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Key Legislative Developments Affecting Your Human Resources US

Volume 8 | Issue 10 | March 13, 2017

ACA Reform Efforts Accelerate; Multiemployer Pension and State-Run Savings Plans in Spotlight

Last week, a legislative proposal to repeal and replace substantial portions of the Affordable Care Act – introduced by Republican lawmakers in two House committees – was met with significant opposition by both Democrats and other GOP members. Meanwhile, actions taken by Senate Republicans would change the rules for suspending benefit payments from financially troubled multiemployer pension plans and block DOL rules for state and local government run retirement plans for private employers.

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Health Care Reform

The [American Health Care Reform](#) (Act), introduced by GOP House Republicans in the Ways and Means and the Energy and Commerce Committee (and recently passed by the committees along party lines), would shift the health care landscape by repealing or dramatically changing many Affordable Care Act (ACA) tax-related provisions. For example, the penalty to satisfy the employer shared responsibility provisions would be reduced to \$0, and the 40 percent excise tax on “high cost” plans (the Cadillac tax) would be delayed, yet again, from 2020 to 2025. In addition, the Act would substantially enhance the value of health savings accounts (HSAs). Specifically, it would allow more individuals (such as those enrolled in Medicare Part A) to contribute to an HSA, almost double the annual HSA contribution limit, and permit reimbursement of over-the-counter medicines without a prescription. (For a more complete description of the Act, as well as insights as to its potential impact for employers, please see our [March 8 FYI Alert](#).)



Last week, Sen. Rand Paul (R-KY) and Rep. Jim Jordan (R-OH) also introduced ACA related legislation ([S.544](#) and [H.R. 1436](#)). Unlike the Act, which is an ACA repeal and replacement bill, the Paul/Jordan legislation is focused exclusively on repealing portions of the ACA, without any replacement provisions, and is substantially the same as the [reconciliation bill](#) previously introduced and subsequently vetoed by President Obama in January 2016. As

such, it would reduce the employer shared responsibility penalty to \$0 and repeal many of the ACA tax provisions, including the Cadillac tax.

Comment. The Paul/Jordan legislation does not include any ACA replacement language because Sen. Paul and Rep. Jordan believe that it would be wiser to pass repeal-only legislation first with replacement legislation to follow when the GOP caucus can agree on what that should be. Indeed, legislation previously introduced by Sen. Paul – the Obamacare Replacement Act ([S. 222](#)) – includes ACA replacement language that would create a somewhat different health care framework than the Act introduced last week. (Additional information for Sen. Paul’s bill is in his [summary](#), [section-by-section analysis](#), and [press release](#).)

GOP vs GOP: A Real Challenge

Congress could pass GOP-sponsored health care reform legislation without any support from the Democrats, but only if substantially all Republican lawmakers rally behind it and there is virtually zero defection among GOP Senators. Thus, until the Senate and House Republicans reach a consensus on which path to follow – a clean repeal bill, without inclusion of any replacement provisions, or a combined repeal and replacement bill – efforts to advance health care reform may stall.

Multiemployer Plans

Last week, Sen. Rob Portman (R-OH) re-introduced the Pension Accountability Act ([S. 489](#)). As noted in his [press release](#), the bill would amend the Multiemployer Pension Reform Act of 2014 (MPRA) to “give workers and retirees a seat at the table” when efforts are made to suspend benefit payments from multiemployer plans that are in jeopardy of becoming insolvent. Specifically, the legislation would change MPRA to provide that (1) unreturned participant ballots would not be counted as a vote in support of reducing benefits, and (2) participant votes would be binding and not subject to being overruled by the Treasury Department under the rules for systemically important plans. (For additional information on the current process permitted under the MPRA to reduce benefit payments subject to approval by Treasury following a vote by plan participants, see our issues of *For Your Information* from [September 2, 2015](#), [June 29, 2015](#), and [January 12, 2015](#).)

Savings Plans

Senate Republicans introduced two resolutions ([S.J. Res. 32](#) and [S.J. Res. 33](#)) last week to disallow DOL regulations that were promulgated under the Obama administration to enable states, as well as certain counties and cities, to require private employers to enroll employees in government-run retirement savings programs without fear of ERISA preemption. (For background, please see our *For Your Information* issues dated [January 5, 2017](#) and [August 29, 2016](#).) Like the identical GOP-sponsored House resolutions ([H.J. Res. 66](#) and [H.J. Res. 67](#)) introduced earlier this year, the Senate resolutions are subject to the Congressional Review Act rules and need only a simple majority vote to advance.

Comment. Both the Senate and House resolutions are likely to garner sufficient Republican lawmakers’ support to advance without backing from any Democrats. Nevertheless, even if the resolutions are approved by President Donald Trump and the DOL rules are deemed null and void and with no further effect, efforts to roll out state and local government-run savings programs with mandates for private employers are expected to continue.

Looking Ahead

This week, Republican lawmakers will continue their efforts to bridge the intraparty divide on health care reform. In addition, the Senate Health, Education, Labor and Pensions (HELP) Committee is scheduled to hold a confirmation hearing for Rene Alexander (Alex) Acosta, President Trump's nominee for secretary of labor. It's expected that Mr. Acosta will be approved and, soon thereafter, will turn his attention to topics of great interest to employers and plan sponsors, including the future of the overtime and fiduciary rules.

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