FCA INTERNATIONAL LEGISLATIVE Update
Building a Better Future for Our Families

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Congressional Overview

The House and Senate were in session this week. The House returned after their three week Spring Recess and focused on budget negotiations, while the Senate continued dealing with the President's Supreme Court nominee, Marick Garland. Garland made rounds this week with a growing list of GOP Senators. Garland met with Sens. Chuck Grassley (R-IA and Judiciary Chairman), Kelly Ayotte (R-NH), Jeff Flake (R-AZ), Barbara Murkowski (R-AK), Rob Portman (R-OH) and Pat Toomey (R-PA).

Congress is supposed to pass a budget by April 15 under the Congressional Budget Act to begin the annual spending process, but the House GOP Leadership does not have a plan for passing a budget, especially before Friday's deadline. The House and Senate could still pass a budget after April 15 if they can reach an agreement, but unfortunately neither of the two sides are budging due to those that want to lower spending levels and members who want to adhere to last year's bipartisan deal. Nonetheless, House appropriators moved forward with individual 2017 spending bills this week despite the dim chances of them ever reaching the floor.

Another Multiemployer Pension Fund Applies for Benefit Cuts

A Long Island, NY-based multiemployer pension fund has become the latest to seek Treasury Department approval to reduce benefits. The Road Carriers-Local 707 Pension Fund, based in Hempstead, filed an application for benefit cuts on March 15 under the Multiemployer Pension Reform Act (MPRA). Under the MPRA (also known as the Kline-Miller Act) plan trustees must demonstrate to Treasury that proposed benefit cuts are necessary to prevent future insolvency. Also, the pension fund submitted a request to the PBGC to partition the plan. This appears to be the first case in which a plan has combined a request for partition with a request for benefit suspension. In a partition, the PBGC transfers some liabilities from a plan in danger of becoming insolvent to a new plan and provides financial assistance to that plan allowing financially healthy employers to maintain the original plan.

Marco Rubio Declares Support for Zika Funding

Sen. Marco Rubio (R-FL) may now be the Obama administration's biggest ally in the fight for emergency funding to combat the Zika virus. While most Republicans have resisted the requested $1.9 billion, Sen. Rubio declared his support for the funding last Friday after a briefing with state and local leaders from Florida and Puerto Rico. Republican appropriators have stonewalled the request, saying the administration should use unspent funding for the 2014 Ebola virus outbreak. The administration said last week it would redirect $589 million, mostly from the Ebola program, to combat Zika, but that the full $1.9 billion is still needed because more must be done to combat Ebola too. The mosquito-borne Zika virus, which has been linked to birth defects, is spreading in Latin America and has already reached 40 U.S. states and Puerto Rico.

Senate Working on Bill to Reauthorize Federal Aviation Administration

With a looming July deadline to reauthorize the Federal Aviation Administration, the Senate resumed work this week on an 18-month bill that would enhance consumer protection for flyers and set new regulations for drones. Having moved through the first set of amendments last week, including passage of new security provisions and a rejection of minimum legroom requirements for airline seats, the Senate will still have to deal with some security language, plus a set of tax extenders that Democrats are hoping to carry on to the bill.

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House FY 17 Budget Resolution Appearing Less and Less Likely

It appears that a FY 17 House budget resolution remains out of reach for House Republicans. There is no visible path to adoption on the House floor and per Rep. Tom Cole (R-OK), an appropriations cardinal who sits on the Budget and Rules committees, no progress was made during the recess. Even without a budget, the House Appropriations Committee is scheduled to consider spending bills in subcommittee and full committee. The 1974 budget law permits appropriations bills to proceed on the floor after May 15 without a budget resolution in place, and appropriators clearly plan to proceed with their work.

