



SETTING THE NEW HR AGENDA

SHRM's 2009 Legislative Priorities



Employee Representation

Background

Under terms of the National Labor Relations Act (NLRA), enacted in 1935, a union can seek to be certified as the collective bargaining agent for an organization's employees through a secret-ballot election. Under limited circumstances, employers can also allow recognition of the union through a card check process if the union obtains a majority of employee authorization cards from the workforce unit.

Issue

As the prevalence of these types of agreements has grown, so has concern about whether they are truly voluntary and if employees are able to select representation without interference or coercion by employers or unions.

Outlook

It is anticipated that the 111th Congress will consider the Employee Free Choice Act (EFCA) early in its term. This proposal would amend the organizing rules provided by the NLRA by allowing unions to bypass private ballot elections in favor of the card check process. If EFCA were to be enacted, it would compel an employer to recognize a union if 50 percent-plus-one of employees in a bargaining unit sign authorization cards. In the 110th Congress, the House passed EFCA but it died in the Senate after a successful filibuster.



SHRM Position

SHRM believes that government-supervised secret-ballot elections are the best process for both representation and decertification elections. The rights of employees to consider representation by a union without threats, interrogation, promises of benefits, or coercion by employers or unions must be protected.

Key Talking Points

- SHRM believes in the fundamental right of every employee to make a private choice on union representation. It believes a secret ballot is the best means of protecting employees from coercion or other pressures in making that choice.
- SHRM also recognizes that alternative processes available under the NLRA, such as card check, can legitimately validate the will of the majority.
- SHRM, however, opposes legislation that would eliminate the use of a secret-ballot election.



Pay Discrimination



Background

The Equal Pay Act of 1963 and Title VII of the Civil Rights Act of 1964 prohibit gender-based discrimination in the workplace. Depending on performance and seniority, jobs that have the same functions, similar working conditions and require substantially equal skill, must be compensated equally.

Issue

Debate continues over whether gender-based wage disparities are attributable to discrimination or legitimate pay practices. Equal pay advocates want a “comparable worth” pay system. Congress rejected that during the original Equal Pay Act debate because it would mandate the same pay for different jobs.

Outlook

Pay discrimination was a central theme of President Obama’s campaign. On January 29, 2009, he signed into law the Lilly Ledbetter Fair Pay Act. It eliminates the statute of limitations for filing discrimination claims. In addition, the Paycheck Fairness Act has been introduced to amend the Equal Pay Act to require employers to use comparable worth pay systems.

SHRM Position

SHRM adamantly opposes gender discrimination and believes that any intentional misconduct against an employee should be promptly resolved. However, it opposes the requirement of comparable worth pay practices or the elimination of the current statute of limitations for filing pay discrimination claims.

Talking Points

- SHRM adamantly opposes discrimination based on gender, vigorously supports equal pay for equal work, and believes that any intentional misconduct against an employee should be promptly resolved.
- SHRM opposes requiring employers to adopt “comparable worth,” which prohibits them from taking into consideration geography, experience, and skills in making pay decisions.
- SHRM also opposes eliminating the uniform statute of limitations on pay discrimination claims.



Sexual Orientation

Background

Federal laws protect employees from discrimination in the workplace on the basis of race, national origin, sex, religion, disability, pregnancy and age, but not on the basis of sexual orientation. However, the U.S. Supreme Court has ruled that federal bans on workplace sexual harassment apply when both parties are of the same gender.

Issue

Recently, employers have begun adopting policies barring the consideration of sexual orientation in employment decisions. The District of Columbia and 20 states also prohibit such discrimination, but there is no similar federal statute.

Outlook

In the 110th Congress, the House passed the Employment Non-Discrimination Act (ENDA) by a vote of 235-184, but the issue was not taken up by the Senate. It is expected that ENDA will be reintroduced in the new Congress and will be expanded to include provisions to prohibit discrimination based on gender identity.

SHRM Position

SHRM believes that employment decisions should be made on the basis of qualifications for a job, not non-job-related characteristics, including sexual orientation.

