contributions up to \$5,000 (reduced by the amount of employer-paid and other dependent care expenses that are otherwise excludable from income under current rules).
- [S 446](#) – A bill that would [amend](#) the Code to increase the current \$5,000 income tax exclusion for dependent care flexible savings accounts to \$7,500 and increase the existing tax credit for employers that establish workplace child care facilities from 25% of expenses to 35%.
- [HR 750](#) – The Family Care Savings Act would increase the current \$5,000 income tax exclusion for employer-provided dependent care assistance to \$10,000 (with inflation adjustments after 2015).

President Obama emphasized the importance of the affordability of child care in his State of the Union address a month ago (see our [January 23, 2015 Legislate](#) for more information on benefits issues raised in the president's speech). It remains to be seen whether Congress takes up legislation that reduces the cost of child and dependent care.

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