SHRM’s 2013 Guide to Public Policy Issues

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J. Robert Carr, J.D., SPHR  
*SVP, Membership, Marketing & External Affairs*  
703 535-6136  
Robert.Carr@shrm.org

**Mike Aitken**  
*Vice President, Government Affairs*  
703 535-6027  
Mike.Aitken@shrm.org

**Chatrane Birbal**  
*Senior Associate, Member Advocacy*  
703-535-6476  
Chatrane.Birbal@shrm.org

**Bob Carragher**  
*Senior State Affairs Advisor*  
703 535-6268  
Robert.Carragher@shrm.org

**Kathleen Coulombe**  
*Senior Associate, Government Relations*  
703 535-6061  
Kathleen.Coulombe@shrm.org

**Madde Delgado**  
*Staff Associate, External Affairs*  
703 535-6312  
Madeline.Delgado@shrm.org

**Nancy Hammer**  
*Senior Government Affairs Policy Counsel*  
703 535-6030  
Nancy.Hammer@shrm.org

**Lisa Horn**  
*Senior Government Relations Advisor*  
703 535-6352  
Lisa.Horn@shrm.org

**Michael Layman**  
*Senior Associate, Government Relations*  
703 535-6058  
Michael.Layman@shrm.org

**David Lusk**  
*Senior Associate, Member Advocacy*  
703 535-6158  
David.Lusk@shrm.org

**Kate Kennedy**  
*Manager, Media Relations*  
703 535-6260  
Kate.Kennedy@shrm.org

**Cassidy Neal**  
*Workplace Flexibility Program Specialist*  
703-535-6086  
Cassidy.Neal@shrm.org
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Background: Because the current Fiscal Year 2013 budget projects a deficit of over $1 trillion for the fifth consecutive year and a U.S. national debt of more than $16.4 trillion, tax reform and deficit reduction efforts are a priority for Congress and the Obama administration. During these policy debates, the tax-deferred status of employee benefits such as retirement and health care plans may come under scrutiny by Congress. Additionally, other employer-provided benefits, such as transit and education assistance, could be re-examined as part of comprehensive tax reform.

Issue: Employer-provided retirement plans are a key component of our nation’s retirement system and produce significant retirement benefits for America’s working families. There are approximately 670,000 private-sector defined contribution plans covering 67 million participants and more than 48,000 private-sector defined benefit plans covering 19 million participants. Likewise, the current tax treatment of employer contributions to their health care plans enables employers to provide such plans and to subsidize part of the cost their employees pay. According to the 2012 SHRM Employee Benefits Survey, 83 percent of HR professionals surveyed offered a health care benefit. Additionally, 97 percent offered a prescription drug benefit. Americans rely primarily on their employers to provide their health care insurance. The Census Bureau estimated that in 2010, 256.2 million people were insured. Of those, 55.3 percent (169.3 million people) were covered by their employers.

Outlook: Because of their tax-deferred status, employee benefits generate the largest annual loss in revenue to the federal treasury as scored by the Congressional Budget Office. As a result, it is anticipated that public policy efforts to reform the tax code and bring down the federal deficit will involve an examination of employer-sponsored fringe benefits, including retirement and health care plans. Currently, tax-qualified retirement plans hold $16.6 trillion in assets, of which about $13 trillion is attributable to employer-provided plans.
**SHRM Position:** SHRM believes that a comprehensive and flexible benefits package is an essential tool in recruiting and retaining talented employees. Every American employee should be 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.

**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 2012 Employee Benefits research report, 92 percent of respondents offer a defined contribution plan for their employees and 70 percent match their employees’ contributions.
Employment-Based Immigration

**Background:** In an increasingly global and inter-connected world, there are few factors that play as fundamental of a role in positioning the United States to compete globally as 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.

**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. While there is no single solution for addressing the skill shortage, employment-based immigration is a central piece of our country’s larger workforce policy, and intelligent modernization of the U.S. immigration system is not only critical to ensuring a competitive American workforce, but reform will help create U.S. jobs, spark innovations and ultimately strengthen the economy.

**Outlook:** President Obama has indicated that comprehensive reform of our nation’s immigration system is one of his top five legislative priorities this congressional term. In addition, bipartisan groups in congress in both the House and Senate have been working to develop legislative proposals to reform the immigration system and make it likely that some form of immigration reform could occur during the 113th Congress.
SHRM Position: SHRM and its affiliate, the American Council on International Personnel (ACIP), support building a U.S. workforce that can compete in an increasingly complex and interconnected world. However, SHRM and ACIP believe that a U.S. immigration system must support American employers in their efforts to manage, recruit, hire and transfer top world talent in the United States. In particular, we advocate for proposals that help our nation’s employers have access to global employee talent that helps them compete in the 21st Century. Specifically, SHRM and ACIP support 1) providing green cards for the highly educated and entrepreneurs, particularly for foreign nationals graduating with U.S. advanced science, technology, engineering, and mathematics (STEM) degrees with STEM skills; 2) creating a trusted employer program that facilitates visa processing for employers that have a proven record of immigration compliance and; 3) making green cards available by eliminating backlogs and per-country limits and by ultimately providing a market-based cap.

