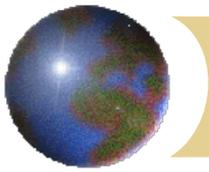


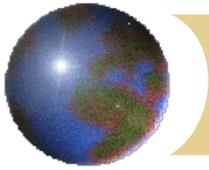
# **Government Affairs Update Central Region Conference June 6, 2017**

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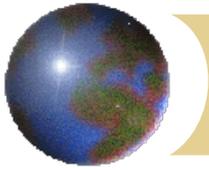
# Overview

- ✦ Republicans control the executive/legislative branches of the federal government but are short of the 60 vote majority needed in the US Senate to end filibusters
- ✦ 33 states have Republican governors
- ✦ During the last 8 years, Democrats lost more than 1,000 seats at the state and national level



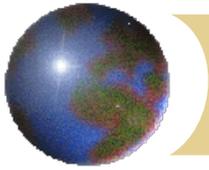
# Overview

- ❖ How is the Administration and Republican Congress doing?
  - ❑ 41% approval rating for President Trump/54% disapprove
    - Average approval is 62% at this point in a presidency
  - ❑ 20% approval rating for the Congress/74% disapprove
    - Approval of Congress by Republicans is down 22% since February



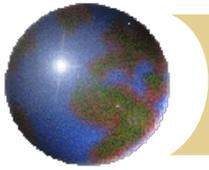
# Overview

- ❖ Healthcare & dissatisfaction with government/poor leadership are now seen as the most important problems facing the country
  - ❖ 9% increase in the number citing healthcare
- ❖ Immigration/illegal aliens, the economy in general, and unemployment/jobs are the next most important problems



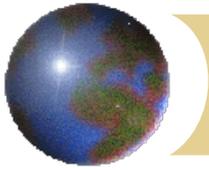
# Overview

- ❖ Congress passed a bill funding the federal government for the balance of this fiscal year
- ❖ Debt ceiling suspension ended in March and Congress needs to take action by the end of summer to either raise the national debt or suspend it



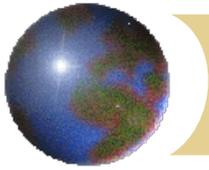
# Overview

- ✦ The budget proposal by the Trump Administration for the next fiscal year starting October 1<sup>st</sup> would increase defense spending by \$54 billion while reducing domestic spending by the same amount
  - ✦ Largest cuts are to EPA, State/Agriculture/Labor Departments
- ✦ A number of departments and programs would have their budgets reduced significantly and some programs would be eliminated
- ✦ Congress is likely to make changes to the budget proposal



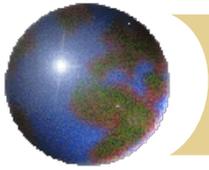
# Paid Parental Leave

- ✦ The proposed budget would provide employees with up to 6 weeks of paid parental leave by the year 2020
- ✦ The paid parental leave would be fully offset by a package of reforms to the state unemployment insurance system
- ✦ 6 weeks of paid family leave would be provided to new parents including those who adopt
- ✦ States would have broad latitude to design and finance the program



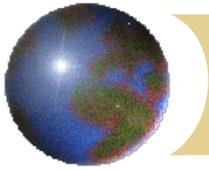
# Paid Parental Leave

- ⊕ Paid leave would be financed by:
  - ⊞ Improving unemployment insurance program by forcing states to clamp down on the improper payment of benefits
  - ⊞ Offsetting overlapping unemployment and disability payments that currently allows individuals to receive unemployment and disability benefits for the same period of joblessness



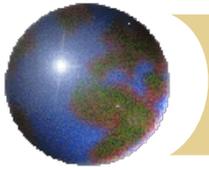
# Paid Family Leave

- ❖ Bills (S 337/HR947) have been introduced that would provide paid family and medical leave insurance benefit for up to 60 days
- ❖ Bill has a formula for determining a monthly benefit as well as minimum/maximum amounts
- ❖ Bill would establish the Federal Family & Medical Leave Insurance Trust Fund that would be funded through a tax on individuals and employers



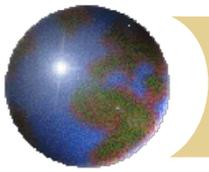
# Jobs

- ✦ In May, the economy added 138,000 jobs and the unemployment rate is 4.3%
  - ▣ 80 consecutive months of job growth
- ✦ Over the last 3 months, job increases have averaged 121,000/month as compared to 187,000/month in 2016
- ✦ Government jobs decreased in April by 9,000
  - so far this year have increased by 18,000
- ✦ Labor underutilization rate is 8.4%



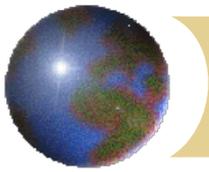
# American Health Care Act

- ✦ The House passed the American Health Care Act (HR 1682) by a vote of 217 – 213
  - ✦ No Democrats voted for the bill
- ✦ Budget reconciliation process was used, which only requires majority vote, but is limited to revenue/deficit provisions



