

Legislate<sup>®</sup>

## Key Legislative Developments Affecting Your Human Resources

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## Congress Deals with Pension, Multiemployer and Healthcare Plans Despite Chaos and Challenges

In this issue, we recognize the challenges facing Congress with the upcoming debt ceiling, the pending House leadership's change of guard, and budget woes. Last week, the president signed legislation changing the ACA. Congress held another hearing to examine joint employer issues. And legislation was introduced to provide retirement protections for spouses and part-time workers, as well as for multiemployer pension plan participants and union workers.

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### Congress Navigates Obstacle Course

October 30? November 5? December 11? Employers are asking, "*Why are we focused on these dates?*" The calendar is full of deadlines that Congress is trying to manage in their effort to avoid a financial crisis.

Speaker John Boehner's (R-OH) last day as speaker of the House is October 30. Treasury Secretary Jack Lew announced that, absent an increase to the debt ceiling, the government will have limited funds to timely and fully pay its debts by about November 5. The Bipartisan Policy Center [estimates](#) that the government would run out of funds on some date between November 10 and 19. Congress' funding authorization expires on December 11.

So, what's next? Solving the dual challenges of government funding and the debt ceiling are next on the obstacle course. Rep. Boehner wants to solve these challenges before passing the baton to the next speaker. Despite the announced October 30 date, we don't know when this will actually happen because the election scheduled for October 8 was postponed when House Majority Leader Kevin McCarthy (R-CA) abruptly dropped out of the race minutes before the scheduled vote.

### Understanding the U. S. Debt Limit

**What is the debt limit?** The debt limit (or debt ceiling) is the total amount of money that the government is authorized to borrow to make payments on its existing obligations, such as Social Security and Medicare benefits. It allows the government to finance existing legal obligations, but creates a limit on the amount of money Treasury may borrow.

**Why does Congress have the authority to change the debt limit?** Under the Constitution, only Congress can authorize borrowing money on the credit of the United States. In 1917, Congress established an aggregate limit, or "ceiling," on the total amount of new bonds that could be issued.

**What are the consequences of reaching the debt limit?** The government would not be able to borrow additional funds and would be unable to pay its debts. This would lead to a default on meeting its legal obligations, potentially triggering a financial crisis.

**Can Congress change the debt limit?** Yes. With its authority under the Constitution, Congress established the debt limit and the process for changing the limit. Since 1960, Congress has changed it almost 80 times.

**What's the impact for employers if the debt limit is not raised?** According to a Department of Treasury [report](#), a debt limit impasse that results in a default "could have a catastrophic effect" on job creation. Moreover, according to the report, the debt ceiling debate itself "could spark renewed financial market stress" and could cause "businesses to postpone hiring and investments."

## Healthcare: Obama Agrees to ACA Change

Last week, President Barack Obama agreed to modify the Affordable Care Act when he signed [H.R. 1624](#), the Protecting Affordable Coverage for Employees Act. As noted in last week's [Legislate](#), this law rescinds the ACA's scheduled 2016 expanded definition of "small employer" from 1 to 50 employees to include employers with 51 to 100 employees, and instead allows each state to decide independently whether to expand the definition. By signing this bill, employers with 51 to 100 employees will avoid having to comply with the ACA small employer reforms, and the president has shown a willingness to change the ACA when it's reasonable to do so.

## Retirement

Bills that would enhance women's retirement security and would dramatically change the procedural landscape for multiemployer plans approaching insolvency are in the spotlight.

### Renewed Efforts to Enhance Retirement Security

On September 30, Sen. Patty Murray (D-WA), Ranking Member of the Senate Health, Education, Labor, and Pensions (HELP) Committee, introduced the [Women's Pension Protection Act of 2015](#) (S. 2110). Sen. Murray's proposal is intended to enhance retirement security for women, but the bill's language addresses retirement security for spouses and part-time workers regardless of gender. The only non-gender neutral provisions are those aimed at improving women's financial literacy.

