Legislate®
Key Legislative Developments Affecting Your Human Resources

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PBGC Premium Bill Introduced in Senate; Rumors of Cadillac Tax Demise Greatly Exaggerated?

Last week, legislation was introduced in the Senate to stop counting PBGC premium increases for the budget and offsetting government spending, and the House Appropriations Committee approved a fiscal year funding bill. With focus on the Republican convention this week in Cleveland, and the Democratic convention next week in Philadelphia, Congress started a seven-week recess and won't be back in session until after Labor Day. The summer recess is longer than typical due to the conventions this month. With limited focus on benefit and labor issues last week, in this issue we focus on a House proposal for replacing the Cadillac tax.

PBGC Premiums

Last week, legislation (S. 3240) sponsored by Sen. Mike Enzi (R-WY), and co-sponsored by Sens. Lamar Alexander (R-TN) and Johnny Isakson (R-GA), was introduced to stop counting PBGC premium increases for the budget and offsetting government spending. The bill essentially mirrors the Pension and Budget Integrity Act of 2016 (H.R. 4955), introduced in April by Rep. Jim Renacci (R-OH) with bipartisan sponsorship. Both versions would prohibit increases in premiums to offset general government (non-pension) program spending. Congress has done this many times, most recently under the Bipartisan Budget Act of 2015. This is so, even though PBGC premiums can be used only to pay pension benefits and PBGC expenses, because current law permits the premiums to be included in the federal government budget. (For details on the most recent PBGC premium hikes, see our November 2, 2015 *FYI Alert.*)

House Appropriations Committee Approves Funding Bill

The Appropriations Committee approved a 2016 fiscal year funding bill last week, with amendments, for the Departments of Labor, Health & Human Services, and Education, and other related agencies. (See our *Legislate* from July 11.) The bill can now move to the House floor for consideration after the recess.

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The Cadillac Tax is Dead – Long Live the Cadillac Tax!

Legislation enacted late last year delayed the Cadillac tax for two years until 2020. (See our December 21, 2015 *Legislate*.) There have also been a number of bipartisan, bicameral congressional efforts to secure a full repeal of the Cadillac tax, and both Donald Trump and Hillary Clinton have stated that they will repeal the tax if elected. So it seems that regardless of the results in this fall's elections, there's a good chance that the tax will be repealed by a new administration and Congress.

If the Cadillac tax is repealed, new sources of revenue will be needed to help fund the ACA or new Republican healthcare reforms. Perhaps the most obvious target as a revenue source is the tax preference for employer-sponsored insurance (ESI). Employees currently receive ESI tax free, creating the largest federal health expenditure behind only Medicare and Medicaid. According to projections by the Congressional Budget Office, this reflects tax subsidies of about $266 billion for fiscal year 2016, and $3.6 trillion for the next decade.

Last month, House Speaker Paul Ryan's (R-WI) Task Force on Health Care Reform released the House GOP's policy paper called "A Better Way." (See our June 27 *Legislate*.) The House paper sets out the GOP's view of the ACA and provides the broad outline for a Republican alternative. The Cadillac tax would be repealed and replaced by a cap on the ESI tax exclusion that employees receive. Employees, rather than employers, would be subject to a tax on the value of ESI that exceeds a cap.

The paper sets out several reasons for the change from the Cadillac tax to a cap on the employee exclusion for ESI:

- The open-ended nature of the ESI tax exclusion gives employees and employers the incentive to maximize coverage. The CBO estimates that ESI premiums are 10-15% above what they would be without the ESI exclusion.
- The ESI exclusion "holds down wages as workers substitute tax-free benefits for taxable income."
- The ESI tax exclusion is regressive "because it becomes proportionately larger — and more valuable — for the wealthiest Americans."
- While the Cadillac tax would disrupt the way Americans currently receive coverage, the exclusion cap would be set "at a level that would ensure job-based coverage continues unchanged for the vast majority of health insurance plans."

While the Republican House proposal provides few details on the mechanics of the cap, the basic concept has features that are very similar to the Cadillac tax:

Feature	ACA Cadillac Tax	"A Better Way" Exclusion Cap
Limit on tax preference	Would subject the value of ESI over a cap amount to a tax	
Tax rate	40% excise tax	Individual tax rates
Payment of the tax	Plan administrator or insurer	Employee
Benefits subject to the tax	Insured and self-insured health coverage as defined by regulations. Similar issues under both taxes	
Treatment of pre-tax HSA contributions	Counted towards cap	Not counted towards cap
Valuing health coverage	To be defined by regulations, but similar issues under both taxes	
Administration of the tax	Excess amount determined and allocated by the employer to insurers and plan administrators for payment of tax to the IRS	Excess amount likely determined by the employer and reported as income to employees; employees pay any additional tax due
Employer focus to address tax	Offer employer health plans with value that is less than cap	

The Republican House proposal intends to set the dollar amount of the exclusion cap at a level that would leave most current ESI unaffected. That sounds similar to what was assumed to be the original intent of the Cadillac tax. But the level of the exclusion cap will directly impact the amount of revenue raised, and if few employer plans are affected, the cap may not have the intended revenue or marketplace impact.

While the exclusion cap would shift the tax liability to the employee, it appears that the employer would still have to deal with all of the administrative complexity. Employees will likely pressure employers to offer lower-cost options to avoid the exclusion cap and to provide information on the value of coverage options during open enrollment each year.

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