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Key Legislative Developments Affecting Your Human Resources

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Resolution Disapproving NLRB's New Election Rules Vetoed; Retirement Bill Recap

The president vetoed S.J. Res. 8 this week — a congressional resolution that would have blocked implementation of the NLRB's new election rules later this month. With Congress out until April 13, this week's *Legislate* reviews retirement bills that have been introduced in the first three months of the 114th Congress.

In this article: Labor and Employment | Retirement

Labor and Employment

As expected, President Barack Obama vetoed S.J. Res. 8 on Wednesday. The resolution would have blocked implementation of the NLRB's so-called "ambush" or "quickie" election rules that were finalized in December. Barring an unlikely veto override, the rules will take effect April 14. See our February 13 and March 20, 2015 editions of *Legislate* for more information on the resolution, its passage by Congress, and the new election rules.

Retirement

Since the beginning of the 114th Congress three months ago, the following bills on retirement policy have been introduced in the House of Representatives and Senate:

Municipal bankruptcies. Introduced by Rep. John Conyers (D-MI), H.R. 95 — the Protecting Employees and Retirees in Municipal Bankruptcies Act — would modify a number of rules that apply to municipalities under Chapter 9 of the bankruptcy code. Among the changes is a rule that would allow a court to confirm a bankruptcy plan that modifies a collective bargaining agreement or retiree benefit if the union (or authorized representative of the retirees} agrees — even if that change is otherwise prohibited by non-bankruptcy law.

Private-sector bankruptcies. Also introduced by Rep. Conyers, H.R. 97 — the Protecting Employees and Retirees in Business Bankruptcies Act — would modify rules that apply to private sector bankruptcies. For example, the legislation would increase the priority of severance pay and WARN Act damages, and would place restrictions on executive compensation for companies that are reorganizing.

Multiemployer plans. Introduced by Pete Sessions (R-TX), H.R. 458 would modify the withdrawal liability rules for certain multiemployer pension plans. Currently, multiemployer plans are permitted to apply to the PBGC for an alternative method of computing employer withdrawal liability. For a red zone plan that is not expected to emerge from that zone by the end of the rehabilitation period, the legislation would deem the alternative approved unless the PBGC affirmatively disapproves of the method within 90 days of the plan's adoption of it. The legislation directs that the PBGC may disapprove of the alternative method only if it reasonably determines that the method creates an unreasonable risk of loss to participants or the PBGC.

Auto-enrollment IRAs. The Automatic IRA Act (H.R. 506/S. 245) would require private-sector employers to enroll employees automatically in payroll deduction IRAs. Employers are generally subject to the requirement unless they sponsor an active tax-qualified retirement plan for their employees. The default contribution rate would be 3% and employees could elect not to contribute (or to contribute at a different rate). The legislation is sponsored by Rep. Richie Neal (D-MA) and Sen. Sheldon Whitehouse (D-RI).

Multiple employer plans and safe harbor 401(k) plans. The Retirement Security Act (H.R. 557/S. 266) would provide new rules for multiple employer plans. Introduced by Rep. Vernon Buchanan (R-FL) and Sen. Susan Collins (R-ME), the legislation would require the Treasury Department to issue regulations that would treat a tax-qualified multiple employer retirement plan as continuing to satisfy the tax qualification requirements despite violations by some participating employers (the "one bad apple" rule). The legislation would also amend ERISA so that employers in a defined contribution qualified multiple employer plan would no longer have to share a common interest. Such plans would be generally open to employers with 500 or fewer employees. The legislation also would provide for a new automatic enrollment 401(k) safe harbor — with contributions in the first year of at least 6%, at least 8% in the second, and at least 10% for later years. The new options would require matching contributions of 100% for the first 1% of compensation, 50% between 1 and 6% of compensation, and 25% between 6 and 10%.

