

The background of the entire page is a close-up, slightly blurred image of the United States flag, showing the blue field with white stars and the red and white stripes. The flag is draped and folded, creating soft shadows and highlights.

SHRM's 2015 Guide to

Public Policy Issues

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SOCIETY FOR HUMAN
RESOURCE MANAGEMENT



The Society for Human Resource Management (SHRM)

Founded in 1948, the Society for Human Resource Management (SHRM) is the world's largest Human Resource (HR) membership organization devoted to human resource management. Representing more than 275,000 members in over 160 countries, SHRM is the leading provider of resources to serve the needs of HR professionals and advance the professional practice of human resource management. SHRM has more than 575 affiliated chapters within the United States and subsidiary offices in China, India and United Arab Emirates.

The Council for Global Immigration (CFGFI)

The Council for Global Immigration (CFGFI), a strategic affiliate of the Society for Human Resource Management (SHRM), is a nonprofit trade association comprised of leading multinational corporations, universities and research institutions committed to advancing the employment-based immigration of highly educated professionals. CFGFI bridges the public and private sectors to promote sensible, forward-thinking policies that foster innovation and job growth.

What Is Human Resource Management?

HR encompasses all issues that impact an organization's most valuable asset—its people. HR helps organizations recruit and hire new employees as well as retain current employees. In addition, HR helps organizations respond to change, develop salary and benefits packages, match individuals with appropriate positions, comply with federal and state workplace laws, and foster employee commitment and performance.

Resources SHRM Can Provide

On a daily basis, SHRM's members comply with federal, state, and local workplace laws and administer benefits and programs to their employees that reflect creative, progressive and dynamic workplaces. SHRM consistently communicates with our membership and we are able to provide:

- **Access to HR constituents** who live and work in every congressional district and state.
- **Research and information**, which provide timely insight on emerging workplace public policy issues, as well as labor market and economic data and trends.
- **Expertise on effective and flexible workplaces** through *When Work Works*, a collaborative nationwide initiative by the Families and Work Institute and the Society for Human Resource Management that brings research on workplace effectiveness and flexibility into community and business practice.

SHRM's Policy Priorities

SHRM works in a nonpartisan manner to advocate for effective workplace public policies and to communicate to members of Congress and regulatory agencies about the impact of workplace policies on both employers and employees. This guide focuses on a variety of issues important to the HR profession that impact the workplace, specifically: labor and employment, civil rights, tax and benefits, immigration, health care, and workplace flexibility.



HR Policy Action Center

advocacy.shrm.org

When Congress develops workplace policy, HR's voice will be heard. The SHRM Advocacy Team, or A-Team, represents thousands of HR professionals who actively communicate the needs of the profession to their elected officials. By working together, we can help advance effective workplace public policy and strive to move our profession forward.

At advocacy.shrm.org:

- View SHRM's member advocacy calls to action.
- Research SHRM positions on key workplace issues.
- Learn more about SHRM's HR member advocacy army, the A-Team.
- Follow SHRM's strong advocacy presence on social media.
- Review critical HR legislation SHRM is actively tracking.

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Background Investigations

Background: HR professionals ensure that new hires possess the talent, work ethic and character needed for the organization’s success. Background investigations, including reference checks, credential or educational certification checks, criminal history checks, credit checks, and drug tests, can play a pivotal role in the hiring process.

The Fair Credit Reporting Act of 1970 (FCRA) governs the use of consumer reports and has explicit protections for consumers. Further, Title VII of the Civil Rights Act of 1964 bars employment decisions based on policies or tests, such as credit or criminal background checks, that have a “disparate impact” on protected groups.

Issue: The Equal Employment Opportunity Commission (EEOC) in April 2012 issued updated guidance on the use of criminal background checks in the employment process, including recommending that employers conduct an individualized assessment for those individuals screened out due to a criminal record and that employers refrain from including a check box for criminal convictions on the employment application.

Congress, federal agencies and state legislatures have considered proposals to restrict or prohibit certain background investigations. Ten states currently limit employers’ use of credit information in employment: California, Colorado, Connecticut, Hawaii, Illinois, Maryland, Nevada, Oregon, Vermont and Washington. Thirteen states plus the District of Columbia have adopted “Ban the Box” restrictions which prohibit employers from including a question about criminal convictions on the job application. These states are: California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, New Mexico and Rhode Island. Six of these jurisdictions expand the requirement beyond public employers to include government contractors or private employers.

