

Legislate[®]

Key Legislative Developments Affecting Your Human Resources

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Lawmakers Leave DC Until Lame-Duck Session Begins

Although the Senate and House struck a deal to fund the government after September 30, the show is not over yet. Congress will need to take action during the post-election lame-duck session to avoid a government shutdown after December 9. In this issue, we look at a few bills that would impact employers if they were to become law before this congressional session ends.

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Government Shutdown – Not Now!

Although a government shutdown seemed likely during the early part of last week when the Senate failed to muster enough votes to advance a proposed stopgap spending bill (commonly referred to as a continuing resolution, or CR), the House scrambled and helped the Senate find a path forward. Two days before a shutdown, with an agreement to address the Flint, Michigan water supply immediately following the November 8 elections, Congress passed a CR that will fund the government through December 9. In the end, with President Obama's signature on the [bill](#) — on September 29 (one day before the last day of fiscal year 2016) — a shutdown was averted.

Comment. The House and Senate will be on recess through the November 8 elections. Post-recess, Congress will have few legislative days to address ongoing funding before its term ends on January 3, 2017. While a government shutdown on October 1 has been avoided, the risk of a shutdown after December 9 remains. For background on the implication of a shutdown for private employers (with and without federal contracts), please see our [September 28, 2015](#) *Legislate*.



Mental Health Parity

With bipartisan and bicameral support, members of both chambers may be able to push mental health parity legislation across the finish line before the new Congress begins in January. Although numerous comprehensive mental health bills address parity, the spotlight is on the Helping Families in Mental Health Crisis Act ([H.R. 2646](#)). This bill has passed the House — practically unanimously — with almost 250 co-sponsors. The most recent effort to advance it came in the form of a [letter](#) — signed by 211 House members from both sides of the aisle — urging senators to take up the bill.

Comment. In anticipation of increased scrutiny for fulfilling mental health parity requirements, plan sponsors and administrators are encouraged to review current policies, procedures and practices for compliance with current mental health parity rules and to identify any potential weaknesses or gaps worthy of change. Please see our [September 6 Legislate](#) for additional information on the pending mental health bills with parity provisions.

ACA Individual Mandate

In an effort to relieve individuals from the burdens (perceived or actual) that may arise when health insurers stop offering coverage during the year, Rep. Adrian Smith (R-NE), together with seven Republican co-sponsors, introduced legislation — the CO-OP Consumer Protection Act of 2016 ([H.R. 954](#)). The legislation, which the House approved (largely on party lines), would provide an exemption from the ACA's individual mandate for anyone whose CO-OP coverage ends during the year. Notwithstanding, according to a [Statement of Administration Policy](#) issued by the Office of Management and Budget, if the president were presented with the bill, he would veto it.

Comment. Employers are reminded that legislation providing exemptions from the individual mandate do not affect the ACA's employer shared responsibility provisions. For additional information on this bill, as well as other legislation that would broaden the exemption from the individual mandate, please see our [September 12 Legislate](#).

Overtime Rule

As employers and plan sponsors prepare for the DOL's new overtime rule that more than doubles the minimum salary threshold for the so-called "white-collar" exemptions from the FLSA's overtime pay requirements, efforts to delay and block it altogether continue. (See our [May 18 FYI Alert](#) for additional information on the rule.)

Most recently, the House passed the Regulatory Relief for Small Businesses, Schools, and Nonprofits Act ([H.R. 6094](#)). This bipartisan bill would delay the new rule's effective date for six months, from December 1, 2016, to June 1, 2017. An identical bill ([S. 3462](#)) was introduced in the Senate late last week. In addition, two other bills currently pending — the Overtime Reform and Enhancement Act ([H.R. 5813](#)) and the Overtime Reform and Review Act ([S. 3429](#)) — would gradually phase in the increase to the minimum salary threshold for a white-collar exemption and eliminate any automatic increases going forward. (For additional background on these bills, please see this [press release](#).)

In addition to congressional efforts, lawsuits challenging the overtime rule have been filed against the DOL by business groups and nearly half the states. Alleging that the DOL overstepped its authority in promulgating the rule, the lawsuits seek injunctive relief to block it from taking effect. (See our [July 25 Legislate](#) and our [September 21 FYI Alert](#) for additional information on efforts to delay or halt implementation of the final overtime rule.)

Comment. Because President Obama is expected to veto any stand-alone bill to delay or derail the DOL's overtime rule, Republican lawmakers may seek to attach a rider to a year-end funding bill that would include such provisions.

Looking Ahead

Members of the House and Senate have sprinted out of town to campaign for the upcoming elections. In the lame-duck session following their return in mid-November, all eyes will be on funding the government after December 9.

Policy riders to funding legislation may address the fiduciary and overtime rules, open multiple employer plans (MEPs), PBGC premiums and multiemployer plans. (See our prior 2016 issues of *Legislate* for background on each of these topics: [September 26](#), [September 12](#), [July 11](#), [June 20](#) and [June 13](#).) For information on policy riders included in the 2015 year-end legislation, please see our [December 21, 2015 *Legislate*](#).)

Authors

Allison R. Klausner, JD
Sharon Cohen, JD

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