



The NEA Monthly Lobbyist Report for Members



National Employers Association - January 2024 Policy Report

Last Updated: January 25, 2024

On the Hill

The House cleared a stopgap spending bill on January 19 that officially keeps federal agencies funded through early March, sending the measure to President Joe Biden's desk. The chamber approved the shutdown-averting legislation hours after the Senate's relatively speedy passage. The measure, known as a continuing resolution, passed with mostly Democratic support in a 314-108 vote, a point sure to irritate conservatives who are already fuming over spending.

With parts of the government now funded through March 1 and March 8, leading appropriators have a tremendous amount of work to do in just a matter of weeks. They're looking to finalize a dozen annual spending bills that Congress has so far failed to pass as House conservatives seek deeper cuts. If lawmakers fail to clear those bills over the next six weeks, appropriators warn that Congress might have to fall back on yet another a stopgap spending bill, this time through the rest of the fiscal year. That would saddle federal agencies with flat budgets or, worse, steep funding cuts.

The most recent stopgap spending bill is the third passed by Congress — so far — in the fiscal year that began on Oct. 1, with House Republican infighting hobbling the appropriations process. Passing all 12 real spending bills, and not short-term patches, will require a massive bipartisan lift that could further land Speaker Mike Johnson in hot water with his right flank.

Work this month

Lobbyit attended a hearing held by the House Committee on Education and the Workforce Subcommittee on Health, Employment, Labor, and Pensions earlier this month, "Lowering Costs and Increasing Access to Health Care with Employer-Driven Innovation." It featured testimony on how to give employers incentives to leverage innovative payment models to lower health care costs and improve quality. Other notable topics discussed during the hearing included association health plans, the use of claims data, and direct contracting.

Tax deal support grows

The House Ways and Means Committee voted overwhelmingly on January 19 to approve a \$78 billion tax package to revive a trio of business tax incentives and expand the child tax credit.

The panel backed the measure on a 40-3 vote, with unanimous Republican and strong Democratic support, despite the minority party's criticism of the package (HR 7024) for doing too little to boost the child tax credit. Democratic support is likely to be key if the bill is to pass the House as a stand-alone measure, particularly if leadership wants to limit amendments or debate on the floor.

While Democrats criticized the bill for falling short of the 2021 expansion of the child tax credit (PL 117-2), all but three voted for the measure: Reps. Lloyd Doggett of Texas, Linda T. Sanchez of California and Gwen Moore of Wisconsin.

Backers cited the boost to low-income housing tax credits, tax relief for victims of natural disasters and the end of double-taxation of American entities operating in Taiwan and vice versa.

"Legislation is about choices. And we got a lot into this bill. We pushed our way into it," said Richard E. Neal of Massachusetts, the top Democrat on the panel. "We could walk out of here today saying that child credit is better than it was when we walked in. And I think that that in and of itself is a milestone. Not what we wanted -- you can hear that today. But we're going to keep pushing, and pushing and pushing."

The White House lent its support to the bill, letting it be known that Biden would likely sign the legislation if it reaches his desk.

DOL narrows business' discretion on independent contractors

The Labor Department on Tuesday announced a final rule making it more difficult for businesses to classify workers as independent contractors, rather than full-fledged employees.

The change officially scraps a 2021 policy by the Trump administration and is intended to ensure that millions of workers, including those in the service sector, construction and health care, receive labor guarantees like a minimum wage, mandatory overtime and payroll tax contributions.

Under federal law such protections apply to employees but are not automatically extended to those who work for themselves and contract with employers, a distinction that has taken on heightened salience with the rise of the gig economy.

The move will be closely scrutinized by large tech companies, particularly popular app-based enterprises, whose business models are heavily reliant on the use of contractors and have fiercely fought back state and federal efforts to label workers as employees.

The Biden administration has taken to imposing an "economic realities" test similar to the one under former President Barack Obama that relies on a multi-factor, "totality-of-the-circumstances" approach in which each component is weighted equally when determining whether a worker is properly classified.

By contrast, the Trump framework emphasized an individual's "opportunity for profit" and degree of control over their work above other considerations — a position that the Biden administration believes fostered worker misclassification and business confusion while running counter to court precedent.

DOL is one of several federal agencies with overlapping jurisdiction over workers, and Biden officials stressed that the announced change does not alter employers' obligations under other federal or state laws that parse relationships between workers and employers.

For instance, the National Labor Relations Board in June issued a ruling that likewise made it more difficult to classify workers as contractors by undoing a move from the prior administration. The NLRB's standard has implications for workers' ability to form a union, an issue that falls outside the direct scope of DOL's independent contractor rule.

