The Trump Administration and the 115th Congress: The Washington Outlook for HR Public Policy

Michael P. Aitken, Vice President
Government Affairs, SHRM
GSHRM
August 23, 2017
Government, healthcare most important problem in U.S.

<table>
<thead>
<tr>
<th>Issue</th>
<th>July 2017</th>
<th>August 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dissatisfaction with government/Poor leadership</td>
<td>19</td>
<td>20</td>
</tr>
<tr>
<td>Healthcare</td>
<td>16</td>
<td>17</td>
</tr>
<tr>
<td>Immigration/Illegal aliens</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Unemployment/Jobs</td>
<td>6</td>
<td>7</td>
</tr>
<tr>
<td>Race relations/Racism</td>
<td>4</td>
<td>7</td>
</tr>
<tr>
<td>Economy in general</td>
<td>8</td>
<td>6</td>
</tr>
<tr>
<td>Unifying the country</td>
<td>7</td>
<td>6</td>
</tr>
<tr>
<td>Situation with North Korea</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>International issues, problems</td>
<td>3</td>
<td>4</td>
</tr>
</tbody>
</table>

GALLUP

Source: August 10, 2017
### Polling Data

<table>
<thead>
<tr>
<th>Poll</th>
<th>Date</th>
<th>Sample</th>
<th>Approve</th>
<th>Disapprove</th>
<th>Spread</th>
</tr>
</thead>
<tbody>
<tr>
<td>RCP Average</td>
<td>8/3 - 8/20</td>
<td>--</td>
<td>38.4</td>
<td>55.7</td>
<td>-17.3</td>
</tr>
<tr>
<td>ABC News/Wash Post</td>
<td>8/16 - 8/20</td>
<td>1014 A</td>
<td>37</td>
<td>58</td>
<td>-21</td>
</tr>
<tr>
<td>Gallup</td>
<td>8/18 - 8/20</td>
<td>1500 A</td>
<td>35</td>
<td>59</td>
<td>-24</td>
</tr>
<tr>
<td>Rasmussen Reports</td>
<td>8/16 - 8/20</td>
<td>1500 LV</td>
<td>42</td>
<td>57</td>
<td>-15</td>
</tr>
<tr>
<td>NPR/PBS/Marist</td>
<td>8/14 - 8/15</td>
<td>859 RV</td>
<td>38</td>
<td>51</td>
<td>-13</td>
</tr>
<tr>
<td>Economist/YouGov</td>
<td>8/13 - 8/15</td>
<td>1291 RV</td>
<td>42</td>
<td>54</td>
<td>-12</td>
</tr>
<tr>
<td>Reuters/Ipnsos</td>
<td>8/11 - 8/15</td>
<td>1587 A</td>
<td>35</td>
<td>58</td>
<td>-23</td>
</tr>
<tr>
<td>Quinnipiac</td>
<td>8/9 - 8/15</td>
<td>1361 RV</td>
<td>39</td>
<td>57</td>
<td>-18</td>
</tr>
<tr>
<td>Monmouth</td>
<td>8/10 - 8/14</td>
<td>706 RV</td>
<td>42</td>
<td>49</td>
<td>-7</td>
</tr>
<tr>
<td>CBS News</td>
<td>8/3 - 8/6</td>
<td>1111 A</td>
<td>36</td>
<td>58</td>
<td>-22</td>
</tr>
</tbody>
</table>

Source: Real Clear Politics, August 21, 2017
“America First” running headlong into domestic and international realities, priorities and responsibilities:
- North Korea
- Russia
- Syria
- Afghanistan

Governing in the majority is proving to be difficult:
- Complicated “stuff”
- Freedom Caucus vs. Main Street Republicans
- Slim majority in the Senate
- Hyper-partisan environment in Washington
- Divided America

Legislative efforts on health care reform may be a preview of things to come on:
- Fiscal Year 2018 Spending Bill
- Debt limit increase
- Tax Reform
U.S. approval of Congress at its lowest to date in 2017