TALKING POINTS:

- SHRM and ACIP 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 the contributions of foreign-born talent that provides spouses, permanent partners and children of foreign professionals with appropriate visas and work authorization.
Background: Under the Immigration and Nationality Act, it is 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 state or local law to use E-Verify. If an employer chooses to use this online verification system, it must still complete Form I-9 for every newly hired employee. The E-Verify program was recently extended through September 30, 2015.

Issue: E-Verify, which relies on the Social Security Administration and Department of Homeland Security databases, is a subjective system that lacks proper security features. It uses paper documentation that is susceptible to identity theft, forgery and alteration, and that cannot be verified for authenticity.

Outlook: Comprehensive immigration reform is a top priority for the Obama administration and bipartisan working groups in the 113th Congress. Working toward giving employers who play by the rules a reliable way to verify that their employees are here legally is a central pillar of reform. The goal is to create a reliable electronic employment eligibility verification system operated by the federal government that provides employers with certainty that new employees are authorized to work by preventing identity theft. To date, approximately 18 states and localities have enacted laws mandating the use of E-Verify. Should congressional efforts to enact comprehensive immigration reform fail, states and localities likely will look to mandate the use of E-Verify moving forward.
**SHRM Position:** SHRM and ACIP support policies that provide employers with effective tools to ensure they are hiring a legal workforce, and that eliminate the redundancies existing in the system today in favor of a fail-safe and user-friendly mandatory system that builds on the successes of E-Verify. SHRM believes congressional reforms should pre-empt the growing patchwork of state laws with one reliable and secure federal employment verification system, create an integrated electronic verification system that incorporates the E-Verify system with an attestation system and eliminates the duplicative Form I-9, prevent identity theft through identity authentication, ensure a safe harbor from liability for good-faith program users, and apply employment verification only to new hires.

**TALKING POINTS:**

- SHRM and ACIP share the goal of a legal workforce, which must be a key element of any effective immigration policy.
- SHRM and ACIP support a reliable electronic employment eligibility verification system operated by the federal government that provides employers with certainty that new employees are authorized to work.
- SHRM and ACIP believe the federal government must develop a more efficient approach to employment verification that strengthens E-Verify.
- SHRM and ACIP call for 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, and prevent employment discrimination based on national origin.
Skills Gap

**Background:** Employers and HR professionals continue to confront persistent gaps between the skills of unemployed workers and the skills sought by employers to fill specific positions. Part of this skills shortage is due to the changing demographics of the workplace and the aging population of skilled workers. There is also research that shows graduating high school and college students lack the necessary basic technological skills and are unprepared for work in a knowledge economy. There are also fewer students pursuing undergraduate and graduate degrees in science, technology, engineering, and mathematics—skills that are necessary for the United States to be globally competitive.

Recent SHRM research reveals that, in the current labor market, more than one-half (52 percent) of employers reported difficulty recruiting for specific jobs. Certain positions are identified as more difficult to fill than others, including high-skill jobs such as engineers, doctors, nurses and computer programmers, as well as middle-skill jobs that require education and training beyond high school but less than a four-year degree. These positions include heating and air conditioning specialists, welders, environmental engineering technicians, and dental hygienists.

At the same time, there are pools of workers that might serve as a source of skilled employees—military veterans and individuals with disabilities. According to 2010 Census data, the unemployment rate among people with disabilities was 15.3 percent. Within the veterans’ community, it is 11.5 percent.

**Issue:** In many industries, high- and middle-skilled workers are in demand, but supply in particular geographic and industry-specific areas is very low. Consequently, employers are unable to fill key jobs. While there are ongoing policy initiatives to address both the middle- and high-skill shortage issues, other avenues will be necessary in the short term for employers to meet their needs for skilled employees. In addition, while veterans and the disabled community are a potential source of skilled labor, these groups might need assistance transitioning to the civilian workforce and employers will need help in locating, recruiting and hiring them.
**Outlook:** There is likely to be a continued focus on the employment of certain groups, including veterans and individuals with disabilities. Since passing the Veterans Opportunity to Work Act, which included tax credits for hiring veterans and other job readiness provisions, Congress may continue to seek ways to increase employment among returning military veterans.

**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 become qualified for better, high- and middle-skill jobs. SHRM believes that such training should be encouraged as sound investment through incentives rather than mandates.

