

Legislate[®]

Key Legislative Developments Affecting Your Human Resources

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Review of *King* Proposals; Public Safety Officer Death Benefits; NLRB, Grievance Fees and Right-to-Work

This week we review two proposed legislative responses to *King v. Burwell*, the pending Supreme Court case involving state-based marketplace tax credits. We also review recently enacted legislation that provides an income tax exclusion for certain death benefits paid to fallen public safety officers, a GAO report on retirement savings, and a hearing on whether the NLRB is seeking to impair state right-to-work laws.

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Healthcare

The Supreme Court is likely to issue a decision at the end of this month in *King v. Burwell*, where a group of individuals residing in states that did not establish their own public marketplaces challenge IRS regulations allowing residents of those states to claim premium tax credits. Currently 37 states rely on a federally facilitated or supported marketplace, or have a federal-state partnership marketplace, and 14 states and the District of Columbia have established their own marketplaces. Please see our [March 5, 2015 FYI Alert](#) for background on the *King* case.

Republican senators have offered two bills that would respond to a decision by the Court rendering the premium tax credits unavailable in states that did not establish their own public marketplaces.

Chances of enactment?

The outlook for both *King*-related bills is uncertain. First, the Court may rule for the federal government, meaning the premium tax credits would remain available throughout the US and a legislative response would be unnecessary. Even assuming a ruling for the plaintiffs, Republicans in the House and Senate have not yet coalesced around a *King* decision response. Earlier this year, chairs of congressional committees with jurisdiction over the ACA announced two conceptual, high-level *King* response proposals in Wall Street Journal and Washington Post op-eds — but legislative language has not been introduced. Please see our [March 6, 2015 Legislate](#) for more information on the House and Senate conceptual proposals. Additional proposals are likely in the month ahead.

- **S. 673** — the [Winding Down ObamaCare Act](#) — was introduced by Senator Ben Sasse (R-NE) in March. This bill would provide “COBRA-like” rights to individuals insured through a public marketplace in a state that did not establish its own marketplace. In the event of a decision against government in *King*, individuals losing their premium tax credits could elect to continue their coverage at the same premium amount for 18 months. The bill would provide a new tax credit to assist with premiums during the 18 month coverage period — starting at 65% of the total premium for six months, and then reduced 5% each month for the remaining year. Additionally, the legislation would prohibit HHS from entering into new contracts with states to provide them with public marketplace technology — presumably to make it harder for states to set up their own public marketplaces in short order. As of yet, S. 673 has no co-sponsors.
- **S. 1016** — the [Preserving Freedom and Choice in Health Care Act](#) — was introduced by Senator Ron Johnson (R-WI) in April. This bill would retroactively repeal the individual and employer shared responsibility requirements, and preserve eligibility through September 2017 for the ACA’s premium tax credits for residents of states that have not established their own public marketplaces. Additionally, on a permanent basis, premium tax credits would be permitted only for individuals who are enrolled in coverage through a public marketplace before enactment of the legislation. The bill would also permit individuals to maintain group or other health insurance coverage in which they are enrolled between the date of enactment and December 31, 2017 — with special rules allowing family members and new employees to enroll. The legislation would also redefine the ACA’s definition of “essential health benefits package” as coverage that provides for benefits and cost-sharing as required by the state in which the plan is offered, and “essential health benefits” to include benefits required by the state in which the plan is offered. S. 1016 is co-sponsored by 31 Republican senators.

Death Benefits for Public Safety Officers

Two weeks ago, the president signed [Public Law 114-14](#), the “Don’t Tax Our Fallen Public Safety Heroes Act.” In addition to confirming a tax exclusion for certain federal death benefits provided to public safety officers, the legislation affirms that a tax exclusion is available for state programs that provide monetary compensation for surviving dependents of a public safety officer who has died in the line of duty. The exclusion is not available for any amounts that would have been payable for deaths not attributable to injuries sustained in the line of duty.

Comment. The legislation does not state a particular effective date — it is apparently viewed as merely removing an ambiguity about existing benefits. The legislation is also not specific about the source or type of payments. For example, it’s not clear whether survivor pension payments from qualified retirement plans that are available within the constraints of the incidental death benefit rule would be eligible for this favorable tax treatment.

Retirement

The Government Accountability Office (GAO) publicly released a [report](#) on Tuesday entitled “Retirement Security: Most Households Approaching Retirement Have Low Savings.” Highlights of the report include:

- 52% of households age 55 or older have no retirement savings in a defined contribution plan or IRA.
- 29% of households age 55 or older have no account-based retirement savings or any benefits from a defined benefit plan.

- For the 48% of households that have account-based retirement savings, the median account balance is \$109,000 — estimated to provide a \$405 monthly benefit at age 65.
- Social Security provides an average of 52% of household income for those 65 or older.

Labor and Employment

On Wednesday, the House Education and the Workforce Committee held a [hearing](#) — “Compulsory Unionization through Grievance Fees: The NLRB’s Assault on Right-to-Work.” The hearing focused on whether the NLRB should adopt a rule permitting unions to collect fees from non-members for processing their grievances and the possible impact of such a rule on right-to-work states. In April, the NLRB invited the public to submit briefs on the fee issue in the currently pending *Buckeye Florida* case. Last month, the board’s solicitation of briefs and its implications was one of several issues explored with NLRB Chairman Mark Pearce and General Counsel Richard Griffin during a Senate appropriations hearing on the NLRB’s FY 2016 budget request. See our [May 29, 2015 Legislate](#) for more information on that hearing.

In this week’s hearing, Governor Pete Ricketts (R-NE) testified that imposing grievance fees on non-union members is a threat to state right-to-work laws — noting that such laws are an incentive for attracting employers to states. Several witnesses expressed concern that the NLRB’s adoption of a rule requiring the payment of such fees would overturn long-standing court and NLRB precedent, undercut right-to-work laws, impair the economies of the 25 current right-to-work states, and undermine employees’ free choice — requiring them to pay union dues in order to preserve their right to pursue grievances against their employers. In contrast, other witnesses questioned whether right-to-work laws are beneficial for workers and actually result in job growth within a state.

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