SHRM supports public policy efforts to bar workplace discrimination based on sexual orientation. SHRM supports the voluntary right of employers to offer domestic partner benefits to their employees.

Talking Points

- SHRM is committed to encouraging fair and consistent employment practices.
- SHRM believes that employment decisions should be made on the basis of job qualifications, such as education, experience and demonstrated competencies, not non-job-related characteristics, including sexual orientation.
- SHRM supports efforts to bar workplace discrimination based on sexual orientation. Legislation should be carefully drafted to address this specific issue, while avoiding unintended consequences for employers and employees.



Family and Medical Leave Act

Background

Congress enacted the Family and Medical Leave Act (FMLA) in 1993 to provide up to 12 weeks of unpaid leave to provide for the birth, adoption or foster care placement of an employee's child, as well as to deal with a "serious health condition" of a spouse, child, parent, or for the employee's own medical condition. In 2008, the Act was amended to provide up to 26 weeks of unpaid leave to an employee to care for a family member who is injured while serving on active military duty and up to 12 weeks of leave for urgent needs related to a family member's call to active duty.

Issue

Recent legislative initiatives have proposed expansions of the FMLA, including paid leave, and expanded eligibility for and duration of leave. Although the FMLA regulations were recently improved by the Department of Labor, HR professionals continue to have two primary concerns with the regulations: the definitions of "serious health condition" and "intermittent leave."

Outlook

Congress expanded the scope of the FMLA in 2008, and further expansion is likely in the 111th Congress. For example, the proposed Family Leave Insurance Act would provide for some paid leave, and the Family and Medical Leave Inclusion Act would permit leave to care for a same-sex spouse, domestic partner, parent-in-law, or grandparent.



SHRM Position

Since its enactment in 1993, the FMLA has guaranteed invaluable work and family flexibility for millions of Americans, allowing employees to feel secure in their jobs while attending to important personal and family needs. Although supportive of the goals of the FMLA, SHRM opposes further expansion of the Act at this time. SHRM believes that the FMLA must be strengthened to prevent misuse and abuse of the leave, which currently threatens the integrity of the law.

Talking Points

- SHRM believes that the new FMLA rules will improve the Act's implementation in the workplace for both employers and employees, but additional regulatory clarifications are still needed.
- SHRM strongly believes that improvements to the regulations should reflect the original intent of the law, and that the law should continue to benefit those employees who have truly serious health conditions.



Paid Sick Leave

Background

To date, the only workplace leave requirement enacted into law on the federal level is the Family and Medical Leave Act (FMLA).

Issue

Since the 1993 enactment of the FMLA and its provisions for unpaid leave, lawmakers have proposed various forms of mandated paid leave, such as paid sick leave for full-time workers, and a pro-rata share for part-time workers.

Outlook

President Obama said during his campaign that workplace flexibility would be one of his administration's priorities. Sen. Ted Kennedy (D-MA), chairman of the Health, Education, Labor and Pensions Committee, has said he will make the Healthy Families Act, legislation to mandate paid sick leave, one of his priorities in the 111th Congress. In addition, paid leave proposals will likely surface again throughout state legislatures.



SHRM Position

SHRM believes that the United States must have a 21st Century workplace flexibility policy that meets the needs of both employers and employees. As opposed to a one-size fits all government mandate, the policy should be a new approach that reflects different work environments, representation, industries and organizational size. The policy should support employees in balancing their work and family obligations and, at the same time, provide certainty, predictability and stability to employers in offering the program.

SHRM generally opposes any form of government mandate on employee benefits or leave requirements. SHRM believes employers, not the government, are best situated to know the benefit preferences of their employees.

Talking Points

- SHRM enthusiastically supports efforts to assist employees in meeting the dual demands of work and family, and it believes that employers should voluntarily offer paid leave to their employees. Mandated leave requirements limit an employer's flexibility in designing generous leave programs for employees.
- SHRM shares Congress' interest in providing families additional work flexibility, but the Healthy Families Act represents an unworkable one-size-fits-all mandate that will come at a significant cost to both employers and employees.
- SHRM welcomes dialogue and debate on a workplace flexibility policy for the 21st Century. HR professionals have decades of experience in designing and implementing leave benefits and programs that work for both employers and employees and are eager to share this expertise with policymakers.



