

Legislate[®]

Key Legislative Developments Affecting Your Human Resources US

Volume 8 | Issue 14 | April 10, 2017

Wages and Pension Testing Rules Share Spotlight with Health Care Reform and Senate Confirmations

Congress was bustling last week working to finish or advance numerous agenda items before its two-week recess. Legislation targeting pay practices and addressing pension plan nondiscrimination testing rules were introduced; one of President Trump’s nominees was confirmed; and health care legislation was tweaked.

In this issue: [Wages and Compensatory Time Off](#) | [Closed DB Plan Testing](#) | [Health Care Reform](#) | [Senate Confirmations](#) | [Looking Ahead](#)

Wages and Compensatory Time Off

Equal Pay Day, celebrated this year last Tuesday, is held every April to symbolize how far into the next work year women need to work to make what men did in the previous year. Two bills would amend the Fair Labor Standards Act to address some existing pay disparities:

- Paycheck Fairness Act ([S. 819](#) and [H.R. 1869](#)), introduced by Sen. Patty Murray, D-Wash., and Rep. Rosa DeLauro, D-Conn., would, as described in both Rep. DeLauro’s [press release](#) and Sen. Mark Warner’s, D-Va., [press release](#), “strengthen and close loopholes in the Equal Pay Act of 1963 by holding employers accountable for discriminatory practices, ending the practice of pay secrecy, easing workers’ ability to individually or jointly challenge pay discrimination, and strengthening the available remedies for wronged employees.”
- Workplace Advancement Act ([S. 345](#) and [H.R. 1890](#)), introduced by Sen. Deb Fischer, R-Neb., and Rep. Stephen Knight, R-Calif., would, as stated in Rep. Knight’s [press release](#), enable “individuals to negotiate their salaries more effectively by preventing retaliation against employees who inquire about or discuss workplace salaries.” Furthermore, as [noted](#) by Sen. Fischer, the legislation would “empower employees, especially women, with information about wages so they can be informed advocates for their compensation.”



Comment. These bills did not garner enough support to be enacted in the prior Congress. As such, it remains to be seen whether lawmakers will rally around one or more of them.

On April 5, a House Education and the Workforce subcommittee held a [hearing](#) on the Working Family Flexibility Act ([S. 801](#) and [H.R. 1180](#)), introduced by Sen. Mike Lee, R-Utah, and Rep. Martha Roby, R-Ala. These bills would address a compensatory time off (“comp time”) issue. Specifically, this legislation would allow private-sector employees to choose between overtime pay or comp time. It would permit employers to offer employees who worked at least 1,000 hours in a 12-month period the option to receive comp time in lieu of overtime pay, subject to the provisions of a collective bargaining agreement or a written agreement between the employer and unrepresented employee. Employees would be able to accrue up to 160 hours of comp time. Accrued but unused comp time would generally have to be paid out at the end of a 12-month period, and on termination. An employer would also be able to pay out an employee’s unused comp time in excess of 80 hours on 30 days’ notice. (For additional information on the legislation, as well as the House subcommittee hearing, please see this [press release](#).)

Closed DB Plan Testing

The Retirement Security Preservation Act of 2017 ([S. 852](#) and [H.R. 1962](#)), bipartisan legislation introduced in both chambers last week, would amend the nondiscrimination and minimum participation rules for certain closed or frozen defined benefit plans. Specifically, the bills introduced by Sen. Ben Cardin, D-Md., Sen. Rob Portman, R-Ohio, Rep. Patrick Tiberi, R-Ohio, and Rep. Richard Neal, D-Mass., would ease the challenges of satisfying the nondiscrimination rules when noncompliance becomes an issue due to ordinary workforce attrition and closing the plan, or a plan feature, to new hires. Importantly, the bills address certain nondiscrimination testing issues not covered by Treasury’s proposed regulations as well those that might arise with the minimum participation rule. (For more information, please see this [summary](#) and [press release](#).)

Health Care Reform

Less than a week after a decision to postpone proceedings and not hold a vote on the American Health Care Act (AHCA) ([H.R. 1628](#)), Republican lawmakers took a new step towards achieving their goal to reform the health care landscape. Specifically, the House Rules Committee approved an AHCA [amendment](#) that would appropriate billions of dollars to fund a new risk-sharing program.

Comment. This change would not directly impact employers, as it is designed to reduce the risk that insurers in the individual market would sharply raise premiums. However, the action indicates that GOP leaders continue to have health care reform on their agenda, aim to bridge the divide among those in the caucus, and are seeking Republican votes to pass the AHCA. For additional information, please see this [section-by-section summary](#) of the amendment.

Senate Confirmations

In an historic move last week, the Republican-led Senate changed the rules for confirming a Supreme Court justice to shepherd in President Trump’s nominee, Judge Neil Gorsuch. Although confirmation of other federal judges and cabinet members require only a simple majority of the Senate (as a result of a rule change by the Democrat-led Senate in 2013), until last week, a Supreme Court justice nominee needed to secure no less than 60 Senate votes.

In other news, the confirmation hearing for Alex Acosta, President Trump’s nominee for secretary of labor, has not yet been set. A former member of the National Labor Relations Board, Assistant Attorney General for the Civil Rights Division of the United States Department of Justice, and U.S. Attorney for Southern District of Florida, his views on critical DOL issues, such as the overtime and the fiduciary rule are not yet known. For background on the status of the overtime rule and the fiduciary rule, please see our [December 9, 2016 For Your Information](#) and our [April 5, 2017 FYI Alert](#), respectively.

Looking Ahead

When the lawmakers from both congressional chambers return following their two-week recess, they will quickly turn their attention to solving the looming government funding issue. It’s likely they will agree to another short-term funding measure, known as a continuing resolution, or CR, to stave off a government shutdown on April 29. Legislators may seek to include riders, such as additional funding for the retired coal miners’ multiemployer health and pension plans. (For background on the current CR, which provides funding through April 28 and the coal miners, please see our [December 12, 2016 Legislate](#).) They are less likely to include any “poison pill” riders, such as ones that would defund Affordable Care Act activities.

Update on Fiduciary Rule

As noted, last week DOL delayed the fiduciary rule’s applicability date until June 9, 2017, and delayed until January 1, 2018 certain required written disclosures and representations by fiduciaries. That is, fiduciaries must adhere to the Impartial Conduct Standards beginning June 9, but are not required to make specific disclosures and representations of fiduciary compliance in written communications with investors until January 1, 2018. Meanwhile, the U.S. Court of Appeals for the Fifth Circuit recently refused to grant an emergency injunction blocking the rule.

Authors

Allison R. Klausner, JD
Nancy Vary, JD

Produced by the Knowledge Resource Center

The Knowledge Resource Center is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, surveys, training, and knowledge management. For more information, please contact your account executive or email fyi@conduent.com.

You are welcome to distribute *Legislate*® publications in their entirety. To manage your subscriptions, or to sign up to receive our mailings, visit our [Subscription Center](#).

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.