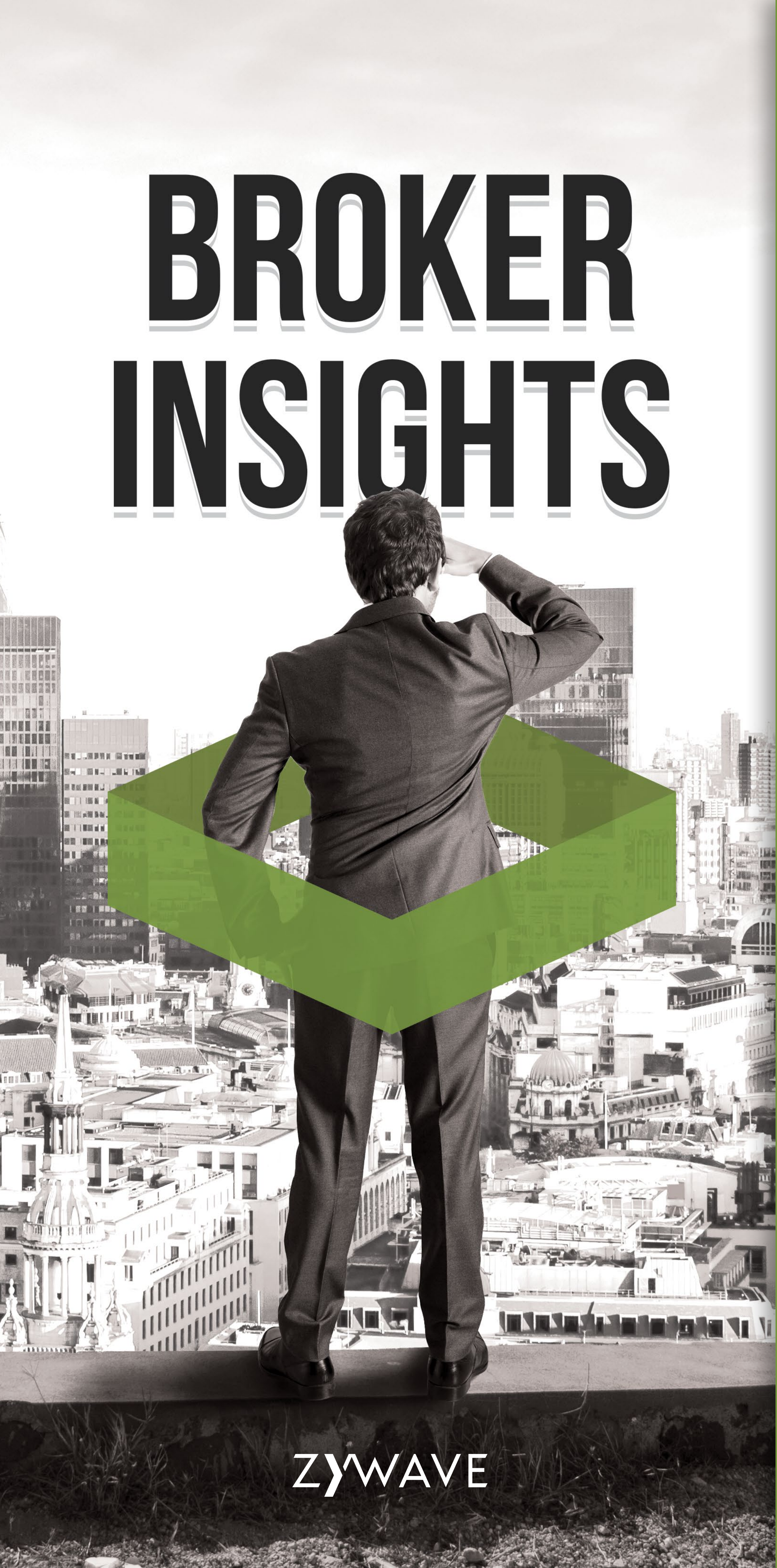

BROKER INSIGHTS

THE BENEFITS MARKET UNDER PRESIDENT-ELECT TRUMP

Presidential Republican candidate Donald Trump's victory in the election, along with Republican majorities retained in both the Senate and House of Representatives, will likely have a significant impact on the employee benefits industry, as well as a number of compliance issues over the next four years. This piece provides an overview of some of the changes to come.