Source: Gallup, August 2-6, 2017
Since 1862 the President’s Party has Lost Ground in the House in 36 of 39 Midterm Elections

President’s party gain/loss of seats in House
Data from Vital Statistics on Congress

- Democratic president
- Republican president

*gain affected by House expansion

1862 2014

1998: After the GOP-led effort to impeach President Clinton, Democrats picked up seats during the midterm

2002: Republicans gained seats in 2002 due to the aftermath of 9/11

1934: Democrats picked up nine seats after the financial crash because voters were still frustrated with former President Hoover’s Republican Party

1902*: Although Republicans technically gained nine seats in the midterms, they lost ground to Democrats, who gained 25 seats due to an increase in the number of representatives after the census

President Trump created a new “2 for 1” Rule:
- Creates a Regulatory Reform Office in each agency
- Reports due to agency heads in 90 days
- Focus on regulations that eliminate/inhibit jobs, outdated or costs exceed benefits

Aggressive regulatory and executive action from the Obama Administration are under review or rescinded:
- Final Persuader Rule Rescinded
- Administrative Interpretations on Joint Employment and Independent Contractor Rescinded
- EE0-1 Compensation Data Collection Rule

NLRB Board nominated and actions will be reviewed:
- *Browning-Ferris*
- *Specialty Health Care*
- *D.R. Horton*

..... However Board Chair Miscimarra announces he will leave at end of year.
Federal court issues preliminary injunction on OT Rule.

Trump Administration filed a brief on June 30 asking the 5th U.S. Circuit Court of Appeals to uphold DOL’s authority to set a salary threshold.

DOL published a July 26 a 60-day comment period on a Request for Information on the OT regulations.

Expect changes in agency guidance and enforcement strategy:
- New philosophy on worksite enforcement

EEOC been very active also:
- Final Guidance on Sex Discrimination
- Final Wellness Rules under ADA and GINA
- EEOC Best Practices on Harassment and draft guidance
Paid Sick Laws Gain Momentum in Some East & West Coast States & Cities

State and local paid sick leave laws, by administrative district
Requirements vary by jurisdiction

- State or local employers are required to provide state and local paid sick leave

2016 ballot measures
- Washington state approved a ballot measure for paid sick leave which goes into effect January 1, 2018
- Arizona approved a ballot measure for “earned paid sick time” which takes effect July 1, 2017

No consensus on federal government mandate

% saying...

48% Employers should be able to decide for themselves
51% The federal govt. should require employers to provide paid leave
1% No answer


Pew Research Center

No consensus about what is the most helpful benefit or work arrangement

% of Americans who are employed or looking for work saying each benefit or work arrangement is or would be the most helpful to them

- Having flexibility to choose when you work your required hours: 28%
- Having paid leave for family or medical reasons: 27%
- Having flexibility to work from home: 22%
- Having paid time off for routine doctor’s appt. or to deal w/ minor illnesses: 12%
- Knowing your hours and work schedule well in advance: 10%


Pew Research Center
Four States & D.C. will Offer Paid Parental Leave to New Parents

Mandatory paid family leave state policies


Other attempts at legislation
In 2007, Washington passed a paid parental leave law, which was supposed to be implemented in 2009. However, the legislation has been postponed until a funding mechanism is identified.

Currently, only California, New Jersey, Rhode Island and New York (will go into effect in 2018) mandate partially paid family leave. All four states fund their programs through payroll taxes.
Bills to mandate paid leave introduced in new Congress, but action unlikely:

- Healthy Families Act (S.636 & H.R. 1516) – Requires employers with 15 or more employees to provide up to 56 hours of paid sick leave.
- Family Act (S.397 & H.R.947) – Creates a paid family leave insurance fund through a payroll tax to provide partial wage replacement for FMLA qualifying events.

Proposals to address maternity/paternity leave are high on Trump Administration priority list for first year:

- Expansion of coverage through unemployment system
- AEI/Brookings proposal

Predictable scheduling proposals are gaining traction in the states.
Representative Mimi Walters (R-CA) is expected to introduce SHRM-developed legislation that would expand paid leave and workplace flexibility opportunities for all employees:

- Employers that choose to participate by offering a minimum threshold of paid leave and a flexible work option to all employees will qualify for a federal safe harbor and will satisfy state and local paid sick leave law requirements.

