

# Experts: Fight over ACA is just beginning

By Tristan Lejeune | October 17, 2013

The 16-day government shutdown ended with no major concessions from the Obama administration, which successfully fought off Republican efforts to repeal, delay and defund the Affordable Care Act. The brokered deal was yet another stop-gap measure: the budget has only been funded through January 15 and the debt ceiling raised to February 7, but with ACA's existence unchallenged – for now – in the legislature, attention will turn towards its implementation.

Wally Miller, a shareholder with Schwabe, Williamson & Wyatt, says the new agreement “doesn't do anything directly now with respect to employee benefits,” but it paves the way for discussions to come. The GOP failed to make even minor funding changes to Obamacare, he says, but they will try again.

“The one thing I glean from it,” Miller says, “is the fact that part of the negotiations with the Republicans were to repeal or delay part of the Affordable Care Act and the tax on medical devices. My guess is because that didn't go anywhere, it may still be on the table. Because of federal debt limit [going up], the federal government will need money and if Republicans want to put it back on table ... we need to find the revenue someplace else.”

Michael J. Lotito, co-chair of workplace policy and shareholder at Littler Mendelson, agrees, and he thinks the committee in charge of hammering out the *next* agreement has its work cut out for it. “The only thing that we've really done is kick the can down the road,” Lotito says. The uncertainty this brings, he adds, “is going to continue to drag on consumer confidence and on business confidence – and I think that's going to have an impact on hiring.” The debate itself is expensive – Standards and Poor estimates that the government shutdown took a \$24 billion bite out of the economy.

“What we've done is just delay the crisis,” Lotito says. “We're going to wind up finding out on Dec. 13, which will probably get extended, because these committees always ask for more time, whether or not America is going to get a Christmas present or a lump of coal in their stocking. If there's not a budget deal in December, that's going to put [this deal] in jeopardy.”

There was one significant change that Republicans secured on Obamacare: tighter income verification procedures for those seeking government subsidies to their plans. The shift will have no impact for employers, and very little for marketplace participants. All that is required is a pair of reports from the Department of Health and Human Services detailing and verifying the income checks and procedures used to determine if health exchange applicants qualify.

More likely to come up again, Miller says, are old revenue debates about defined contribution retirement plans for top earners.

“As far as the Affordable Care Act, I don't see a lot of changes,” he says, “but we do have the revenue piece because the debt limit is going up and there needs to be more money. Everything will be on the table in terms of revenue reducing ... [including] tinkering with 401(k) plans and reducing the amount highly compensated individuals can contribute to the plan.”

Any benefit changes would be the result of funding being required elsewhere, says Drew Crouch, director of government relations for Buck Consultants. “The senate Democrats and President [were] not willing to negotiate,” and in the end, they got what they wanted, he says.

The deal made “no changes to employee benefit law,” Crouch says, and even though there were a “number of things discussed in plan ..... none of that made it in the end. From a benefits prospective, there was really no change.”

But the final verdict on ACA has yet to come down, Lotito says. It's more a question of it collapsing under its own weight, rather than being undone by Congress, he adds. “The inability of consumers to enroll” due

to computer glitches and other problems is “going to have an impact on the ability of insurance companies to price their products,” which of course ripples out to plan design and even hiring.

“The jury is still very much out on ACA,” he says. “The effort at ‘repealing’ it has clearly failed yet again, and in rather dramatic fashion. Whether or not ACA is ever going to be fully implemented and meet some of the promises that have been made is very much an open question.”