

# Legislate<sup>®</sup>

## Key Legislative Developments Affecting Your Human Resources US

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### Retirement and Compensation Legislation in Focus; Senators Mull Next Steps for Health Care Reform

Last week, Senators began what is bound to be a long legislative process of drafting a health care reform bill that may be radically different from the one passed by the House. Earlier this month, bicameral multiemployer plan legislation with potentially widespread implications was introduced and compensation-related legislation advanced in the House.

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#### Retirement Plans

Individuals with huge defined contribution accumulations in employer plans and IRAs would face new limitations and distribution requirements in multiemployer pension plan legislation introduced in both chambers last week. Sen. Bernie Sanders, I-Vt., and Rep. Marcy Kaptur, D-Ohio, with multiple co-sponsors, introduced the Keep Our Pension Promises Act ([S. 1076](#) and [H.R. 2384](#)) that would unwind certain Multiemployer Pension Reform Act (MPRA) provisions.

#### Suspending Multiemployer Benefit Payments

MPRA permits, under certain circumstances and in line with specific procedures, the suspension of benefit payments from multiemployer plans in jeopardy of becoming insolvent. The legislation would restore the anti-cutback rule in effect before MPRA. For background on the MPRA and other congressional efforts to modify the procedural rules for suspending benefit payments, please see our [March 13 Legislate](#) and issues of *For Your Information* from [September 2, 2015](#), [June 29, 2015](#), and [January 12, 2015](#).



#### Changes for Savings Plans

The legislation would limit contributions to employer-sponsored savings plans and IRAs, and modify the minimum distribution requirements, for individuals with huge aggregate savings in such plans and IRAs. Specifically, the bill would bar new contributions and would require taxable distributions when the aggregate balances for an individual tip the scales at \$5 million or more (adjusted for inflation). New reporting requirements would be imposed on plan sponsors to allow IRS to identify individuals subject to these new rules.

## PBGC Funding

Tax collected because of the savings plan changes, along with tax revenue from other tax law changes unrelated to retirement savings, would be transferred to a new PBGC fund to pay for the restored multiemployer benefits. The estimates of revenue are unclear, but perhaps more than one might expect. In a [2014 study](#), the Government Accountability Office found there were about 9,000 individuals with \$5 million or more in their IRA accounts by 2011.

For additional information on the legislation, see Rep. Kaptur's [press release](#).

**Comment.** In the prior Congress, this legislation was introduced and did not gain traction. The prospects of advancing in the current Congress may be better, however, if the legislation is folded into a larger tax reform bill.

## Compensation

Earlier this month, the House passed the Working Family Flexibility Act ([H.R. 1180](#)), a bill that would amend the Fair Labor Standards Act to allow private-sector employers to offer employees compensatory time off (“comp time”) in lieu of cash overtime pay. The bill contains a sunset provision under which the law would expire five years after enactment. Additional details of the House bill, as well as a related Senate bill ([S. 801](#)), are provided in our [April 10 Legislate](#).

**Comment.** If either bill is enacted, employers should check their state and local laws for any restrictions on comp time, such as minimum wage and overtime requirements, before revising their pay practices. Employers will also want to review their employee benefit plans to determine any potential impact on the operation of the plans and evaluate whether to modify plan designs or provisions to account for any such changes.

## Health Care Reform

As noted in our [May 8 Legislate](#), the Senate’s ability to take action swiftly following the House’s passage of the American Health Care Act (AHCA) is likely to be hampered for a variety of reasons. Chief among them are the:

- Lack of consensus among GOP Senators as to the components of a reform bill designed to shift the health care ecosystem differently than the one created, or at least fostered, by the Affordable Care Act (ACA)
- Strict budget reconciliation rules (i.e., legislation must relate to budget and revenue) for the Senate to advance legislation with a mere 51 votes
- Time lag before the Senate receives from the Congressional Budget Office (CBO) a cost estimate of the AHCA as passed by the House

### What to do now?

Employers are encouraged to stay the course in terms of ACA compliance, while reviewing and developing revised plan design strategies, and engagement and communication opportunities, to address the more likely outcomes of health care reform and maximize the impact of benefit offerings. Importantly, efforts should be viewed with a panoramic lens, with consideration of traditional health care plans as well as account-based plans (such as health savings accounts), retirement savings plans, and potential tax and retirement reforms.

**Comment.** The hurdles identified above, combined with the realities of the congressional calendar, may mean that health care reform doesn't cross the finish line until late in 2017, or perhaps 2018. In the near term, getting the ball rolling in the Senate is going to be an uphill battle as the CBO report is not expected until May 22 at the earliest. And, in the longer term, the Senate is on recess Memorial Day week and again for the month of August, with September likely to be dedicated to addressing government funding for fiscal year 2018 (that begins on October 1, 2017).

## Looking Ahead

With both chambers of Congress in session for only two weeks before the next one-week recess, we may see a concerted effort to accelerate the pace of legislative activity. However, a significant amount of lawmakers' political capital may end up focused on topics unrelated to employee benefits, such as national security and foreign policy.

### Authors

Allison R. Klausner, JD  
Marjorie Martin, FSPA, EA, MAAA

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