

West Wing Revolving Door and Retirement Plan Ideas Floating in D.C.

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I started writing this when Scaramucci was communications director, but before I could finish it the revolving door at the West Wing had swung again and he was out. In addition to his statements made to the press, which do not merit repeating and would not make it past most filters, he did provide a few statements on retirement plans that employers may want to consider in case his retirement plan thoughts are shared by others in Washington. He wanted to move the Social Security eligibility age to 70. He also wants to reduce Social Security benefits based upon the individual's assets. He wants to increase the ceiling on income subject to FICA or Social Security taxes from \$118,500 to \$250,000 which would impact not only the FICA tax collection and net take home pay, but also significantly change the calculation of permitted disparity benefits under retirement plans using permitted disparity. As Congress will next be looking at tax reform, if health reform is not again resurrected from the ashes, these are significant ideas because they both involve ways to increase tax revenues.

Another idea he espoused was that "U.S. employers should be required to set up retirement programs for employees and make mandated minimum 3 percent contributions. In exchange, unions must agree to make concessions on current defined pension liabilities and all workers must submit to an auto-enrollment provision for employer-based retirement programs." This is an interesting concept on many fronts, and if it moves forward in the current Congress, it will be a surprise to me as this is akin to an individual mandate and an employer mandate in the retirement arena, which concepts this administration is fighting in the health arena. If I am wrong and it moves forward, it will mean that there will be interesting legislative language on mandating the unions to agree to concessions and the lobbyists in Washington will be busy. This proposal for a retirement plan mandate would also indicate changes in budgets for retirement plan benefits and for labor counsel as negotiations on the language to implement this will be interesting. These were just ideas suggested by someone who is now back outside of the West Wing, but they are ideas that might show up as we watch the next round of reform efforts in Washington. The real news continues to provide an interesting roller coaster or revolving door ride.

The White House's legislative affairs director, Marc Short, just announced the timeline for tax reform, the House Ways and Means Committee is to mark up the bill using the reconciliation process (the one requiring fewer votes to pass the bill) in September, the House is to pass the bill in October and the Senate is to pass it in November so it will be ready for the President's signature. As we have seen with health reform the reconciliation process is not a fool proof way to pass a bill and there is no guarantee the House and the Senate will pass the same bill language. So fasten your seatbelts, the tax reform rollercoaster will be starting soon and you can bet that there will be thoughts about retirement plans because those rules have been adjusted by Congress over the years to adjust tax revenues as well as for retirement plan policy.

Mandatory Victims Restitution Act and Retirement Plans

For any plan sponsor that has dealt with an employee who has stolen from the company, there is often a desire to find a way to recoup the loss. The Mandatory Victims Restitution Act can be the vehicle that permits recovery from the offending individual's retirement plan benefits, if the requirements are satisfied and action is taken quickly to press charges, obtain a conviction and a writ of garnishment. In *U.S. v. Tilley* (W.D. Pa., July 14, 2017), the convicted individual sought to fight the order of garnishment to take his retirement plan account on several basis and failed. While pursuing a convicted former employee is not a position most employers want to be in, the MVRA provides an alternative to consider if one faces employee theft. In such situations, it is important to get the government attorney prosecuting the case thinking about the MVRA early in the process as it is an action that the government must bring. The MVRA does not permit the employer to use self-help to access the perpetrator's retirement plan benefit.

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