Outlook: Although legislation to ban the use of credit reports in the employment process has not yet been introduced in the 114th Congress, it remains an area of focus for policymakers. In addition, the EEOC could publish guidance on the use of credit information and/or the use of social media in the employment process, both of which have been the subject of EEOC hearings in the past few years. In addition, several state legislatures and local jurisdictions are likely to consider new restrictions on employers’ use of both criminal and credit checks in employment.

SHRM Position: SHRM and its members have a long tradition of promoting equal employment opportunity practices for all individuals. Employment decisions should be made on the basis of qualifications—education, training, professional experience, demonstrated competence—not on factors with no bearing on the ability to perform job-related duties.

However, there is a compelling public interest in enabling our nation’s employers to make the best hiring decisions. Employers’ ability to conduct background checks for employment purposes helps keep the workplace free of physical, financial, economic and personal identity threats to employees and the general public. The FCRA already protects consumers by requiring companies to get written permission from job candidates before conducting a background check. In addition, employers are barred by Title VII from using background checks to screen out job applicants based on protected characteristics such as race, ethnicity or gender.

Talking Points:

- ★ SHRM supports preserving employers’ ability to conduct background checks for employment purposes. They serve as an important means to promote a safe and secure work environment for employees and the general public.
- ★ SHRM believes public policy should facilitate the flow of accurate, truthful and relevant information about job candidates.
- ★ SHRM is supportive of protections for employees and job applicants that are found in the Fair Credit Reporting Act of 1970 and Title VII of the Civil Rights Act of 1964.



Compensation Equity

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

Issue: According to the Bureau of Labor Statistics, in 2013 women who were full-time wage and salary workers had median usual weekly earnings of \$706, which is about 82 percent of the median weekly earnings of male full-time wage and salary workers (\$860). The question is whether this wage disparity between women and men is attributable to discrimination, legitimate pay practices or other workplace dynamics. Equal pay advocates have proposed a “comparable worth” pay system to correct gender-based pay differences. Congress rejected this concept during the original Equal Pay Act debate because it would mandate the same pay for different jobs.

Outlook: As President Barack Obama highlighted in his State of the Union address, wages will be an important focus of the public policy debate in the coming months. The administration and certain members of Congress have discussed raising the federal minimum wage up to \$10.10 an hour and taking steps to address the gender wage gap. While the main piece of legislation on compensation equity, the Paycheck Fairness Act (PFA), failed to advance in the last Congress, it will likely surface again in the 114th Congress. The PFA would allow employers to base employee pay differentials only on seniority, merit and production. The PFA would also shift the burden of proof to the employer in discrimination claims, making it easier for plaintiffs to challenge employer pay practices. Because the PFA faces an uphill battle in the current environment, congressional leaders are exploring alternative approaches to address compensation equity issues that could gain traction in the 114th Congress. SHRM chairs the employer-led coalition on compensation equity issues and frequently spearheads efforts to support these alternative approaches while also opposing efforts that limit employer flexibility to reward employees using legitimate pay practices. Additionally, it is anticipated that the Obama administration will continue to focus on enforcement strategies and rulemaking efforts as part of its efforts to address the wage gap.

SHRM Position: SHRM

has a proud record of working to end gender discrimination in the workplace and believes that any intentional misconduct against an employee should be resolved promptly. However, SHRM has opposed efforts to limit employer flexibility to reward employees using legitimate pay practices. As a result, SHRM opposes the requirements outlined in the PFA because the legislation could limit an employer's ability to consider many legitimate pay factors such as an employee's professional experience and salary history.



Talking Points:

- ★ Throughout its history, SHRM has worked to end workplace discrimination based on gender. We vigorously support equal pay for equal work, and believe that any misconduct against an employee should be promptly and fully rectified.
- ★ SHRM opposes proposals such as the PFA which include provisions that would restrict employers' pay practices and limit legitimate factors in making employee compensation decisions.
- ★ SHRM also has concerns that the PFA would require unprecedented annual compensation reporting to the federal government or the mandatory disclosure of wage and salary information to the general public.



Employment Practices of Federal Contractors

Background: The Federal Acquisition Regulation (FAR) is the primary source for information and guidance governing the federal procurement process. The FAR includes information about how to qualify as a contractor and the types of contracts available, as well as policies governing the suspension and debarment process of contractors. Federal agencies currently have the authority to initiate a suspension and debarment proceeding for contractors with labor violations. Regardless, there has been renewed interest from Congress and the executive branch in revisiting the federal contracting process to limit the ability of employers with labor violations, in particular those related to the Fair Labor Standards Act (FLSA), to receive federal contracts.

Issue: During the 113th Congress, amendments were proposed to multiple House Appropriations bills that would drastically impact federal contractors. These amendments would prevent organizations with even a single FLSA violation in the past five years from being awarded federal contracts.

