

CUT AND PASTE POST MARCH 2016

HR-Related Proposals in the 2017 Federal Budget

On February 7, President Obama released his proposed FY2017 Budget. There are several budget provisions that could potentially impact human resource practices. A summary of these provisions follows.

- **Retirement** – Among other things, President Obama’s budget would require employers to sponsor individual retirement account (IRA) programs, would require certain employees to participate in these programs, would offer tax incentives and tax credits to employers who sponsor IRA’s, and would allow the long term unemployed to withdraw from their IRA’s without the usual penalties.
- **Unemployment Insurance** – The proposal would make federal unemployment insurance benefits available to individuals who leave employment for a ‘compelling family reason’, would make partial unemployment insurance benefits available for individuals who are laid off and then take a job that pays less than their previous position, and would encourage employers to avoid layoffs by making unemployment insurance benefits available to employees whose hours are reduced.
- **Health Care** – The proposal funds the Affordable Care Act and increases the threshold for the ‘Cadillac Tax’.
- **Immigration** – The budget funds the E-Verify program.
- **Labor and Employment** -
 - Under the proposal, up to 5 states could receive grants to run paid leave pilot programs. The grants would be used to cover family, parental and medical leave programs that provide up to 12 weeks of benefits. The budget also includes funds for state and local governments to investigate the feasibility of implementing mandatory leave programs (The synopsis doesn’t say the leave has to be paid leave, but...);
 - The proposal increases funding for apprenticeship and Veteran’s programs;
 - The proposal funds the Workforce Opportunity and Innovation Act; and
 - The proposal sets aside funds to identify which, if any, occupational licensing rules create barriers to employment.

Inside this Issue:

- *HR Related Proposals in the 2017 Federal Budget*
- *Update on Bi-Partisan Attempt to Repeal “Cadillac Tax”*
- *The Impacts of the Death of Justice Scalia on HR*

See a complete budget synopsis at:

<http://www.shrm.org/Advocacy/Documents/Obama%20FY%202017%20SHRM%20Analysis%2002-10-2016.pdf>

Update on Bi-Partisan Attempt to Repeal “Cadillac Tax”

The two Senate proposals to repeal the Affordable Care Act (ACA) “Cadillac Tax” have been sitting in Committee since September. *If you think the “Cadillac Tax” provision of the ACA should be repealed, contact Senators Tester (<http://tester.senate.gov>) and Daines (<http://daines.senate.gov>) and encourage them to cosponsor S.2045 and S.2075.*

The Impacts of the Death of Justice Scalia on HR

The February 13 death of Supreme Court Justice Antonin Scalia may impact the practice of human resource management in a couple of ways:

- First, according to Tom Goldstein, publisher of scotusblog.com, votes that Justice Scalia already cast in cases that have not been publicly decided are void. So, in cases where Scalia’s vote would have resulted in a 5-4 decision, the case becomes a tie, and the lower court’s ruling stands.
- Second, the Republican Party will likely block any attempt by President Obama to fill the vacancy created by Justice Scalia. That means the Court will be down to eight members, raising the prospect of 4-4 deadlocks on some of the most important cases in the 2015-16 term. This results in a scenario where lower court rulings stand, and the Supreme Court is unable to fulfill its duty of clarifying and establishing nationwide legal standards.

Here are three HR cases that have already been argued before the High Court, and whose outcomes may be impacted by Justice Scalia’s death:

- **Union Dues** – In *Friedrichs v. California Teachers Association* the Supreme Court was reviewing a 9th Circuit Court of Appeals decision requiring public employees to pay the equivalent of union dues even if they oppose the union’s political activities. Based on the tone of oral arguments on January 11, 2016, the Court seemed poised to render a 5-4 verdict overturning the 9th Circuit. Assuming Scalia was one of five Justices voting for the plaintiff, the decision will become a 4-4 tie, and the 9th Circuit’s decision will stand.
- **Affirmative Action:** In *Fisher v. University of Texas*, the plaintiffs allege that the University’s admission policy illegally discriminated against them based on race. This is the second time this case has been at the Supreme Court. According to Court observers, it appeared that the Court justices were looking for a way to dispense with this case since last December, perhaps by punting it back to a lower court for more fact-finding. With Justice Kagan recused because she was involved with the case as U.S. Solicitor General, the Court’s conservative judges may be able to muster a 4-3 majority to declare racial and ethnic preferences unconstitutional, but it is unlikely.
- **Affordable Care Act:** *Little Sisters of the Poor v. Burwell* challenges the ACA rule requiring employers to include contraception benefits in their insurance plans. The 10th Circuit found it was not a “substantial burden” to require a religious employer (in this case, a Catholic charity) to notify the government it would not provide contraception to its employees (so those employees could obtain these benefits under an alternate program). It appeared the High Court was going to find, in a 5-4 decision, for the *Sisters*; with Scalia’s absence, it’s likely the 10th Circuit’s decision will stand.

