

Legislate[®]

Key Legislative Developments Affecting Your Human Resources

US

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Retirement and Pension Bills Emerge from Under ACA Shadow; Fiduciary Rule Fate Remains Uncertain

Although health care reform and Senate confirmation hearings continue to dominate the conversation, lawmakers have introduced legislation to address retirement and pension-related issues that remained unresolved at the end of 2016.

In this issue: [PBGC Premiums](#) | [State and Local Retirement Plans for Private Employers](#) | [Multiple Employer Plans](#) | [Fiduciary Rule](#) | [The “Rs” of Health Care Reform](#) | [Cabinet Update](#)

PBGC Premiums

Bills have been introduced in both the House and Senate to prohibit the use of premiums paid to the PBGC as a budget offset for non-pension federal government spending. Sen. Michael Enzi (R-WY) and Reps Jim Renacci (R-OH) and Mark Pocan (D-WI) have sponsored legislation – the Pension and Budget Integrity Act of 2017 ([S. 270](#) and [H.R. 761](#)) – to stop the “budget gimmick” that allows, and historically has led to, PBGC premium increases for reasons unrelated to pension plans. (For additional background, please see Rep. Renacci’s [press release](#).)

State and Local Retirement Plans for Private Employers

Last week, Republican lawmakers took action to block DOL rules issued in 2016 under the Obama administration paving the way for states, as well as some large cities and counties, to require certain private employers to participate in state or local government-run IRA programs. Specifically, Rep. Tim Walberg (R-MI) and Rep. Francis Rooney (R-FL) introduced two resolutions of disapproval ([H. J. Res 66](#) and [H. J. Res 67](#)) under the Congressional Review Act (CRA) to stop the rules. (For additional background, please see our *For Your Information* issues dated [January 5, 2017](#) and [August 29, 2016](#) as well as this [fact sheet](#).)

Comment. Many employers have voiced concern about the DOL rules. Noting that compliance with a patchwork of state and local rules – in addition to ERISA – creates unnecessary and burdensome administrative challenges, some have advocated for the rules to be rolled back, overturned or replaced with a federal solution.



The House is expected to approve both measures, but there is no clear picture yet on whether the Senate will follow through.

Multiple Employer Plans

Consistent with the House GOP's vision, Rep. Vern Buchanan (R-FL) introduced bipartisan legislation – The Retirement Security for American Workers Act ([H.R. 854](#)) – to expand the availability of multiple employer plans (MEPs) by permitting unrelated employers without a “common bond or nexus” to join together in a plan without exposing each employer to any risk of liability arising from another employer's compliance failure. For additional background on Open MEPs, please see our [February 1, 2016 Legislate](#) and this [press release](#).

Comment. This may be the year that MEP legislation gains traction and advances. Not only does it enjoy bipartisan support, but it may be appealing as a mechanism to fill the retirement access and coverage gap if the DOL guidance for state and local plans is blocked or if states, cities and counties simply get cold feet!

Fiduciary Rule

Last week, a Texas federal court [denied a request](#) to strike down the fiduciary rule. The judge determined that it was a proper exercise of DOL's authority. Nevertheless, DOL is expected to delay the upcoming April 2017 applicability date and may seek to revise or withdraw it in accordance with President Trump's directives. See our [February 6 Legislate](#) for additional information.

Comment. In upholding the fiduciary rule, the Texas court explicitly noted that DOL did not exceed its authority as determined under the “Chevron” deference doctrine. Judge Neil Gorsuch – President Trump's Supreme Court nominee – does not support the doctrine and, as such, may influence the court to pull back on judicial deference to administrative agencies such as DOL if the case is ultimately reviewed by the Court.

The “Rs” of Health Care Reform

Revamping the health care system is and will be a challenge. Keeping on top of the evolving lingo is, too! Indeed, Republican lawmakers' vernacular has expanded beyond “replace and repeal,” and words like “rescue” and “repair” have now crept into the lexicon. For example, Speaker Paul Ryan (R-WI) commented that the Republicans' job “is to repair the American health care system and rescue it from the collapse” and the best way to do that “is to repeal and replace Obamacare.” Similarly, Sen. Orrin Hatch (R-UT) commented that, while he's all “for repealing [ACA] and starting over,” there are “some good things [in the ACA] that we would put in any bill.”

Cabinet Update

Last week, Rep. Tom Price (R-GA) was confirmed as secretary of HHS. This week, Mr. Andrew Puzder's nomination as secretary of Labor will be vetted by the Senate Health, Education, Labor and Pensions (HELP) Committee.

Authors

Allison R. Klausner, JD
Sharon Cohen, JD

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