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Key Legislative Developments Affecting Your Human Resources

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Short-Term Deal Averts Shutdown; Tax Extenders Legislation Includes Transit Parity; DOL's Proposed OT Rule under Scrutiny

Congress failed to pass an omnibus spending bill or reach consensus on the scope of a tax extenders bill last week. In this issue, we provide an update of Congress' efforts to pass these bills, which could affect the DOL's proposed fiduciary rule and/or the timing of the Cadillac tax. Additionally, we examine Congress' response to DOL's proposed overtime rules and legislation to extend the work opportunity tax credit and encourage the hiring of unemployed workers.

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Short-Term Funding Fix, Omnibus Spending Bill Forthcoming

Congress failed to reach agreement last week on an omnibus bill to fund most of the federal government for the fiscal year that ends on September 30, 2016. However, the government's lights will stay on (for now, at least), as President Obama signed a five-day spending bill, in the form of a continuing resolution (CR), providing funding through December 16. (See our [October 5](#) and [September 28](#) issues of *Legislate* for background on the potential impact of a government shutdown and the CR that provided funding through December 11.)

Meanwhile, Congress is expected to introduce an omnibus spending bill today that it will seek to finalize before the scheduled two-week recess beginning after December 18, 2015. However, efforts to attach riders to such a bill — designed to accomplish outcomes unrelated to funding and often viewed as disruptive to the legislative process — could force another short-term funding solution.



Rider Could Impact Proposed Fiduciary Rule

Numerous congressional actions already underway could interfere with DOL's intent to finalize its proposed fiduciary and conflict-of-interest guidance. (See our [December 7](#) and [November 23](#) issues of *Legislate* and our [April 21 For Your Information](#) for additional background.) Adding to this mix, Congress is now considering a rider to the omnibus spending bill on the topic. Under one scenario, a rider would send DOL back to the drawing board to issue a new proposed rule, followed by a new notice and comment period. Alternatively, a rider could prohibit the DOL from using

federal funding to finalize, implement, administer or enforce the DOL's proposed rule. The latter approach has already been proposed in stand-alone legislation introduced by the [House](#) and [Senate](#).

Tax Extenders Legislation – Transit Parity and Cadillac Tax Delay

Historically, at the end of each year, Congress has considered tax-related laws that are about to expire, or have already expired, to determine which, if any, to extend — and whether such extensions should be temporary or permanent. Transit parity is one topic currently on the tax extenders table. Additionally, a rider to a tax extenders bill could impact the timing of the Cadillac tax. (See our [January 10, 2014 Legislate](#) for background on tax extenders.)

Two-Year Patch to Restore Transit Parity

Restoring parity of the tax exclusion for qualified transportation parking and mass transit benefits is once again included in a package of potential tax extenders being considered by Congress. Specifically, Rep. Kevin Brady (R-TX) introduced [legislation](#) last week to increase, for a two-year period retroactive to January 1, 2015, the monthly amount for mass transit benefits so that it would be the same as for parking benefits. Earlier this year, Sen. Orrin Hatch (R-UT) introduced [S. 1946](#) to extend parity for 2015 and 2016.

If the current draft of the tax extender legislation is finalized and signed into law, for 2015, employees would be able to exclude from income up to \$250 per month for 2015 mass transit expenses — the same as the monthly limit for parking expenses. And, for 2016, employees would be entitled to exclude from income up to \$255 per month (to reflect adjustment for inflation). (See our [January 9 FYI Alert](#) for background on the administrative complexities that would arise if the bill is applied retroactively to January 1, 2015.)

If the tax extender legislation is not finalized and signed into law, the monthly limit for qualified mass transit benefits will remain at \$130. (See our [December 18, 2014](#) and [October 21 For Your Information](#) publications for additional background.)

Comment. If [H.R. 4104](#), the Bike to Work Act of 2015, is enacted with bike-sharing systems being treated as mass transit **and** if tax extenders legislation is passed with transit parity as described above, eligible employees would be entitled to exclude from 2016 income up to \$255 per month (to reflect adjustment for inflation) for use of bike sharing systems. However, the \$20 per month qualified bicycle commuter limit — that applies to the purchase of a bicycle and bicycle improvements, repair and storage — would not change.

Two-Year Delay for Cadillac Tax

Although repeal of the Cadillac tax has bipartisan, bicameral support and is included in the reconciliation package, President Obama is expected to veto the package due, in part, to its inclusion of provisions that would repeal numerous key aspects of the Affordable Care Act. As such, Congress has been discussing various legislative avenues to deliver a multi-year delay to the Cadillac tax, currently scheduled to apply in 2018. Most recently, Congress has discussed using the tax extenders package as the vehicle.

Hiring Decisions – Impact of OT Regulations and Tax Credits for Hiring Unemployed

During a hearing held last week, a House Education and the Workforce subcommittee considered the DOL's proposed overtime rule and the impact it may have on employers' hiring decisions. Meanwhile, Rep. Alan Lowenthal reintroduced legislation to encourage hiring unemployed individuals.

DOL's Overtime Rule under Scrutiny

Congress continues to review the DOL's proposed changes to the overtime pay regulations. Specifically, the DOL's proposed rule would dramatically expand overtime eligibility under the Fair Labor Standards Act by narrowing the group of "white collar" employees who are currently exempt from the overtime pay requirements. (See the [December 2](#), [June 30](#) and [March 31](#) issues of *For Your Information* for additional background.)

Last week, the DOL's overtime proposal was briefly discussed during a [hearing](#) before the House Education and the Workforce subcommittee on Workforce Protections. Although the scope of that hearing was not specific to the DOL's proposed overtime rule, subcommittee chairman Rep. Tim Walberg (R-MN) noted in his opening remarks that the DOL's "overtime proposal is just one example of this administration's misguided approach to regulating." This is consistent with his [comments](#) at a July, 2015 subcommittee hearing examining the impact of the overtime pay proposal. At the July hearing, Rep. Wahlberg emphasized concerns regarding the proposed rule, including "that it will limit flexibility and opportunity in the workplace," potentially leading to salaried employees being demoted to hourly workers with fewer opportunities to advance. It remains to be seen whether Congress will seek a legislative approach to modernizing the overtime rules, despite the fact that the DOL was directed to do so by the president in March, 2014.

Tax Credits for Hiring Unemployed Individuals

Although unrelated to Congress' current efforts to draft and agree to a tax extenders bill, Rep. Alan Lowenthal (D-CA) introduced [H.R.4178](#), American Unemployed Worker Investment Act of 2015 earlier this month. The bill would reinstate the work opportunity tax credit and apply to certain individuals, hired from January 1, 2015 through 2017, who have consistently faced significant barriers to employment, such as veterans. This bill would also extend a credit against income tax to small employers for hiring certain individuals who are receiving unemployment compensation. Like the identical [bill](#) introduced by Rep. Lowenthal in the prior Congress, we do not anticipate that the current legislation will gain bipartisan support or move forward.

Looking Ahead

Dashing to avoid a government shutdown, Congress is expected to pass an omnibus bill providing funding through September 30, 2016. On the other hand, Congress may punt tax extenders legislation until early 2016 when it returns from recess. Finally, employers should anticipate that Congress will continue in 2016 to seek repeal of key sections of the Affordable Care Act, including the Cadillac tax.

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