

# Legislate<sup>®</sup>

## Key Legislative Developments Affecting Your Human Resources

Volume 7 | Issue 18 | May 9, 2016

### Bipartisan Focus on Dependent Care FSAs, 529 Plans, and FMLA for Veterans; Republicans Mull ACA Future

Although the contentious presidential race has taken center stage in recent weeks, Republicans and Democrats have made some strides reaching across the aisle. Bipartisan legislation encouraging college savings through employer matching contributions and tax credits, raising the maximum exclusion for dependent care assistance programs and accelerating access to FMLA leaves for veterans was introduced. However, repealing and replacing the ACA remains a top priority for Republicans.

**In this issue:** [Dependent Care](#) | [College Savings and 529 Plans](#) | [Accelerated Access to FMLA for Veterans](#) | [ACA Replacement Framework](#) | [Looking Ahead](#)

#### Dependent Care

Legislation to assist workers with dependent care costs has been introduced numerous times over the years. Many of the bills focus on updating the provisions in Section 129 of the Code relating to Dependent Care Assistance Programs (also known as dependent care flexible spending arrangements, or FSAs). In March, Rep. Mike Kelly (R-PA) and Rep. Linda Sanchez (D-CA) introduced the Working Families Relief Act ([H.R. 4867](#)). On April 28, Sen. Kelly Ayotte (R-NH) and Sen. Shelley Moore Capito (R-WV) added to that effort by introducing a companion bill ([S. 2879](#)). Although the text of the Senate bill is not yet available, according to Sen. Ayotte's [press release](#), the two bills have many provisions in common.

**Caps Raised.** Both the House and Senate bills would raise the annual maximum exclusion provided through dependent care assistance programs. Generally, the bills would increase the maximum exclusion from \$5,000 to \$10,500, which would be indexed annually for inflation.



**Tax Credits.** Both the Senate and House bills would provide tax credits to employers who match employee contributions to dependent care FSAs, with the House bill offering tax credits of up to \$1,000 per employee per year. The House bill would also provide small employers (generally those with no more than 100 employees) who implement a dependent care FSA with a tax credit, up to \$500 per year for a maximum of three years. As Sen. Ayotte's press release does not mention a start-up tax credit, it is not known yet whether the Senate bill includes such credit.

**Comment:** Dependent care FSAs are subject to nondiscrimination provisions. They may not disproportionately benefit highly compensated employees, although for a variety of reasons, these programs notoriously fail nondiscrimination testing. Increasing the maximum exclusion would not alleviate this issue and could possibly aggravate it. Should this legislation advance, employers may be faced with a decision of limiting dependent care reimbursements for highly compensated employees.

## College Savings and 529 Plans

In April, Sen. Richard Burr (R-NC), together with Sen. Bob Casey (D-PA), introduced the Boost Saving for College Act ([S. 2869](#)), legislation designed to spur greater savings and reduce the amount of debt incurred to obtain a college education. If this legislation is enacted, key provisions for employers to consider are as follows.

**Employer Match.** The Act would permit employers to match up to \$1,000 per year (subject to cost-of-living adjustments) to [qualified tuition programs](#) (529 account plans) that are owned by the employee (or spouse) for the benefit of the employee (or spouse or other dependent). Amounts contributed (up to the cap) would not be subject to income tax or employment tax (FICA and FUTA).

**Comment.** If an employee contributes to a 529 account for the benefit of a grandchild, the bill's tax benefits would not apply to the employer match unless the grandchild is also the employee's tax dependent. But if the contribution is made to their own account and subsequently rolled over to the grandchild's account, apparently the tax benefits would apply.

**Tax-Free Rollovers.** Absent legislation, amounts withdrawn or distributed for purposes other than qualified educational expenses are subject to taxation.

- **Rollover to Roth IRA.** The Act would permit individuals who maintain a qualified tuition program account for 10 or more years to roll over on a tax-free basis certain undistributed amounts to a Roth IRA (for the employee or beneficiary of the qualified tuition program). The bill provides a cap on the tax-free rollover amount and would apply only to contributions (and applicable earnings) during the five-year period immediately prior to the rollover.

