

Legislate[®]

Key Legislative Developments Affecting Your Human Resources

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House Speaker Election, Debt Ceiling, Employee Benefits and Halloween

With Halloween just days away, Congress will hopefully not be frightened by the prospect of a new speaker, dealing with the debt ceiling or other scary tasks. In this issue, we review highlights of Sen. Marco Rubio's employment and employee benefits-related views and proposals, as well as developments on ACA repeal efforts and fiduciary rules.

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House Leadership — Trick or Treat

Following a one-week recess and pressure from Republican colleagues, Rep. Paul Ryan (R-WI) is now preparing to run for House speaker to fill the vacancy arising from Rep. John Boehner's (R-OH) pending resignation. Ryan has broad support from Republicans and Democrats, but no endorsement from the House Freedom Caucus. The election is scheduled for October 28. If Ryan becomes speaker, focus will pivot to who will be the next chairman of the House Ways and Means Committee. If Ryan is not elected, Congress will be hard pressed to deliver any treats. Meanwhile, the full Congress must quickly address the looming debt ceiling and government funding issues. (See our [October 12 Legislate](#)). These issues are increasingly serious, as made clear by Treasury's [decision](#), for the first time since 2004, to delay the October 27 auction of the two-year note. According to Treasury, Congress' failure to take action on the looming debt ceiling jeopardizes the success of the sale.

Treasury Notes

Treasury notes are debt obligations of the U.S. Government backed by the government's full faith and credit.

ACA — Repeal Efforts Continue

The House approved a [reconciliation bill](#) that would repeal significant Affordable Care Act (ACA) provisions, including the Cadillac tax, the individual mandate, the employer shared responsibility mandate and the 2.3% medical device tax. Now dropped from the bill is a provision to repeal establishment of an Independent Payment Advisory Board, which would make policy recommendations on Medicare.

The bill is expected to clear congressional hurdles and be presented to the president for signature. However, since the president is not expected to sign it, employers will push forward with advocacy efforts for full repeal of the Cadillac tax. To date, these efforts appear to be paying off. Each week there are new co-sponsors to the four pending congressional bills, [S. 2045](#), [S. 2075](#), [H.R. 879](#) and [H.R. 2050](#), which seek full repeal.

Fiduciary Rules

Recognizing that the regulatory notice and comment period is among the longest ever, the DOL continued to provide updates on its efforts to finalize the fiduciary rules. In addition, the DOL issued updated rules to help fiduciaries prudently navigate the process for selecting economically targeted investments for plan assets.

Proposed Regulations

Last week, Phyllis Borzi (DOL, Assistant Secretary of Labor, Employee Benefits Security Administration) spoke at a [Bipartisan Policy Center](#) event. She provided insight into next steps for the proposed fiduciary rule, also known as the conflict-of-interest rule. Borzi did not discuss the topic of education versus advice. Specifically, she addressed:

- **Timing:** comments are still being read; new guidance will not be issued in 2015
- **Value:** comments included some “nuggets” that will serve as the foundation to issue revised guidance
- **Standard:** the “best interest” standard is not intended to be a watered down one from the “sole interest” standard in the earlier fiduciary proposal; rather it is a hybrid of the “sole interest” and the SEC standards
- **Enforceability:** guidance will strive to create a “legally enforceable” best interest contract

Economically Targeted Investments

Last week, the DOL provided updated [guidance](#) on investing retirement plan assets in “economically targeted investments” or ETIs. Although there is no consensus, for purposes of the guidance, the DOL considers ETIs to include “any investment that is selected, in part, for its collateral benefits, apart from the investment return.”

Comment. Going forward, fiduciaries, including 401(k) plan savings investment committees that select and monitor plan investments, will have less risk if an ETI is selected via a prudent process that is reflected in an “appropriate level of documentation.” Among other things, the DOL has made clear that there is no longer a presumption that more documentation is needed than for selecting other non-ETI investments.

Presidential Candidate Rubio’s Emerging Views

Continuing our coverage of the presidential candidates’ employment and employee benefits-related positions, we turn to Sen. Marco Rubio (R-FL).

Congress’ Role

Congressional efforts to delay the DOL’s regulation pick up steam as additional co-sponsors sign on to a bill that would prohibit the agency from issuing revised rules before the SEC takes action.

See our [October 5 Legislate](#).

Healthcare

Senator Marco Rubio's healthcare proposals would significantly change the landscape for employer-sponsored coverage. His proposals include:

- Changing the tax preference for healthcare plans sponsored by employers
- Expanding health savings accounts

Prescription Drugs

Rubio has stated that prescription drug pricing "is a complex issue" and should reflect how well the drug performs. Rubio has also noted that it is "really frustrating" that drugs "across the border" cost less. As such, Rubio would likely support a plan to permit prescription drugs to be imported from Canada. In this regard, his views are consistent with Hillary Clinton's and Bernie Sanders' proposals. However, such a proposal would not align with Rubio's position in 2012, when he refused to support Sen. John McCain's (R-AZ) efforts to permit consumers to purchase prescription drugs from Canadian pharmacies.

Paid Leaves

Rubio would seek to change the federal tax code to encourage private employers to voluntarily offer employees paid leave to take care of family or medical issues. Specifically, he wants to provide a 25% nonrefundable tax credit, up to a maximum of \$4,000 per worker, to companies that provide workers a minimum of four weeks of paid leave. Rubio's proposal is consistent with [legislation](#) introduced in 2014 by the Senate and identical [legislation](#) introduced in the House.

Halloween — Schumer Tackles Face Paint and Makeup Issues

In recent weeks, Sen. Chuck Schumer (D-NY) has carved out time to address Halloween-related issues. Noting that makeup and face paint may contain lead and other dangerous chemicals, Schumer has [asked](#) the FDA to investigate such products and to draft regulations to protect children from dangers. At a minimum, Schumer has urged the FDA to require disclosure of chemical ingredients on the product packaging and to "increase enforcement of products that are currently on the market that are mislabeled, misbranded or adulterated."

Looking ahead to next week ...

Tricks or treats?

Halloween – Fun Congressional Facts

In 2003, Congress introduced the [Halloween Safety Act of 2003](#), which would have amended the Uniform Time Act of 2006. The legislation was designed to provide an extra hour of daylight until after Halloween. Although the legislation was not enacted, two years later, as part of the [Energy Policy Act of 2005](#) and without any mention of Halloween, the Uniform Time Act of 1966 was amended to extend standard daylight time through October.

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