In a related matter, President Obama signed the Fair Pay and Safe Workplaces executive order on July 31, 2014, requiring prospective federal contractors and subcontractors (with contracts valued at more than \$500,000) to report labor violations of 14 different federal labor laws and the equivalent state laws, including statutes addressing wage and hour, safety, collective bargaining, family and medical leave, and civil rights protections, among others.

Furthermore, the executive order requires federal agencies to designate a senior official as a Labor Compliance Advisor to provide guidance on whether contractors' actions rise to the level of demonstrating a lack of integrity or business ethics, and to take this information into consideration in awarding new contracts. These new advisors will have broad authority within their agencies to monitor and enforce labor law responsibility requirements.

Outlook: The Fair Pay and Safe Workplaces executive order will apply to all solicitations for contracts after a final rule is issued by the Federal Acquisition Regulatory Council. The executive order is expected to be implemented in phases starting in 2016, after a full rulemaking process with opportunities for additional stakeholder comment.



SHRM Position: SHRM is concerned that the Fair Pay and Safe Workplaces executive order unnecessarily and unfairly duplicates existing safeguards in the federal contracting process. Legislative attempts to automatically debar federal contractors with a single FLSA violation circumvent long-standing and proven suspension and debarment procedures under the Federal Acquisition Regulation. The executive order would also create added complexities and challenges for federal contractors. If enacted, this amendment and executive order could prevent a significant number of employers from competing for federal contracts.

Talking Points:

- ★ Federal agencies already have the authority to initiate a suspension and debarment proceeding for contractors with labor violations.
- ★ SHRM believes that federal contractors are already subject to a myriad of complex and overlapping federal and state laws. While employers work diligently to comply, requirements under federal and state labor laws are subject to frequent changes.
- ★ SHRM is concerned that the recent Fair Pay and Safe Workplaces executive order unnecessarily and unfairly duplicates existing safeguards in the federal contracting process.



Employment Verification

Background: The Immigration and Nationality Act makes it unlawful for an employer to knowingly hire or continue to employ someone who is not authorized to work in the United States. Federal law requires employers to examine numerous documents presented by new hires to verify identity and work eligibility, and to attest to that examination on Form I-9.

As of 2009, certain federal contractors must use the eligibility verification system known as E-Verify for employees hired during a contract and employees assigned to that contract. Other employers may be required by the 22 state or local law requirements to use E-Verify. Even if it is an employer's choice to use this online verification system, it must still complete Form I-9 for every newly hired employee. The E-Verify program has been reauthorized through September 30, 2015.

Issue: E-Verify, which relies on the Social Security Administration and the Department of Homeland Security databases to confirm work authorization, lacks sufficient security features to protect employers from persons using fraudulent identities to work. E-Verify continues to rely on paper documentation that is susceptible to theft, forgery and alteration, and cannot be verified for authenticity.

Effective worksite enforcement is central to efforts to secure America's borders. While U.S. employers are committed to hiring only work-authorized individuals, today they are confronted with a patchwork of federal and state employment verification requirements that are confusing and which can be defeated by workers presenting stolen identities. American employers need one reliable, accurate and easily accessible federal employment verification system upon which they can fully rely.

Outlook: Congress will likely consider more targeted, step-by-step approaches to address concerns with border security, worksite enforcement and maintaining a legal workforce. Congress will also consider the reauthorization of a number of Department of Homeland Security programs, including E-Verify, which is set to expire in the fall of 2015. Twenty-two states require either E-Verify or a specified alternative for some or all employers. Absent congressional action to ensure a legal workforce, states and localities will likely seek individual mandates for the use of E-Verify.

SHRM Position: SHRM and CFGI support policies that provide employers with modern tools that eliminate redundancies and build upon E-Verify's success. While the United States Citizenship and Immigration Services (USCIS) should be commended for the improvements it has made to E-Verify, the program requires additional changes to be truly effective as a deterrent to prevent unauthorized employment. Both organizations believe congressional reforms should pre-empt the patchwork of state laws with one reliable, accurate and easily accessible federal employment verification system; create an integrated, entirely electronic verification system that eliminates the obsolete paper Form I-9; use-state-of-the-art technology to accurately authenticate a job applicant's identity, such as knowledge-based authentication, to protect against identity theft; ensure a safe harbor from liability for good-faith program users; and require employment verification only for new hires. SHRM and CFGI lead an employer coalition aimed at achieving our employment verification goals.

