

Legislate[®]

Key Legislative Developments Affecting Your Human Resources US

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Labor Rules Considered Despite Challenges and Disruptions for Advancing Trump Agenda

In the best of times, lawmakers struggle to move legislation. Last week, those challenges were amplified after a shooting left a GOP House leader in critical condition and delayed numerous votes and hearings. One House hearing that did take place focused on several controversial NLRB changes made during the prior administration. Meanwhile, although no significant steps have been taken by Senate Republicans following approval by the House of the American Health Care Act, health care reform remains a top GOP priority. Also, Puerto Rico voted for statehood.

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NLRB Rules

Last week, the House Education and the Workforce subcommittee on Health, Employment, Labor and Pensions considered three GOP-sponsored bills to amend the National Labor Relations Act (NLRA) and roll back controversial changes to the union election process made by the National Labor Relations Board (Board) during the Obama administration. These bills were introduced in the 114th Congress, but did not advance out of committee.

Workforce Democracy and Fairness Act (H.R. 2776). Sponsored by Rep. Tim Walberg, R-Mich., subcommittee chairman, this bill would address two issues: the NLRB’s ambush or quickie election rule and certifying micro-units. Specifically, the legislation would:

- Amend the NLRA to restore the long-standing election procedures that predated the April 2015 quickie election rules with respect to the timing of elections, pre-election hearings, and the identification of pre-election issues. The bill would require an appropriate hearing within 14 days of the filing of a representation petition, seek to have the Board resolve pre-election significant legal issues likely to impact it, and require a period of at least 35 days between the filing of a petition and the conduct of an election. For additional background, see our [April 6, 2015 For Your Information](#).



- Restore decades-old standard for determining an appropriate unit in a representation proceeding that was rejected by Board in its 2011 [Specialty Healthcare](#) decision. For additional background, see our [June 5 Legislate](#).

Comment. Last month, other legislation – Representation Fairness Restoration Act ([S. 1217](#) and [H.R. 2629](#)) – was introduced to reverse the Specialty Healthcare decision.

Employee Privacy Protection Act ([H.R. 2775](#)). Sponsored by Rep. Joe Wilson, R-S.C., the bill would require that lists of employees eligible to vote in organizing elections be provided to the NLRB (rather than to the petitioning union) within seven – rather than two – days after the Board’s final determination of the appropriate bargaining unit, and would only require one piece of contact information of the employee’s choosing.

For additional information, please see Rep. Wilson’s [press release](#).

Employee Rights Act ([H.R. 2723](#)). Sponsored by Rep. Phil Roe, R-Tenn., this bill would:

- Allow union recognition only via secret ballot election
- Require a majority vote of all employees – not just those present on a particular day – to decide whether to unionize or strike
- Require periodic union recertification elections
- Require opt-in permission from union members for the use of their dues for non-bargaining purposes
- Give employees the right to opt out of sharing their personal information with a union during an organizing campaign

For additional information, please see Rep. Roe’s [press release](#).

Health Care Reform

The big picture: things are moving slowly.

Although the House passed the American Health Care Act ([H.R. 1628](#)) on May 4, the Senate has not yet released any legislative text of its own. Some Senate GOP lawmakers indicated an intent to act before the July 4 week-long recess, however they have not coalesced around what provisions to include in a bill. Moreover, they are hampered by President Trump’s remarks that the House-passed bill is “mean” – suggesting that their efforts may not bear fruit anytime soon. In the meantime, in a letter to Senate Majority Leader Mitch McConnell, R-Ky., Senate Minority Leader Chuck Schumer, D-N.Y., asked to have an all-hands-on Senate meeting during which both parties would “discuss how to make health care more affordable and accessible.”

Comment. If the Senate doesn’t make meaningful progress in the next two weeks and release legislation prior to the July 4 recess, the chance of significant health care reform legislation passing before the end of the fiscal year (September 30, 2017) diminishes. During the few weeks that Congress is in session before the month-long August recess, they will need to focus on other issues, such as the debt ceiling and reauthorizing the Children’s Health Insurance Program (CHIP). And, upon their return in September, lawmakers’ time and attention will most be dedicated to budget and appropriations matters, leaving little or no time for addressing comprehensive health care reform.

Although comprehensive legislation has not advanced since the House passed the AHCA on May 4, the House passed a bill – the Broader Options for Americans Act (H.R. 2579). The bill would enhance the permitted uses of any AHCA tax credits and allow individuals to use them to purchase “unsubsidized” COBRA health coverage. (For additional information on the bill, please see our [June 12 Legislate](#).)

In addition, support for continuing the cost-sharing reduction (CSR) payments under the Affordable Care Act (ACA) could be growing. Indeed, Sen. Lamar Alexander, R-Tenn., chairman of the Senate HELP committee, urged the Trump administration to continue the payments “at least through 2018 – and probably ... through 2019.” (For background on CSR payments and the pending litigation about them, please see our [April 17 Legislate](#).)

Comment. Employers would not be directly affected by the continuation or cessation of these payments. However, if these payments are discontinued, a greater number of individuals may seek coverage through their employers. This in turn would shift additional costs to employers and their plans.

Puerto Rico Votes for Statehood

Last week, Puerto Rican voters – those that bothered to show up – voted overwhelmingly in favor of statehood. The vast majority of the opposition boycotted the ballot box. But Puerto Rico’s governor visited Washington nonetheless with his demand that they be recognized as the 51st state. There is little likelihood that Congress will approve such a move.

Comment. Puerto Rico is already subject to ERISA and other federal laws, such as FLSA and FMLA. So, the main difference for human resource operations, if Congress were to agree to statehood, might be tax rules, such as the elimination of “dual qualified” plan conflicts for pension plans.

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