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Legislate®

Key Legislative Developments Affecting Your Human Resources

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New DOL and EEOC leadership; healthcare and drug pricing reform; health, pension, minimum wage, and immigration bills advance

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As Labor Secretary Acosta exited, Deputy Secretary Pizzella took the reins at the DOL. Before its summer recess, the Senate filled long-standing vacancies at the EEOC. As the Trump administration and lawmakers considered healthcare and drug pricing reforms, the House voted to repeal the Cadillac tax and passed multiemployer pension relief, minimum wage, and immigration bills.

In this issue: Leadership changes at the DOL | EEOC vacancies filled | Healthcare and drug pricing reform | Legislative developments | Looking ahead

Leadership changes at the DOL

An unexpected resignation triggers personnel moves at the DOL as other important agency posts are filled.

Labor secretary resigns

Effective July 19, Secretary of Labor Alexander Acosta resigned amid criticism over his handling of criminal proceedings against Jeffrey Epstein while serving as the U.S. attorney for the Southern District of Florida. President Donald Trump has announced that he will nominate management-side attorney, son of the late Supreme Court Justice Antonin Scalia, to replace Acosta. Currently a partner with the law firm of Gibson, Dunn & Crutcher, Scalia recently led the legal team representing the Chamber of Commerce and other groups that persuaded the 5th Circuit Court of Appeals to vacate the Obama Labor Department's fiduciary rule governing retirement accounts. Previously Scalia served as DOL solicitor in President George W. Bush's administration, overseeing litigation and legal advice on rulemakings and administrative law, and also served in the Department of Justice. Senate confirmation is expected once Scalia is nominated.

Pizzella steps in as acting labor secretary

On July 20, Deputy Labor Secretary Patrick Pizzella became acting secretary of labor, pending confirmation of a new secretary. Pizzella, who was narrowly confirmed as deputy secretary last year, previously served as assistant secretary of labor for administration and management under President George W. Bush and as the acting head and a member of the Federal Labor Relations Authority under President Barack Obama. He is expected to push the DOL's rulemaking agenda forward, including proposed changes to its joint employer regulations, overtime regulations, and regular rate definition for overtime calculation purposes.

OSHRC has a new chairman

James J. Sullivan, Jr., who was unanimously confirmed to the Occupational Safety and Health Review Commission (OSHRC) in 2017, was elevated to chairman by President Trump on July 19. Prior to joining the review commission, Sullivan practiced law with several firms, focusing on labor and employment law and workplace safety and health matters. Earlier, he served as vice president of labor and employment law and deputy general counsel for Comcast. OSHRC currently has two vacancies at the commissioner level.

On July 11, the House Workforce Protections Subcommittee held a hearing entitled "From the Fields to the Factories: Preventing Workplace Injury and Death from Excessive Heat," which coincided with the introduction of the Asunción Valdivia Heat Illness and Fatality Prevention Act (H.R. 3668). If passed, the act would give the Occupational Safety and Health Administration two years to propose a national standard on occupational heat exposure.

ETA chief confirmed

On July 11, the Senate confirmed John Pallasch to lead the DOL's Employment and Training Administration (ETA) that oversees federal job training and worker dislocation programs, administers the Office of Foreign Labor Certification, and operates the federal-state unemployment insurance program, among other things. Pallasch, who was first nominated as assistant labor secretary for employment and training in April 2018, previously served as the executive director of Kentucky's Office of Employment and Training. He is expected to play a significant role in developing and administering the ETA's new apprenticeship effort.

EEOC vacancies filled

The EEOC regains a quorum as commission vacancies are filled.

EEOC has a new chair

Janet Dhillon was sworn in as the 16th Chair of the U.S. Equal Employment Opportunity Commission (EEOC) on May 15. First nominated by President Trump in June 2017, she was confirmed on May 8. Prior to joining the EEOC, Dhillon practiced law in the private sector for over 25 years, most recently as executive vice president, general counsel and corporate secretary of Burlington Stores, Inc. Her term will end on July 1, 2022.

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A new general counsel

By a voice vote on August 1, the Senate confirmed Sharon Fast Gustafson to a four-year term as EEOC general counsel, filling a position that has been vacant since late 2016. The Senate Health, Education, Labor and Pensions Committee had approved her nomination along party lines on July 30.

A second term for one commissioner

On July 3, President Trump re-nominated current Commissioner Charlotte Burrows, whose term expired on July 1, to a second term as a Democrat member. On July 30, the Senate Health, Education, Labor and Pensions Committee unanimously approved Burroughs for a second term. On August 1, the Senate confirmed her by unanimous consent.

A nominee for another commissioner slot

On July 3, President Trump announced that he would nominate Keith Sonderling, currently deputy administrator of the DOL's Wage and Hour Division, to fill one of two remaining commissioner vacancies at the EEOC. If confirmed, Sonderling would join Chair Dhillon and Commissioner Victoria Lipnic as the third Republican member of the commission. A Democrat seat remains open.

EEOC opens pay data collection

On July 15, the EEOC opened its portal for the collection of employee pay and hours worked (Component 2) data for calendar years 2017 and 2018. Employers have until September 30 to submit this data.

Healthcare and drug pricing reform

The administration and lawmakers look toward healthcare and drug pricing reforms.

