

Legislate[®]

Key Legislative Developments Affecting Your Human Resources

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Timeline(s) for Health Care, Retirement and Tax Overhaul Taking Shape; Regulatory Activity Continues

Republican lawmakers intend to leverage their majority in the House and Senate to reform the health care, retirement and tax landscape during President Trump's term and before the 2018 congressional mid-term elections.

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Backdrop

As House and Senate Republicans contemplate the end goals of a reformed health care, retirement and tax landscape, they do so amid other constraints and factors. Specifically, as they consider the ideal framework to foster and cultivate individual and corporate behavior to secure the health and financial wellbeing of employees and their families, as well as businesses, government and society as a whole, they do so in the context of other deadlines, considerations and timelines.

Two key factors framing the backdrop are as follows:

Government Funding. Congress passed a continuing resolution in December 2016 that provides funding for federal government operations through April 28. To avert a government shutdown for the remainder of the fiscal year (which started on October 1, 2016 and ends on September 30, 2017), Congress must appropriate additional funds. If Congress doesn't solve the government funding issue quickly, then health care, retirement and tax reform efforts may be relegated to a back burner.

2018 Mid-Term Elections. In November 2018, one-third of the Senate seats will be up for re-election – 25 currently held by Democrats and nine by Republicans. The results of that election may alter the current balance of 52 Republicans and 48 Democrats. If the Democrats take the majority post-election, the Republicans' ability to easily pass significant reforms through the budget reconciliation process – which requires only

Webinar on Health and Retirement Policy

Sign up for our webinar, [Health and Retirement Policy under the Trump Administration and 115th Congress: The Next Chapter or a New Book?](#), to be held on Wednesday, February 22 at 12:30 p.m. ET. The webinar will feature Conduent experts Allison Klausner and Amy Dunn as well as Will Hansen, Sr. VP, Retirement Policy for The ERISA Industry Committee.

51 Senate votes, rather than the regular order process that requires 60 – will be in jeopardy. On the other hand, if the Republicans increase their Senate majority post-election, they would secure greater leverage to pass legislation during the regular order process without support from Senate Democrats. As such, depending on their viewpoints, perspectives and risk tolerance, lawmakers may seek to stall legislation from advancing or to quickly shepherd it through in advance of the 2018 mid-term election campaigns.

Timeline(s)

Republican lawmakers are beginning to coalesce around some high-level timelines, with a focus on tackling different parts of reform sequentially. The developing “skeleton” – outlined below – suggests the GOP may aim for the following, which includes two separate budget reconciliation bills in 2017: one early, and one later in the year. Any congressional reforms that are finalized in 2017 may have delayed effective dates or implementation dates. With Republicans holding 52 (of 100) Senate seats and 241 (of 435) House seats, they will seek to use the budget reconciliation process (which requires only 51 Senate votes) to advance certain partisan tax and revenue related legislation.

Topic	Vehicle and Timeline	Comments
Affordable Care Act (ACA) – Repeal of Certain Key Tax Provisions	Budget Reconciliation before April 2017	<p>Although passing legislation via the budget reconciliation process is relatively easy because the regular order 60 Senate vote threshold doesn't apply, some Republican lawmakers are reluctant to pass a limited repeal/reform bill without an agreed-upon overall ACA replacement. Thus, it is unclear if these efforts will succeed by the end of April.</p> <p>Efforts to repeal the Cadillac tax, currently effective in 2020, may be postponed for inclusion in a larger tax reform effort.</p> <p>The individual mandate penalty and the employer shared responsibility assessment cannot be eliminated entirely by budget reconciliation. If they are included in this process, they likely would be “zeroed out” (rather than repealed). This would result in a maximum penalty of \$0 and would leave in place current employer requirements to timely complete and submit IRS Forms 1094/1095.</p>
ACA – HSA Expansion	Budget Reconciliation or regular order legislation before April 2017	Expanding access to and permitted uses of health savings accounts (HSAs) are high priorities for Republican lawmakers. Although typically cast as part of an ACA replacement package proposal, they may be more appropriately characterized as strong pillars of a Republican-sponsored, post-ACA framework.

Topic	Vehicle and Timeline	Comments
Retired Coal Miners' Health and Retirement Benefits	Budget Reconciliation or regular order legislation in April 2017	Funding for this health benefits coverage is in place through April 28. Protections for health benefits beyond that date, and retirement benefits, may be secured when Congress tackles funding for government operations after April 28. (For background, see our December 12, 2016 Legislate .)
Comprehensive Tax Reform – Impacting Health and Retirement Benefits	Budget Reconciliation in May and June 2017	<p>In addition to changes in personal income and corporate tax rates, Republicans are likely to introduce a cap on the tax exclusion for employer-sponsored health care and retirement benefits. A limit on the tax exclusion is attractive to Republican lawmakers as they look for revenue to pay for government programs (which may, or may not, be related to employee benefits or health and retirement).</p> <p>Supporters of the employer-sponsored benefits system strongly advocate against such caps. They note that the tax-favored treatment of health and retirement benefits is a meaningful incentive for employers to provide such benefits – though reduced income tax rates will tend to decrease that incentive to some extent. Furthermore, they assert that such benefits are instrumental in ensuring that businesses have an engaged and productive workforce with the tools to maintain and achieve good health and financial wellbeing. There is also concern that individual markets would destabilize if employers stopped offering health care coverage to some or many of the 177 million individuals who currently receive such coverage.</p>
ACA – Replacement	Regular order process in Q4 '17 or Q1 '18	Republican efforts to overhaul the health care system will likely occur after the debt ceiling – which is expected to be hit sometime between July and September – and 2018 fiscal year funding are addressed. These efforts are not expected to disrupt (albeit they may modify) the ACA insurance market reforms, such as those that protect individuals with pre-existing conditions.

Regulatory Activity

Congress has taken some actions consistent with President Trump's directives to reduce certain ACA-related burdens and the number and cost of regulations (see our [February 6](#), [January 30](#) and [January 23](#) issues of *Legislate* for more background). For example, last week the House passed resolutions disapproving of three DOL rules. Two of those rules ([H.J. Res. 66](#) and [H.J. Res. 67](#)) created a path – outside of ERISA – for states, as well as certain counties and cities, to require private employers to participate in government-run retirement savings plans.

(For additional information, please see our [February 13 Legislate](#).) The third rule ([H.J. Res. 42](#)) limits states' ability to condition receipt of unemployment compensation on clean drug test results in certain circumstances.

Looking Ahead

The House and Senate are on recess this week. In the meantime, official details of the DOL's efforts to delay or modify the fiduciary rule are expected to be released this week. (See our [February 13 Legislate](#) for background.)

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