DOL's final rule, due to be published in the Federal Register shortly, before taking effect March 11, comes more than a year after its initial proposal in October 2022.

The independent contractor issue has loomed large in the minds of many business groups and animated a substantial portion of the opposition to Su's nomination to oversee DOL permanently after Marty Walsh left last year. (Su was renominated by President Joe Biden this month.)

Within hours of DOL's announcement, Republicans in Congress said they intended to force a vote on blocking the regulation via the Congressional Review Act. However, it is unlikely any such effort would succeed while Biden is in office.

Bills by Issue

National Employers Association (4)

State	Bill Number	Last Action	Status	Position	Priority	FN Outlook
US	HR 2868	Placed On The Union Calendar Calendar No 87 2023 06 14	In House	None	None	12.3% 70.5%
Title		Introduction Date: 2023-04-25				
Association Health Plans Act						
Primary Sponsors						
Tim Walberg						

Title
CHOICE Arrangement Act

Description

This bill generally provides statutory authority for certain health reimbursement arrangements and other alternative health insurance options for employers. TITLE I--ASSOCIATION HEALTH PLANS ACT This title provides statutory authority for the treatment of association health plans (AHPs) as single, large employers for purposes of the Employee Retirement Income Security Act (ERISA). Under AHPs, groups of individuals or small employers join together to purchase health insurance coverage. AHPs were historically subject to the market requirements for individual and small group health plans. In 2018, the Department of Labor issued regulations that allowed an AHP to be considered a single, large employer under ERISA if certain conditions are met. The regulations have been subject to litigation, which is still ongoing. The title provides that an AHP qualifies as a single, large employer if it (1) among other listed criteria, has been in existence for at least two years before offering health insurance and was formed for a purpose other than offering health insurance; (2) meets any criteria set by Labor in a prior advisory opinion; or (3) meets any other criteria set by Labor through regulations. TITLE II--CHOICE ARRANGEMENT ACT This title provides statutory authority for regulations that allow employers to offer individual coverage health reimbursement arrangements (ICHRAs). Under ICHRAs, employers agree to reimburse employees for incurred medical expenses up to a limit for a specified period (e.g., a calendar year), and employees obtain their own individual coverage that meets certain requirements of the Patient Protection and Affordable Care Act (coverage of preventive services and no annual or lifetime limits). Payments or reimbursements under an ICHRA are tax-exempt and may only be made for medical care provided when the employee was covered by a plan that meets the requirements. Employees may also pair ICHRAs with Medicare coverage. In 2019, the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services issued regulations that allow employers to offer employees ICHRAs if certain conditions are met: (1) the employer offers ICHRAs to all employees in the same class (e.g., all full-time employees) without the choice of an employer-sponsored group health plan, and (2) the employer offers the ICHRA to all employees within the class on the same terms (i.e., the amount of available funds and the terms and conditions of the benefits). The regulations also specify certain notice and verification requirements with respect to ICHRAs. The title provides statutory authority for these regulations and generally refers to ICHRAs as custom health option and individual care expense arrangements. TITLE III--SELF-INSURANCE PROT... (click bill link to see more).

Bill Summary: Last edited by Jacob Kohn at Jun 22, 2023, 1:42 PM
The CHOICE Act makes several improvements, including: - Association Health Plans Act Would Allow Businesses to Pool Risk and Negotiate Lower Costs - Self-Insurance Protection Act Levels the Playing Field for Small Business - Custom Health Option and Individual Care Expense Arrangement Act Creates Certainty and Improves Individual Coverage HRAs (ICHRAs)

Introduction Date: 2023-06-05

Primary Sponsors

Kevin Hern

State	Bill Number	Last Action	Status	Position	Priority	FN Outlook
US	HR 3800	Ordered To Be Reported In The Nature Of A Substitute Amended By The Yeas And Nays 34 6 2023 06 07	In House	None	None	24.5% 76.7%

Title **Introduction Date:** 2023-06-05
Chronic Disease Flexible Coverage Act

Primary Sponsors
Brad Wenstrup

State	Bill Number	Last Action	Status	Position	Priority	FN Outlook
US	S 3224	Read Twice And Referred To The Committee On Finance Text Cr S 5341 2023 11 02	In Senate	None	None	3.5% 78.9%

Title **Introduction Date:** 2023-11-02
Chronic Disease Flexible Coverage Act

Primary Sponsors
John Thune