

Legislate[®]

Key Legislative Developments Affecting Your Human Resources

Volume 7 | Issue 27 | July 11, 2016

Spending Bills and Democratic Party Platform; Overtime Rule for PR; Health Bills Advance

Last week, Congress continued work on appropriations bills, with a dual focus on allocating the federal budget to fund government programs and agencies and advancing public policy objectives. In this issue, we focus on certain key provisions in a DOL and HHS appropriations bill that would impact employers and employee benefits. We also look at select portions of the draft 2016 Democratic Party Platform, as well as legislative developments related to the overtime rule, health savings arrangements, health flexible spending accounts and mental health parity.

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House DOL-HHS Spending Bill – Policy Riders

Last week, a House subcommittee held a markup of the [draft Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2017](#) and agreed to report it without change to the House Appropriations Committee. The legislation includes program funding, as well as policy riders to block specific regulations and defund implementation or enforcement of certain laws, including the Affordable Care Act (ACA). (For information on the Senate FY 2017 Labor, Health and Human Services, and Education and Related Agencies Appropriations Bill, see our [June 13 Legislate](#).)

It is unclear whether this bill will move to the House floor. However, employers and employee benefits will be affected if it is enacted (or if some provisions land in an end-of-year omnibus spending bill). Certain key provisions of the bill are highlighted below.

Committee Markup

During a subcommittee meeting to “mark up” a bill, changes and amendments may be made before the bill is recommended to the full committee or a decision not to report the bill to the full committee is made.

Topic	House HHS-Labor Bill	Comments
Fiduciary Rule	Would prohibit enforcement of final rule	No similar provision is included in Senate appropriations bills for these agencies. For background on the fiduciary rule, see our April 22 For Your Information . For background on other legislative efforts to block the rule, see our June 27 and April 25 issues of <i>Legislate</i> .
Overtime Rule	Would prohibit implementation, administration and enforcement of the recently issued final rule	No similar provision is included in Senate appropriations bills for these agencies. For background on the overtime rule, see our May 18 FYI Alert . For information on other legislative efforts to block the rule, see our June 20 Legislate .
H-2B Program	Would provide continued flexibility for bringing H-2B non-immigrants into the US	The Consolidated Appropriations Act, 2016 included a similar provision, limited to the seafood industry, as described in this DOL guidance . For background on H-2B program provisions in other appropriations bills, please see our July 5 Legislate .
Union Elections – Electronic Voting	Would prohibit NLRB’s use of funds to issue any new rules to provide for electronic voting in a union representation election	The Consolidated Appropriations Act, 2016 included an identical provision.
Micro-Units	Would prohibit NLRB’s use of funds to implement, create or enforce standards or decisions recognizing “micro-union” representation election units	For background, please see our June 20 Legislate .
Union Elections – Quickie/Ambush	Would prohibit use of funds to implement or enforce the NLRB’s so-called “ambush” or “quickie” election rules	For background on the rules, please see our <i>For Your Information</i> from April 6, 2015 .
Joint Employer	Would prohibit NLRB’s use of funds to enforce or otherwise apply its new joint employer standard from the Browning-Ferris decision	For background on the decision and other legislative efforts to block the new standard that eliminates the requirement for joint employers to have an “actual, direct and immediate” control over the essential terms and conditions of a worker’s employment, see our <i>Legislate</i> from June 20 .
Indian Tribes	Would prohibit using funds to enforce the NLRA against any “Indian” tribes	Please see our November 23, 2015 Legislate for background on the NLRB’s pre-2004 long-standing practice not to assert jurisdiction over “Indian” tribes, and legislation to amend the NLRA to ensure that these tribes and tribal enterprises are treated like states and their political subdivisions.
Affordable Care Act (ACA) – Religious Objections	Would amend the ACA to prohibit requiring an issuer of health insurance coverage or the sponsor of a group health plan to include, in any such coverage or plan, coverage to which such issuer or sponsor has a moral or religious objection	Please see our May 17 For Your Information for background on the ACA mandate to provide coverage for contraceptive services and the Supreme Court’s decision addressing nonprofit religious employers’ objections to the procedures required to avoid the mandate.
ACA – Funding	Would prohibit using funds to implement the ACA, by rescinding prior year mandatory funds and prohibiting the use of any new discretionary funding	See our June 13 and May 31 issues of <i>Legislate</i> for information on other appropriations bills that include provisions limiting use of funds to implement and enforce the ACA.

House Votes on Mental Health, HSA and FSA Bills

Last week the House passed two comprehensive health related bills and introduced a new one.

Mental Health. With a vote of 242 to 2, the House easily passed the Helping Families in Mental Health Crisis Act of 2016 ([H.R. 2646](#)), a comprehensive mental health bill that provides a framework for, and encourages, compliance with mental health parity requirements. (For additional information on mental health parity requirements, including guidance in April by the Departments of Labor, Health & Human Services and Treasury for compliance with the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), see our [May 19 For Your Information.](#))

Comment. Although the Senate has two bills containing mental health parity provisions — the Behavioral Health Coverage Transparency Act of 2016 ([S. 2647](#)) and the Mental Health Reform Act of 2016 ([S. 2680](#)) — it is uncertain whether the House or Senate bills will advance. (For background on the Senate bills, see our *Legislate* issues from [March 14](#) and [March 21](#).) Notably, the likelihood of any of these bills advancing is largely dependent on whether agreement can be reached for the inclusion or exclusion of provisions on access to guns.

