Legislate®
Key Legislative Developments Affecting Your Human Resources

Volume 7 | Issue 22 | June 6, 2016

ACA: Recap of Congress' Efforts to Revise and Repeal

With both chambers of Congress on recess last week, there were no specific activities on the Hill to advance legislation. So, we use this short hiatus to review congressional efforts to repeal and revise Affordable Care Act provisions that are a key focus of employers.

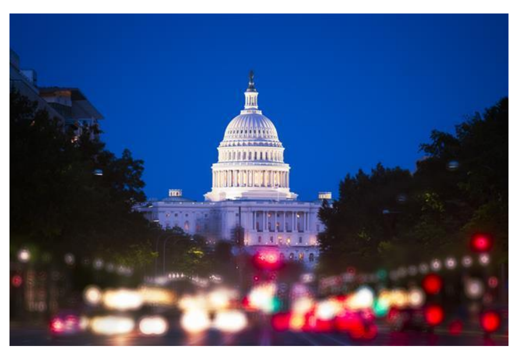
A Little Background

When Congress is in session, any number of bills may be introduced on a given day. Many, perhaps most, do not attract attention, support or otherwise move forward. The legislative process generally starts with the introduction of a bill and takes numerous steps to become a law.

When the 115th Congress begins on January 3, 2017, any bill introduced during this current (114th) Congress will be "dead" or no longer in play. In other words, legislation that is not enacted prior to the changeover will need to be reintroduced by the new Congress in order to be considered and thereafter advanced. Although it is unlikely that any of the current bills (discussed below) will be enacted during this Congress, one or more may become "riders" to end-of-year bills that are enacted or re-introduced and enacted during the next Congress. For that reason, employers are encouraged to keep their eye on them.

Cadillac Tax

Efforts to fully repeal the 40% nondeductible excise tax on high-cost plans (the so-called Cadillac tax) continue despite its delay until 2020. There is bipartisan and bicameral support, as well as endorsement from the 2016 presidential candidates and the business community, to repeal it.



Current standalone bills calling for full repeal of the Cadillac tax include the following:

- H.R. 2050 – Middle Class Health Benefits Tax Repeal Act (185 co-sponsors: 30 Rep.; 155 Dem.)
- H.R. 879 – Ax the Tax on Middle Class Americans' Health Plans Act (129 Rep. co-sponsors)

- S. 2045 – Middle Class Health Benefits Tax Repeal Act of 2015 (22 co-sponsors: 21 Rep.; 1 Dem.)
- S. 2075 – American Worker Health Care Tax Relief Act of 2015 (15 Dem. co-sponsors)

Numerous comprehensive healthcare bills seek to fully repeal and replace the ACA and would thereby repeal the Cadillac tax, as well as the individual and employer mandates. Those bills that have received notable attention and support include the following.

- H.R. 2653 – American Health Care Reform Act of 2015 (98 Rep. co-sponsors)
- H.R. 2300 – Empowering Patients First Act of 2015 (84 Rep. co-sponsors)

In addition, before the Republican National Convention in July, the Republican healthcare reform task force is expected to release a recommendation for a comprehensive ACA “repeal and replacement” bill that would include repeal of the Cadillac tax. (See our May 9 *Legislate* for additional information.)

Tax Exclusion for Employer-Sponsored Healthcare

Under current law, premiums paid for employer-provided health benefits, including the portion paid by an employee under a cafeteria plan, are excluded from an employee’s gross income for income tax, FICA and FUTA purposes. An important change that may accompany a repeal and replacement of the ACA would eliminate or limit such exclusion.

Bills and proposals affecting the tax exclusion include the following:

- The Empowering Patients First Act (H.R. 2300) would limit the tax exclusion. It would give employees a refundable tax credit for health insurance coverage purchased through the individual market (but not for employer-sponsored health insurance) and, if an employer contributes towards the employee’s healthcare coverage, the bill would limit the tax exclusion to $8,000 per employee for self-only coverage and $20,000 for family coverage, subject to indexing.
- American Health Care Reform Act of 2015 (H.R. 2653) would eliminate the tax exclusion and replace it with a standard tax deduction ($7,500 for individuals; $20,000 for families) for coverage obtained in the individual or group markets. Employers would continue to be permitted to deduct payments made for health benefits provided to employees as a business expense.

- Another proposal would cap the exclusion at $12,000 for self-only coverage and $30,000 for family coverage, subject to indexing.

  Comment. Limiting the tax exclusion in this way would increase employee’s taxable income (subject to employment and income tax) and reduce take-home pay. It would also increase employment tax obligations for employers.

Finally, one bill, introduced last month, would provide employers with an alternative framework for providing healthcare coverage and allow them to avoid certain ACA mandates, including the Cadillac tax. This bill, World’s Greatest Healthcare Plan (H.R. 5284), would not repeal the Cadillac tax. Employers that choose to remain under the ACA paradigm would continue to be subject to the Cadillac tax, whereas those that provide healthcare coverage as contemplated by the bill would not. (For background on H.R. 5284, see our May 23 *Legislate*.)

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Full-Time Employees

To determine an employer's ACA shared responsibility requirement, it is necessary to know how many workers are full-time employees and full-time equivalent employees (FTEs). The Save American Workers Act of 2015 (H.R. 30) would make changes to those determinations. Specifically, the bill would increase the threshold for determining full-time status and the denominator for calculating FTEs from 30 to 40 hours and 120 to 174 hours, respectively.

HSAs, FSAs and HRAs

An abundance of legislation would affect health savings accounts (HSAs), health flexible spending arrangements (FSAs) and health reimbursement arrangements (HRAs). Some of the bills would impact the Cadillac tax.
Our May 23 *Legislate* includes a table that discusses the bills.

Looking Ahead

Following last week's recess, the Senate returned today and the House returns tomorrow. While both chambers are expected to focus on advancing legislation, including pending mental health bills, House Republicans' attention will be on rolling out a framework to replace the ACA.

Authors
Allison R. Klausner, JD
Sharon Cohen, JD

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