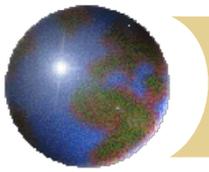
# American Health Care Act

- ❖ Congressional Budget Office estimated the bill would result in 14 million more uninsured next year and a total of 23 million people losing their insurance over the next decade
  - ❖ Insurance costs in many states could soar for those who are sick or have pre-existing conditions, while premiums would fall for those who are healthy



# American Health Care Act

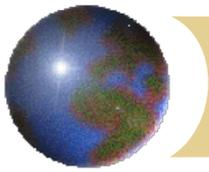
- ✚ According to NBC News/Wall Street Journal Poll:
  - ❏ 48% believe the House bill is a bad idea including 43% who strongly believe that
  - ❏ Only 23% say it is a good idea including 18% who strongly believe that
  - ❏ The ACA is more popular than it has ever been



# American Health Care Act

## ✦ Major provisions:

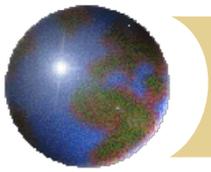
- ✦ Replaces income-based subsidies with a refundable tax credit that is tiered by age and ranges from \$2,000/year to \$4,000/year (family could receive up to \$14,000/year) – credits not available to individuals eligible for a group health plan
- ✦ Eliminates the individual mandate by making the penalty \$0 as of 2016 – imposes 30% surcharge on premiums for individuals who go more than 2 months without coverage



# American Health Care Act

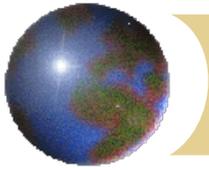
## ✦ Major provisions:

- ✦ Eliminates the employer mandate by making the penalty \$0 as of 2016
- ✦ Waivers available for states to establish their own essential health benefit requirements
- ✦ Retains the wellness program structure contained in the Affordable Care Act
- ✦ Suspends the excise or “Cadillac” tax until 2026 – repeals other taxes contained in the ACA



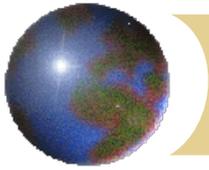
# American Health Care Act

- ✦ Major provisions:
- ✦ Regarding preexisting conditions the bill would allow states to apply for waivers that allow health status underwriting for those who don't maintain continuous coverage
- ✦ Increases the age rating ratio to allow insurers to charge elderly customers up to 5 times what they charge young adults
- ✦ Discontinues the Medicaid expansion in 2020 and restructures the Medicaid federal financing into a per capita model



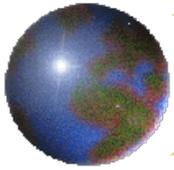
# American Health Care Act

- ❖ Potential impact on employer-provided plans:
  - ❖ The ACA banned insurers from imposing annual or lifetime limits on the amount of care they would cover and required plans to cap annual out-of-pocket spending with respect to care that is considered essential health benefits
  - ❖ States could waive the essential health benefit standards in the ACA which would narrow the scope of these requirements



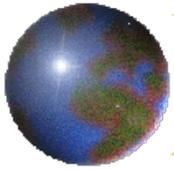
# American Health Care Act

- ❖ The bill will now be considered by the Senate, which indicated that it would write its own bill
  - ❖ Major changes are expected
  - ❖ Republicans have a small majority, with only 52 Republican Senators
  - ❖ Senate parliamentarian will determine what can be considered under reconciliation
  - ❖ Mixed signals as to when Senate legislation will be finalized and a vote scheduled



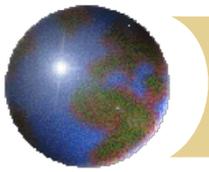
# Cost Sharing Reductions

- ❖ One key to insurers selling plans in the individual markets are the cost-sharing reductions that reduce out-of-pocket expenses for low income enrollees
- ❖ House Republicans sued the Obama Administration claiming the Congress did not appropriate the funds for the cost-sharing reductions - District Court agreed with the House Republicans & the case was appealed by the Obama Administration
- ❖ The House Republicans and the Department of Justice were recently granted another extension until August 22<sup>nd</sup> to file a status report as to how they plan to handle the appeal



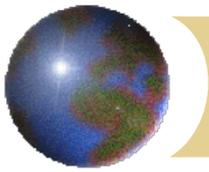
# Cost Sharing Reductions

- ✦ Group of Democratic attorney generals from 15 states and Washington, DC filed a motion to intervene in the case arguing that the Trump administration was not appropriately defending the law
- ✦ House Republicans opposed the motion claiming that the delay is designed to allow the parties to seek a negotiated resolution with the Administration and ongoing legislative efforts
- ✦ House Republicans contend the motion to intervene is premature