- Amends ERISA, providing employers flexibility and predictability in workplace flexibility programs, rather than a patchwork of conflicting government mandates.
Compensable leave defined as paid time off, sick leave, personal leave, or vacation.

Number of compensable days available to employee determined by employer size and employee tenure.

Compensable leave is available to full-and part-time employees with leave prorated for part-time employees based on a calculation subject to the employer’s full-time designation.

Employees would have the flexibility to decide how/when they use the leave, unless an employer determines that a specific instance of use would unduly disrupt the business operations of the employer.

Plans may allow the employee to roll over or to cash out any accrued leave but would not be required to do so.
A Flexible Work Arrangement (FWA) must be offered to each eligible employee and may include:

- Compressed work schedule;
- Biweekly work program;
- Telecommuting program;
- Job-sharing program;
- Results-oriented work environment;
- Flexible scheduling; or
- Predictable scheduling

Employers may specify which employee positions can participate in a particular FWA and employee participation is voluntary.
- Individuals employed for 12 months and that have worked 1,000 hours during the previous 12-month period are eligible to participate in the FWA.
- Employees will begin to accrue leave upon employment but may be prohibited from using the leave in their first 180 days of employment.
- Employee tenure starts with the first day of employment but an employer must count a tenured employee’s service prior to plan adoption.
- Participation of union employees will be determined by the collective bargaining process.
- Introduction expected soon.
Issues on the horizon for HR:

- Freeze/Review/Rescind recent federal regulations
- Regulatory reform
- Paid leave/Workplace flexibility
- Joint employer
- Compensation equity
- Labor-Management reform???
Health Care Reform Issues

- Repeal of the Affordable Care Act (ACA) was one of President Trump’s major priorities in the first 100 days of his Administration.... but reform has proved difficult.

- President signed Executive Order on January 20 to “take all actions consistent with law to minimize the unwarranted economic and regulatory burdens of the ACA.”

- Key elements of Executive Order include:
  - Eliminate any “fiscal burden on any State” or any “cost, fee, tax, penalty or regulatory burden” on individuals and providers;
  - Give states more flexibility and;
  - Encourage the interstate sale of health insurance.
Congress passed a Budget Resolution that provided the budgetary reconciliation framework that allowed for Congress to repeal the tax provisions of the ACA.

Use of the budget reconciliation process allows the Senate to pass repeal of the tax provisions of the ACA with 51 votes instead of the 60 votes needed to override a filibuster.

On May 4, the House of Representatives passed H.R. 1628, the American Health Care Act to replace the Affordable Care Act (ACA) by a vote of 217 to 213.

On July 28, the Senate rejected by a vote of 49 to 51, the Health Care Freedom Act.

This proposal was a “slimmed down” repeal effort offered as a substitute amendment to the House-passed H.R. 1628, the American Health Care Act (AHCA).
On May 4, the Senate rejected by a vote of 49 to 51, the Health Care Freedom Act.

This proposal was a “slimmed down” repeal effort offered as a substitute amendment to the House-passed H.R. 1628, the American Health Care Act (AHCA).

Reduces the employer mandate penalty to zero until 2024 for failure to provide health care coverage. The employer mandate will remain and would have to be repealed in the future.

Reduces the penalty to zero for failure for an individual to maintain minimum essential coverage. The individual mandate will remain and would have to be repealed in the future.

Both the reductions in the employer and individual penalties would be effective beginning after December 31, 2015.

Repeals the Health Insurance tax after December 31, 2016.
Repealed the excise tax on high cost employer-sponsored health coverage to benefits exceeding certain thresholds ($10,200 for individual coverage and $27,500 for family coverage). Under current law, the tax will go into effect in 2020.

