

Legislate[®]

Key Legislative Developments Affecting Your Human Resources

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Healthcare Focus of Returning Congress; Legislative Fixes to NLRB Election Rule Proposed

Congress returned from its spring recess this week, and three congressional panels held hearings on the impact of the Affordable Care Act on taxpayers, employers and IRS operations. Medicare legislation was passed by Congress and is expected to be signed into law by the president. Also, labor committee chairs unveiled legislation that would significantly alter the NLRB's new union representation election rules that took effect earlier this week.

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Healthcare

Congressional panels held three hearings this week examining the impact of the Affordable Care Act (ACA) on taxpayers, employers and IRS operations:

Workplaces. A subcommittee of the House Education and the Workforce Committee heard [testimony](#) on the impact of the ACA on workplaces. Several business owners testified that the employer shared responsibility provisions of the reform law are limiting their hiring plans and creating onerous recordkeeping burdens. One business owner focused on costs added by ACA fees and mandates — such as the PCORI fee and the requirement to cover adult children until age 26 — and also expressed concern that a large number of employers would be subject to the excise tax on high-cost plans (the “Cadillac” tax, effective in 2018). The business owner also expressed concern about the reform law’s definition of full-time employee — noting that employers do not typically consider an employee who works 30 hours per week to be full-time. One trade organization focused on the excise tax and increased costs — for example, testifying that the tax is projected to apply to 17% of all US businesses in 2018, including 38% of large employers. In contrast to the other witnesses, one small business owner testified that the ACA has stabilized its insurance premiums and offered more options for coverage.

Individual mandate and employer shared responsibility. A subcommittee of the House Ways and Means Committee held a [hearing](#) on the shared responsibility provisions of the ACA for individuals and employers. One policy expert testified that repealing the individual mandate could lower premium costs (if combined with other reforms, such as repealing the 3:1 age rating restriction that applies to coverage in the individual market) and that provisions applicable to employers will lead to slower job growth and greater reliance on part-time workers. Another

expert highlighted the rationales behind various ACA requirements and the cost of repeal. For example, the witness observed that the employer shared responsibility requirement is designed to maintain the existing system of employer-provided coverage and discourage employers from dropping coverage — and that repealing the requirement is estimated to increase the uninsured population by up to one million and reduce government revenues by \$150 billion. A small business owner in the fast food industry testified that his premiums for employer-provided coverage have risen 60% over the last four years (single coverage now costs \$6,400 annually and family coverage is \$19,200), and only 4% of hourly staff have actually enrolled in coverage.

IRS operations. The Senate Homeland Security and Governmental Affairs Committee heard [testimony](#) from IRS Commissioner John Koskinen on the ACA's impact on IRS operations. The commissioner testified that despite significant IRS budget cuts (\$1.2 billion in reduced funding over the last five years), the IRS has performed reasonably well during the 2015 tax return filing season — the first year in which the individual mandate and the premium tax credits for public marketplace coverage were effective. The commissioner noted that prior to the filing season, the IRS worked with the tax return industry to update tax filing software to reflect new ACA rules, since 91% of tax filers use this type of software to prepare their returns. The commissioner noted that during the filing season, the ACA section of the IRS' website has had more than 4.4 million visits and the IRS' automated ACA telephone line has played more than 300,000 recordings.

Medicare legislation passes Congress

On Tuesday, the Senate passed ([92 to 8](#)) [H.R. 2](#) — the Medicare Access and CHIP Reauthorization Act of 2015. Since the House passed the legislation several weeks ago, H.R. 2 heads next to the president — who is expected to sign it. The legislation would change how physicians are reimbursed under Medicare and would provide a two year extension of the Children's Health Insurance Program (CHIP). As a partial offset to its cost, the legislation contains two provisions that would impact Medicare enrollees in 2018 and 2020:

- Income-related premium adjustments. Effective in 2018, enrollees in two income brackets would pay higher Medicare Part B and D premiums. Enrollees with income between \$133,500 and \$160,000 (doubled for a couple) would pay 65% of the premium (up from 50%), and enrollees with income above \$160,000 to \$214,000 (also doubled for a couple) would pay 80% of the premium (up from 65%).
- Medigap policies. Beginning in 2020, Medigap policies issued to newly eligible Medicare beneficiaries would be prohibited from covering the Medicare Part B deductible. Note that this change does not apply to employer-sponsored coverage for employees and retirees.

H.R. 2 would also repeal information reporting that was originally designed to enforce Medicare's secondary payor rules. Under these reporting rules, employers are required to respond to questionnaires from HHS seeking identification of Medicare beneficiaries with group health coverage. This reporting is no longer necessary since group health plans now directly report individuals with group health plan coverage to Medicare.

Congressional staff prepared a [section-by-section](#) explanation of H.R. 2.

Labor and Employment

Labor committee chairs in both the [House](#) and [Senate](#) proposed a legislative response this week to the NLRB's so-called "quickie" or "ambush" election rule that took effect on April 14. The new union election rule significantly alters how the NLRB administers representation elections. Earlier congressional efforts to disapprove the rule before it took

effect and block its implementation met with a presidential veto. (Please see our [February 13](#), [March 6](#), [March 20](#), and [April 2, 2015](#) editions of *Legislate* for more information on the new NLRB rule and the veto of S.J.Res. 8. See also our [April 6, 2015](#) *For Your Information* on the veto.)

Two bills were introduced in the House on Tuesday that would roll back certain key provisions of the NLRB's new union election procedures — [H.R. 1768](#) (the Workforce Democracy and Fairness Act) and [H.R. 1767](#) (the Employee Privacy Protection Act). Companion legislation for both bills ([S. 933](#)) was introduced in the Senate to amend the National Labor Relations Act with respect to the timing of elections, pre-election hearings, and the identification of pre-election issues, and to require that lists of eligible voters be provided to the NLRB.

[H.R. 1768](#) would:

- Prohibit union representation elections from taking place in less than 35 days after the filing of an election petition (the new NLRB rules would permit elections in as few as 11 days)
- Provide employers with at least 14 days after the filing of a petition to prepare for a hearing before the NLRB, and would allow employers to raise relevant and material pre-election issues — including unit appropriateness, the NLRB's jurisdiction, and other issues that reasonably could be expected to impact the outcome of the election — at any time prior to the close of the hearing
- Require the NLRB to rule on critical issues before certifying the results of a representation election — such as voter eligibility and the composition of the bargaining unit

[H.R. 1767](#) would require an employer to provide a list of the names of eligible voters and not more than one additional form of personal contact information no earlier than seven days after the Board's final determination of the appropriate bargaining unit. The bill would require workers to choose in writing the personal contact information (e.g., telephone number, email address, or mailing address) that would be given to union representatives.

Passage of these bills is likely if they are brought up for a vote. Because they would significantly alter the NLRB's new union election rule, the president would almost certainly veto the legislation. Enactment might be possible, however, if the bills are included as part of must-pass legislation later in the year — such as appropriations legislation funding the federal government for FY 2016 (which must be passed by September 30, 2015 to avoid a government shutdown).

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