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INTRODUCTION

After hard-fought campaigns by both candidates, Donald Trump was elected the 45th president of the United States on Nov. 8, 2016, and will be inaugurated into office on Jan. 20, 2017. During his campaign, Trump called for a repeal of President Barack Obama's health care reform legislation, the Affordable Care Act (ACA). In addition, Trump's victory raises uncertainty over the future of other policies enacted under President Obama.

This Broker Insights piece serves as a high-level summary of some of the changes to come. However, like any election, how and if Trump's campaigned platforms and promises will be achieved once he takes office remains to be seen. By being aware of the potential changes, though, you can better understand how the Trump administration may impact the employee benefits industry, which allows you to prepare your business and your clients for any potential changes.

Please note that this list of potential changes is based on current expert opinion, research and formal statements released by the President-elect and the Republican Party. This list is not exhaustive and is subject to change without notice as the new administration takes office. Because of the uncertainty, you and your clients should not make any substantial amendments to your benefits plans and be sure to look to Broker Briefcase for the latest updates.

CHANGES TO THE ACA AND HEALTH CARE

Throughout his presidential campaign, Trump ran on a platform of repealing and replacing the ACA. In addition, since its enactment, Republicans in both the Senate and the House of Representatives have virtually all opposed the ACA, calling for its repeal.

According to benefits industry experts, Trump's nomination of U.S. Representative Tom Price—a retired surgeon, staunch critic of and one of the main composers of legislation drafted to repeal and replace the ACA—as the secretary of the Department of Health and Human Services (HHS), demonstrates his seriousness about repealing and replacing the current health care reform law.

Republicans in Congress plan to move quickly in January 2017 to repeal the ACA and delay the effective date of the repeal so they have a few years to phase it out. Their "repeal and delay" strategy, which is being primarily coordinated by Speaker of the House Paul Ryan and Vice President-elect Mike Pence, is designed to streamline the impending changes. Plan details, including changes, have yet to be released. Republicans in the past have suggested the following:

- Partially repealing key provisions (such as the indi-vidual and employer mandates), while retaining some less controversial provisions
- Changing the Medicare and Medicaid programs
- Implementing new policies intended to expand coverage and lower health care costs

Over the course of his campaign, Trump has proposed making the following changes:

- Getting rid of the Exchanges
- Creating tax-free health savings accounts (HSAs) for people with high deductible health plans (HDHPs)
- Establishing state-based high-risk pools for people with certain medical conditions that would otherwise face difficulty obtaining coverage on their own
- Enabling insurance companies to sell insurance across state lines
- Eliminating both the Cadillac tax and the individual mandate

Additionally, there has been talk of potential changes to what types of services will be included under the preventive care the ACA currently requires insurers to provide at no cost to insured individuals. This could impact a variety of women's health issues, as women have had access to free birth control methods through their insurance plans under the preventive health benefits provision.

It is unlikely that a complete repeal or any substantial changes to the ACA will occur until plans have been carefully drafted. Moreover, it is likely that a few of the current stipulations of the ACA will remain untouched, including the following:

- Rule requiring group health plans and health insurance issuers to offer group or individual coverage that provides dependent coverage to children on their parents' plans until the adult child reaches age 26
- Rule prohibiting insurance companies from refusing to cover individuals with pre-existing conditions or charging more because of an individual's pre-existing condition

MATERNITY LEAVE

Trump has proposed a plan that would guarantee six weeks of paid maternity leave for mothers following childbirth. This plan would only apply in cases where employers don't already offer paid maternity leave. Trump plans to amend the existing unemployment insurance companies are required to carry and plans to pay for the required maternity leave through reform of unemployment insurance. His plan, however, would not provide any paid paternity leave or leave for adoptive or foster parents.

