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Key Legislative Developments Affecting Your Human Resources

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New Congress Gears Up to Repeal ACA, Provide Relief for Retired Miners and Delay Fiduciary Rule

Last week, members of the 115th Congress were sworn in and hit the ground running. They set the stage to repeal and replace the Affordable Care Act, address unfinished business on health and retirement benefits for certain retired miners and push back the implementation date for the fiduciary rule.

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Week in Review

The early days of a new Congress include a number of important housekeeping items. Details for what happens on the first day in each chamber – the House and the Senate – can be found in the [House guide](#) and the [Senate guide](#), both published by the Congressional Research Service.

House Leadership

With the Republicans holding the majority of seats, Rep. Paul D. Ryan (R-WI) was formally elected speaker of the House for the 115th Congress (2017-2018). He will lead the chamber of 241 Republicans and 194 Democrats. For the Democrats, as determined by the outcome of an election held in late 2016, Rep. Nancy Pelosi (D-CA) will be the House minority leader. Rep. Ryan and Rep. Pelosi held these positions, respectively, in the prior Congress.



Senate Leadership

For the newly sworn-in Senate, Sen. Mitch McConnell (R-KY) is the majority leader and Sen. Chuck Schumer (D-NY) the minority leader. Sen. McConnell held this position in the prior Congress, and Sen. Schumer has succeeded retired Sen. Harry Reid (D-NV).

Affordable Care Act – Next Chapter

The Affordable Care Act (ACA) may be on the chopping block – but the path and timing are yet to be determined. Nevertheless, repealing and replacing the ACA, in whole or in part, is among the highest priority for congressional Republicans, as well as President-elect Trump and his incoming administration.

Congress. During the first week of the new Congress, a variety of bills and proposals relating to the dismantling of the ACA were introduced and discussed. Swirling in the mix are the following:

- [Senate budget resolution](#). Introduced by Budget Chairman Mike Enzi (R-WY), the resolution sets the stage in support of Republicans' aim to repeal and replace the ACA. Specifically, it instructs certain congressional committees to draft reconciliation bills that include provisions relating to the ACA. The bills will likely identify the provisions to be repealed as well as the timing of the repeal, but not the substance of a replacement plan. The draft bills are expected not later than January 27 and would be combined and voted on shortly thereafter.
- [House Republican Study Committee bill](#). The American Health Care Reform Act of 2017 would (1) fully repeal the ACA effective Jan. 1, 2018, (2) eliminate the tax exclusion for employer-paid health insurance and replace it with a standard deduction, available to any individual with qualifying coverage, purchased through employment or otherwise, and (3) expand the use of health savings accounts (HSAs) by allowing larger contributions, expanded expense reimbursement and increased benefits. The bill does not impact amounts that may be deducted as a business expense. Thus, to the extent otherwise permitted under the Internal Revenue Code, employers could deduct costs associated with providing health coverage to employees and their families as a business expense. The Republican Study Committee has provided this [two page summary](#) and [section by section summary](#) of the bill.

In addition, various House and Senate bills introduced last week would:

- Repeal the ACA in full (see [H.R. 175](#) – ObamaCare Repeal Act – and Rep. Steve King's (R-IA) [press release](#))
- Repeal the 40 percent deductible excise tax on high-cost plans (the so-called Cadillac tax) currently scheduled to go into effect in 2020 (see [H.R. 173](#) – The Middle Class Health Benefits Tax Repeal Act of 2017 – and Rep. Mike Kelly's (R-PA) [press release](#))
- Repeal the individual and employer health insurance mandates (see [H.R. 285](#) – Healthcare Tax Relief and Mandate Repeal Act – and Rep. Mike Turner's (R-OH) [press release](#))
- Expand HSAs by permitting the reimbursement of health insurance payments and increasing the maximum allowable contribution (see [H.R. 247](#) and [S. 28](#) – Health Savings Account Expansion Act – and both Rep. Dave Brat's (R-VA) [press release](#) and Sen. Jeff Flake's (R-AZ) [press release](#))

Comment. In January 2016, President Obama vetoed [H.R. 3762](#) – a reconciliation package with a number of provisions that would have dismantled the ACA. Among other things, it would have repealed the Cadillac tax and eliminated the individual mandate and employer shared responsibility penalties. Nevertheless, this vetoed bill may serve as the template for a reconciliation bill to be introduced later this month. Importantly, any ACA repeal legislation introduced via the budget reconciliation process will require only 51 Senate votes (rather than a supermajority of 60 votes). As such, with Republicans holding 52 Senate seats, the bill should pass easily through the Senate absent some senators crossing party lines.

Trump Administration. In addition to congressional action, President-elect Donald Trump reportedly is ready to take swift executive action to unwind the ACA. Although no details have yet been provided, Vice President-elect Mike Pence indicated that replacement plans would include expanding coverage and contributions under HSAs. For additional information on President-elect Trump's views on health care reform, please see his [pre-election website](#).

Miners' Health and Retirement Benefits

Protecting certain retired miners' health and retirement benefits was an issue at the end of 2016 that almost derailed congressional efforts to avert a government shutdown after December 10. Just in the nick of time, Congress agreed to provide sufficient funding to maintain their health benefits through April 28, 2017 – the last day the continuing resolution provides funding for government operations. (See our [December 12, 2016 Legislate](#).)

On January 3, Rep. David McKinley (R-WV) re-introduced a bill from the prior Congress that had bipartisan sponsorship and is designed to provide continuing protection for the health and retirement benefits of over 120,000 retired coal miners. The bill – the Coal Healthcare and Pension Protection Act ([H.R. 179](#)) – would use excess funds from the Abandoned Mine Reclamation Fund – not the PBGC – to subsidize retiree health care and pension benefits under the United Mine Workers of America's multiemployer plans.

Fiduciary Rule

After years of starts and stops, the DOL's new fiduciary rule is scheduled to take effect in a few months. However, another delay is in the works. Specifically, the [Protecting American Families' Retirement Advice Act](#), introduced on Friday by Rep. Joe Wilson (R-SC), would push back the effective date until two years after the bill is enacted.

Comment. If this bill is not enacted, and no other congressional, regulatory or judicial actions are taken to halt the implementation of the rule, the new fiduciary definition and some limited conditions of the best interest contract exemption will be effective in April 2017. (See our [April 6, 2016 FYI Alert](#) for background on the rule.)

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