Repeals the $2,500 limit of contributions by employers and employees to health care Flexible Spending Accounts for taxable years beginning after December 31, 2016. The bill also allows FSAs to reimburse over-the-counter medications also beginning in 2017 and would be retroactive.

Creates a new continuous coverage requirement surcharge to encourage individuals to obtain health care coverage. To avoid a 30 percent premium surcharge, individuals must prove that they did not have a gap in creditable coverage beyond 63 continuous days during the 12 months preceding coverage.

Allows states to opt out of mandating insurance plans to cover 10 essential health benefits in plans. Since the ACA’s prohibitions of lifetime and annual limits and cap on out-of-pocket expenditures also only apply to essential health benefits, states granted a waiver would be able to define these protections as well.
The bill, introduced by Representative Steve King (R-IA), Chairman of the House Judiciary Subcommittee on the Constitution & Civil Justice, passed the House by a vote of 218 to 210.

The bill makes changes to the adjudication of medical malpractice claims.

Limits the amount of time that an individual may file a health care lawsuit to 3 years after the manifestation of an injury connected to medical product or service or 1 year after the claimant discovers or should have discovered the injury; whichever occurs first.

Minors able to file a health care lawsuit up to 3 years after the date of a manifestation of an injury connected to medical product or service or 8th birthday, whichever is longer.
Minors able to file a health care lawsuit up to 3 years after the date of a manifestation of an injury connected to medical product or service or 8th birthday, whichever is longer.

Restricts non-economic damages to $250,000. Provides no limit on the awarding of actual economic damages.

Prevents the preempt of state law if it provides for: greater damages or contingent fees or a lesser period of time to bring a lawsuit.

SHRM supports the legislation.
The Vast Majority of Americans have Employment-based Coverage

Rate of health care coverage of U.S. population, 2015

<table>
<thead>
<tr>
<th>Coverage Type</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employment-based</td>
<td>55.7%</td>
</tr>
<tr>
<td>Direct purchase</td>
<td>16.3%</td>
</tr>
<tr>
<td>Medicaid</td>
<td>19.6%</td>
</tr>
<tr>
<td>Medicare</td>
<td>16.3%</td>
</tr>
<tr>
<td>Military health care</td>
<td>4.7%</td>
</tr>
<tr>
<td>Uninsured</td>
<td>9.1%</td>
</tr>
</tbody>
</table>

11% Average 2017 increase in health care costs

- 25% increased 1% to 5%
- 41% increased 6% to 10%
- 18% increased 11% to 15%
- 16% increased 16% or more

*Note: n = 599. Only respondents whose costs increased from 2016 to 2017 were asked this question.

Health Care Reform Issues

Organizations’ Health Care Coverage Costs
Increased Again in 2017

- 79% increased
- 16% stayed the same
- 5% decreased

Note: Respondents who answered “don’t know” were excluded from this analysis.

*Data are from SHRM’s 2016 Strategic Benefits Survey—Health Care.
Other health care issues on the horizon for HR:

- Bipartisan effort?
- Protecting employer-based system
- Taxation/Cap of employer-sponsored health care coverage
- HSA Expansion/Coverage mechanisms
- Wellness reforms???
E-Verify and four other immigration laws extended to September 30, 2017 as part of FY 2017 budget bill but will need to be extended again in September.

The 115th Congress will likely consider immigration enforcement issues and could also include a focus on employment-based visas as well.

Immigration reform was a major issue in 2016 Presidential Campaign and migration issues are also at the forefront of the international community.

President Trump has promised a focus on border security and interior enforcement, including worksite enforcement:
- Executive Order – Buy American, Hire American
- Possible Executive Order on Worksite Enforcement
- Possible repeal of DACA Executive Order
- Executive Order - Protecting the Nation from Foreign Terrorist Entry Into the United States.
President Trump Recommits to Hard-line Immigration Stances

1. Build a wall with surveillance and sensor technology, fortified with manpower.
2. End “catch and release” by detaining anyone who crosses the border until they are deported.
3. Enforce zero tolerance for criminal aliens by removing them all from the U.S. and creating a Deportation Task Force.
4. Block funding for sanctuary cities in an effort to eliminate laws that shield undocumented immigrants.
5. Cancel Obama’s executive orders giving amnesty and fully enforce all immigration laws.