The bill would enhance women's retirement security with two key changes. First, spousal protection provisions would generally extend defined benefit plan spousal consent rules to defined contribution plans. Second, the bill would require 401(k) and 403(b) plans to allow non-union, part-time employees who work at least 500 hours in three

consecutive 12-month periods to participate. This later provision is seen as benefitting women because they are more likely to work part-time.

Notably, there have been numerous congressional efforts to improve retirement security for women over the years. For example, the [Comprehensive Women's Pension Protection Act of 1996](#), introduced in the House and the Senate, would have required spousal consent for distributions from 401(k) plans and would have established a dedicated women's pension toll-free phone number. Likewise, the [Women's Pension Protection Act of 2002](#), introduced by former Sen. Ted Kennedy (D-MA), would have required spousal consent for distributions from defined contribution plans.

**Comment.** If Murray's bill were to become law, defined contribution plans would likely experience some increased costs for providing information and opening small accounts. Administering spousal consent requirements would also add administrative complexity and cost. Although the possibility of the current legislation gaining traction is uncertain, employers should continue to monitor it.

### New Legislation — Stronger Voice for Multiemployer Plan Participants

Sen. Rob Portman (R-OH) [introduced The Pension Portability Act](#) on October 7 that would dramatically change the procedural landscape for multiemployer plans approaching insolvency and seeking approval to cut accrued benefits. The Multiemployer Pension Reform Act (MPRA), enacted in December 2014, permits multiemployer pension plans to avert potential bankruptcy by permanently reducing the payment of accrued pension benefits, subject to approval by Treasury, and following a vote by plan participants. Our [June 29, 2015](#) and [September 2, 2015](#) *For Your Information* publications explain the IRS submission and voting process. The Pension Portability Act would change the process and give plan participants a stronger voice. Specifically, under Portman's proposal, the participants' vote would be binding (rather than non-binding under current law, as Treasury can overrule their vote), and unreturned ballots would no longer be counted as a vote in favor of cutting pension benefits.

**Comment.** Portman's bill differs from the bi-cameral legislation, Keep our Pension Promises, introduced earlier this year by Sen. Bernie Sanders (I-VT) ([S. 1631](#)) and Rep. Marcy Kaptur (D-OH) ([H.R. 2844](#)). The legislation would restore the pension anti-cutback rule that existed prior to MPRA.

### Labor and Employment: Focus on NLRA and NLRB

Legislation addressing workers' rights to organize was introduced on October 6 by presidential candidate Bernie Sanders (I-VT) ([S. 2142](#)) and Rep. Mark Pocan (D-WI) ([H.R. 3690](#)). The [Workplace Democracy Act](#) would amend the National Labor Relations Act to allow the National Labor Relations Board to certify a union if a majority of eligible workers sign valid authorization cards, eliminating the employer's right to demand a secret ballot election. The bill would also require companies to begin contract negotiations within 10 days after certification and would create mediation and binding arbitration rights if no collective bargaining agreement is reached within prescribed time limits. In a Republican-controlled Congress, this legislation is unlikely to advance.

**Comment.** Similar card-check legislation — the [Employee Free Choice Act](#) — was introduced in both chambers in 2009, but did not gain traction. Employers with non-union workforces that may be subject to organizing will want to watch for renewed legislative efforts should control of Congress shift.

Last week, the Senate Health, Education, Labor and Pensions Committee held a full committee hearing to examine the NLRB's joint employer decision, as well as the [Protecting Local Business Opportunity Act](#) — legislation designed

to make clear that an employer must have actual, direct and immediate control over an employee to be considered a joint employer. (See our [October 5, 2015 Legislate](#).) Notably, although the legislation is largely intended to protect small and franchise businesses, contractors and entrepreneurs, as well as to restore the joint employer standard in place prior to the Board's decision, committee members and witnesses at the hearing questioned whether the Board decision was overreaching and whether the legislative response makes sense.

The House Small Business Committee's Subcommittee on Investigations, Oversight and Regulations held a [hearing](#) focused on the proposal released last summer that would revise the FLSA's "white collar" overtime exemptions. (See our [June 30, 2015 FYI Alert](#).)

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