

Legislate[®]

Key Legislative Developments Affecting Your Human Resources

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Beyond 2016, Congress Considers Future of ACA

The long-term viability of the ACA was a focus last week for Congress and the presidential candidates. In this issue of *Legislate*, we report on Sen. Bernie Sanders' health care proposal and the game plans being discussed by the current congressional Republicans to repeal and replace the ACA. Relief from defined contribution required minimum distributions is once again on the table, as is legislation aimed at wage theft and student debt.

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ACA After 2016

Although the House was not in session last week, House Republicans focused on developing a game plan to repeal and replace the Affordable Care Act (ACA).

Reconciliation Bill

Earlier this month, President Obama vetoed the [reconciliation bill](#). The bill contains numerous sections that would dismantle the ACA, including a provision that would fully repeal the so-called Cadillac tax. To overturn the veto, two-thirds of both the House and the Senate would need to vote in favor of the bill. The House had scheduled a vote tomorrow, but it will be postponed as D.C. digs out after last week's snowstorm. Whenever it's rescheduled, there is no expectation of sufficient votes, so this will effectively end the Republicans' effort to dismantle the ACA through the reconciliation process.

Full Repeal and Replacement

House Republicans continue to revamp and renew their strategy for repealing and replacing the ACA. Two bills unveiled last year are likely to be part of the framework for pushing that agenda.

Empowering Patients First Act. The Empowering Patients First Act ([H.R. 2300](#)), introduced by Rep. Tom Price (R-GA), may be one of the vehicles House Republicans rely on to replace the ACA. This bill would give employees a refundable tax credit for health insurance coverage purchased through the individual market. No tax credit would be

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provided to employees for health insurance provided under employer-sponsored plans. In addition, if an employer contributes to the employee's health care coverage, the bill would limit the amount excludable from an employee's taxable income for the employer contributions. The cap would be based on the employee's election of self-only or family coverage.

Comment. The provisions in the bill limiting the employer exclusion could cause employees to have additional amounts subject to income tax. For example, if an employer contributes \$10,000 per year for an employee with self-only coverage, the legislation would cap the exclusion at \$8,000. Thus, the employee would have \$2,000 subject to employment and income taxes. Employers would need to consider this factor as they design their health care plans.

American Health Care Reform Act of 2015. The American Health Care Reform Act of 2015 ([H.R. 2653](#)), introduced by Rep. David Roe (R-TN), is another bill that House Republicans may use to replace the ACA. Unlike the Empowering Patients First Act, it would create a standard tax deduction for health insurance. Importantly, the legislation would eliminate the tax exclusion for employer-paid health insurance. Under the bill, however, employers still would be able to deduct payments made for health benefits provided to employees as a business expense.

Comment. Employers should pay close attention to the Republican proposals to replace the ACA. While surely President Obama would veto any bill dismantling the ACA, one of these bills could be the blueprint for legislation introduced (or re-introduced) after 2016. If the Republican Party remains in control of the Congress after 2016 and a Republican presidential candidate is elected, there is a possibility that any legislation passed will eliminate, or significantly change, the economic advantages of an employer providing health care coverage to employees.

Sanders' Health Care Proposal

Proposals from presidential candidates continue to emerge. Sen. Bernie Sanders (I-VT) announced his health care [proposal](#) last week, moments before the democratic debate with former Secretary of State Hillary Clinton and former Governor Martin O'Malley (D-MD). Labeled as "Medicare for All," Sen. Sanders believes his proposal will bring the nation closer to universal health care by building on the successes of the ACA. He has stated that he is not proposing to repeal the ACA.

A "federally administered single-payer health care program" that provides "comprehensive coverage for all Americans" is the backbone of Sen. Sanders' proposal. Under his proposal, health insurance would be separated from employment with employers no longer being responsible for providing health coverage.

To [finance](#) his plan, Sen. Sanders would rely on new taxes, including a 6.2% income-based health care premium paid by employers and a 2.2% income-based premium paid by households. In addition, he would implement a progressive income tax, increase the capital gains and dividends tax, and limit tax deductions and the estate tax for wealthier individuals. Because of his plan, the tax advantages/savings that employers receive for providing health coverage to employees would disappear.

Importantly, Sanders' proposal would result in loss of the tax deduction for amounts spent by employers that sponsor health care coverage. Despite that impact, Sen. Sanders claims that his proposal (based on his [assumptions](#)) will create savings for both employers and employees. According to Sanders, employers would save almost \$9,500 a

year in health care costs for a family of four with \$50,000 in annual wages. And, in turn, this family would save about \$5,800 each year.

Comment. Sen. Sanders' proposal would have a significant impact on employers. His proposal would dramatically change the current landscape — most notably by eliminating the tax advantages of providing health coverage to employees and creating a single-payer system. Employers would certainly review and evaluate whether to stay in or get out of the health coverage business. Finally, the proposal says that “health care provided by employers is compensation that is not subject to payroll taxes or income taxes under current law.” It's not clear if Sen. Sanders assumes that employer dollars not spent for health coverage would be provided to employees through increased wages. Whether employers would drop coverage and increase overall wages because of this plan is unclear.

