

# Legislate<sup>®</sup>

## Key Legislative Developments Affecting Your Human Resources

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## Little Time Left to Pass Legislation Between November and December Recesses

Congress was on recess last week and will be again after December 18. In this issue, we recognize legislation introduced last month seeking to expand multiemployer plan participants' rights, as well as nursing mothers' rights. Next week we hope to report that Congress passed funding legislation to avoid a government shutdown after December 11.

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### Thanksgiving

Last week, the Senate and the House of Representatives were on recess with no hearings scheduled, the nation celebrated Thanksgiving Day and President Barack Obama continued a long standing tradition started in 1963 by President John F. Kennedy. Abe, a lucky turkey flown to Washington D.C. on "Turkey One," was pardoned by the president and sent to live on a farm in Virginia.

### Support Grows for Enhancing Multiemployer Pension Plan Participant Rights

Rep. David Joyce (R-OH) introduced [H.R. 4029](#), the Pension Accountability Act. This bill, like an identical Senate bill introduced last month by Sen. Rob Portman (R-OH), [S. 2147](#), would give participants more say in efforts to suspend benefit payments from multiemployer plans in jeopardy of becoming insolvent. Importantly, the legislation would provide that ballots not returned by participants are not counted as a vote in support of reducing benefits.

For additional information on the suspension of benefit provisions in the Multiemployer Pension Reform Act of 2014, see our [October 12 Legislate](#) and our [September 2](#), [June 29](#) and [January 12](#), 2015 *For Your Information* publications.



## Lactation Breaks for Nursing Mothers

The Fair Labor Standards Act (FLSA) requires employers (subject to limited hardship exceptions for small employers) to provide non-exempt employees with reasonable breaks and privacy to express breast milk for their nursing children age one or younger. Most recently, Sen. Jeff Merkley (D-OR) and Rep. Carolyn Maloney (D-NY) continued their efforts to extend that requirement to exempt employees, introducing [S. 2321](#) and [H.R. 4113](#), the Supporting Working Moms Act of 2015. Notably, the mandate imposed on employers by the FLSA (and which would be imposed by this legislation) is narrower than the requirements set forth in some state laws. For example, some state laws require employers to provide reasonable breaks for breastfeeding in the workplace, as well as lactation, and to accommodate working mothers for children over the age of one.

**Comment.** As work environments continue to change and evolve, providing privacy may be more relevant and important today than it was in the past. Specifically, with an increase of open work spaces without closed offices for non-exempt employees, there may be a greater need for expanded rights and protection for nursing mothers. Efforts to pass this legislation may gain traction in this Congress despite its failure to succeed previously.

## Congress Returns for Three Weeks

Congress returns from recess for three weeks before it begins a two week recess at the end of the month. Importantly, Congress has only this week and next to pass legislation necessary to fund the government agencies and programs after December 11. Perhaps due to the need to stay focused on the appropriations process, no hearings are scheduled for this week that relate directly to employer-sponsored benefit plans or HR/employment matters.

### Coordination of Federal, State and Local Laws

More than half the states, and some local jurisdictions, provide nursing mothers with rights related to breastfeeding and/or lactation. To the extent such laws provide mothers with rights greater than those provided by the FLSA, they are not preempted by the federal law. As such, nursing mothers' rights to express milk in the workplace will depend on upon which law, if any, applies.

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