

Legislate®

Key Legislative Developments Affecting Your Human Resources US

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Health Care Reform Chugs Along; Bills Aim to Enhance Workers' Leave Rights; Trump Proposal Spotlights Mental Health

Last week, neither a late winter Nor'easter nor lack of consensus could throw lawmakers off track in advancing the American Health Care Act. Meanwhile, Senate and House Democrats, as well as a handful of Republicans, focused on legislation to improve workers' rights to take paid and unpaid leaves of absences, and President Trump released his first budget proposal.

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Budget and Mental Health

President Donald Trump released his first budget proposal last week, [America First – A Budget Blueprint to Make America Great Again](#). The proposal includes significant cuts in discretionary spending for many government agencies including the Departments of HHS, Labor, and Treasury (the departments). It does, however, include funding to implement the 21st Century CURES Act, a law enacted in 2016 that, among other things, seeks to ensure that health plans operate in compliance with current mental health parity laws. As such, the proposal indicates the president's aim to ensure that the departments issue compliance program guidance and audit health plans that have repeated violations of the mental parity laws. (For more background on the CURES Act, please see our [December 12, 2016 Legislate](#).)

Comment. While the CURES Act implementation does require additional regulatory guidance, for the most part, the president's proposal significantly cuts the departments' budgets. Although met with some bipartisan opposition, the proposal aligns with his initiatives to reduce regulatory burdens. (See our [February 6 Legislate](#) for background.) With a smaller budget, the departments will likely need to reprioritize their audit programs and enforcement policies (that were put in place during the Obama administration), in addition to addressing regulatory enforcement. While it's not yet clear how this will play out on Capitol Hill – the president has said his



budget is a starting point in the negotiations with Congress – there may be some relief in store for employers that have been overwhelmed with regulatory red tape and audit pressures.

Health Care Reform

Efforts to change the landscape for health care continue to be a primary focus for House GOP lawmakers. Last week, the House Budget Committee [voted](#) to advance the [American Health Care Act \(AHCA\)](#) – legislation drafted by Republican members of the House Ways and Means Committee and the House Energy and Commerce Committee that would repeal and replace portions of the Affordable Care Act (ACA). As expected, all the Democrats on the Budget Committee, as well as a few Republicans, voted against it. The legislation will be considered next by the House Rules Committee and, should it advance, the full House. (For background on the ACHA, please see our [March 8 FYI Alert](#).)

Comment. In its current form, the AHCA may not pass the House Rules Committee. And, if it does, it is unlikely to pass the full House and has little chance (if any) to pass the full Senate – despite the relatively low 51-vote bar. As such, it is expected that House Speaker Paul Ryan, R-Wis., will aim to amend the bill to garner votes from House Republicans who have expressed concern or, in some cases, outright opposition to the bill as currently drafted. Among the potential changes are a restructuring of the tax credits. However, what that restructuring would look like is yet to be determined. Some GOP lawmakers want the tax credits to purchase health insurance on the individual market to be enhanced for lower-income families, while others consider the tax credits to be an entitlement program and want them eliminated.

Paid and Unpaid Leaves of Absence

House and Senate lawmakers from both sides of the aisle are seeking to close a gap in safeguards for workers who take a leave of absence for reasons or purposes not protected by federal law. While some protections might exist under a patchwork of state and local laws and regulations, there is no uniformity and this, in turn, creates complexity for employers. (See our [February 21 For Your Information](#) for additional information.)

Paid Sick Leave

Sen. Patty Murray, D-Wash., ranking member of the Senate Health, Education, Labor, and Pensions (HELP) Committee and Rep. Rosa DeLauro, D-Conn., reintroduced the Healthy Families Act ([S. 636](#) and [H.R. 1516](#)). This bicameral legislation, which has more than 100 Democrat lawmakers as cosponsors, would allow workers to earn up to 56 hours, or seven days, of paid leave each year to be used for a variety of reasons, including sickness, to care for a family member, or to obtain preventative care. (For additional background, please see Sen. Murray's [press release](#), as well as Rep. DeLauro's [press release](#) and [fact sheet](#).)

Unpaid Bereavement Leave

The Parental Bereavement Act of 2017 ([H.R. 1560](#) and [S. 528](#)) has been introduced in the Senate by a group of Democrats and one Independent, and, in the House, by a bipartisan group of Democrats and Republicans. The legislation would amend the list of events triggering FMLA coverage to include the death of a child and provide parents with up to 12 weeks of unpaid leave. (For additional background on the House bill, please see Rep. Gosar's [press release](#).)

Paid Family and Medical Insurance Leave

Sen. Kirsten Gillibrand, D-N.Y., and Rep. Rosa DeLauro, D-Conn., reintroduced the Family and Medical Insurance Leave Act (FAMILY Act) ([S. 337](#) and [H.R. 947](#)). This bicameral legislation, which has more than 100 cosponsors, would establish a Family and Medical Leave Trust Fund within the Social Security Administration (SSA), funded by a new FICA tax equal to 0.2% of wages, and used to provide workers with a paid leave of absence to care for certain family members. To be eligible for the paid leave (generally capped at \$4,000 per month and 60 days of benefits), an employee would need to (1) be insured for disability insurance benefits under social security; (2) have earned income in the past 12 months; (3) filed an application; and (4) be engaged in “qualified caregiving” (generally any activity that would satisfy a leave under FMLA, with modifications to include care provided to a domestic partner or his/her children).

Comment. If passed, this bill could create some compliance complexity for employers. As drafted, it would not preempt or supersede any provision of state or local law that authorizes paid family and medical leave similar to the benefits provided through the Family Act. Employers potentially would need to carefully evaluate numerous laws to ensure compliance with each of them. (For more information, please see Sen. Gillibrand’s [press release](#) and Rep. DeLauro’s [press release](#).)

Looking Ahead

As Congress has appropriated funding (by a continuing resolution, or CR) for government operations only through April 28, funding the government – together with health care reform – will be in the spotlight for the next several weeks. Specifically, lawmakers will commence preparations necessary to secure funding and avoid a government shutdown. (See our [December 12, 2016 Legislate](#) for background on the CR.)

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