

# Legislate<sup>®</sup>

## Key Legislative Developments Affecting Your Human Resources

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## Congress Recesses, Leaving House Without a New Speaker

No hearings or other congressional activity were scheduled last week while Congress was in recess. In this issue, we consider the current congressional challenges heightened by Speaker John Boehner's pending resignation. We also review some presidential candidates' emerging views and proposals on employee benefits and other employment-related issues.

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### House Leadership Needed

Last week, Congress was in recess. This week, while the House focuses on the need to nominate a new speaker to succeed Speaker Boehner, Congress as a whole will concentrate on averting the debt ceiling crisis. Indeed, according to Treasury, the federal debt limit is projected to be reached as early as [November 3](#) — so Congress must act and raise this limit to avoid a government default in mid-November. With the House leadership in flux, there is concern that Congress may not timely address the debt ceiling and the December 11 expiration of funding, either of which could lead to a government shutdown. See our [September 28, 2015 Legislate](#) for more on the potential impact to employers of a government shutdown.

### Who Will Be Speaker?

Who will emerge as a front-runner for the speakership remains to be seen. Rep. Paul Ryan (R-WI), the current Chairman of the Ways and

### Social Security and Medicare Premiums

The SSA announced last week that recipients will receive no cost-of-living (COLA) increases in 2016. (See our [October 15, 2015 For Your Information](#).) While the overall CPI did not increase, Medicare health costs continued to escalate and an increase in the Medicare Part B premium is required in 2016. However, federal law includes a “hold harmless” provision that protects about 70% of Social Security recipients from an increase in Part B premiums that would effectively reduce their monthly Social Security payment (most Medicare recipients have their premiums deducted from their Social Security checks). Thus, since there is no COLA in 2016, Part B premiums cannot increase for the group protected by the hold harmless provision. But this means the remaining 30% will bear the full brunt of the increase in Medicare costs, which CMS has projected as a 52% increase in Part B premiums and deductibles. While there is considerable debate going on in D.C. about how to address this increase, it remains to be seen if the administration or Congress will take action.

Means Committee, has stated that he [will not be a candidate](#) — despite encouragement from members of his party. If he changes his mind, it's widely anticipated that he would be the front runner.

In the meantime, Rep. Jason Chaffetz (R-UT) and Rep. Daniel Webster of (R-FL) are actively seeking the post. Given Chaffetz's reputation of collaborating with Democrats, should he win the Republican's nomination, he would have a reasonable chance of being elected when the full House votes. On the other hand, Webster has little chance of winning the nomination. And, should Webster be elected speaker, his leadership would be jeopardized by the likelihood that he will lose his House seat shortly thereafter due to pending district map changes.

## Spotlight on Presidential Candidates

Congress is not likely to pass significant legislation for employer-sponsored plans during the current administration. Looking forward, employers have a keen interest in the presidential candidates' views on topics impacting employment and employee benefits that could be the subject of future legislation. The Democratic debate last week provided some insight into these views.

### Learnings from the Democratic Debate?

The first 2016 Democratic Party presidential debate occurred on October 13, with Hillary Clinton (former Secretary of State, Senator (D-NY), and First Lady) taking center stage, flanked by Sen. Bernie Sanders (D-VT), former Senator Jim Webb (D-VA), and former Governors Martin O'Malley (D-MD) and Lincoln Chaffee (D-RI).

**Wages and leaves.** Sanders made clear that he supports a federal minimum wage of \$15/hour (consistent with [legislation](#) he introduced in July). Clinton also supports a minimum wage increase, but believes that the increase should take into account regional cost-of-living differences. Both Clinton and Sanders support paid leave. Indeed both think the failure to provide such leaves separates the US — in a negative way — from other countries' policies. Clinton, for example, said that paid family leave for American families would allow the U.S. to "join the rest of the world." And Sanders weighed in that the lack of a federal right to paid leave is "an international embarrassment."

**Healthcare.** While not discussed during the debate, the candidates' healthcare proposals are coming into focus from other sources. Clinton wants to modify the ACA's existing structure, including a repeal of the Cadillac tax, while Sanders supports a single-payer system — "Medicare for all."

**Prescription drugs.** Clinton's and Sanders' proposals to lower prescription drug prices have certain elements in common.

Sanders' plan would:

- Require Medicare to negotiate with prescription drug companies
- Permit prescription drugs to be imported from Canada
- Prohibit "pay-for-delay" deals — whereby brand name drug companies pay generic drug makers to delay release of a generic drug, resulting in higher prices

Clinton's proposals would:

- Allow Medicare to negotiate with drug companies
- Place a cap on monthly out-of-pocket costs for prescription drugs

- Reduce the exclusivity period for biologic drugs to seven years
- Permit prescription drugs to be imported from outside the U.S.
- Eliminate tax breaks for drug advertising directed at consumers

### Healthcare – Jeb Bush Views and Proposals

In contrast to both Clinton's and Sanders' proposals, former Governor Jeb Bush's (R-FL) plan would repeal and replace much of the Affordable Care Act (ACA). His proposal would change the current landscape of employer sponsored healthcare insurance by introducing an annual cap of \$12,000 per individual or \$30,000 per family on tax-free employer sponsored healthcare. Notably, Bush's plan would permit employers to make tax-free contributions to employees' costs in purchasing individual health insurance coverage, rather than providing the coverage itself. The plan would roughly double the current contribution limits for health savings accounts (HSAs) and increase the possible uses of HSAs, and would provide tax credits to those who do not have employer coverage to purchase health insurance in the individual market. In addition, the plan would eliminate the ACA's "essential health benefits" mandate. (See our *For Your Information* from [February 27, 2013](#).)

### Looking Ahead ... Congress Returns from Recess

This week, the House is expected to vote on a proposed reconciliation package — which includes a repeal of a number of ACA provisions, including the individual and employer mandate, the Cadillac tax, the medical device tax, and auto-enrollment. It remains unclear whether the Senate will take up this legislation or its prospects if it does. If such a package makes it to the president's desk, it is unlikely to be signed into law.

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