Talking Points:

- ★ SHRM and CFGI share the goal of a legal workforce, which must be a key element of any effective immigration policy.
- ★ SHRM and CFGI support a reliable, entirely electronic employment-eligibility verification system operated by the federal government that provides employers with certainty that new employees are authorized to work.
- ★ SHRM and CFGI believe the federal government must develop a more efficient approach to employment verification that builds up E-Verify.
- ★ SHRM and CFGI urge Congress to improve E-Verify to include an electronic verification system that will eliminate virtually all unauthorized employment, provide security for employers, eliminate the current I-9 paper-based system, protect the identity and personal information of legal workers through identity authentication tools, and prevent employment discrimination based on national origin.



Employment-Based Immigration

Background: In an increasingly global and interconnected world, there are few factors that play as fundamental of a role in positioning the United States to compete globally as having access to the best and brightest talent. Whether transporting goods, delivering services, developing new technologies or performing cutting-edge research, an organization's success will be based on the quality of its human capital and the way it manages its talent pipeline. Although comprehensive immigration reform was a significant topic of debate in the 113th Congress, ultimately, Congress was unable to send a bill to the president for consideration.

On November 20, 2014, in lieu of congressional action, President Obama issued a series of executive actions targeted at: strengthening border enforcement efforts, temporary relief from deportation and work authorization for millions of undocumented migrants with family ties to the United States, and reforms to enhance the efficiency and predictability of the high-skilled immigration system.

Issue: Organizations of every shape, size and industry continue to confront challenges in finding the right employees with the right skills to fill specific positions. Although there is no single solution for addressing the skills gap, employment-based immigration is a central piece of our country's larger workforce policy, and modernizations to the U.S. immigration system are critical to ensuring a competitive American workforce. While the president's executive actions make targeted reforms to our system that will impact employer workforce and compliance strategies in a limited fashion, more fundamental reforms to our immigration system are still needed and will likely be considered by the 114th Congress.

Outlook: This is a time of immense change and uncertainty for employers, as the president's executive actions are implemented over the course of this year through memoranda, regulations and other administrative guidance. Employers and HR professionals will need to educate themselves about the new work authorization available to some undocumented workers, policy and processing changes impacting high-skilled workers and students, and I-9 compliance challenges presented by the president's actions. Immigration reform will continue to be the subject of debate in the 114th Congress with high-skilled immigration, border security and worksite enforcement bills standing the best chance of passage.

SHRM Position: SHRM and CFGI support building a 21st century U.S. workforce that can compete in an increasingly complex and interconnected world. Our immigration system must support American employers in their efforts to recruit, hire, transfer and retain global employees.

SHRM and CFGI specifically support creating a “Trusted Employer” program that speeds up outdated bureaucratic processes and improves both consistency and predictability in the application process, saving resources for both the government and compliant employers. In addition, both organizations seek to ensure that employers have the ability to recruit, hire, transfer and retain high-skilled foreign national professionals, especially those educated and trained in the United States, through modernized policies that acknowledge business realities, grow business and create jobs. This will require changes to our green card and nonimmigrant employment-based immigration systems. SHRM and CFGI work with the Compete America coalition in our efforts to achieve increased access to foreign-born talent.

Talking Points:

- ★ SHRM and CFGI believe that foreign talent complements the U.S. workforce and that U.S. employers competing in a global market will always need to utilize the best professionals worldwide while investing in and growing the domestic pipeline.
- ★ Employers recognize the importance of family unity and support policies that provide spouses, permanent partners and children of foreign professionals with visas and work authorization.



Fair Labor Standards Act Overtime Regulations

Background: Under the Fair Labor Standards Act of 1938 (FLSA), employees are to be paid at a rate of at least one and a half times their regular rate for any hours worked over 40 in a week, unless they have been classified as exempt under certain specific statutory categories or meet other requirements in the regulations. Under Section 541 of the FLSA regulations, an employee may qualify as exempt from the overtime requirements if he or she satisfies a “primary duties test” (performs specific job responsibilities under the executive, administrative, professional, computer and outside sales regulations) and if he or she is paid on a salary basis (that is, salary does not fluctuate based on hours that the individual works). Under the current regulations, the employee must be paid a salary of at least \$455 per week to meet the salary basis test.

Issue: In March of 2014, President Obama directed the DOL, through the Presidential Memorandum on Updating and Modernizing Overtime Regulations, to “modernize and streamline” the FLSA overtime regulations. The president may call for a significant increase to the salary basis amount of \$455 a week. If so, this would mean that a substantial number of employees, in a variety of different industries, currently classified as exempt from the overtime requirements would then be subject to those requirements. The DOL may also amend the primary duties test for many otherwise-exempt employees, which may result in these employees losing their exempt status and therefore being subject to overtime coverage requirements.