6. Suspend issuing visas to any place we cannot adequately screen including countries with refugees like Syria and Libya.
7. Require other countries to take back their citizens when they are deported. Some countries refuse to accept people back in such circumstance.
8. Complete the biometric entry-exit visa tracking system in an effort to eliminate Visa overstays.
9. Use E-Verify to the fullest extent, expanding its use and prioritizing the deportation of aliens on welfare.
10. Reform legal immigration to keep it legal immigration within historical norms and admit immigrants most likely to be financially self-sufficient.

President Trump announces new immigration proposal with Senators Cotton and Perdue

Key elements of the Reforming American Immigration for Strong Employment (RAISE) Act

- Reduces the total number of green cards granted for permanent legal residence from over 1 million to around 500,000
- Creates a point-based system that accounts for English-speaking ability, education and skill-level to determine who will receive one of the 140,000 employment-based green cards
- Limits programs allowing siblings and adult children of U.S. citizens and permanent residents to apply for green cards, but maintains programs for minor children and spouses
- Caps the number of refugees admitted at 50,000 per year and ends a visa diversity lottery that currently provides 50,000 green cards per year

Satisfaction with the level of immigration into the US, 2017

- Republicans: 19%
- Independents: 40%
- Democrats: 65%

Tom Cotton
- Republican Senator from Arkansas
- Elected in 2014

David Perdue
- Republican Senator from Georgia
- Elected in 2014

Because the bill needs 60 votes for cloture, it is unlikely to move forward in the Senate without Democratic support
More Than 10% of U.S. Employers Use E-verify

Employers using E-Verify, FY 2001-2015
Percentage of employers across all industries, states and U.S. territories

Issues on the horizon:

- Border security/Interior enforcement
- Increased focus of employment-based visa process
- Stepped-up worksite enforcement
- Mandated E-Verify
- Merit based immigration system
2017 Federal Budget

- Congress passed and President Trump signed into law The Consolidated Appropriations Act of 2017 to fund the federal government through September 30, 2017.

- Congress is working on 2018 spending bill. Fights expected on:
  - Spending policy
  - Reconciliation proposals

- Debt ceiling limit will need to be extended in fall of 2017 as “reset” expired on March 16, 2017. Secretary Treasury Steven Mnuchin will need to take “extraordinary measures” to fund essential payments.

Federal National Debt

- Current federal debt is over $19.9 trillion dollars. Deficit projected to hit $1.1 trillion a year by 2025.

Federal Spending & Revenues
FY 2016

Spending $3.9 trillion

Discretionary spending ($1.2 trillion)

Net interest on debt 1.3% of GDP $241 bn
Nondefense 3.3% of GDP $600 bn
Defense 3.2% of GDP $584 bn
Social Security 4.9% of GDP $910 bn
Medicare 3.2% of GDP $588 bn
Medicaid 2.0% of GDP $368 bn
Other 3.1% of GDP $563 bn

Mandatory spending ($2.7 trillion)

Corporate income taxes 1.6% of GDP $300 bn
Individual income taxes 8.4% of GDP $1.5 trillion
Payroll taxes 6.1% of GDP $1.1 trillion
Other 1.7% of GDP $306 bn

Revenues $3.3 trillion

Source: Congressional Budget Office, 2017.
Tax reform likely next focus of the 115th Congress.

Speaker Paul Ryan’s Better Way to Develop Bold Agenda for a Confident America included a task force on tax reform.

Significant changes to employer-sponsored benefits could be part of any tax reform discussion. The tax reform task force included recommendations to:

- Review current tax incentives for employer-provided pension plans to determine what incentives will remain.
- Consolidate many of the higher education tax credits; including Section 127, employer-provided educational assistance.

Social Security and Medicare Reform may be part of the overall budget and tax discussion.

