

Obama Expands Family Leave Flexibility

Pres. Obama has directed federal agencies to provide six weeks of advance paid sick leave for federal workers to meet family needs that they could pay back over time. He says he will also propose legislation to Congress to give federal workers six weeks of additional paid parental leave. His 2016 budget request contains a \$2.2 billion reimbursement for as many as five states for three years for the costs of implementing a paid leave policy, along with millions in state grants to study such programs. A Republican House had previously sent legislation to the then Democratic-controlled Senate to let employees take paid time off for working overtime. The Obama administration threatened to veto that bill, which died in the Senate.

SMOKING CUBAN QUESTION > SCOTT SINDER, EDWARD KRAULAND, MEREDITH RATHBONE, JACK HAYES

Cuban Trade Living on Island Time

Insurance potential is close but no cigar if congressional Cuba hawks have their way.

Many people have theories about why the Terrorism Risk Insurance Program Reauthorization Act got derailed shortly before Christmas when the Senate left town without acting. My favorite is that President Obama wanted the decks cleared before his announcement, on Dec. 17 that the United States would reestablish diplomatic relations with Cuba. The move would ease restrictions on travel and funds transfers, support expanded trade and allow more financial transactions between the U.S. and Cuba.

In somewhat record speed—a month later—the U.S. Office of Foreign Assets Control (OFAC) amended the Cuban Assets Control Regulations, and those regulations now are in effect. The new regulations offer a glimmer of hope for some specific industries, including insurance. But for now that hope is restricted to very narrow confines, such

as Cuba-related travel for insurance. And as compliance officials around the country have been explaining to their prematurely elated business teams, no one should be celebrating large new premium opportunities just yet.

Since the early 1960s, the United States has imposed comprehensive economic sanctions against Cuba that severely restrict interaction between the two nations and its citizens.

As a practical matter, our government for more than 50 years essentially prohibited you from furnishing any Cuba-related, insurance-related service absent applying for a specific license and receiving advance approval from OFAC. This included a bar on U.S. insurers and intermediaries (and their foreign branches and subsidiaries) on insuring any Cuba-related activities even for people or businesses that were neither American nor Cuban.

OFAC historically recommended that insurance policies, especially those of a more global nature, contain exclusion clauses dealing with anything inconsistent with the U.S. sanctions. In practice, it was difficult to put such exclusions in place, and your clients often did not find them workable. Your foreign competitors also are not subject to these restrictions and thus can frequently offer more comprehensive services.

The newly amended regulations modify the overall travel regime, liberalize Cuba-related business opportunities in specified areas like telecom services and the sale of technology devices, and dramatically revise the travel-related insurance business restrictions imposed on U.S. brokers and carriers. The amendments establish two general licenses allowing insurers to provide certain travel-related insurance services as long as they meet the terms and conditions of the general licenses, which creates some unanticipated risks.

First, OFAC expanded non-tourism-related activities that qualify for travel by U.S. residents >>



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on TV and exercising in company-approved at-home office. His widow filed for coverage claiming stress from job contributed. www.maine.gov/pfr/insurance/

MASSACHUSETTS Law prohibiting improper use of certificates of insurance, S.B. 2402, signed in January by Gov. Deval Patrick before he left office. Becomes effective April 7. Based on NCOIL model act, it disallows preparation or issuance of cert containing false or misleading information concerning underlying policy or purporting to alter, amend or extend coverage of a policy. Law

applies to third parties, including subs, banks and mortgagees. Law confirms cert is distinct from insurance policy and codifies principles above making violation of restrictions a basis for declaring non-compliant cert null and void. www.mass.gov

MINNESOTA Minnesota builders association sues state over new law requiring sprinkler systems be installed in new homes 4,500 square feet or larger. Association says it's too expensive (adding \$8,000 to \$10,000 to cost of homes) and will hurt sales. www.commerce.state.mn.us

MONTANA Licensed 34 captives in 2014. Total is now 177. Series business units added 19, and 29 new captive cells began as well. <http://sao.mt.gov>

NEW MEXICO Bill introduced to reduce workers comp benefits when death or injury results from alcohol or drug abuse on job. Benefits for workers injured under the influence could be reduced by workers comp judges by between 35% and 85%. H.B. 238 is moving through committee at press time. www.nmprc.state.nm.us/id.htm

NEW YORK Gov. Cuomo signs cert law, A 9590/s 6545-A, based on NCOIL model act requiring that certs reflect only the coverages available through underlying policies, effective mid-February. Makes it unlawful to request or require language on a cert that doesn't reflect policy language. >> Attorney general reportedly has started criminal investigation on Superstorm Sandy flood-claims rejection complaints over falsified engineering reports. Companies involved not named. www.dfs.ny.gov

NORTH DAKOTA Acting mayor says FEMA is continuing exemption for Fargo homes

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» to Cuba without a specific license. These include religious and educational opportunities, market research, exchange of information and informational materials, contractors or grantees working for the U.S. government or a foreign government, journalism, professional research or meetings, and public performances. If the purpose of your trip falls within one of these categories, you need no special permission from the government to travel to Cuba.