Outlook: It is anticipated that the DOL’s Wage and Hour Division will release proposed regulations in early 2015. As a leader on this issue, SHRM chairs the Partnership to Protect Workplace Opportunity, which leads the employer community’s response to potential changes to the overtime regulations.



SHRM Position: The FLSA was enacted toward the end of the Great Depression and reflects the realities of the industrial workplace of the 1930s, not the workplace of the 21st century. While SHRM appreciates the administration’s interest in modernizing the FLSA overtime regulations, enacting significant changes to the primary duties test would further exacerbate an already complicated set of regulations for employers, particularly small employers and employers in industries where managers often conduct exempt and nonexempt work concurrently. Substantial changes to the overtime regulations could further limit workplace flexibility for employees.

Talking Points:

- ★ While the current regulations aren’t perfect, HR professionals have extensive experience working with them, so any new changes to the regulations should be carefully constructed to prevent further confusion and uncertainty, as well as potential litigation.
- ★ Changes to the overtime regulations will limit workplace flexibility for employees and employers.
- ★ SHRM and its members are committed to working with members of Congress and the federal executive branch to address the FLSA in a manner that meets the needs of both employees and employers.



Health Care Reform

Background: Four years after enactment, implementation of the Affordable Care Act (ACA) requirements remains challenging due to the complexity of the law, delays in effective dates of certain provisions and coverage requirements. While the individual and employer coverage requirements and state exchange provisions are in effect, the 40 percent excise tax on employers that provide high-cost health plans, known as the “Cadillac tax,” takes effect in 2018.

Issue: Although the ACA purports to lower health care costs for Americans, costs continue to rise for employers and employees alike. Furthermore, employer-sponsored health care plans are encountering difficulties when implementing the ACA. SHRM believes the ACA has inadequate cost-containment measures, namely medical liability reform, and other restrictions that limit employer plan design. To comply with the ACA, some employers have opted to eliminate health care coverage for part-time employees, while others have re-engineered staffing models to reduce employee hours below the 30-hour threshold that triggers the coverage requirement. In addition, the U.S. Supreme Court must decide in *King v. Burwell* whether the ACA allows consumers who buy insurance through federal exchanges to qualify for subsidies.

Outlook: The House of Representatives has already passed legislation to repeal the ACA. However, any legislation that seeks to repeal the ACA will need to overcome Democratic opposition in the form of a Senate filibuster and veto threat from President Obama. With the unlikely ability to override a veto, Congress will likely consider specific changes, including proposals to modify the ACA definition of a “full-time” employee for purposes of the health care coverage requirement. H.R. 30, the Save American Workers Act, a bill that defines full-time employee as one who averages 40 hours of service a week, passed the House of Representatives on January 8. Similar bipartisan legislation, S. 30, the Forty Hours is Full Time Act, has also been introduced in the Senate. The Supreme Court is expected to rule on *King v. Burwell* in June. If the court rules subsidies are illegal in states without their own exchanges, the decision would put the viability of the ACA law in jeopardy.

While congressional debate on improvements to the law continues, policymakers may also offer proposals to repeal, delay or alter the anticipated “Cadillac tax.” Most recently, the Equal Employment Opportunity Commission (EEOC) challenged ACA-compliant employer wellness programs, claiming that medical screenings are in violation of the Americans with Disabilities Act and, in some cases, the Genetic Information Nondiscrimination Act. As a result, additional EEOC guidance on the ACA’s standards for employer wellness programs is expected in 2015.

SHRM Position: SHRM supports reforms that lower health care costs and improve access to high-quality and affordable coverage. The Society believes that congressional reforms should strengthen and improve the employer-based health care system, encourage increased use of prevention and wellness programs, improve quality and transparency to reduce health care costs, ensure that tax policy contributes to lower costs and greater access, and streamline medical liability laws as a component of cost containment. In addition, SHRM supports efforts that ensure that the “full-time” employee coverage requirement definition is consistent with the Fair Labor Standards Act.

Talking Points:

- ★ SHRM supports the provisions in the ACA that improve quality of care, promote transparency of and access to health information, and reform the current payment system.
- ★ SHRM believes that medical liability lawsuits contribute to rising health care costs with “defensive” medical practices and increased liability insurance costs.
- ★ SHRM believes wellness programs are an integral part of an employer’s health care strategy. As such, Congress and federal agencies should avoid creating conflicting requirements for employers.
- ★ SHRM supports defining “full-time” employee as one who averages 40 hours of service per week.