### Qualified Tuition Programs

These programs permit individuals to contribute to an account established for paying qualified education expenses (such as tuition, fees, books, and room and board) at an eligible educational institution (such as a college, university, vocational school or other institution providing postsecondary education). Additional information can be found [here](#) and [here](#).

- **Rollover to ABLE Programs.** For designated beneficiaries of a 529 plan who are disabled, the Act would permit rollovers on a tax-free basis of undistributed amounts (subject to certain limitations) to an ABLE account for the designated beneficiary. The ABLE Financial Planning Act ([S. 2703](#) and [H.R. 4794](#)), bipartisan legislation introduced earlier this year by Sen. Casey and Rep. Ander Crenshaw (R-FL), respectively, would also permit rollovers from 529 accounts into ABLE accounts.

**Tax Credit.** The Act would expand the Saver's Credit, generally available to low- and middle-income families, to include contributions to a 529 account. Under current law, the credit is available only for certain contributions to retirement accounts, including traditional and Roth IRAs and employer-sponsored plans. Additional information on the Saver's Credit can be found [here](#) and [here](#).

**Comment.** This Act is different from the bills introduced earlier this year that would permit employers to provide student loan payment assistance. For example, the Student Tax Affordability and Relief Act ([H.R. 4363](#)) and the Employer Participation in Repayment Act ([S. 2457](#)) would permit employers to contribute on a pre-tax basis (up to certain limits) towards an employee's student debt for qualified higher education expenses. (For additional background on these bills, please see our [January 25 Legislate](#).)

### ABLE Accounts

The Code provides for the establishment and maintenance of a tax-advantaged savings program under which contributions may be made to an account established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account who is disabled.

Additional information can be found [here](#) and [here](#).

## Accelerated Access to FMLA for Veterans

The federal Family and Medical Leave Act (FMLA) provides eligible employees with job-protected leave for their own serious illnesses or injuries, for the birth, adoption or foster care placement of a child, or to care for seriously ill family members. Since its enactment in 1993, the FMLA has been amended several times to add or expand job-protected leave for military families (See our [March 29, 2013 For Your Information](#) for additional background.) However, the amendments did not alter the basic FMLA eligibility requirements.



Last week, Rep. John Delaney (D-MD) and Rep. Chris Gibson (R-NY), together with more than 30 co-sponsors, introduced the Medical Leave for Disabled Veterans Act ([H.R. 5165](#)). This bipartisan legislation would amend the FMLA to add a new leave entitlement for veterans with service-connected disabilities, as well as individuals who retired from the Armed Forces because of such a disability, to receive related hospital care or medical services. The bill would accelerate medical leave eligibility for working veterans by reducing the FMLA's 1,250 hours and 12 months of service requirement with a covered employer to either (a) 625 hours and six months, or (b) 833 hours and eight months, depending on the veteran's disability rating.

## ACA Replacement Framework

House Republicans intend to unveil an ACA replacement plan, but not legislative language, before the Republican National Convention in July. Rep. Fred Upton (R-MI), a member of the [House Republicans' health care reform task force](#), along with House Ways and Means Committee Chairmen Kevin Brady (R-TX), Rep. Tom Price (R-GA) and Rep. John Kline (R-MN), stated that it may be released as early as May.

Other than the [recommendations](#) released by the Republican Study Committee (RSC) and a few words from Speaker Paul Ryan (R-WI), House Republican leaders have shed little light on the ACA replacement framework. However, Speaker Ryan has indicated that, to rein in costs for healthy individuals, health insurers should be permitted to discriminate against individuals with pre-existing conditions. State-based high-risk pools, subsidized by the federal government, would then be available to insure those who are the sickest.

## Looking Ahead

The Senate returns today and the House returns tomorrow.

### 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](mailto:fyi@xerox.com).

You are welcome to distribute *Legislate*® publications in their entirety. 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.