

Impact of 2006 Elections on HR Issues

On November 7, Democrats regained the majority in the House of Representatives. Late on the following day, it was confirmed that the Democrats had also regained the majority in the Senate, by a narrow 51–49 margin, including the two Independent senators who will generally align with the Democrats. The Democrats have gained at least 28 seats in the House, well beyond the 15 seats that they needed to regain the majority. As it stands now, the Democrat majority is 230–196, with nine contests still undecided.

What does all this mean for HR-related issues? Here is some preliminary analysis that will be updated as we learn more about the specific agenda and priorities of the incoming majority in Congress.

- **Probably No Radical Change in Terms of New Legislation.** President Bush still wields the veto pen, and overriding a veto with a two-thirds majority will be challenging for Congress. Given the narrow Senate majority, the minority party in that chamber will still be able to use Senate rules to block legislation passed in the House, as it often did in the past several years. For example, it typically requires 60 votes in the Senate to cut off further debate and move to a vote on an underlying legislative proposal.
- **Some HR Legislation Will Get Quick Action.** Democratic leaders have already announced they want very quick action to pass an increase in the minimum wage, allow the federal government to negotiate directly with pharmaceutical manufacturers for lower drug prices for Medicare beneficiaries, and broaden federal funding for stem cell research. Whether these initiatives will become law will hinge on whether there is an opportunity for bipartisan cooperation on selected issues. During a November 8 press conference, for example, President Bush indicated that he could work with Democrats on an increase in the minimum wage, provided the bill alleviates the impact on small businesses. Democrats are likewise saying publicly that they want to work in a more bipartisan fashion.

It remains to be seen how extensive and how long bipartisan cooperation will last. Many commentators believe that partisan politics have ruled the day in recent years, despite previous calls on both sides for bipartisan cooperation. It will also be difficult to maintain a bipartisan atmosphere in the face of the campaigning for the upcoming presidential election. Since Democrats have also taken control of the Senate as well as the House, however, they will need to work to some extent with President Bush and the Republicans in Congress if they want to advance their legislative agenda and demonstrate the ability to govern to voters.

- **Other HR Issues Will Be Prominently Debated, Setting the Stage for 2008.** The majority party—especially in the House—controls the legislative agenda, the committee memberships, and the oversight function over government policies. In the Senate, even with a narrow majority, Democrats will set the agenda and allocate committee memberships, resources, and staff.

— Democratic candidates made health care reform, including universal coverage, a prominent issue in their campaigns. Even though the exit polls show that health care was not a top-tier priority among voters, compared to the war in Iraq and other issues, Democratic members will likely make health care legislation a priority, perhaps evoking more voter interest in health reform. Wide differences, however, exist between Republicans and Democrats over the issue of health reform, perhaps leaving more incentive for states to take action on their own. Democrats, for example, picked up the governorship in six states. But in a Democrat-controlled congressional environment, consumer-driven health care and Health Savings Accounts (HSAs) are likely to get far less emphasis than they did in the past few years of the Bush Administration.

Other health care issues on the agenda will include reimportation of prescription drugs, health care information technology, and potential changes to the Medicare drug benefit program. Reduction of payment rates to Medicare Advantage plans may also be a target. Reauthorization and full funding of the State Children's Health Insurance Program (SCHIP) will be a high priority.

— Exit polls showed illegal immigration was one of several top issues among voters. Proposed immigration reforms failed in 2006, with differences of opinion among Republicans in the House and Senate. Legislation may be considered that will address this issue in the new Congress. On November 8, President Bush indicated in his press conference that he thinks comprehensive immigration reform can be passed in a Democrat-controlled Congress.

- **Key Leadership Changes Will Affect HR Issues in the House.** Election of House Leaders is slated to take place on November 15. In the meantime, the likely outcomes are discussed below.

— House Minority Leader Nancy Pelosi (D-CA) will become the Speaker of the House. The Democratic leadership will proceed to advance policies on their agenda, as outlined in “A New Direction for America” (available at <http://www.democraticleader.house.gov/pdf/thebook.pdf>). Rep. Pelosi has also talked of rolling back the tax cuts for upper-income individuals (e.g., annual income above \$250,000 or \$300,000). She also has called for repealing tax incentives that encourage the movement of U.S. jobs overseas.

— It is expected that the most senior Democrats in the current committees will step up to become chairmen in 2007. As such, Rep. Charles Rangel (D-NY) as Chairman of the House Ways and Means Committee will take over the tax-writing committee and will have a very different orientation than the outgoing chairman. Rep. Rangel repeated on November 8 previous statements that it is too early to dictate what the tax committee will do with respect to the tax cuts set to expire in 2010. He has joined Rep. Pelosi in saying that the U.S. tax code should not encourage jobs to go overseas. Rep. Rangel has opposed recent legislation to expand and improve HSAs. The former chair of the Ways and Means Health Subcommittee failed to win reelection, possibly giving Rep. Pete Stark (D-CA) the chairmanship. Rep. Stark has advocated

legislation such as a Medicare-for-All universal health coverage program and criticized the “doughnut hole” in the Medicare standard drug benefit, in addition to addressing many other health care issues.