Second, OFAC now allows someone in the United States “to issue or provide coverage for global health, life, or travel insurance policies for individuals ordinarily resident in a country outside of Cuba who travel to or within Cuba.” OFAC also made clear this new general insurance authority extends to U.S. policyholders who are “authorized travelers” to Cuba under American law. These people are authorized to service these travel-related policies and pay claims.

However, this applies only to

issuing or providing “coverage” for global health, life, or travel insurance policies; servicing those policies; and paying claims for events involving Cuba. It’s not clear that underwriting, related actuarial services or brokering the placement of insurance would be within the scope of the new authorizations.

It’s also unclear what OFAC is referring to as “global insurance” (although that appears to be an issue only for non-American travelers), and there is no express reference made to reinsurance or retrocessional services. Finally, there is no clear guidance on how to actually authorize travel for anyone in the United States.

Nevertheless, other types of insurance, including property-casualty, shipping, marine and export-import credit insurance, are not within the scope of the general license (not yet anyway), and it does not appear that insurance can be provided under the expanded general authority for the now broader list of permissible Cuba-related business activities, like those approved for telecom, without obtaining an explicit license from OFAC.

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Cubans themselves also do not qualify as authorized beneficiaries of U.S. insurance services. The core prohibition restricting American carriers from engaging in transactions in which a Cuban has an interest remains intact for now and lurks just outside the boundaries of the new general licenses.

President Obama has promised broader relief and more normalized relations.

But the existing tug-of-war with Congress over who has the authority to lift sanctions could delay, if not dash, his intention to end the longest-standing, shortest-reach embargo in modern American history.

Maybe that TRIA reauthorization theory isn’t so far-fetched after all.

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“The honest truth is that I had never expected to **stay this long.**”

—Margaret Hamburg, outgoing commissioner of the Food and Drug Administration. The Harvard Medical school grad’s nearly six years in office is one of the longest tenures in the agency’s history. (*The Washington Post*)

HOT BUTTON
Japan plans to develop standards for cyber insurance rates. Companies’ security measures will be assessed and anonymously aggregated by an independent public agency then provided to the insurance industry as broad data for setting baseline insurance premiums.

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with basements in floodplains, meaning those homes that have “flood-proofed” their basements can keep coverage without higher rates. www.nd.gov/ndins

OHIO Bureau of Workers Compensation proposes 10.8% drop in overall premium rate levels for private employers effective July 1. Says lower claim frequency and imminent adoption of new billing system will decrease costs. One-time premium credit of \$1.2 billion statewide to private employers and local governments will prevent policyholders from being

double-billed while billing system deploys. www.insurance.ohio.gov

OKLAHOMA Licenses 37 new captives in 2014. Total now sits at 47 licensed captives in state. www.oid.ok.gov

PENNSYLVANIA New governor, Tom Wolf, appoints Teresa Miller as state insurance commissioner. She’s an attorney and former administrator of the Oregon Insurance Division. Succeeds Michael Consedine, who had been serving since Jan. 1, 2015, as NAIC president-elect after having

been voted into that post in November. www.ins.state.pa.us/ins/site/default.asp

SOUTH CAROLINA Upcoming bills include permitting medical marijuana growth and prescriptions. www.doi.sc.gov

SOUTH DAKOTA Larry Deiter named director of Division of Insurance. Has been with division since November 2012 and served as interim director since Dec. 4 when Merle Scheiber resigned the post. Deiter has experience in commercial banking and participates on NAIC committees

for p-c insurance, workers comp, crop insurance and examination oversight. www.state.sd.us/drr2/reg/insurance/

TEXAS H.B. 956 proposes to clarify definition of “claimant” in medical malpractice cases. State Supreme Court decision in Texas West Oak lawsuit causes liability claims to be considered “healthcare liability claims” under Texas Medical Liability Act if they occur in a healthcare facility. That requires plaintiffs to have an expert report, typically reserved for med mal cases. Bill would limit definition of healthcare liability claimants to patients. »