Employment Verification

Background

Under the Immigration and Nationality Act, it is unlawful for an employer to knowingly hire or continue to employ an alien who is not authorized to work in the United States. Current law requires employers to examine documents presented by new hires to verify identity and work eligibility, and to attest to the examination on the Form I-9. Employers may also elect to participate in an electronic employment eligibility verification system, known as E-Verify. Only a small fraction of the nearly 7 million U.S. employers participate in the E-Verify program, which relies on Social Security and Department of Homeland Security databases.

Issue

E-Verify is a subjective and insecure process. It relies on paper documentation, yet it cannot verify the authenticity of increasingly sophisticated fraudulent documents.

Outlook

The Federal Government has finalized regulations requiring federal contractors to use the E-Verify program for any new employees hired during the contract term by the contractor, as well as any other employee assigned to work on a federal contract. This regulation, however, has been put on hold pending the outcome of a lawsuit challenging its validity. Some states have enacted laws or regulations requiring state contractors to use E-Verify. Arizona and Mississippi require all employers to use the system. A proposal for an alternative to E-Verify, the New Employee Verification Act (NEVA), was introduced during the 110th Congress and strongly supported by SHRM.



SHRM Position

SHRM believes the federal government must provide U.S. employers with a reliable method to confirm work eligibility. A fully electronic system that uses biometric measures to prevent identity theft, as called for in NEVA, would give employers the tools they need to keep illegal workers off their payrolls.

Talking Points

- SHRM and its members share the goal of a legal, authorized workforce.
- SHRM believes that the federal government must develop an efficient and foolproof system to ensure a legal workforce, which is key to an effective immigration policy.
- SHRM believes that a new electronic system would eliminate virtually all unauthorized employment; provide security for employers; protect the identity and personal information of legal workers; and prevent employment discrimination based on national origin or related issues.



Health Care Reform



Background

To partially offset rising health insurance costs, HR professionals are forced to shift a larger portion of those costs to employees. In response, more workers are choosing to forgo employer-sponsored coverage, adding to the 47 million Americans currently uninsured. In addition to the cost crisis, the existing health care system is error prone, is still primarily paper-based, and lacks cost and quality data transparency for both payers and patients.

Issue

Lawmakers are eager to address health care reform. While consensus remains elusive, there is strong bipartisan interest in addressing the building blocks for a better health care system—health information technology, greater access to consumer-friendly health outcomes data, and improved quality of care.

Outlook

Congress has held numerous hearings on reform, with an eye toward action in 2009. President Obama wants all children to be insured, and he has talked about a possible public insurance plan available to all workers. Despite the economic crisis, Congress and the Administration seem poised to move forward on health care reform – whether they can develop consensus legislation remains to be seen.

SHRM Position

SHRM is a proponent of strengthening and improving the current employer-based health care system, and it supports the goal of providing all Americans with access to health coverage. But the problem of the uninsured is not one that can or should be resolved solely by employers and payers.

Talking Points

- SHRM supports reform but is concerned about proposals that limit employer flexibility in designing benefit plans. Benefit mandates, however well intended, drive up the cost of health care plans for both employers and employees.
- More than 100 million Americans have health benefits voluntarily provided by employers under a framework established by the Employee Retirement Income Security Act. Congress shouldn't erode what works in order to fix what's broken.
- SHRM strongly supports standards for a national health information network. HR professionals understand that electronic records can improve patient outcomes and coordination of care while reducing duplication and inefficiencies, all of which can reduce costs for employers and employees.



Weapons in the Workplace

Background

Unfortunately, a major trend in workplace violence involves gun-related incidents. According to the U.S. Bureau of Labor Statistics, 491 of the 610 homicides committed in U.S. workplaces in 2007 were the result of shootings. Homicides involving guns are the fourth-leading cause of occupational deaths in the U.S. and the leading cause of workplace deaths for women.