HSAs and FSAs. With a vote of 243 to 164, the House also passed the Restoring Access to Medication Act ([H.R. 1270](#)). The bill would amend a provision in the ACA that restricts account-based plans like health savings accounts (HSAs) and health flexible spending arrangements (FSAs) from reimbursing over-the-counter medication on a tax-free basis. As [the bill incorporates](#) the text of the Health Care Security Act ([H.R. 5445](#)), and portions of the Health Savings Act ([H.R. 4469](#)), it also would allow both spouses to make catch-up contributions to the same HSA and increase the maximum contribution limit to HSAs such that it equals the maximum out-of-pocket limitation.

Comment. The House bill will now head to the Senate where an identical bipartisan bill ([S. 709](#)) was introduced and is being negotiated. However, even if the legislation reaches President Obama's desk, according to a [June press release](#) issued by the Executive Office of the President, "he would veto the bill" as it would "disproportionately benefit high-income people."

HSAs. Reps. Diane Black (R-TN) and Earl Blumenauer (D-OR) introduced bipartisan legislation — the Access to Better Care Act of 2016 ([H.R. 5652](#)) to modify the rules for high-deductible health plans (HDHPs) coordinated with HSAs. Specifically, the legislation would permit HDHPs to provide reimbursement for services and prescription drugs for treating chronic diseases before the deductible is satisfied.

Comment. Under current law, only "preventive care benefits" can be reimbursed from a HDHP prior to the satisfying the minimum deductible.

Overtime Rule – Puerto Rico

The Puerto Rico Oversight, Management, and Economic Stability Act ([S. 2328](#)), signed into law at the end of June, temporarily exempts employers in Puerto Rico from application of the new overtime rule for white-collar employees. Specifically, the rule will not apply in Puerto Rico until an analysis is performed and the DOL determines that the rule "would not have a negative impact on the economy of Puerto Rico." (For background on the overtime rule, and efforts to block it, please see the [table](#) on page 2, as well our [May 18 FYI Alert](#) and our [June 20 Legislate](#).)

2016 Democratic Party Platform

The [draft document](#) released on July 1 reflects the Democratic Party position on a plethora of topics, including ones that would affect employers and workers. The final Democratic Party platform will be a collection of statements that reflect the ideas and beliefs that govern the party as a whole, similar to the House GOP's "slate of ideas" set out in a series of public policy blueprint papers called "A Better Way."

Below are key highlights from the draft.

Issue	Democratic Party Platform Position
Wages	Support a \$15 per hour minimum wage, subject to indexing
Union Organizing	Support making it easier for public and private workers to organize, requiring the NLRB to certify unions "if a simple majority of eligible workers sign valid authorization cards," and binding arbitration for a first contract
Right to Work	Oppose "right to work" laws
Union Dues	Oppose "laws and other efforts" that would eliminate dues check-off procedures, abolish fair share requirements, and restrict the use of voluntary membership payments for political purposes
Prevailing Wage	Oppose "laws and other efforts" that "would attack prevailing wage standards"
Annual Recertification	Oppose "laws and other efforts" that would "require annual recertification efforts"
Arbitration	Support limiting use of arbitration clauses in employment and service contracts
Paid Family and Medical Leave	Support for "at least" 12 weeks of paid leave to "care for a new child or address a personal or family member's serious health issue"
Sick Leave	Support for at least seven days of paid sick leave
Social Security	Support expanding Social Security and "taxing some of the income of people above \$250,000" — without privatizing Social Security, raising the retirement age, diminishing benefits or cutting cost-of-living adjustments
Retirement	Support delivery of promised benefits and fight to protect earned benefits in multiemployer plans
Fiduciary Rule	Oppose any attempts to "roll back" the DOL's newly minted fiduciary (conflict of interest) rule
Business Tax Breaks	Support clawback of tax breaks for companies that ship jobs overseas, eliminate tax breaks for big oil and gas companies, and crack down on companies that "dodge" their tax responsibilities via inversions or other methods
Income Tax Rate	Support a "multimillionaire surtax" and closing loopholes for hedge fund managers and others to "ensure millionaires can no longer pay a lower rate than their secretaries"
Healthcare	Support guaranteed, affordable healthcare coverage as a fundamental right, through Medicare or a public option, with lower out-of-pocket expenses and a cap on out-of-pocket prescription drug costs
Prescription Drugs	Support efforts to control prescription drug costs by "prohibit[ing] anti-competitive 'pay for delay' deals that keep generic drugs off the market" and by permitting them to be imported from Canada and elsewhere
Mental Health Parity	Support enforcement of mental health parity rules

Looking Ahead

This is the final week before both chambers leave for the extended summer recess. Efforts to advance appropriations and other bills will continue; however, this work is likely to be overshadowed by the upcoming July conventions and November elections.

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