Groups continue to engage in various congressional working groups to discuss impact of changes to the tax treatment of retirement and benefit plans.
Ten Largest Individual Tax Expenditures Projected to Cost the Government
Over $4.7 Trillion from 2016 through 2020

<table>
<thead>
<tr>
<th>Tax Expenditure</th>
<th>Estimated Revenue Loss (in billions of dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exclusion of contributions to and earnings from</td>
<td>$1,070.9</td>
</tr>
<tr>
<td>retirement plans</td>
<td></td>
</tr>
<tr>
<td>Exclusion of employer contributions for health care</td>
<td>$863.1</td>
</tr>
<tr>
<td>Reduced tax rates on dividends and long-term capital</td>
<td>$677.7</td>
</tr>
<tr>
<td>gains</td>
<td></td>
</tr>
<tr>
<td>Earned income tax credit</td>
<td>$373.4</td>
</tr>
<tr>
<td>Deduction of state and local taxes</td>
<td>$368.8</td>
</tr>
<tr>
<td>Deduction for mortgage interest</td>
<td>$357.0</td>
</tr>
<tr>
<td>Deduction for charitable contributions</td>
<td>$313.4</td>
</tr>
<tr>
<td>Child tax credit</td>
<td>$270.5</td>
</tr>
<tr>
<td>Exclusion of untaxed Social Security and railroad</td>
<td>$213.8</td>
</tr>
<tr>
<td>retirement benefits</td>
<td></td>
</tr>
<tr>
<td>Exclusion of benefits provided under cafeteria plans</td>
<td>$168.8</td>
</tr>
</tbody>
</table>

Employer Participation in Student Loan Assistance Act (HR 795)

- Bipartisan legislation introduced in the House by Representatives Rodney Davis (R-IL), Jared Polis (D-CO), Scott Peters (D-CA) and Elise Stefanik (R-NY).
- Expands Section 127 of the Internal Revenue Code to include student loan repayment.

Expansion of Section 127 Limit

- Bipartisan legislation to be introduced in early July by Senators Jeff Flake (R-AZ) and Catherine Cortez-Masto (D-NV) in the Senate, and Representatives Rodney Davis (R-IL) and Henry Cuellar (D-TX) in the House of Representatives.
- Will expand Section 127 of the IRC to $11,500 per calendar year, and index that amount for inflation.
- As Chair of Coalition to Preserve Employer-Provided Educational Assistance, SHRM supports both of these pieces of legislation.
Issues on the horizon:
- Corporate & individual tax reform
- Incentives to save for retirement
- Taxation of employer-sponsored benefits
- Expansion of employer-sponsored education assistance
- Entitlement reform
THE WASHINGTON OUTLOOK FOR HR PUBLIC POLICY

SHRM Advocacy in Action

- SHRM on “speed-dial” with policy makers:
  - Testified 7 times in front of congressional committees and 2 times before federal agencies
  - Testified 4 times at the state level
  - Invited to 3 congressional roundtables

Leslie Christ, SHRM-CP, (pictured on the far left), Crystal Frey, SHRM-SCP, (seated next to Leslie) testifying at House Subcommittee on Workforce Protections

Frank Cania, SHRM-SCP, serving as a witness before the House Committee on Small Business

Nancy McKeague, SHRM-SCP, testified before the House Subcommittee on Health, Education Labor and Pensions
THE WASHINGTON OUTLOOK FOR HR PUBLIC POLICY

SHRM Advocacy in Action

SHRM A-Team Statistics
(as of April 2017):

- 9,300+ active members.
- 700+ Advocacy Captains designated across the country in 50 states.
- 100% of Congressional Districts Complete.
- Off to a fast start: 250 meetings during ELLC and over 228 at CALSHRM Leg.
THE WASHINGTON OUTLOOK FOR HR PUBLIC POLICY

Michael P. Aitken
Vice President
Government Affairs
mike.aitken@shrm.org

Twitter: @SHRMVPAitken

1800 Duke Street
Alexandria, VA  22314

+1-703-535-6027 Direct