

Legislate[®]

Key Legislative Developments Affecting Your Human Resources US

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Potential Government Shutdown Looms Large; Joint Employer Issues Re-emerge

Congress is tasked this week with taking action to avert a government shutdown. Earlier this month, lawmakers revisited the impact of an NLRB decision that overruled decades-long precedent and established a new joint-employer standard.

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Government Funding

The federal government’s fiscal year began on October 1, 2016, but government operations were not funded for the entire 12-month period. Rather, Congress passed a measure (known as a continuing resolution, or CR) in December 2016 that provided funding only through April 28, 2017. To keep the lights on after that, lawmakers must pass another stop-gap measure before April 29. When a CR is passed, it could be for any duration – even for just a day. Thus, depending on the duration, this next CR may be one of many to come.

Comment. The December 2016 CR included a provision to fund certain retired coal miners’ multiemployer health benefits, ensuring that they would continue after December 31, 2016. However, that health plan funding will run out on April 28. Lawmakers who advocated in December for the addition of a coal miner provision are expected to do the same again. These lawmakers are also expected to seek protections for the retired coal miners’ multiemployer pension benefits. (For additional information and background, please see our [December 12, 2016 Legislate](#).)

What if...?

Should a shutdown occur, private employers may be affected, particularly government contractors and others in their supply chain. Please refer to our [Legislate](#) from [September 28, 2015](#) for additional information and background about the possible impact of a shutdown on issues such as medical coverage, retirement plan loan repayments, and requests for hardship withdrawals.

Joint Employers

In 2015, the NLRB’s *Browning-Ferris Industries of California, Inc.* [decision](#) upended the National Labor Relations Board’s (NLRB’s) long-standing standard for determining who is the “employer.” Prior to that decision, joint employer status under the National Labor Relations Act was predicated on a company having actual, direct and

immediate control over workers' essential terms and conditions of employment. Under the NLRB's new standard, joint employer status extends to companies with only indirect control over those terms and conditions.

Earlier this month, a bipartisan group of lawmakers took action to block, at least temporarily, the impact of that decision. Specifically, they sent a letter to a House appropriations subcommittee requesting that the 2018 budget include a provision that puts a one-year hold on the joint employer standard set forth in the *Browning-Ferris* decision.

Comment. Although legislation to reverse *Browning-Ferris* has not been introduced in the current Congress, such bills were introduced in the prior Congress. (Please see our [March 21, 2016 Legislate](#) for more information.) As the NLRB decision is currently on appeal to the D.C. Circuit, lawmakers may be waiting for that decision before taking further action.

Looking Ahead – Health Care Reform

During the two-week recess, health care reform discussions continued with the goal of preparing revised legislation in the coming days or weeks. Nevertheless, unless Republican efforts to defund the Affordable Care Act become a sticking point in advancing a CR, health care reform efforts are likely to remain in the shadows until a CR is in place.

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