**TALKING POINTS:**

- SHRM believes that the government and employers both play a role in providing training to employees to help them become more productive and become qualified for better, high- and middle-skill jobs.
- SHRM supports tax incentives provided to employers in return for hiring and/or training and developing targeted workers. Such tax credits lower the cost of hiring and/or training eligible workers, expand the eligible candidate pool, and diversify the labor market.
- SHRM believes more should be done to make it easier for veterans to obtain professional certifications and that there are services for transitioning veterans to prepare them for a job in the civilian world.
- SHRM develops resources and tools to help HR professionals in their efforts to reach out to veterans and to recruit and retain those within the disabled community.
Background: Signed into law on March 23, 2010, the Patient Protection and Affordable Care Act (PPACA) brought about major reforms in health care coverage in the United States. On June 28, 2012, the U.S. Supreme Court upheld the PPACA’s mandate that individuals must buy health insurance as a constitutional exercise of Congress’ power to tax. While several elements of the law already have gone into effect, both the individual mandate and the mandate for employers to provide health care coverage become effective in 2014. Executive agencies have been promulgating regulations and guidance to implement many of the PPACA’s provisions that address employer requirements.

Issue: While the PPACA purports to increase health care coverage for many uninsured Americans, health care costs continue to rise. Furthermore, employer-sponsored health care plans are encountering difficulties when implementing the PPACA. In addition, SHRM believes the PPACA has inadequate cost-containment measures, namely medical liability reform, and other restrictions on employer-sponsored plans that limit employer plan design.

Outlook: With the PPACA’s individual and employer mandates taking effect next year, Congress may consider changes to the PPACA in 2013. The fiscal cliff budget agreement in early January 2013 repealed the Community Living Assistance Services and Supports (CLASS) Act, which would have created a national, voluntary insurance program for purchasing community living services. In the meantime, implementing regulations and guidance from federal agencies will continue throughout 2013.
SHRM Position: SHRM remains supportive of reform that lowers health care costs and improves access to high-quality and affordable coverage, and believes such reform should:

- Strengthen and improve the employer-based health care system.
- Encourage greater use of prevention, promotion and wellness programs.
- Solidify the Employee Retirement Income Security Act to provide a national, uniform framework for health care benefits.
- Reduce health care costs by improving quality and transparency.
- Ensure that tax policy contributes to lower costs and greater access.
- Reform the medical liability laws as a component of cost containment.

TALKING POINTS:

- SHRM supports the provisions in the PPACA that improve the quality of care, promote transparency of and access to health information, and reform the current payment system.
- SHRM continues to advocate for public policy solutions that lower costs, strengthen the employer-based system, improves the quality of care, and offers access and affordable coverage to all Americans.
- SHRM believes that medical liability lawsuits contribute to rising health care costs with “defensive” medical practices and increased liability insurance costs. SHRM supports meaningful reform of the medical liability system as an important component of cost containment.
Background: Private-sector unionization rates continue to decline. According to the Bureau of Labor Statistics, the overall workforce union membership rate was 11.3 percent in 2012, 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.

Labor organizations view the card check process as an easier, more direct way to secure the approval of a majority of workers in a bargaining unit. However, the NLRB’s Fiscal Year 2012 data reveal that unions won 59 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 National Labor Relations Board (NLRB) have promulgated numerous workplace rules and decisions to make organizing easier. However, the NLRB’s activity may be curtailed in 2013 because federal courts invalidated some of the Board’s proposed rules and ruled in Noel Canning v. NLRB that President Barack Obama gave unconstitutional recess appointments to three NLRB members.

Outlook: Labor’s top legislative priority, the Employee Free Choice Act (EFCA), would amend the NLRA’s organizing rules by allowing unions to bypass private ballot elections in favor of the card check process. But EFCA is no longer on the congressional agenda since Republicans took over the House in the 2010 midterm elections. Since then, the labor policy playing field has shifted from the legislative to the executive branch as agencies like the NLRB and DOL have become increasingly active on employee representation issues. Among these agencies’ recent actions are:

- Specialty Healthcare decision: The NLRB allows the way for labor organizations to form “micro-unions” to target smaller bargaining units.
• Banner Health System decision: The NLRB found the employer in violation of the NLRA for asking employees to refrain from discussing ongoing internal investigations.

• “Quick election” rule: The NLRB published a rule to shorten the time within which employers can respond to representation petitions. A federal court invalidated the NLRB’s quick election rule in May 2012. The NLRB’s appeal is pending and likely will not be resolved until summer 2013.

• “Persuader” proposed rule: In June 2011, the DOL issued a proposed rule that would significantly narrow the “advice exemption” under Section 203 of the Labor-Management Reporting and Disclosure Act and would expand employers’ and consultants’ reporting obligations.

• NLRA employee rights posting requirement: The NLRB finalized a rule that required almost all private employers to display a poster explaining employees’ NLRA rights. But a federal court enjoined the rule’s April 30, 2012, effective date until it can decide on an appeal challenging the posting rule in early 2013.