DOL fiduciary rule. Introduced by Rep. Ann Wagner (R-MO), H.R. 1090 — the Retail Investor Protection Act — would prohibit the DOL from modifying the definition of an ERISA fiduciary until 60 days after the SEC has issued a final rule on the standards of conduct applicable to brokers and dealers under the Securities and Exchange Act of 1934.

Social Security reform. The Social Security 2100 Act (H.R. 1391) would make a number of reforms to Social Security, including a change in the CPI used for COLA adjustments, an increase in the minimum benefit payable to low earners (to ensure that minimum benefits are 25% above the poverty line for workers with at least 30 years

Chances for further legislative activity?

Few of the retirement policy bills that have been introduced to date are likely to see further legislative activity this year.

An exception is the Retirement Security Act (H.R. 557/S. 267), which contains provisions that were also included in Senate Finance Committee Chairman Orrin Hatch's SAFE Annuities Act from the 113th Congress. Chairman Hatch is likely to re-introduce this legislation in the 114th Congress and has expressed interest in marking it up. (See our **November 14, 2014** and **January 16, 2015** editions of *Legislate* for more information on the SAFE Annuities Act.)

Multiemployer pension plan legislation is also possible this year following the enactment of the Multiemployer Pension Reform Act of 2014 in December. (See our **January 12, 2015** *For Your Information* for more details on this law.) With the Treasury Department and other agencies issuing guidance in the year ahead, Congress may revisit some of the reforms to ensure that they work as intended. Any such legislation might pick up provisions like H.R. 458.

Volume 6 | Issue 13 | April 2, 2015

of covered employment), an increase in the thresholds at which benefits are taxed, applying the OASDI component of FICA to compensation in excess of $400,000, and increasing the OASDI rates for all compensation subject to the tax. The legislation was introduced by Rep. John Larson (D-CT).

Payroll tax holiday for seniors. Introduced by Rep. Ron DeSantis (R-FL) and Sen. Marco Rubio (R-FL), H.R. 1395/ S. 767 — the Let Seniors Work Act — would eliminate the OASDI component of FICA payroll taxes for individuals who have reached Social Security retirement age. The legislation would also repeal provisions that reduce Social Security early retirement benefits because of earned income.

Underfunded governmental pensions. Introduced by Brian Babin (R-TX), H.R. 1476 — the No Taxpayer Bailouts for Unsustainable State and Local Pensions Act — would prohibit the Treasury Department and the Federal Reserve from providing financial assistance to any governmental pension plan.

Roth rollovers. Introduced by Sen. Mark Kirk (R-IL), S. 195 — the 401(Kids) Education Savings Account Act — would make a number of changes to Coverdell education savings accounts, including permitting account holders to make a rollover of unused amounts to a Roth IRA.

Tax Loopholes

Senate Finance Committee Democrats released a **report** in early March that described a number of tax loopholes they believe should be closed by Congress. Among the tax avoidance strategies identified is nonqualified deferred compensation. The report expressed concern that lengthy permissible deferral periods allow for the compounding of tax-free earnings for executives, a perk that is not generally available to rank and file workers beyond the limits in qualified plans such as 401(k) plans.

With Republican control of both chambers, legislation tightening the tax and other rules for executive compensation is unlikely to be enacted this year unless included in comprehensive tax reform. See our *FYI Alert* from **February 27, 2014** for more information on a tax reform proposal by former Ways and Means Chairman Dave Camp (R-MI) that would have significantly modified nonqualified deferred compensation.

Plan loans and hardship distributions. Introduced by Sen. Michael Enzi (R-WY), S. 324 — the Shrinking Emergency Account Losses (SEAL) Act — would allow participants an extended period to rollover plan loan offset amounts to their IRA because the plan or employee is terminated. The legislation would also prohibit plan loans from being made through a credit card. In addition, the Treasury Department would be directed to revise the hardship distribution regulations so that a cessation of plan contributions is not required to satisfy the hardship distribution safe harbor.

Volume 6 | Issue 13 | April 2, 2015

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