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Key Legislative Developments Affecting Your Human Resources

Volume 7 | Issue 30 | August 1, 2016

Democratic Party Nominates Hillary Clinton and Releases Platform; Direction of Healthcare Up In the Air

Last week, Hillary Clinton made history when she received and accepted the Democratic Party's nomination for president of the United States. In this issue, we review her party's platform, which outlines its vision for the future, as well as her healthcare and prescription drug proposals.

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Democratic National Convention and Party Platform

The Democratic National Convention, a multi-day event that began with the unexpected resignation of the committee's chairperson, was designed to showcase the strength and unity of the Democratic Party. It was also an opportunity to present its platform.

The [Democratic Party Platform](#) reflects its party's perspective that "out of many, we are one" and, as such, "cooperation is better than conflict, unity is better than division, empowerment is better than resentment, and bridges are better than walls." (See our [July 25 Legislate](#) for background on the [Republican Party Platform](#).) In its final form, the core of the Democratic Party platform is substantially similar to the draft released a few weeks ago. Notably, it includes the employment and employee benefits-related provisions that appeared in the draft, some of which are premised on the party's belief that America should prioritize long-term investment, and promote innovation and entrepreneurship.

The employment and employee benefits-related topics included in the draft platform and reflected in a table in our [July 11 Legislate](#), include support for a \$15 federal minimum hourly wage subject to indexing, union organizing, paid family and medical leave, and continuation of the Affordable Care Act (ACA). The final platform also includes the following key points:



Topic	Democratic Party Platform	Comments
Overtime Rule	Will defend the rule	For background on the overtime rule, as well as legislative efforts to modify or block it, see our July 25 , June 20 , June 13 and May 23 issues of <i>Legislate</i> . For information on the temporary exemption for employers in Puerto Rico, see our July 11 <i>Legislate</i> .
Profits	Will seek to incentivize businesses to share profits with employees on top of wages and pay increases	The Republican Party Platform supports employee empowerment and workplace flexibility through employee ownership (ESOPs).
Retirement	Will seek to expand access to retirement investment programs	For background on efforts to expand access to employer-sponsored retirement programs, see our July 25 <i>Legislate</i> .
Ban-the-Box	Will seek to remove barriers to help formerly incarcerated individuals become employed by “banning the box” and similarly extend protection to federal employers and contractors through executive action	For background, see our May 2 <i>Legislate</i> .
Autism	Will encourage states to require health insurance coverage for autism services in private insurance plans as well as state marketplaces	Under the ACA, a plan may select a definition of essential health benefits (EHBs) that does not include autism services. For background on EHBs, and the rules for annual or lifetime dollar limits, see our March 31 <i>For Your Information</i> .

Clinton on Healthcare

[Hillary Clinton’s healthcare plan](#) aligns with the party platform. As president, she would:

- Defend and expand the ACA
- Repeal the deductible excise tax on high-cost plans — the so-called Cadillac tax
- Defend access to reproductive healthcare, including affordable contraception
- Make a “public option” possible and allow those over age 55 to buy into Medicare
- Permit all Americans to purchase insurance on the public exchanges, regardless of immigration status

Comment. Repeal of the Cadillac tax has the support of both presidential candidates as well as bipartisan, bicameral congressional support. As such, the tax may be repealed before it is currently scheduled to take effect in 2020. (For background on pending bills aimed at repealing the ACA, generally, and the Cadillac tax, specifically, see our [June 6](#) *Legislate*.)

Prescription Drugs

Lowering the cost of prescription drugs is also part of Mrs. Clinton's healthcare plans. Tackling the problem in accordance with a [multi-point plan](#), she would:

- Deny tax breaks for pharmaceutical companies for direct-to-consumer advertising and marketing
- Encourage competition for generic drugs and lower the exclusivity period from 12 to 7 years for certain "biologic" drugs
- Prohibit "pay for delay" arrangements where brand name drug companies pay generic drug makers to delay release of a generic drug (See our [September 21, 2015 Legislate](#) for background on legislative efforts to prohibit such arrangements)
- Permit prescription drugs to be imported from outside the United States
- Permit Medicare to negotiate prescription drug and biologic prices
- Implement a \$250 monthly cap on out-of-pocket costs for certain prescription drugs that treat chronic or serious health conditions

Mrs. Clinton's proposal clearly aligns with former presidential candidate Bernie Sanders' (D-VT) vision for changing prescription drugs rules. Indeed, if enacted, the Prescription Drug Affordability Act of 2015 ([S. 2023](#)) sponsored by Sen. Sanders would accomplish many of the points in Mrs. Clinton's plan. Among other things, the bill would:

- Require HHS to negotiate lower prices for Medicare Part D drugs
- Restore the minimum rebate for Medicare Part D drugs
- Allow prescription drugs to be imported from Canada
- Prohibit "pay-for-delay" agreements

For additional information on the bill, please see the [summary](#) on Sen. Sanders' website.



Comment. The Republican and Democratic parties have found common ground to reign in prescription drug costs. Indeed, [Donald Trump's healthcare proposal](#) includes the removal of "barriers to entry into free markets for drug providers that offer safe, reliable and cheaper products" and permitting prescription drugs to be imported from overseas.

Biologics

[According to the FDA](#), biologics "include a wide range of products such as vaccines, blood and blood components, allergenics, somatic cells, gene therapy, tissues, and recombinant therapeutic proteins." (Please see the [FDA website](#) for additional information.)

Looking Ahead

With Congress on recess, all eyes will be focused on the upcoming elections — presidential and congressional.

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