Dozens of conservatives, including members of the House Freedom Caucus and some who belong to the much larger Republican Study Committee, are still opposed to the resolution because it maintains the higher $1.07 trillion discretionary spending topline from last year's budget deal. Most House Republicans voted against that legislation, which raised the limit on base discretionary spending. It's possible that, if it appears efforts to advance a budget resolution are being abandoned, some lawmakers who are insisting on changes to the plan might have second thoughts about skipping a budget altogether.

House to Move on Opioid Legislation Soon

House Majority Leader Kevin McCarthy (R-CA) announced that the House is expected to consider several bills to address the prescription opioid and heroin epidemic with a floor vote as early as next May. This announcement comes almost a month after the Senate passed its legislation (S 524) to promote opioid treatment and prevention, and the bill's sponsors are accusing the House of moving too slowly to address a problem that kills nearly 30,000 Americans annually. A companion version of the Senate bill, which primarily authorizes new grants for prevention and treatment that the Department of Health Human Services (HHS) and Justice can send to states, has been introduced by Rep. Jim Sensenbrenner (R-WI).

The bill (HR 953) will likely get a markup in the House Judiciary Committee at the end of April, but given the issue's high profile in an election year, other House committees are eager to move opioid legislation with their members' names attached to them. In addition to the Sensenbrenner legislation, McCarthy said that the House will also look at bills focusing on pain management and prescribing practices, treating newborns with opioid-withdrawal symptoms and strengthening drug trafficking laws.

D.C. Court Rules that P3 Project Not Subject to Prevailing Wage

The U.S. Court of Appeals for the District of Columbia Circuit Court ruled that construction of an upscale development in Washington, D.C., known as CityCenterDC, is not subject to the prevailing wage requirements of the Davis-Bacon Act (DBA). Affirming summary judgment to the District of Columbia, the appeals court disagreed with the Labor Department and found that the city was not a party to construction contracts to build CityCenterDC. Although the city owned the land, it rented it to private developers in a series of 99-year leases. Those developers, and not the city, contracted with general contractors to construct the development.

Also, the court rejected the DOL's argument that CityCenterDC is a "public work" within the meaning of the DBA. The court said the development was not a public work because its construction was not publicly funded and the city does not own or operate the facility. Per the D.C. Circuit, "The Labor Department's interpretation 'would significantly enlarge' the scope of the DBA, and such an expansion must be carried out by Congress through statutory amendment and not by judicial rewrite. Under the Department's reading, many future D.C. construction projects that are privately funded, privately owned and privately operated would be covered by the DBA, at least so long as the Federal Government or D.C. has some hand in leasing the property or even just in planning or approving the use of the property. We are unwilling to green-light such a massive, atextual and ahistorical expansion of the DBA."

Judge Brett Kavanaugh wrote the opinion, joined by Judge Stephen F. Williams. Judge Merrick Garland, who was nominated last month by President Barack Obama to serve on the U.S. Supreme Court, participated on the panel at oral argument but did not participate in the opinion.

OSHA Silica Rule Challenged Early

OSHA is confident its newly hatched silica rule will withstand the inevitable legal challenges. Within hours of the silica rule being finalized on March 24, several employer representatives threatened legal challenges that would question, among other things, whether OSHA used the best available science to justify cutting the permissible exposure limit in half.

Per the new rule, employees will be required to “demonstrate knowledge and understanding” of:

- Respirable silica hazards.
- Specific tasks at the worksite that could result in silica exposure.
- Protection measures initiated by the employer, such as wet sawing.
- Knowledge of the employer's medical surveillance program.
- For construction sites, the identity of the workplace's “competent person.”

OSHA estimates that training for newly hired workers should take about one hour for each employee. However, the training time could be shorter for workers previously employed in the same industry. As for the costs, OSHA believes that in many cases the training will be done in house and will not require companies to bring in outside instructors. The cost for teaching newly hired workers at general industry and maritime locations should range between about $31 and $47 per employee. Most of the cost is attributed to the workers being paid to take the training and in house instructor costs. For construction companies, estimated cost per student for initial training ranges from about $38 to $56.