Management Alert

Fiscal Crisis Averted *For Now*

The House on Tuesday passed compromise legislation negotiated by the Administration and Senate Republican leadership, thereby avoiding draconian spending cuts that would otherwise have been triggered by last year's Budget Control Act. Like the nation, however, employers are hardly "out of the woods" as regards federal fiscal troubles. The agreement reached early this week in Washington addresses mainly revenue (i.e., tax) matters. As Defense Secretary Leon Panetta put it: "Congress has delayed the worst possible outcome by delaying sequestration for two months. Unfortunately, the cloud of sequestration remains. Congress cannot continue to kick the can down the road."

Yet that is precisely what Congress (and the Administration) did this week. As suggested above, sequestration of discretionary defense and non-defense funds – the automatic spending cutback slated to occur absent further legislation – was simply pushed back two months, to March 1. At about that time, moreover, the U.S. Treasury is expected to be unable to meet its obligations unless Congress votes to raise the debt ceiling. Those two issues promise to be at least as vexing and vexatious as the tax wrangling that brought legislators back to Washington during the holidays.

For employers with federal contracts and/or grant monies, the spending side (those still looming 8-10% cuts) has always been the fiscal cliff's most frightening feature. For employers generally, the debt ceiling decision – with its implications for the U.S. and global economy – may well trump tax rates in determining future economic growth. Moreover, Moody's has said it will join Standard & Poor's in downgrading U.S. debt unless Congress reigns in federal spending before this summer.

Thus, employers who remain skeptical regarding Washington's ability to slash federal spending in the coming months (or who expect a protracted fight over the debt ceiling) have every reason to anticipate another fiscal cliff stalemate two months from how. In that event, employers may again need to consider one or more of the following measures for controlling labor costs:

- Plant closings or mass layoffs, as those terms are defined under the federal Worker Adjustment and Retraining Notification Act
- Short-term layoffs that move employees to inactive status but provide recall rights, even as to non-union workers
- Across-the-board pay cuts, taking care to avoid jeopardizing the exempt status of employees properly classified as exempt
- Furloughs (reduced work days or hours), which likewise can jeopardize exempt status if not properly implemented under federal and applicable state laws

With regard to furloughs, private employers may find noteworthy the December 29, 2012 guidance issued by the federal Office of Personnel Management (OPM). See *OPM Guidance for Administrative Furloughs*. Parts of that guidance are unique to federal agency employees. However, other parts may be of interest to private employers planning or considering furlough options. Regardless, that OPM updated its guidance on December 27 suggests the Administration believed in late December that a budget deal was no sure thing. Current signs indicate that federal agencies and other employers will feel it's "déjà vu all over again" in another month or two.

This concludes our series of Alerts on the now proverbial "fiscal cliff", at least for the present. Should upcoming negotiations in D.C. portend another crisis that could impact employers, we will through this or other means help keep you informed – and as prepared as possible.

By: *Condon A. McGlothlen*

Condon A. McGlothlen is a partner in Seyfarth Shaw's Chicago office. If you would like further information, please contact your Seyfarth attorney or Condon McGlothlen at *cmcglothlen@seyfarth.com*.