RMD Waivers, Again

Earlier this month, Rep. James Sensenbrenner (R-WI) introduced legislation, [H.R. 4357](#) — the Volatility and Losses Undermining Earnings Act of 2016. It would permit participants in defined contribution (DC) plans [such as 401(k) plans] to skip required minimum distributions (RMDs) for 2016. The legislation is modeled after the [Worker, Retiree and Employer Recovery Act of 2008](#) (WRERA) that permitted DC plans to be operated and amended to skip RMDs for 2009. If the 2016 legislation is enacted, most DC participants and beneficiaries could avoid taking RMD payments in 2016. Also, if a DC participant makes a withdrawal in 2016 (that is not an RMD for 2015), they might be able to roll over the payment into other eligible retirement plans.

Comment. If this legislation is enacted, employers may want to consider taking action to permit DC plan participants to avoid withdrawals from their DC plans. This would allow them to eliminate the impact of taking RMD payments when the value of their DC accounts may be adversely impacted by current financial and economic conditions. For plans that do not require commencement prior to retirement (for non-5% owners), this will only impact former employees who have kept balances in the plan. Finally, if the bill becomes law, IRS guidance likely will be issued providing rules similar to those issued for RMD waivers in 2009. Those rules permitted employers to amend their plans retroactively to conform to operations, and provided rollover relief to DC plan participants who received 2009 RMDs before the guidance was provided.

2009 RMD Waivers

IRS guidance permitted employers to choose one of two paths. Employers could have operated and amended plans with an “opt in” or “opt out” election. For plans that chose the “opt in” framework, 2009 RMD payments were automatically suspended, but individual participants could elect payment. For plans that chose the “opt out” framework, 2009 RMD payments were automatically made, but individual participants could elect no payment.

Wage Theft and Student Debt

Earlier this month, legislation was introduced to protect employees from wage theft. And, with student loan debt a hot topic for presidential candidates, two bills were introduced to permit employers to help pay off their employees' debt without creating taxable income for the employee.

Wages

The Pay Stub Disclosure Act ([H.R. 4376](#)) (Act) was introduced on January 13 by Rep. Bobby Scott (D-VA). It would amend the Fair Labor Standards Act to impose on employers certain federal notice, posting, recordkeeping and employee pay stub disclosure requirements. A [Fact Sheet](#) about the Act was issued by the House Committee on Education & The Workforce Democrats.

Pay Stub. The Act would require employers to include detailed wage information on the pay stubs of nonexempt employees. The pay stubs could be provided as a separate document, as a detachable part of a paycheck or electronically for those employees with electronic direct deposit. Because some states already require pay stub disclosures, the legislation would require the DOL to identify substantially similar state laws that may also satisfy the Act's requirements.

Notice. Employers would also have to provide employees with notice about both their right to receive a pay stub and the information that must be included on the pay stub, as well as the address and telephone number of the DOL's local office. For existing employees, this notice would be required within 15 days of their date of hire. Notice to existing employees would be required within 15 days of the date the legislation becomes effective.

Effective Date

All the changes required by this bill would be delayed until six months after the DOL issues final rules implementing the legislation (or, if sooner, 18 months following the date the bill is enacted).

Penalties. If the bill is enacted, employers that fail to comply with the notice and disclosure requirements would be subject to penalties, up to a maximum of \$4,000 per employee. In addition, failure to comply with the recordkeeping requirements, which include permitting employees to inspect the records, would subject employers to penalties of up to \$750 per violation.

Comment. Although many employers provide pay stubs with detailed wage information, today there is no federal mandate. As such, employers with operations in more than one state must comply with different state laws. If the bill is enacted, employers will need to review their current payroll systems (whether they are internal or outsourced to a third party administrator) and revise them as necessary to comply with the law.

Student Debt

Bills were introduced in both the House and the Senate about employer-provided student loan payment assistance. Although both bills would amend the Internal Revenue Code to exclude from an employee's income employer-provided student loan payment assistance, there are differences.

The Student Tax Affordability and Relief Act ([H.R. 4363](#)) was introduced on January 11 by Rep. Austin Scott (R-GA). This legislation would allow an employer to pay a maximum of \$10,000 a year towards an employee's student debt for qualified higher education expenses without including such payments in the employee's gross income. Qualified higher education expenses would generally cover the cost of attendance such as tuition, fees, books, supplies, equipment, and room and board.

The Employer Participation in Repayment Act ([S. 2457](#)) was introduced on January 20 by Sen. Mark Warner (D-VA), who introduced a similar bill ([S. 2429](#)) in the prior Congress. Sen. Warner's current legislation, which has two Republican co-sponsors, would permit an employer to contribute up to \$5,250 on a pre-tax basis towards an employee's student debt for qualified higher education expenses.

Comment. A student loan program that doesn't create taxable income for employees may be a benefit employers want to add to their total benefit rewards program. It could help with recruiting efforts, as well as employee retention.

Looking Ahead

Congress will continue to examine numerous issues impacting the health care ecosystem, including rising prescription drug prices and the viability of health care co-ops. Behind the scenes, House Republicans will work to develop a way to repeal and replace the ACA. Meanwhile, the presidential candidates gear up for the February 1 Iowa caucus.

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