

Legislate[®]

Key Legislative Developments Affecting Your Human Resources

Volume 7 | Issue 29 | July 25, 2016

GOP Nominates Trump, Releases Platform; Focus on Wellness, OT and Pensions Before Summer Recess

Last week, the Republican Party released its platform and Donald Trump accepted the party's nomination for president. Meanwhile, Congress started its summer recess following introduction of bills designed to block the EEOC's wellness regulations, modify the DOL's overtime rule and create universal retirement accounts.

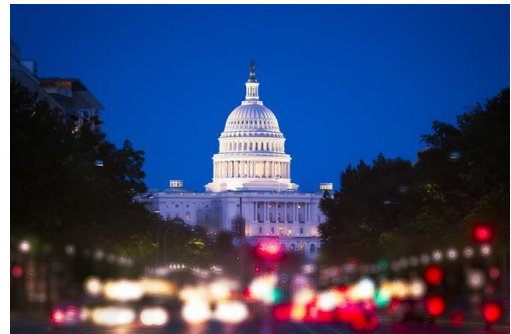
In this issue: [GOP Convention](#) | [Wellness Regulations](#) | [Overtime](#) | [Universal Retirement Accounts](#) | [Looking Ahead](#)

GOP Convention

Although the Republican National Convention was anything but conventional, the [GOP Platform](#) was released and Donald Trump was nominated.

The platform is shaped by the party's view that:

- Federal regulations should be “minimally intrusive, confined to their legal mandate, and respectful of the creation of new and small businesses.”
- Regulatory agencies should respect the “authority of Congress to write legislation and define agency authority.”
- The “proper balance” and separation of powers between the federal government and state governments should be restored.



Stating that the “greatest asset of the American economy is the hard-working American,” the platform deems getting people back to work by fostering job creation to be its “first priority” and “overarching goal.” As such, the platform reflects the party's outlook on reforming current laws affecting healthcare, employment, labor and retirement.

Many provisions in the platform are quite general in nature and echo policy positions previously outlined by Republicans. Highlights that will resonate with employers include the following.

Topic	GOP Platform	Comments
Affordable Care Act (ACA)	Supports repeal	Consistent with Republican-sponsored bills and House Republicans' policy paper – " A Better Way ."
Mental Health	Supports improving access for those "struggling with mental illness"	See our July 11 <i>Legislate</i> for background on pending mental health legislation.
Tax Exclusion and Portability of Healthcare Coverage	Supports "end[ing] tax discrimination against the individual purchase of insurance" and allowing insurance to be purchased across state lines	Our July 18 , June 6 and May 23 issues of <i>Legislate</i> contain background on the exclusion for employer-sponsored coverage and pending bills that would modify or repeal it.
Healthcare Accounts	Supports "growth" of Health Savings Accounts and Health Reimbursement Account	See our July 11 , June 27 and May 23 <i>Legislate</i> issues for background on pending bills related to FSAs, HSAs and HRAs.
ACA – Contraceptive Services	Supports allowing organizations to avoid providing healthcare coverage inconsistent with their religious, moral or ethical convictions	Our May 17 <i>For Your Information</i> has background on the mandate to provide coverage for contraceptive services and the Supreme Court's decision addressing nonprofit religious employers' objections. Also see the RFI issued last week by the DOL, HHS and Treasury soliciting ideas for accommodating organizations that object to providing contraceptive services on religious grounds.
NLRB Matters	Supports reversal of NLRB's "big labor" agenda	Consistent with the House Republicans' policy paper - " A Better Way ." See our June 20 <i>Legislate</i> for background on the joint employer and micro-union issues and our <i>For Your Information</i> from April 6, 2015 for background on the ambush election issue.
Minimum Wage	Supports being "handled at the state and local level"	The House Republicans' policy paper – " A Better Way " – focuses on other factors, such as the earned income tax credit, to address poverty.
Indian Tribes	Supports tribal sovereignty in labor matters	Our November 23, 2015 <i>Legislate</i> contains background and information on legislation to amend the NLRA to ensure that tribes and tribal enterprises are treated like states and their political subdivisions.
ESOPs	Supports employee empowerment and workplace flexibility through employee ownership	See our February 15 <i>Legislate</i> for background on a proposed change for ESOPs.
Flexible Employment Options	Encourages trends towards family-friendly options, especially portability in pension plans and health insurance	Our May 16 , February 15 and February 1 issues of <i>Legislate</i> have background on pension portability.

Wellness Regulations

Sen. Lamar Alexander (R-TN), chairman of the Senate Health, Education, Labor and Pensions (HELP) Committee, and Sen. Johnny Isakson (R-GA), a HELP Committee member, introduced two joint resolutions under the Congressional Review Act to block the EEOC's final ADA and GINA regulations on wellness programs. As a general matter, the final ADA rule addresses incentives for medical examinations and disability-related inquiries, and the final GINA rule addresses incentives that are offered in exchange for information about a spouse's health. (For background on the final wellness rules, please see our [June 17 FYI In-Depth](#).) However, because these final rules are somewhat inconsistent with rules under the ACA, the senators introduced the joint resolutions of disapproval.