Labor-Management Relations

Background: Private-sector unionization rates continue to decline. According to the Bureau of Labor Statistics, the overall workforce union membership rate was 11.1 percent in 2014, down from 20.1 percent in 1983. The National Labor Relations Act of 1935 (NLRA) states that a union can be certified as the exclusive collective bargaining agent for an organization’s employees in one of two ways: a secret-ballot election or, under limited circumstances, a “card check” process in which a majority of employees in a specific work unit sign a card authorizing a union to represent their collective interests.

The National Labor Relations Board’s (NLRB’s) Fiscal Year 2013 data reveal that unions won 64 percent of all representation elections, and elections were conducted in a median time of 38 days after the filing of the petition.

Issue: Union leaders have argued that current laws and regulations governing union representation favor management and hinder employees’ ability to organize a union. In recent years, the Department of Labor (DOL) and the NLRB have promulgated numerous workplace rules and decisions to make organizing easier.

Outlook: The 114th Congress will allow for renewed oversight over the NLRB and its decisions. Congress will likely consider legislation to address many of the recent NLRB rules and decisions. However, any legislation that overturns or modifies these NLRB decisions will still need to overcome certain Democratic opposition in the form of a Senate filibuster and veto from President Obama if the legislation reaches his desk.

With the current environment in Congress, the NLRB and the DOL have been busy advancing several regulatory initiatives that will affect employer-labor relations in the workplace. One key effort advanced by the NLRB is its ambush election rule, which is designed to speed up the union election process. On January 5, 2015, SHRM joined with other employer groups to file a lawsuit in the U.S. District Court for the District of Columbia challenging the rule. Another major initiative by the NLRB is the pending *Browning-Ferris* case where the board is seeking to increase the application of the “joint-employer” concept, potentially easing the way toward unionization by including a larger group of employees and other workers in a potential bargaining unit. Finally, it is anticipated that the DOL will issue a final rule on the persuader rule that would significantly narrow the “advice exemption” under Section 203 of the Labor-Management Reporting and Disclosure Act that would expand employers’ and consultants’ reporting obligations.



SHRM Position: SHRM believes in the fundamental right—guaranteed by the NLRA—of every employee to make a private choice about whether or not to join a union. SHRM believes these recent NLRB and DOL actions are imbalanced approaches to governing union organizing campaigns.

Talking Points:

- ★ SHRM believes a secret ballot is the best means of protecting employees from coercion or other pressures in deciding whether to join a labor union.
- ★ SHRM’s viewpoint is that the NLRB ambush election rule, *Specialty Healthcare* decision and the proposed DOL persuader rule constitute imbalanced approaches that limit employer free speech during union organizing campaigns.



Retirement Security and Tax Reform

Background: Employer-sponsored and individual retirement plans are key components of our nation's retirement system. Together with Social Security and individual savings, employer-sponsored retirement plans produce significant benefits for America's working families. Private retirement plans in the United States paid out more than \$3.96 trillion in benefits from 2001 through 2010, while public-sector retirement plans distributed \$2.82 trillion during the same period, with both playing an essential role in providing retirement income for millions of our nation's senior citizens. In 2012, there were approximately 633,000 private-sector defined contribution plans covering over 75.4 million active participants, and approximately 43,600 private-sector defined benefit plans covering over 15.7 million active participants. According to the 2014 SHRM Employee Benefits Survey, 89 percent of employers surveyed provided a defined contribution—401(k) or similar—retirement plan, and 24 percent provided a defined benefit pension plan. Employer-sponsored retirement plans are the main conduit for employees to save for a financially sustainable retirement. Despite the successes of the employer-provided retirement system, the issue of tax reform and the possible impact to the current retirement system are being discussed in the 114th Congress.

Issue: Reforming the tax code will certainly have implications for both businesses and individuals. For example, eliminating tax incentives could dramatically affect an employer's ability to offer a comprehensive benefits package, including a retirement plan, to its employees. These changes could also act as a barrier to employees saving for retirement. In this competitive economy, offering an attractive benefits package is a key factor in recruiting and retaining a talented workforce. Because employee benefits enjoy a tax-free status and account for the largest annual loss in revenue to the federal treasury, it is likely that tax reform discussions will involve an examination of employer-sponsored fringe benefits, including retirement plans, health care benefits and educational assistance programs, among others.

Outlook: Both the Republican congressional leadership and President Obama have identified reforming the tax code as a policy area where they might be able to work together during the 114th Congress. Because of employer-sponsored fringe benefits' tax-deferred status, it is anticipated that public policy efforts to reform the tax code will involve a close examination of such benefits, including retirement and health care plans. Several of the reform proposals that have emerged will have far-reaching consequences for retirement savings, and some previous proposals could gain traction in the 114th Congress.