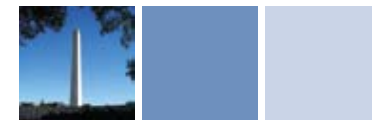
The Occupational Safety Health Act mandates that employers provide a workplace “free from recognized hazards that are causing or are likely to cause death or serious physical harm.” In the 2006 SHRM Weapons in the Workplace Survey Report, 98 percent of respondents suggested employers should be allowed to restrict weapons in the workplace.

Issue

SHRM believes the freedom of employers to assess the safety needs of their organizations and establish appropriate policies is paramount to the overall success and sustainability of their workforces.

Outlook

Eight states have enacted into law measures that restrict an employer’s right to enforce a no-weapons policy on company property. Other states (particularly in the mid-west and south) are expected to consider this legislation in future sessions.



SHRM Position

SHRM’s position has been that employers should maintain their right to determine which policies are appropriate for their work site, type of business, and company property. SHRM opposes efforts to restrict employers’ rights on enforcing no-weapons policies. SHRM has never taken a position concerning gun controls or gun ownership.

Talking Points

- Federal law requires private employers to provide a safe workplace for employees.
- SHRM believes that employers should maintain their right to determine which policies are appropriate for their work site, type of business, and company property.
- SHRM opposes efforts to restrict employers’ rights on enforcing no-weapons policies. SHRM has never taken a position concerning gun controls or gun ownership.



Employer-Provided Educational Assistance



Background

Section 127 of the Internal Revenue Code allows an employee to exclude from income up to \$5,250 per year in educational assistance at the undergraduate and graduate level, regardless of whether the education is job-related. Section 127 has been extended eight times, most recently in 2001. It is set to expire at the end of 2010.

Issue

SHRM research has found that 65 percent of employees are using Section 127 to pursue degrees in fields where U.S. employers currently experience a shortage of skilled workers. The ongoing temporary extension of Section 127 causes confusion for employees and employers alike.

Outlook

Over the years, there have been efforts to make Section 127 permanent. But the current economic crisis will make another attempt difficult. However, efforts to extend Section 127 will begin in earnest in the 111th Congress.

SHRM Position

SHRM strongly supports the permanent extension of Section 127 for graduate and undergraduate level courses. By providing Section 127 benefits, employers will invest in the education and training of employees at all levels, with potential dividends for society and the economy. SHRM believes that providing tax free educational assistance is an important tool employers use to attract the best available employees, build a skilled workforce, and positions the U.S. economy to compete in a global economy.

Talking Points

- SHRM believes that providing tax-free educational assistance is an important tool employers use to attract the best available employees, build a skilled workforce, and positions the U.S. economy to compete in a global economy.
- SHRM strongly supports the permanent extension of Section 127 for graduate and undergraduate level courses.



Society for Human Resource Management
Governmental Affairs Staff

1800 Duke Street
Alexandria, VA 22314

www.shrm.org/advocacy

William Maroni

Chief External Affairs Officer
(703) 535-6042
William.Maroni@shrm.org

Michael Layman

Manager, Employment & Labor
(703) 535-6058
Michael.Layman@shrm.org

Michael Aitken

Director, Government Affairs
(703) 535-6027
Mike.Aitken@shrm.org

Kathleen Coulombe

Manager, Tax & Benefits
(703) 535-6061
Kathleen.Coulombe@shrm.org

Bob Carragher

Manager, Government Relations
(703) 535-6268
Robert.Carragher@shrm.org

Recardo Gibson

Specialist, Member Advocacy
(703) 535-6091
Recardo.Gibson@shrm.org

Nancy Hammer

Manager, Regulatory & Judicial Issues
(703) 535-6030
Nancy.Hammer@shrm.org

Bernard Coleman III

Specialist, State Affairs
(703) 535-6214
Bernard.Coleman@shrm.org

Lisa Horn

Manager, Health Care
(703) 535-6352
Lisa.Horn@shrm.org

Anita Dennison

Government Affairs Coordinator
(703) 535-6028
Anita.Dennison@shrm.org