Comment. The ACA amended HIPAA to generally provide that wellness program rewards cannot exceed 30% of the cost of the coverage in which an employee and any dependents are enrolled. It also grants the Secretaries of Labor, HHS and Treasury authority to increase the reward to 50% of the cost of coverage. The reward limits under the EEOC's final regulations differ from those provided under HIPAA. A plan that complies with the outer limits of the HIPAA regulations might conflict with the EEOC's regulations. In an effort to address any conflicts and prevent the EEOC from finding an ACA-compliant plan to violate the ADA or GINA, the House and Senate introduced identical bills, the Preserving Employee Wellness Programs Act ([H.R. 1189](#) and [S. 620](#)). (Please see our [March 27, 2015 Legislate](#) for background.) Under this legislation, which thus far has not gained traction, rewards under ACA-compliant wellness programs would also comply with the EEOC's regulations under the ADA or GINA.

Congressional Review Act

This law provides a procedure for Congress to disapprove of regulations. Specifically, if a joint resolution of disapproval is passed by Congress and either is approved by the president or vetoed by the president followed by a veto override vote (which requires 2/3 vote in both chambers), then the challenged rule cannot take effect, and the agency that issued the rule is prohibited from reissuing it or one substantially similar.

Overtime

Reps. Kurt Schrader (D-OR), Jim Cooper (D-TN), Henry Cuellar (D-TX) and Collin Peterson (D-MN) introduced legislation, the Overtime Reform and Enhancement Act ([H.R. 5813](#)), earlier this month to gradually phase in the DOL's new overtime rule and eliminate any automatic increases to the minimum salary threshold for an exemption from overtime pay after it reaches \$47,476. Specifically, the bill provides for a roughly 50% increase in the salary threshold in 2016, with annual increases over the following three years. The salary threshold would reach \$47,467 in 2019 as indicated below:

Effective Date	Salary Threshold
December 1, 2016	\$35,984
December 1, 2017	\$39,780
December 1, 2018	\$43,628
December 1, 2019	\$47,476

Please see our [June 20](#), [June 13](#) and [May 23](#) issues of *Legislate* for background on the rule and other legislative efforts to block it.

Also, see the [DOL guidance](#) for answers to frequently asked questions on the new rule.

Universal Retirement Accounts

Improving access to retirement savings vehicles has been, and continues to be, a goal of the Democratic Party. In an attempt to fill in the gaps, the DOL issued proposed guidance for state-run retirement savings plans for private employers, and Congress has sponsored a variety of bills. (For additional background, see our [February 15](#) and [February 1](#) issues of *Legislate* and our [December 4, 2015 For Your Information](#).)

Most recently, Rep. Joe Crowley (D-NY) introduced legislation, the Secure, Accessible, Valuable, Efficient Universal Pension Accounts Act (the “SAVE UP Act”) ([H.R. 5731](#)) to create — and mandate — universal retirement accounts for many employers with employees who lack access to an active workplace retirement savings plan. Key highlights are as follows:

Term	SAVE UP Provision
Affected Employers	Generally, those with 10 or more full-time employees (or equivalent part-time employees) and that do not maintain an active retirement savings plan for all employees (governmental and church organizations exempt)
Affected Employees	Contributions required for employees not covered by other active plans of the employer
Employee Deferrals	Automatic enrollment at 3% (with opt-out permitted) Automatic escalation (0.5% annually) up to 5% max
Employer Contributions	Mandatory \$0.50 per hour worked per employee (subject to annual wage growth adjustment), including for employees who opt out of elective deferrals Additional contributions must be uniform for all employees
Vesting	All contributions 100% vested (non-forfeitable)
Trust	U.S. Treasury Department Trust fund, with three separate accounts: accumulation, annuity and reserve accounts
Earnings	Individuals’ accounts will be credited an annual return equal to the lesser of 6% or a share of positive investment returns determined by a board of governors
Form of Payment	Annuity
Governance	Board of governors — established by the president with oversight of a board of trustees
Employers’ Fiduciary Duties	Limited to the timely payment of contributions Bill does not impose on employers any fiduciary duty for the investment or distribution of assets
Penalty	Employers who are required to maintain a contribution program and fail to do so will be denied a tax deduction for wages paid
Effect on Eligibility for Federal Programs	Accumulations in the account will not be counted to determine financial eligibility for benefits or services paid in whole or in part with federal funds

Looking Ahead

This week is the Democratic National Convention. Hillary Clinton will accept the party's nomination, together with her running mate, Virginia Senator Tim Kaine.

Authors

Allison R. Klausner, JD
Marjorie Martin, FSPA, EA, MAAA

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.

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.