SHRM Position: SHRM believes that a comprehensive and flexible benefits package is an essential tool in recruiting and retaining talented employees. In addition, SHRM believes that a bedrock of sound fiscal and savings policy is ensuring that every American employee is given the opportunity to save and plan for retirement and protect his or her family's health. The government should facilitate and encourage voluntary employer-sponsored retirement plans, individual savings plans and employer-sponsored health care plans.

As part of SHRM's comprehensive strategy on this issue, SHRM chairs the Coalition to Protect Retirement, which comprises the leading professional and trade associations representing retirement plan sponsors, administrators, service providers and related financial institutions. SHRM is working with coalition partners to encourage and support retirement savings for American workers through preservation of tax incentives critical to American workers' retirement security. For additional information visit www.howamericasaves.com.

Talking Points:

- ★ SHRM believes tax incentives should be used to expand retirement savings. Provisions that encourage savings, such as increased contribution limits and catch-up contributions for older workers, are beneficial.
- ★ Together with Social Security and individual savings, employer-provided retirement plans produce significant retirement benefits for America's working families.
- ★ According to the SHRM *2014 Employee Benefits* survey report, 89 percent of respondents offered a defined contribution plan for their employees and 74 percent matched their employees' contributions.



Sexual Orientation Nondiscrimination

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 or gender identity. At the end of 2014, however, the Office of Federal Contract Compliance Programs (OFCCP) issued a rule implementing an executive order prohibiting federal contractors from discriminating on the basis of sexual orientation or gender identity. In addition, the Supreme Court has ruled that federal bans on workplace sexual harassment apply when both parties are of the same gender.

Issue: In recent years, many employers have adopted policies barring the consideration of sexual orientation or gender identity in employment decisions. According to the Human Rights Campaign, 91 percent of *Fortune* 500 companies have adopted policies prohibiting discrimination on the basis of sexual orientation and 61 percent on the basis of gender identity. Twenty-one states and the District of Columbia have passed laws prohibiting employment discrimination based on sexual orientation, and 18 states and D.C. also prohibit discrimination based on gender identity.

As proposed, the Employment Non-Discrimination Act (ENDA) would prohibit discrimination on the basis of sexual orientation and gender identity. While ENDA has garnered bipartisan support in recent Congresses, including Senate passage in the 113th Congress, the House has failed to act on the legislation.

Outlook: ENDA will be reintroduced in the 114th Congress, but it is unclear whether it will advance in the Republican-controlled Congress. Given the president's recent executive order extending such protections to employees of federal contractors, there may be renewed congressional interest in extending these protections to all workplaces.

SHRM Position: SHRM believes that employment decisions should be made on the basis of qualifications for a job, not on non-job-related characteristics, including sexual orientation and gender identity. SHRM supports public policy efforts to ban workplace discrimination based

on sexual orientation and gender identity. SHRM believes any such legislation should be narrowly drafted to avoid unintended consequences for employers and employees. SHRM also supports the voluntary right of employers to offer domestic partner benefits to their employees.

Discrimination

The prejudicial treatment or consideration of a person, racial group, minority, based on category rather than individual, excluding or restricting members on the grounds of race, sex, or age

Talking Points:

- ★ SHRM is committed to encouraging fair and consistent employment practices and believes that employment decisions should be made on the basis of job qualifications such as education, experience and demonstrated competencies, not on non-job-related characteristics, including sexual orientation and gender identity.
- ★ SHRM supports efforts to ban workplace discrimination based on sexual orientation and gender identity.



Skills Gap

Background: Employers and HR professionals continue to confront persistent gaps between the skills of the existing labor pool and the skills sought by employers to fill specific positions. One out of two organizations (50 percent) reported difficulty recruiting for full-time regular positions over the past year. One-half of those organizations (50 percent) cited lack of work experience, lack of the right technical skills or competition from other employers as a primary reason for difficulty in hiring qualified candidates (2014).

Certain positions have been identified as more difficult to fill than others, including high-skilled jobs, as well as middle-skilled jobs that require education and training beyond high school but less than a four-year degree. At the same time, there are pools of workers who might serve as a source of skilled employees—military veterans and individuals with disabilities.

Issue: High- and middle-skilled workers are in demand in many industries, but supply in particular geographic and industry-specific areas is low. Employers consequently are unable to fill key jobs. Last year, the Workforce Innovation and Opportunity Act (WIOA) was signed into law. The WIOA authorizes federal employment and training programs, and is designed to help individuals acquire the knowledge and skills necessary for today's economy and to connect employers to the skilled workers they need. One opportunity to fix this skills gap may be through expanded apprenticeship programs to help employers address the skills shortages in certain industries and sectors.

