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Legislate®
Key Legislative Developments Affecting Your Human Resources

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# NLRB "Quickie Election" Rules Disapproved by Congress; Committees Release FY 2016 Budget Proposals

The House passed a resolution disapproving the NLRB's "quickie election" rules slated to take effect next month. The resolution heads next to the president — who is expected to veto it. Also this week, the budget committees released their proposed FY 2016 budgets, and a PBGC report was released on benefit cuts facing participants in insolvent multiemployer pension plans. Next week, Buck Consultants at Xerox will testify before a congressional committee on wellness program legislation.

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## Healthcare

Next week, Buck Consultants at Xerox will testify on wellness program legislation before a subcommittee of the House Education and Workforce Committee. Tami Simon, Managing Director of the Knowledge Resource Center and the Career Practice will represent the American Benefits Council at the Subcommittee on Workforce Protections hearing — scheduled for Tuesday, March 24, at 10 am (EDT). The hearing will focus on a bill that would affect EEOC enforcement activity on employer-sponsored wellness programs — H.R. 1189, the Preserving Employee Wellness Programs Act – which will be the subject of Tami's testimony. (See our March 6, 2015 *Legislate* for more information on H.R. 1189 and its companion bill in the Senate, S. 620.) The hearing will also cover three other bills that are intended to bring greater transparency and accountability to the EEOC. (See our *Legislate* from February 20, 2015 for more information on H.R. 548, H.R. 549, and H.R. 550.)

## Retirement

The PBGC issued a report this week that examines the benefit reductions participants face if their multiemployer pension plan becomes insolvent. The study was based on reductions for over 78,000 participants in plans that are currently receiving PBGC financial assistance or terminated plans that are likely to require

future PBGC assistance. The PBGC found that 21% of participants in plans currently receiving assistance faced benefit reductions — with 62% of those participants facing reductions of less than 10%, 33% facing reductions between 10 and 19.99%, and 5% facing reductions over 30%. For terminated plans likely to require PBGC assistance, 51% of participants face benefit reductions — with 46% of those participants facing reductions of less than 10%, 46% facing reductions between 10 and 19.99%, and 5% facing reductions over 30%.

The PBGC press release accompanying the report notes that it did not examine the impact that the insolvency of the PBGC's multiemployer insurance program would have on benefit payments to participants in failed plans. The press release further observes that, despite enactment of the Multiemployer Pension Reform Act of 2014 (MPRA), PBGC's own program is likely to run out of money in the next decade. (Please see our *For Your Information* from January 12, 2015 for details on MPRA — which include a PBGC premium hike for multiemployer pension plans and new rules to assist such plans that are severely underfunded.) Several weeks ago, the Congressional Budget Office released a revised baseline report that projects the multiemployer insurance program will become insolvent in federal FY 2024. The report notes that the PBGC is expected to reduce its financial assistance to multiemployer plans to the level that could be supported by the agency's premiums on such plans — with a reduction in FY 2024 of over $1 billion and a reduction in FY 2025 of over $1.5 billion.

It remains to be seen whether Congress will revisit multiemployer pension plan legislation to address any of these issues.

**Congressional Budget Proposals**

The **House** and **Senate** Budget Committees released draft FY 2016 budget proposals this week. Passage of a budget resolution will allow the Congressional appropriations committees to draft government funding legislation for FY 2016. Funding legislation must be enacted before October 1, 2015 to avoid a government shutdown. The legislation may include policy riders — such as provisions modifying the Affordable Care Act (ACA) or regulatory guidance issued by the Obama administration. More details will emerge as the appropriation committees draft the funding legislation.

Both budget proposals promise to repeal the ACA and pledge support for tax and entitlement reform (including Medicare, Medicaid, and Social Security), but provide limited detail. This is not unusual, as separate legislation is required to enact these types of statutory changes and reforms. The House proposal provides more detail on its Medicare reform proposal, which is similar to reforms proposed in prior years. Among other things, the proposal would build a premium support program in Medicare to allow seniors to choose from a range of guaranteed-coverage options, including traditional Medicare — beginning in 2024. Changes to Medicaid in the House and Senate proposals would allow greater flexibility for the states to design and administer their own coverage programs for low-income individuals.

## Labor and Employment

By a 232 to 186 vote mostly along party lines, the House approved S.J.Res.8 on Thursday — a resolution under the Congressional Review Act to block implementation of the NLRB's so-called "ambush" or "quickie" election rules, currently slated to take effect on April 14. (See our February 13, 2015 and March 6, 2015 editions of *Legislate* for more information on the resolution and its passage by the Senate.)

The resolution heads next to the White House, where it will likely be vetoed. The White House made clear several weeks ago that it strongly opposes the legislation, and that the president's advisors would recommend that he veto the resolution if it reaches his desk. This week's House vote on S.J.Res.8 and the Senate's vote several weeks ago

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indicate that there are probably not enough votes to override a veto. In that event, Congress may seek to prohibit the NLRB from enforcing the new rules as part of FY 2016 government funding legislation. That legislation must be enacted before October 1, 2015, in order to avoid a government shutdown.

Also this week, the House held hearings on the president's FY 2016 DOL budget proposal, which includes a request for $13.2 billion in discretionary funding and an increase of $41.5 billion in new mandatory spending. (See our February 6, 2015 *Legislate* for more information on the FY 2016 budget proposed by the White House.) Labor Secretary Thomas Perez testified before two House committees. During Tuesday's budget hearing before the Appropriations Committee's Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, Secretary Perez was asked to explain the DOL's priorities and regulatory agenda. During Wednesday's hearing before the Education and the Workforce Committee, he was asked about many of the same issues as well as overtime, fiduciary, and blacklisting rules.

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