# FLSA Overtime Regulations Litigation

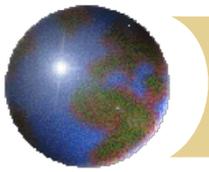
- ⊕ District Court issued preliminary injunction preventing implementation of the revised overtime regulations on 12/1
- ⊕ Case appealed to the 5<sup>th</sup> Circuit by the Obama Administration – Labor Department granted its second extension until June 30<sup>th</sup> to decide whether it wants to proceed with the appeal



# FLSA Overtime Regulations

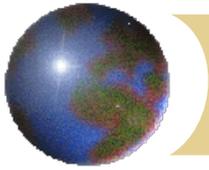
## Litigation

- ⊕ Case brought by 21 states
- ⊕ Court concluded that “significant increase to the salary level creates essentially a de facto salary-only test” which was not the intent of Congress and only Congress can decide that the salary requirement should supplant the duties test
- ⊕ Court rejected a request that the *Garcia* case be overturned so that the FLSA would not be applicable to state/local governments



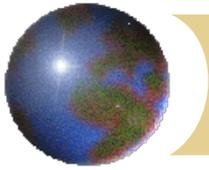
# FLSA Overtime Regulations

- ✦ Alexander Acosta, Labor Secretary expressed support for possible increase in the salary basis threshold saying it was unfortunate that such a threshold could go unchanged since 2004
- ✦ He was critical of the proposed doubling of the threshold proposed by the Obama Administration and declined to commit to defending the rule in the appeal pending before the 5<sup>th</sup> Circuit
- ✦ Texas AFL-CIO requested to intervene as a party in the case – motion pending before the District Court



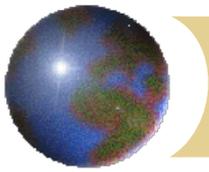
# FLSA Regular Rate

- ❖ 9<sup>th</sup> Circuit ruled in *City of San Gabriel v. Flores* that unspent dollars paid to employees as part of a bona fide flexible benefit program should be included in the regular rate calculation for determining FLSA overtime
- ❖ City provided a flat dollar amount every month to be used towards the purchase of medical, dental, & vision insurance
- ❖ Any unspent dollars were returned to the employee as taxable income



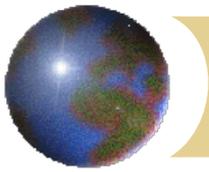
# FLSA Regular Rate

- ❖ 9<sup>th</sup> Circuit stated that since about 40-50% of the monthly amount is cashed out to employees, that the plan was not a bona fide plan resulting in the entire amount having to be included in the regular rate
- ❖ IPMA-HR joined an amicus brief in support of the city's petition for Supreme Court review
- ❖ Supreme Court denied review of the case



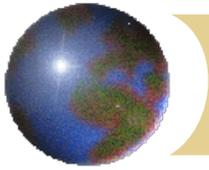
# Does Title VII Prohibit Sexual Orientation Discrimination?

- ✦ In April, the 7<sup>th</sup> Circuit in the case of *Hively v. Ivy Tech Community College* became the 1<sup>st</sup> appellate court to rule that Title VII prohibits discrimination on the basis of sexual orientation
- ✦ Court concluded that “Supreme Court decisions, as well as the common-sense reality that it is actually impossible to discriminate on the basis of sexual orientation without discriminating on the basis of sex, persuade us that the time has come to overrule our previous cases...”



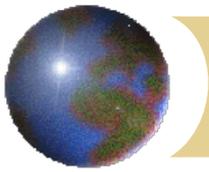
# Does Title VII Prohibit Sexual Orientation Discrimination?

- ✦ The Second Circuit in the case of *Christiansen v. Omincron Group* and the Eleventh Circuit in *Evans v. Georgia Regional Hospital* ruled recently that sexual orientation discrimination is not covered by Title VII
  - ✦ 2<sup>nd</sup> Circuit granted a review by the full court and asked for the views of the EEOC on this issue
- ✦ Supreme Court may decide to rule on this issue
- ✦ 24 states have laws prohibiting sexual orientation discrimination



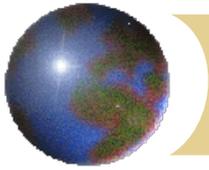
# Equality Act

- ❖ Congressional Democrats introduced legislation (HR 2282/S 1006) that would add sexual orientation and gender identity to other protected classes covered by Title VII of the Civil Rights Act
- ❖ 46 Senate cosponsors/195 House cosponsors – only 1 House Republican cosponsor

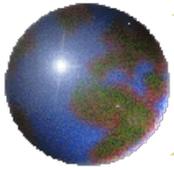


# Wellness Legislation

- ❖ House Committee on Education and the Workforce passed a bill (HR 1313) that would overturn EEOC's wellness regulations
- ❖ Included in the bill is a provision that would allow employers to collect genetic information if done as part of an employer sponsored wellness program
- ❖ Employees who did not comply could lose the health insurance discount for wellness program participation



✦ Happy 50<sup>th</sup> birthday to the Age  
Discrimination in Employment Act!



# Additional Information

✚ For additional information, please contact:

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