Critics of his proposal argue that six weeks is insufficient time off, that paid leave should be provided to fathers and adoptive parents as well as new mothers, that the plan does not provide for paid sick leave, that the plan potentially excludes single mothers and that it is unclear whether unemployment insurance reform would result in enough money to fund the program.

Political experts have noted that the issue of paid family leave is approached quite differently by each major political party, meaning that Trump's proposal will likely not receive bipartisan support. Additionally, Trump's proposal, at this time, is not favored by the Republican Party. If a paid leave policy is to be passed, there will presumably be policy discussions aimed at revising, improving or adding to Trump's current proposal.

CHILD CARE AND ELDER CARE ASSISTANCE PROGRAMS

Trump campaigned on the promise to make child care affordable for citizens by enabling all parents—including legal guardians and adoptive and foster parents—to deduct the cost of child care expenses from their income taxes. Under his proposal, child care costs include the cost of care from a stay-at-home parent or relative as well as nannies and day cares. Trump's proposal also extends to deducting the cost of elder care expenses from income taxes. Specifically, his proposal includes the following details:

- **Tax deduction for dependent care.** For individuals earning less than $250,000 annually and couples jointly earning less than $500,000 annually, Trump proposes an income tax deduction—to be set based on the average cost of child and elder care costs in the taxpayer's state—to be claimed for up to four children and elderly dependents. Tax deductions for elder care will be capped at $5,000 per year.
- **Expanded Earned Income Tax Credit (EITC).** Trump proposes offering a child care rebate as a form of an expanded EITC. For low-income taxpayers, he has proposed to increase the credit to 50 percent of the current payroll taxes paid by the lower earning parent. This increase is subject to an income limitation of $31,200 per year and could result in a $1,200 credit annually.
- **Separate Dependent Care Savings Accounts (DCSAs).** Trump's proposed DCSAs would be complementary to the dependent care flexible spending account that already exists in the benefits industry. Unlike traditional dependent care flexible spending accounts, though, parents will not have to rely on their employer to enroll in the proposed accounts.

Trump's proposed savings account would be tax-advantaged, would be allowed to roll over from year to year and would be subject to a $2,000 annual contribution limit. Both employers and employees, however, would be able to contribute to this account. Trump's proposal includes matching 50 percent of contributions, up to $1,000 per year, for low-income families.

- **Child care dependent savings accounts** funds can be used for things like school tuition or enrichment activities. Funds will remain in the account until the dependent reaches the age of 18, at which time, the funds may be used to offset the cost of higher education.
- **Elder care dependent savings accounts** funds can be used for things like adult day care, in-home or long-term care services.

In addition to the elements listed above, Trump's child care assistance proposal includes **incentives for employers to offer on-site child care for their employees.** These incentives include expanding tax reductions for organiza-tions and allowing companies to share resources to pro-vide communal child care services.

At this time, there has not been an in-depth plan released that details how all of these programs will be funded. How-ever, it does appear that Trump is serious about making reforms that would enable many parents and caretakers to obtain affordable child care and elder care for their de-pendents.

I-9 FORMS AND E-VERIFY FOR EMPLOYERS

Trump's stance on immigration has been clear throughout his campaign. Changes in the immigration policy could impact employers significantly. One large change that may come is the proposed mandatory use of the E-Verify electronic employment eligibility verification system to ensure that all newly hired employees are authorized to work in the United States.

According to the U.S. Citizenship and Immigration Services (USCIS), E-Verify is an internet-based system that compares information from an employee's Form I-9 to data from U.S. Department of Homeland Security (DHS) and Social Security Administration (SSA) records to confirm employment eligibility.

Under the Obama administration, the use of E-Verify is optional for most U.S. employers. Congressional action is required in order to make E-Verify use mandatory for all U.S. employers. However, the Trump transition team is said to be drafting bills on this topic to introduce to Congress soon after Inauguration Day.

