

# Legislate<sup>®</sup>

## Key Legislative Developments Affecting Your Human Resources

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## Budget Act Impacts Pension and Health Care Plans; Further Advances for Fiduciary and Joint Employer Standards

Congress was bustling last week and accomplished many of its missions. In this issue, we examine the impact of the Bipartisan Budget Act of 2015 for employer-sponsored pension and health care plans as well as changes in House leadership. We also review other congressional activity on fiduciary standards and joint employers.

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### Major Congressional Actions

President Obama is expected to sign the [Bipartisan Budget Act of 2015](#) (Act) today, Congress' response to two looming problems: the debt ceiling and funding the federal government. The Act, passed last week by both the House of Representatives and the Senate, suspends the debt ceiling, permitting the U.S. to borrow money, pay its debts, and, in the words of Treasury Secretary Jacob Lew, "avoid [an] unnecessary self-inflicted wound." The Act also ensures that there is funding available for government agencies and programs, minimizing the possibility of a government shutdown during the two fiscal years ending on September 30, 2017. (See our *Legislate* dated [September 28](#) for more background on the impact of government shutdowns.)

The Act includes numerous provisions with significant impact for employers and employer-sponsored benefit plans. Highlights of these provisions are below, and more information is forthcoming in an *FYI Alert*.

### Bipartisan Budget Act of 2015 — Pension Provisions

The pension provisions are generally designed as revenue raisers to offset costs from other Act provisions. The pension provisions include:



- Year-over-year increases for single-employer plan PBGC premiums — both fixed and variable rate (effective in 2017)
- An extension through 2020 of the stabilized interest rates used for funding, permitting plan sponsors additional time to use “pension smoothing”
- Increased flexibility to modify mortality tables prescribed by Treasury for purposes of calculating liabilities (but not lump sums)
- A requirement that PBGC premiums be paid no later than September 15, one month earlier than under current law, in 2025

Note that premiums were not increased for multiemployer plans.

## Bipartisan Budget Act of 2015 — Health Care Provisions

The Act includes provisions to ensure that Medicare Part B premiums and deductibles will not spike in 2016. It also repeals an Affordable Care Act (ACA) provision.

**Medicare Part B Premium Fix.** The Act includes an important provision affecting approximately 30% of Medicare Part B beneficiaries. Absent a “fix,” these beneficiaries would have been subject to significantly higher 2016 monthly premiums.

**Repeal of ACA Automatic Enrollment.** The Act eliminates the requirement for employers with more than 200 full-time employees to enroll new full-time employees automatically into health plans.

### ACA Repeal Efforts Continue

Repeal of automatic enrollment is also included in the reconciliation package ([H.R. 3762](#)). The ACA provisions in the reconciliation package also include repeal of the Cadillac tax, the medical device tax, the individual mandate and the employer shared responsibility mandate. The Senate leadership seeks to target the middle of November for a vote on the reconciliation package.

## Congressional Leadership — House Ways and Means Committee

### Committee Membership

The Republican steering committee, with 33 members — each with one vote, except for the speaker who has five votes and the majority leader who has two — controls who will be nominated for the open Ways and Means chairmanship. The nominee is then subject to approval via a vote by all House Republicans. The same process governs who becomes a new member of the committee in the event the new chairman is selected from the existing committee membership.

Last week the House elected Rep. Paul Ryan (R-WI) as speaker of the House, succeeding Rep. John Boehner (R-OH). As the new speaker, Ryan resigned as chairman of the House Ways and Means Committee. Rep. Sam Johnson (R-TX) has agreed to serve as the committee’s acting chairman. A new chairman and possibly a new member must be elected. As of today, Rep. Kevin Brady (R-TX) and Rep. Pat Tiberi (R-OH) seek to be chairman.

**Jurisdiction.** The Ways and Means Committee is considered one of the most powerful. According to the Constitution, any tax-related bills must originate in the House. Further, [House rules](#) provide this committee with primary jurisdiction for raising revenue to finance the federal government, for borrowing

money, and over most of the programs authorized by the Social Security Act. Notably, bipartisan efforts to repeal certain provisions of the ACA, including the Cadillac tax and the medical device tax, were included in a reconciliation bill drafted by this committee.

**Comment.** Control of this committee is of paramount interest to employers who, as plan sponsors, provide and design plans with an understanding of the tax-favored treatment. Employers may seek to revamp plans should legislation be introduced modifying rules permitting an employer tax deduction, such as those currently provided for defined benefit plan funding, 401(k) deferrals and matching contributions, and costs for welfare plan coverage. Similarly, the landscape of employee benefits would dramatically change if legislation were introduced to cap employees' rights to defer taxation for 401(k) contributions (and related earnings) or to tax premiums deducted from employees' pay.

## Fiduciary Rules — New Developments

Congress, DOL and the White House are challenged to find common ground and a path forward on fiduciary (conflict-of-interest) guidance. As noted in our [September 14](#) *Legislate*, the DOL's proposed regulations, issued in April and the subject of a four-day [hearing](#) in August, would significantly change and broaden the definition of a fiduciary.

The DOL is preparing to issue revised guidance for fiduciary rules, with release expected in early 2016. However, Congress is moving forward with efforts to stop the DOL. Last week, the House passed [H.R.1090](#), the Retail Investor Protection Act. Although this legislation would require the DOL not to act until after the SEC publishes fiduciary guidance, it's not likely to be enacted. Indeed, if the legislation is presented to the president for signature, [his senior advisors](#) will advise him to veto the bill.

## Joint Employers — Congressional Response to New Standard

More congressional activity has taken place in response to the new joint employer standard created by the National Labor Relations Board's decision in [Browning-Ferris Industries of California, Inc.](#) As we reported in our [September 14](#) and [October 5](#) issues of *Legislate*, in that decision the NLRB provided that joint employer status may exist by the exercise of indirect and/or unexercised control of wages and working conditions.

Congressional response to the decision was swift. Rep. John Kline (R-MN) and Rep. Phil Roe (R-TN) vowed to "roll back" what they characterized as a "flawed decision." Rep. Kline introduced the Protecting Local Business Opportunity Act ([H.R. 3459](#)) and Sen. Lamar Alexander (R-TN) introduced an identical bill ([S. 2015](#)) in the Senate that would amend the NLRA to reinstate the board's prior standard, specifying that two or more employers may be considered joint employers only if each has "actual, direct, and immediate" control over essential terms and conditions of employment.

Congressional hearings and other meetings have examined the legislation, including:

- [September 29](#), House Education and the Workforce Subcommittee on Health, Employment, Labor, and Pensions
- [October 6](#), Senate HELP Committee hearing
- [October 28](#), House Education and the Workforce Committee

Last week, the House Education and the Workforce Committee approved H.R. 3459 by a vote of 21 to 15. It will now proceed to the full House for consideration.

## NLRA Violations — A Private Right of Action?

Last week, Rep. Keith Ellison (D-MN) introduced the Employee Empowerment Act ([H.R. 3837](#)), designed to permit employees to bring a private right of action against an employer that allegedly committed certain NLRA violations. The bill has been forwarded to two House committees for consideration but is unlikely to advance. The same bill introduced by Rep. Ellison in 2014 failed to gain traction. (See our *Legislate* from [August 1, 2014](#).)

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