- Rep. John Dingell (D-MI) will become the Chairman of the House Energy and Commerce Committee. He has long been a proponent of a national health care system. In the current Congress, he proposed legislation (H.R. 4683), “Medicare for All,” a bill that would extend Medicare eligibility to all legal U.S. citizens and others residing legally in the U.S. on a phased-in basis.
- Rep. Henry Waxman (D-CA) will assume the reins as Chairman of the Committee on Government Reform and will be able to use his new position to put forward changes that he advocates be made to the Medicare drug program, such as government negotiation of prescription drug prices and use of the expected savings to close the “doughnut hole” coverage gap in the Part D standard benefit. For many years, Rep. Waxman has been active on health care issues, including Medicare, Medicaid, prescription drugs, and medical devices. He also supports a strategy of achieving universal health insurance through expanding Medicare to make it a health insurance option for Americans under age 65.
- Rep. George Miller (D-CA) will take on the chairmanship of the House Education and the Workforce Committee, which deals with ERISA (among other issues). Rep. Miller opposed the Pension Protection Act (PPA) that became law in 2006 and may seek to make further changes in pension law. In the past, he has been critical of the transition to cash balance pension plans and of allowing investment advice to be provided to participants by anyone who is not an independent advisor.
- Rep. Barney Frank (D-MA) will likely take over as Chairman of the House Financial Services Committee. Rep. Frank has proposed legislation (H.R. 4291), “The Protection Against Executive Compensation Abuse Act,” and he issued a report on CEO pay prior to the election. His proposal would require a shareholder vote on compensation packages for the top five executives, require companies to recapture performance-based compensation after financial restatements, and allow shareholders to vote separately on any “golden parachute” packages for executives in connection with an asset sale or purchase.
- **Key Leadership Changes in the Senate.** Election of Senate Leaders is slated to take place on November 14. As in the House, the committee chairmen will be based on the seniority system.
 - Senate Minority Leader Harry Reid (D-NV) will be the new Senate Majority Leader. In the aftermath of the elections, he has emphasized working with Republicans on a bipartisan basis, including reinstating open conference meetings that involve members of both parties. Sen. Reid will be developing the legislative agenda for the next Congress over the next 60 days. In the meantime, during the upcoming “lame-duck” session, he wants to pass an extension of expiring tax provisions and finish the remaining FY2007 spending bills.
 - Sen. Max Baucus (D-MT) will become Chairman of the Senate Committee on Finance, the key tax-writing committee that also has jurisdiction over retirement and health care programs. As the Ranking Democrat on that committee in the current Congress, Sen. Baucus has worked

very closely with the Republican Chairman, Sen. Charles Grassley (R-IA), and that type of bipartisan cooperation is likely to continue. The composition of the Finance Committee will change somewhat, however, as the Democrats will now have more members, and certain former members of the committee are retiring or were not reelected.

- Sen. Ted Kennedy (D-MA) will become the Chairman of the Senate Health, Education, Labor and Pensions (HELP) Committee. Sen. Kennedy has advocated legislation in the past that would include an employer mandate to provide health insurance coverage, and he has also been an advocate of improvements to the Medicare prescription drug program. In the current Congress, he proposed a bill (S. 2229) that would extend Medicare eligibility to all Americans on a phased-in basis. The program would be financed through payroll taxes; workers could retain employer-sponsored coverage, and employers could offer wraparound health benefits. Sen. Kennedy was very influential in shaping some of the provisions of the PPA and was a key force in winning Senate approval of such legislation. He is a strong advocate of increasing the minimum wage, hoping to do that at the outset of the new Congress. The composition of the HELP Committee will also change somewhat, however, as the Democrats will now have more members, and certain former members of the committee are retiring or were not reelected.

Outlook

The changing political landscape in Congress will raise the profile of certain HR policy issues and de-emphasize others. Despite the strong health policy positions that Democrat committee chairmen have taken in the past, the actions they can realistically take will be tempered by their need to work with Republicans and President Bush to get legislation enacted. The legislative agenda may well move along two parallel tracks—one in which compromises will be reached on selected measures, and the other in which no compromise is expected but which would shape the Democrat agenda in the 2008 election campaigns. Even though Democrats are now the majority party, no particular HR legislative proposal is a “done deal.”

Hewitt Associates will continue to update clients on the HR issues in the new political landscape.