Outlook: During his State of the Union address, President Obama underscored the importance of increasing access to higher education and job training in order to equip the next generation of workers with the skills needed to succeed. The president also continues to emphasize apprenticeship models as another way to help employers find skilled workers to fill available jobs.

Furthermore, the administration continues to pursue an initiative called Opportunity for All, a voluntary partnership with the private sector to address the issue of the long-term unemployed. SHRM is a part of this effort and convened a working group to provide input to the administration on the effort. In addition, SHRM has partnered with Easter Seals Dixon Center on a pilot project in Southern California which is focused on linking SHRM members with qualified job-seeking former members of the military. To learn more, visit www.shrm.org/workforcereadiness.



SHRM Position: SHRM believes that the government and employers both play a role in providing training to employees to help them become more productive and better qualified for high- and middle-skilled jobs. SHRM believes that such training should be encouraged as a sound investment through incentives, rather than through mandates.

Talking Points:

- ★ SHRM believes that effective partnerships between employers and education and training providers should be demand-driven, focused on the employment needs of employers.
- ★ SHRM believes more should be done to make it easier for veterans to obtain professional certifications and to strengthen services for transitioning veterans to prepare them for jobs in the civilian world.
- ★ SHRM develops resources and tools to help HR professionals in their hiring and retention efforts to ensure they are including skilled workers wherever they might be found, including within the communities of veterans, individuals with disabilities and the long-term unemployed.



Workplace Flexibility

Background: The Family and Medical Leave Act of 1993 (FMLA) and the Fair Labor Standards Act of 1938 (FLSA) are the two federal statutes that generally shape workplace flexibility policies in this country. Workplace flexibility is an important business strategy that helps organizations respond to demographic, economic and technological changes in the workplace. HR professionals tailor flexibility practices such as telecommuting, job shares, compressed workweeks and part-time work to help employees navigate their work and personal responsibilities, which improves retention, enhances employee engagement, reduces turnover costs and increases productivity.

In 1985, Congress enacted the Federal Employees Flexible and Compressed Work Schedules Act, permanently authorizing compensatory (comp) time for federal employees, while also amending the FLSA to expand coverage requirements to include state and local agencies and their employees.

In 2012, Connecticut became the first state to adopt a statewide paid-sick-leave law, joining several other localities. In 2014, Rhode Island became the third state with a paid family leave insurance program, joining California and New Jersey.

Issue: Employers continue to encounter challenges in designing workplace flexibility policies that do not conflict with the FMLA, the FLSA, and other federal and state laws. Existing statutes may prevent or discourage employers from adopting flexible scheduling, telecommuting or compressed workweeks. In addition, many employers believe the FMLA and its implementing regulations are not responsive to the evolving needs and lifestyles of today's workforce. At the same time, interest in and discussion around work and family issues continue to grow.

Outlook: In the new Congress, advocates will continue to champion H.R. 932/S. 497, the Healthy Families Act (HFA) to require nearly all employers to provide employees with up to 56 hours of paid sick time in a calendar year. The Family and Medical Insurance Leave Act is likely to be reintroduced to provide partial wage replacement funded through a payroll tax for eligible leaves under the FMLA. These bills are unlikely to advance in the Republican-controlled Congress.

However, the SHRM-supported Working Families Flexibility Act (H.R. 465/S. 233), legislation to allow for compensatory time for nonexempt employees in the private sector, was introduced in the 114th Congress and may see action in 2015.

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. Rather than a one-size-fits-all government mandate as found in the HFA, policy proposals should accommodate varying work environments, employee representation, industries and organizational size. SHRM also believes that private-sector employees should be afforded the same flexibility that public-sector workers have in choosing between compensatory time or pay in overtime situations.

SHRM has partnered with the Families and Work Institute to educate employers about the business benefits of workplace flexibility and to encourage the voluntary adoption of flexible workplace strategies through a joint initiative known as *When Work Works*. The *When Work Works* Award recognizes model employers of all types and sizes for their innovative and effective workplace practices.

Talking Points:

- ★ SHRM supports efforts to assist employees in meeting the dual demands of work and personal needs, and believes that employers should be encouraged to voluntarily offer paid leave to their employees. Mandated leave requirements limit an employer's flexibility in designing generous and innovative leave programs for employees.
- ★ SHRM is calling for new 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.
- ★ SHRM believes that private-sector employees should be afforded the same flexibility that public-sector workers have in choosing between compensatory time or cash wages in overtime situations. As the 21st century workforce and workplace continue to evolve, now, more than ever, employees need flexibility options to manage their work/life responsibilities.

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