

Legislate[®]

Key Legislative Developments Affecting Your Human Resources

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Congress Passes Budget Resolution; Senate Tables NLRB's New Election Rule Vote; Increase in Federal Minimum Wage Proposed

The Senate approved a budget resolution for FY 2016 that was passed by the House last week. Legislation failed to advance in the Senate that would override President Obama's veto of a congressional resolution and nullify the NLRB's new union election rule. Last week, the House approved legislation that would overturn a District of Columbia law prohibiting employers from discriminating against employees because of reproductive health decisions. Finally, legislation was introduced to increase the federal minimum wage.

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Budget

The Senate passed a budget resolution ([S.Con.Res. 11](#)) on Tuesday for FY 2016. The budget resolution — passed by the House last week — is noteworthy to employers for three reasons:

- **Policy provisions in appropriations legislation.** The resolution establishes top-line spending numbers for the appropriations committees so they can draft government funding legislation for FY 2016, which must be enacted by October 1, 2015 to avoid a government shutdown. FY 2016 funding legislation could include policy provisions that impact employment rules and/or employee benefits — more details will be available later this summer and in early fall. For example, government funding legislation for FY 2015 included a provision that prohibits the Department of Justice from preventing certain states from implementing medical marijuana legalization laws. (Please see our [December 12, 2014 Legislate](#) for more information.)
- **Affordable Care Act.** The resolution includes budget reconciliation instructions to the congressional committees with jurisdiction over the ACA. Budget reconciliation measures have a procedural advantage in the Senate because such legislation cannot be filibustered. Congress may use this legislative tool later this year to modify the ACA in the event of a decision against the federal government in *Burwell v. King*. This case challenges the



availability of the ACA's premium tax credits in states that have not established their own public marketplaces. Please see our [March 5, 2015 FYI Alert](#) for more information on the *King* case that is currently pending before the Supreme Court and our [November 25, 2014 Legislate](#) on the use of budget reconciliation to modify the ACA.

- **Need for revenue.** The resolution sets federal discretionary spending below the level that would trigger across-the-board, automatic cuts (“budget sequestration”) under the Budget Control Act of 2011. However, Congress may decide later this summer or fall to approve government funding legislation with discretionary spending that exceeds this threshold. If so, it is possible that Congress will enact employee benefit-related provisions as a way to raise revenue. In recent years, Congress liberalized rules on when participants can make Roth conversions in 401(k) plans and enacted PBGC premium hikes to offset the impact of budget sequestration for FY 2013, 2014, and 2015. Please see our [January 4, 2013](#) and [December 20, 2013](#) editions of *Legislate* for more information on these changes impacting retirement plans.

Employment and Labor

On Tuesday, the Senate [failed](#) to move forward on [S.J. Res. 8](#) — a congressional disapproval resolution that would nullify the NLRB's so-called “quickie” or “ambush” union election rule. (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 rule.) S.J. Res. 8 was passed by both chambers of Congress, but was vetoed by President Barack Obama on March 31, allowing the NLRB's new election rule to go into effect on April 14. (See our [April 2, 2015 Legislate](#); see also our [April 6, 2015 For Your Information](#) for more information on the veto.) The next procedural step to revive the disapproval resolution would be a vote in both chambers to override the presidential veto. Given the failure to move forward on Tuesday, a congressional veto override is unlikely.

Labor committee chairs in both chambers have proposed legislative fixes to the NLRB's new election rule. Bills that have already been introduced would roll back key provisions of the NLRB's new union election procedures — including the timing of elections, pre-election hearings, and voter lists. (See our [April 17, 2015 Legislate](#) for more information on the legislation.) While passage of these bills is likely if brought up for a vote, the president would almost certainly veto them. 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 October 1, 2015 to avoid a government shutdown).

Minimum Wage Legislation

Senator Patti Murray (D-WA) and Rep. Bobby Scott (D-VA) [introduced](#) legislation last Friday — the [Raise the Wage Act \(S. 1150 / H.R. 2150\)](#) that would increase the federal minimum wage from \$7.25 to \$12 in five steps — beginning with an increase to \$8 per hour in 2016 and thereafter increasing by \$1 per year until the minimum wage reaches \$12 per hour in 2020. The legislation would also index the federal minimum wage to the median hourly wage and eliminate the subminimum wage for tipped employees. With Republican majorities in both chambers of Congress, the legislation is not likely to advance.

Healthcare

The House passed a disapproval resolution last Friday ([H.J. Res. 43](#)) that would block a new District of Columbia law — the Reproductive Health Non-Discrimination Amendment Act of 2014 — from taking effect. This DC law amends the Human Rights Act of 1977 to protect employees from employment discrimination on the basis of reproductive

health decisions, and is a legislative response to the Supreme Court's *Hobby Lobby* decision last year. Please see our [June 30, 2014 FYI Alert](#) on the *Hobby Lobby* decision.

Even if H.J. Res. 43 is taken up by the Senate, the disapproval resolution is not likely to become law. The White House issued a [statement](#) that the president's advisers would recommend that he veto the resolution if it is passed by Congress.

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