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Key Legislative Developments Affecting Your Human Resources

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Republicans Push Back on DOL Rules; Democrats Introduce Bills to Support Long-Term Unemployed

House and Senate Republicans have filed several resolutions in the past weeks, pushing back against controversial DOL rules. Meanwhile, House Democrats have introduced legislation to help employers hire the unemployed and assist them with retirement savings.

Just Say No – So Say House and Senate Republicans

Given the plethora of controversial DOL rules recently released and pending — most notably the fiduciary rule, the persuader rule, and the overtime rule — it is no surprise that House and Senate Republicans have invoked the Congressional Review Act (CRA). The CRA creates a 60-day period during which Congress can use expedited procedures to overturn a final regulation. Resolutions of disapproval introduced under the CRA can be passed with a simple majority vote (rather than the standard 2/3 majority vote). However, even with that lower threshold, such efforts are unlikely to be effective, particularly with the Republican-controlled Congress seeking to block rules supported by the Democratic president. Whether the Republicans' efforts to disrupt newly minted rules via a CRA challenge will be successful is a story just beginning to unfold.

Persuader Rule Challenged

Last week, Rep. Bradley Byrne (R-AL), a member of the House Committee on Education and the Workforce, introduced a joint resolution under the CRA to block the final persuader rule released by the DOL's Office of Labor-Management Standards (OLMS). As noted in Rep. Byrne's press release, the new rule is a "dramatic departure from well-established labor policy that required disclosure only when an advisor had direct contact with employees" and will "undermine the right of workers to make informed decisions in union elections."

Rep. John Kline (R-MN), committee chairman, and Rep. Phil Roe (R-TN), chairman of the subcommittee on Health, Employment, Labor and Pensions, have joined Rep. Byrne in his efforts to stop the new rule. The rule and the resolution to disapprove it will be considered by the subcommittee during a hearing scheduled for later this week.

For additional background on this rule, scheduled to take effect on April 25, 2016, for persuader arrangements, agreements and payments made on or after July 1, 2016, please see our March 28 *Legislate*.

> **Comment**. The resolution to disapprove the persuader rule will likely pass both chambers of Congress as they are Republican-controlled and only a simple majority will be needed. However, the resolution will almost certainly be vetoed if presented to President Obama and an override by Congress is unlikely. Meanwhile, the rule could be derailed by lawsuits that are challenging the rule on constitutional grounds.

Fiduciary Rule Challenged

Although drastically different from the proposed rule, the DOL's newly minted final fiduciary rule drew fierce criticism from congressional Republicans. As anticipated, Senate and House Republicans are leveraging the CRA in an attempt to stop the rule from implementation.

In the Senate, Sen. Johnny Isakson (R-GA), together with Sen. Mike Enzi (R-WY) and Sen. Lamar Alexander (R-TN) and the backing of more than 30 additional Republican co-sponsors, introduced a Senate resolution to overturn the rule. In the House, Rep. Phil Roe (R-TN), chairman of the House Education and the Workforce subcommittee on Health, Employment, Labor, and Pensions; Rep. Charles Boustany (R-LA), chairman of the House Ways and Means Subcommittee on Tax Policy; and Rep. Ann Wagner (R-MO), with the support of more than a dozen additional Republican co-sponsors, introduced a similar House resolution.

Last week, the House resolution was considered during a "markup" hearing held by the House Education and the Workforce Committee. In his opening statement, Chairman John Kline (R-MN) stated that the resolution is necessary "to block a harmful new regulation that will restrict access to affordable retirement advice." In addition, he noted that, although the "final rule does include some modest changes … [it] is still fundamentally flawed and harmful to those saving for their retirement." Representing the opposite viewpoint, Rep. Ranking Member Robert C. "Bobby" Scott (D-VA) voiced his strong support of the rule, as he believes that it "simply ensures that financial advisors act in the best interest of their clients."

The House's CRA resolution was approved by the House Education and the Workforce Committee by a 22 to 14 vote, just like the committee's approval in February of the Affordable Retirement Advice Act (H.R. 4293). A "markup" hearing for the Senate's CRA resolution has not taken place or been scheduled.

> **Comment.** The Affordable Retirement Advice Act, as well as Strengthening Access to Valuable Education and Retirement Support (SAVERS) Act (H.R. 4294), are pending bills that would require Congress' approval before the final fiduciary rule can be effective. And, if approval is not provided, they would require a new fiduciary standard to be implemented based on bipartisan principles introduced last year. For additional background on congressional efforts to derail the fiduciary rule, please see our April 11 *Legislate*. In addition, you can access the final rule, and the entire regulatory package issued by the DOL, in our April 6 *FYI Alert* or in our April 22 *For Your Information*.

Support the Unemployed – So Say House Democrats

Last week, Rep. Bonnie Watson Coleman (D-NJ), introduced the following bills to change the tax code and encourage employers to hire the long-term unemployed and protect their retirement savings:

Work Opportunity Tax Credit. Under current law, employers can receive a work opportunity tax credit (WOTC) for hiring qualified long-term unemployment recipients, defined generally as those who have been unemployed for least 27 consecutive weeks and received unemployment compensation income under state or federal law during that period. Today, the WOTC is temporary, as it applies only to those hired before 2020, and is limited to 40% of the first $6,000 of wages. Under Rep. Coleman's bill, the Older Workers Act (H.R. 4973), the WOTC would be made permanent. In addition, for those qualified long-term unemployment recipients who are at least age 55, the amount of the credit would increase to 40% of the first $14,000 in wages, subject to indexing and adjustment.

Penalty-Free Withdrawals from Retirement Plans. Under current law, terminated employees who are under age 55 and who do not roll over a distribution taken from an employer's tax-qualified retirement plan [such as a 401(k) plan] to an eligible retirement plan are subject to taxation — plus a 10% penalty tax — on the distributed amount. Individuals who have moved plan funds into their own IRA generally need to wait until age 59½ to make penalty-free withdrawals. Under The Expanding Penalty Free Withdrawal Act (H.R. 4972), individuals who are unemployed (generally for at least 26 weeks) and who have not reached their relevant penalty-free distribution age would be permitted to tap their retirement savings without triggering the 10% penalty tax. The bill would cap the amount that can be withdrawn penalty free.

> **Comment.** H.R. 4972 is consistent with President Obama's budget proposal for fiscal year 2017. (See our February 15 *Legislate* for additional information on his budget proposal.)

Looking Ahead

Both houses of Congress are in session this week. House Republicans will continue to work on policy proposals to repeal and replace the Affordable Care Act. Indeed, last Friday, the Republican Study Committee, chaired by Rep. Bill Flores (R-TX), submitted recommendations to the GOP Health Care Reform Tax Force. Among other things, it reflects an income tax standard deduction for health insurance.

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