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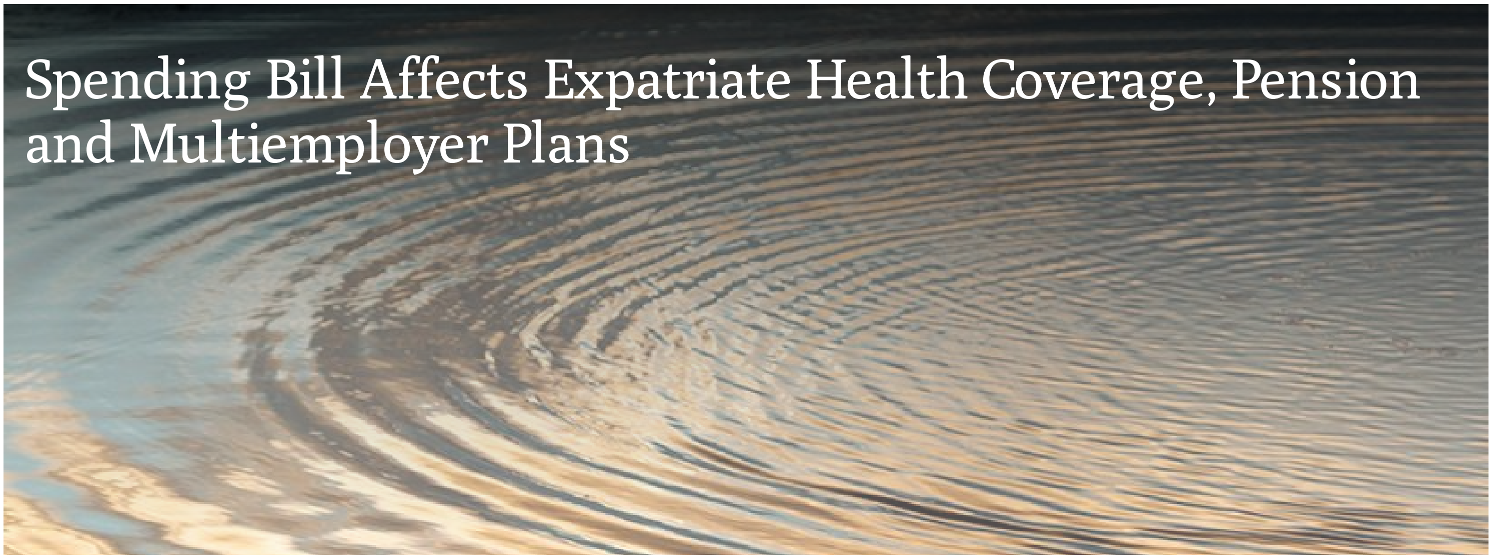

Spending Bill Affects Expatriate Health Coverage, Pension and Multiemployer Plans

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The recent federal spending bill (the Consolidated and Further Continuation Appropriations Act, 2015), enacted into law in December 2014, provides relief from health care reform requirements for expatriate health plans, rewrites facility closure rules for single employer pension plans, and allows for benefit cut-backs under multiemployer plans. The following is a high-level overview of these changes and actions that employers should consider taking:

- **Expatriate Health Coverage**: The spending bill provides relief for employer-sponsored health plans that primarily cover qualified expatriates. Qualified expatriates include employees working outside of the U.S. for at least 180 days in a consecutive 12-month period and employees temporarily working in the U.S. who require access to health insurance in multiple countries and to whom the employer provides other multinational benefits (such as tax equalization and repatriation expense reimbursements). In order to qualify for this relief, the plan must provide inpatient hospital services, outpatient facilities, physician services, emergency services, comply with pre-health care reform HIPAA portability provisions, cover at least 60% of the cost of benefits, and cover dependent children up to age 26 (if dependent coverage is offered). In addition, the plan administrator or coverage provider must be authorized to sell insurance in more than two countries, must maintain network provider agreements in eight or more countries, call centers that accept calls in eight or more languages, process at least $1,000,000 in claims, makes available evacuation and repatriation coverage, maintain legal and compliance resources in three or more countries, and offer reimbursement in the local currency in eight or more countries. If a plan qualifies, it will be exempt from most health care reform requirements and be treated as minimum essential coverage for purposes of the individual mandate and employer pay or play penalties. This relief applies to expatriate health plans that are issued or renewed on or after July 1, 2015. Given the long list of requirements that must be met in order to qualify for this relief, we encourage plan sponsors to review relevant service provider and insurance agreements and to secure representations that applicable requirements will be met.
- **Single Employer Pension Plans**: The spending bill also revises cessation of operation rules under 4062(e) of ERISA that require pension plan sponsors to provide financial protections to the PBGC (usually in the form of collateral or additional contributions to the plan) when a plan sponsor ceases operations at a facility and more than 20% of active participants are separated from employment. The spending bill revises this rule to provide that 4062(e) is triggered upon a permanent cessation of operations at a facility that results in employee terminations at the facility that equal more than 15% of all employees who are eligible to participate in any of the employer's retirement plans (including 401(k) plans). The spending bill provides several important exemptions when

calculating the 15. First, employees who are terminated as a result of a relocation of operations at the same or another U.S. facility are not taken into account if such employees are replaced by other U.S. employees. Second, terminations that arise in connection with a stock or asset sale are not taken into account if the buyer continues operations and the terminated employees are replaced by U.S. employees (or such employees continue to work for the purchaser) and the purchaser maintains a defined benefit plan that includes the assets and liabilities attributable to the terminated employees. Importantly, plans with fewer than 100 participants and plans that are more than 90% funded are now exempt from 4062(e) liability. Plan sponsors who become subject to this liability will also be provided additional payment options to satisfy the liability. These revised rules became effective upon enactment of the spending bill. In addition, the PBGC moratorium on 4062(e) enforcement has been lifted. Plan sponsors need to be cognizant of the reduced facility closure thresholds and the fact that the threshold looks to participants of any retirement plan. In addition, the new rules provide important flexibility for plan sponsors planning workplace relocations and in the structuring of stock and asset sales.

- **Multiemployer Plans**: The spending bill makes sweeping changes to multiemployer plans. The most striking change allows plan trustees to suspend benefits for active and retired participants where a plan is in critical and declining status and is projected to become insolvent within 15 plan years (20 years if inactive participants exceed active participants by a two to one margin). Benefits for participants under age 80 can be reduced, but not below 110 percent of the monthly PBGC guarantee. Suspensions must be equitably distributed, are subject to IRS approval, and would need to be submitted to a vote of participants. In addition, the spending bill eliminates multiemployer reorganization rules, makes several technical changes to PPA rules and clarifies that PPA surcharges are not to be taken into account when determining a participating employer's withdrawal liability. The spending bill also expands the disclosures that must be provided to participating employers. These revised rules became effective upon enactment of the spending bill. It remains to be seen how this relief will be utilized by multiemployer plan trustees. However, it is likely to prevent troubled multiemployer plans from terminating which will in turn avoid the triggering of mass withdrawal liability on participating employers.

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