Executive Order on improving transparency of healthcare prices and quality

On June 24, President Trump issued an executive order directing federal agencies — including Health & Human Services, Treasury, Labor, Defense and Veterans Affairs — to engage in rulemaking, issue guidance, and/or develop reports to increase the transparency of healthcare prices and quality within 60 to 180 days. These actions are intended to increase patient access to data that will help them make informed decisions about their healthcare.

Senate Finance Committee releases drug pricing reform plan

On July 25, the Senate Finance Committee passed the Prescription Drug Pricing Reduction Act of 2019 — a bipartisan package of prescription drug pricing reforms. The bill would cap price increases in both Medicare Part B and Part D, limit out-of-pocket expenses for Medicare beneficiaries, and reform Medicare's prescription drug benefit. In addition, the bill would clarify how prices are calculated and increase the maximum rebate amount in Medicaid. A White House spokesman said on Twitter that the Trump administration plans to help move the proposal spearheaded by Sens. Chuck Grassley, R-Iowa, and Ron Wyden, D-Ore., forward.

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Buck comment. Last month, the Senate HELP Committee overwhelmingly approved the Lower Health Care Costs Act of 2019 (S. 1895), aimed at ending surprise billing, increasing transparency, and boosting prescription drug competition.

Legislative developments

On the Hill, the House moved several bills of interest to employers, but the likelihood of action in the Senate is mixed.

House passes minimum wage bill

On July 18, the House passed the Raise the Wage Act (H.R. 582) largely along party lines. The Act would raise the federal minimum wage to $15 per hour over a five-year period, phase out the tipped employee minimum wage, and eliminate mandatory tip pooling. While the Republican-controlled Senate is not expected to take up the bill, Democrats are expected to raise minimum wage as a core issue in the 2020 elections.

House passes repeal of Cadillac tax

On July 17, the House overwhelmingly passed the Middle Class Health Benefits Tax Repeal Act of 2019 (H.R. 748) by a vote of 419–6. The bill repeals the Affordable Care Act's so-called "Cadillac tax" on high-cost, employer-sponsored health plans that currently is slated to become effective in 2022. With bipartisan support in the Senate, the tax repeal could pass that chamber as well.

Immigration bill passes House

On July 10, the House passed the Fairness for High-Skilled Immigrants Act of 2019 (H.R. 1044) by a vote of 365–65. The bill would eliminate the current 7% per-country caps for employment-based immigrants and help clear the backlog of pending green card petitions from countries such as India and China. While the bill appears to enjoy bipartisan support in the Senate, debate about including significant changes to the H-1B program has slowed its progress.

House passes multiemployer pension bill

On July 24, the House passed the Rehabilitation for Multiemployer Pensions Act of 2019 (H.R. 397) by a vote of 264–169 that would rescue failing multiemployer pension plans. The bill — also known as the Butch Lewis Act — would establish the Pension Rehabilitation Administration within the Treasury Department and a trust fund to make low-interest guaranteed loans to plans that are in critical and declining status or insolvent, provided the plan became insolvent after December 16, 2014, and has not been terminated. Sen. Sherrod Brown, D-Ohio, introduced a Senate version of the bill (S. 2254) on July 24 with 26 original cosponsors, but it is unclear whether the measure will be considered in the Republican-controlled Senate.

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Relief for closed pension plans introduced

On July 31, Sen. Ben Cardin, D-Md., introduced the Retirement Security Preservation Act (S. 2352) that would modify nondiscrimination rules to protect older, longer service participants in retirement plans. Cosponsored by Sen. Rob Portman, R-Ohio, the stand-alone measure would protect closed defined benefit plans from inadvertent violations with the same relief available under the SECURE Act. That measure passed the House earlier this year but has not yet been acted on by the Senate (see our May 24, 2019 *Legislate*).

Bill to move PBGC premiums off-budget introduced

On June 25, Rep. Derek Kilmer, D-Wash., introduced the Pension and Budget Integrity Act (H.R. 4035) that would move PBGC premiums "off-budget" to ensure they can no longer be used to pay for unrelated federal spending. The measure was cosponsored by Reps. George Holding, R-N.C., and Anthony Gonzalez, R-Ohio.

Bills to legalize marijuana introduced

On July 22, Sen. Robert Menendez, D-N.J., introduced the Clarifying Law Around Insurance of Marijuana (CLAIM) Act (S. 2201) to allow insurance companies to provide services to state-legal cannabis businesses without risk of federal prosecution. The bill has some bipartisan support including cosponsors Sens. Rand Paul, R-Ky., and Kevin Cramer, R-N.D.

On July 23, Sen. Kamala Harris, D-Calif., and Rep. Jerrold Nadler, D-N.Y., introduced legislation (S. 2227 and H.R. 3884, respectively) that would legalize marijuana at the national level and allow individuals to expunge marijuana convictions from their records. In a same day hearing, the Senate Banking Committee explored banking reforms for the cannabis industry, including the SAFE Banking Act (S. 1200) that would allow financial institutions to work with cannabis-related businesses without the threat of federal prosecution.

Looking ahead

With both the House and Senate in recess for the rest of the summer, further action to fill open positions requiring Senate confirmation or to move bills forward in either chamber will be delayed until lawmakers return after Labor Day.

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