

Legislate[®]

Key Legislative Developments Affecting Your Human Resources

Volume 7 | Issue 10 | March 14, 2016

Mental Health Legislation a Senate Priority

With the House on recess last week, the Senate addressed a number of workplace issues, including mental health care and wages. This took place against the backdrop of the presidential race, the Supreme Court vacancy, the appropriations process, and former First Lady Nancy Reagan's death.

In this issue: [Timing of D.C. Activities](#) | [Mental Health Legislation](#) | [Wages and Pay Stubs](#) | [Looking Ahead](#)

Timing of D.C. Activities

D.C. was not quiet last week despite the House being on recess. Process and timing were the hot buttons. President Obama and his administration vetted potential Supreme Court justice candidates in the face of Senate Republicans voicing their opposition to participate in the process until after the presidential election cycle is complete. Likewise, even though Congress recognizes that it will need to engage in the appropriations process and pass spending bills based on the agreed upon budget limits set forth in the [Bipartisan Budget Act of 2015](#), and despite Senate Majority Leader Mitch McConnell's (R-KY) stated intentions to push ahead without delay, there is significant resistance to do so until later in the year. Without a doubt, timing is linked to the upcoming elections and the possibility that control of the White House, the Senate or the House could flip.



Mental Health Legislation

Last week, the Senate focused on mental health legislation, releasing a draft of one bill and introducing another. These bills are in addition to those introduced in the House earlier this year and discussed in our [February 8 Legislate](#).

Behavioral Health Coverage Transparency Act of 2016. Sen. Elizabeth Warren introduced this [mental health bill](#) last week, with key provisions focusing on mental health parity. If enacted, the Behavioral Health Coverage Transparency Act of 2016 (BHCTA) would require group health plans and issuers to disclose how they make parity decisions, as well as the rate and reasons for denial of mental health claims. Moreover, the BHCTA would require

State Involvement and Coordination

In contrast to the Vermont state law mandating certain reporting requirements for self-funded ERISA plans that the [Supreme Court recently determined](#) is preempted by ERISA, the BHCTA, as a federal law, would not be subject to an ERISA preemption challenge. (For background on Supreme Court decision, see our [March 11 For Your Information](#).)

each state health insurance commissioner to collect information from group health plans (including self-insured plans) and insurers that offer coverage in the state. Specifically, each state commissioner would have oversight responsibilities for compliance with the federal mental health parity rules. States would have to submit annual reports to HHS that compare financial requirements and treatment limitations imposed by each plan and insurer for mental health and substance use disorder services, on one hand, and for medical and surgical benefits on the other. Finally, the BHCTA would require regulators to conduct random audits of health plans and to make the results of those audits public.

Mental Health Reform Act of 2016. A draft of this [bipartisan bill](#) was released last week by the Senate Health, Education, Labor and Pensions (HELP) Committee. It is a comprehensive piece of legislation that, among other things, would encourage [“better enforcement of existing mental health parity laws.”](#) HHS would issue regulations to assist group health plans and insurers with satisfying the mental health and substance use disorder parity requirements, including those for non-quantitative treatment limitations (NQTLs). A key enforcement provision in the bill provides that if a group health plan or health insurance issuer has five or more findings of non-compliance with the mental health parity rules, a mandatory audit would be conducted the following year.

Comment. A focus on mental health legislation is expected to continue and gain traction. With both bipartisan and bicameral support, and a notable desire among many members of both chambers to further strengthen access and quality of mental health care, legislation may be enacted during the current Congress. As such, employers are encouraged to review existing policies and practices to evaluate compliance with mental health coverage and parity rules.

Obama’s Support for Mental Health Legislation

Addressing mental health issues and improving care is a priority for the administration. In an effort to “remove the stigma around mental illness and its treatment — and make sure that these individuals and their families know they are not alone,” earlier this year the White House proposed, and called upon Congress, to invest an additional \$500 million “to help engage individuals with serious mental illness in care, improve access to care by increasing service capacity and the behavioral health workforce, and ensure that behavioral health care systems work for everyone.”

Wages and Pay Stubs

Earlier this month, Sen. Al Franken (D-MN) introduced the [Pay Stub Disclosure Act](#). The bill, which is substantially similar to the [House bill](#) previously introduced by Rep. Bobby Scott (D-VA), would amend the Fair Labor Standards Act to impose on employers certain federal notice, posting, recordkeeping and employee pay stub disclosure requirements. For additional information on the legislation, please see our [January 25 Legislate](#) and Sen. Franken’s [press release](#).

Comment. A number of states currently require pay stubs to include specific detailed wage information, but the federal legislation may have requirements that are different from current state requirements. Unless the state law is substantially similar to the federal law and the DOL establishes a safe harbor that deems compliance with the state law to be compliance with the federal law, employers will need to comply with both federal and state requirements.

Looking Ahead

Both the House and Senate will be in session next week.

Authors

Allison R. Klausner, JD
Nancy Vary, JD

Produced by the Knowledge Resource Center of Xerox HR Consulting

The Knowledge Resource Center is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, surveys, training, and knowledge management. For more information, please contact your account executive or email fyi@xerox.com.

You are welcome to distribute *Legislate*® publications in their entireties. To manage your subscriptions, or to sign up to receive our mailings, visit our [Subscription Center](#).

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.