OVERTIME RULE

On Nov. 22, 2016, a federal judge in Texas issued a preliminary injunction, halting the enforcement of the Department of Labor's (DOL) new overtime rule until further notice. The rule, which was set to take effect on Dec. 1, 2016, would have increased the salary threshold for the "white collar overtime exemptions" from $23,660 per year to $47,476 per year.

The DOL has filed a motion for an expedited appeal of the Nov. 22 injunction. The court process, though, is lengthy and it is unclear whether or not the appellate court will make this case a higher priority than others. This means that a final court decision could take months and that a decision will probably not be made by Inauguration Day. If a decision is not made on the overtime rule by the time Trump is inaugurated, he may request the DOL to withdraw its appeal.

In the event that the DOL is successful in its appeal, it is possible that state plaintiffs involved in the court case could file a petition to be heard by the full circuit, which could delay the court's order. It is also possible that Trump could take executive action to block or amend the rule, but it is not clear at this time what approach he would take to change or undo the rule. If the appellate court strikes down the rule, though, further court or executive action may not be necessary.

RETIREMENT BENEFITS

Trump's in-depth plan for retirement benefits has yet to be revealed. However, he has mentioned that he does not plan to cut benefits or increase payroll taxes in regards to Social Security. Additionally, his proposed DCSAs act as a traditional health savings account (HSA), allowing individuals to plan for future expenses relating to child and elder care. He also has mentioned wanting to expand the use of HSAs, but has not yet released specifics on this topic.

Other retirement benefits that the Trump administration may address during his term include the following:

- **Fiduciary Rule**—In April 2016, the DOL released a final rule that expands who is considered a "fiduciary" when providing investment advice to retirement plans and their participants. The final rule's guidance also applies to individual retirement accounts (IRAs) and HSAs. The rule's expanded definition of fiduciary is set to take effect **April 10, 2017,** and certain other requirements are set to take effect **Jan. 1, 2018.**

- **Tax Exclusions**—Many members of Congress believe that the current tax exclusions offered for group health plan insurance premiums and retirement plan contributions negatively impact the national budget deficit.

- **Retirement Enhancement and Savings Act (RESA)**—RESA is a retirement-focused bill that has garnered bipartisan support. The bill, which will likely be reintroduced to Congress when they reconvene after Trump takes office, would allow unrelated employers to enter into so-called pooled employer plans (PEPs), replacing current limited shared 401(k) multiple employer plans (MEPs), which require "commonality" among employers that partner in a single plan. The bill would also make changes to the rules governing defined contribution plans.

- **Multiemployer Pensions**—There has been talk from House members to introduce legislation aimed at modernizing the multiemployer pension system and replacing failing plans with composite plans that would function like a traditional pension, with the possibility of reduced payouts if the plan becomes underfunded.

- **Retirement Security Preservation Act (RSPA)**—RSPA is currently awaiting action from the Senate Finance Committee and the House Ways and Means Committee, but has support. The bill seeks to amend the current nondiscrimination rules for defined benefit pension plans and remedy the unintended effects of the rules.

Trump has yet to formally announce a stance on the above issues. While experts believe that Trump will not tackle retirement benefit issues within the first 100 days of his presidency, it is likely that some changes will be made during his four-year term. Be sure to monitor news sources and Broker Briefcase to remain informed and up to date with the latest revelations.

SUMMARY

Trump's victory, as well as sweeping Republican victories in Congress, mean that changes to employee benefits are coming. While it is not certain when these changes will be made, it is important to remain as informed as possible. To keep up to date with the latest developments on potential changes, look to Broker Briefcase. For further information on proposals, visit the resources listed below.

- Donald Trump's Proposals—www.donaldjtrump.com/policies/
- Paul Ryan's A Better Way Campaign—http://abetterway.speaker.gov/

Remaining informed can help you better understand how the Trump administration may impact the employee benefits industry, which allows you to prepare your business and your clients for any potential changes.

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