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

**TALKING POINTS:**

• SHRM’s viewpoint is that the NLRB quick election rule, *Specialty Healthcare* decision and the proposed DOL persuader rule constitute imbalanced approaches that limit employer free speech during union organizing campaigns.

• SHRM believes the NLRB has no statutory authority to issue an employee rights poster requirement.

• A secret ballot is the best means of protecting employees from coercion or other pressures in deciding whether to join a labor union.
Background: The diversity and complexity of the American workforce—combined with workplace transformations driven by advances in technology and global competition in a 24/7 economy—continues to drive the need for more workplace flexibility. As a result, HR professionals are deploying flexible workplace programs and policies to recruit and retain top talent, enhance employee engagement, reduce turnover costs, and increase productivity.

Issue: The Family and Medical Leave Act of 1992 (FMLA) and the Fair Labor Standards Act of 1938 (FLSA) are cornerstones of employment law. Employers, however, continue to encounter challenges in designing workplace flexibility policies that do not conflict with these and other federal and state laws. Potential conflicts with existing statutes may prevent employers from adopting flexible scheduling, telecommuting and Results-Only Work Environment programs. In addition, many employers believe the FMLA and its implementing regulations are not responsive to the evolving needs and lifestyles of today’s workforce.

In February 2013, the U.S. Department of Labor’s Wage and Hour Division published a Final Rule to implement the expanded military family leave provisions in the FMLA. The rule changed the model FMLA forms and expanded from five to 15 days the amount of “Rest and Recuperation” FMLA leave an eligible employee can take to spend with a covered family member.

Outlook: The Healthy Families Act (HFA) is federal legislation that would require nearly all employers to provide employees who work 20 hours per week with up to 56 hours of paid sick time in a calendar year. Since the Republican takeover of the House of Representatives in 2011, advocates’ efforts to expand mandated leave benefits through bills like the HFA have been stymied in Congress, and this trend likely will continue in 2013. Look for President Barack Obama to keep elevating workplace flexibility as a key issue for families, employees and employers through executive branch agencies. In addition, several states and localities have enacted or may consider paid leave mandates.
**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 found in the HFA, policy proposals should accommodate varying work environments, employee representation, industries and organizational size.

SHRM has partnered with the Families and Work Institute to educate employers about the business benefits of workplace flexibility and encourage the voluntary adoption of flexible workplace strategies through a joint initiative known as When Work Works. The Sloan Award for Excellence in Workplace Effectiveness and Flexibility, which recognizes model employers of all types and sizes for their innovative and effective workplace practices, is offered through this program.

**TALKING POINTS:**

- SHRM supports efforts to assist employees in meeting the dual demands of work and personal needs, and it 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. We are eager to share this expertise with policymakers.
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 U.S. Bureau of Labor Statistics, in 2011 women who were full-time wage and salary workers had median usual weekly earnings of $684, about 82 percent of median earnings for male full-time wage and salary workers ($832). 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 want 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:** To address the wage gap, the Paycheck Fairness Act (PFA) has been introduced in the 113th Congress. If the PFA were enacted, the legislation would require employers to base employee pay differentials only on seniority, merit and production. Pay differences based on work location, education, professional experience, shift differentials or prior salary history may be found to be discriminatory. The PFA would also shift the burden of proof to the employer in claims of discrimination. An employer would need to demonstrate that a pay differential is not discriminatory on the basis of gender, but rather is “job related” to the specific position and consistent with business necessity.
**SHRM Position:** SHRM has a proud record of working to end gender discrimination in the workplace. Any misconduct against an employee should be promptly and fully corrected. However, we oppose the requirements of the Paycheck Fairness Act because the legislation would outlaw the consideration of many legitimate pay factors, such as an employee's level of education and training, 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 the requirements contained in the Paycheck Fairness Act that would make it extremely difficult for employers to use a “factors other than sex” affirmative defense for claims brought under the Equal Pay Act.

- SHRM also opposes the PFA’s provisions that would prohibit employers from taking into consideration professional experience, skills, industry-specific qualifications and other legitimate factors in making employee compensation decisions.
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 U.S. Equal Employment Opportunity Commission (EEOC) in April 2012 issued updated guidance on the use of criminal background checks in employment. Key provisions of that guidance include:

- Individualized Assessment: The guidance recommends that employers conduct an individualized assessment when it informs an employee or applicant that he or she is being screened out due to a criminal record by providing the individual with the opportunity to respond and by considering extenuating circumstances before making a final decision.

- “Ban the Box”: Although the guidance does not prohibit employers from including a question about criminal convictions on the employment application, it does recommend that employers refrain from including this on the application and advises that employers ask only applicants who are applying to positions where criminal history may be relevant, limiting those questions to convictions that have a nexus to job duties.

Congress, federal agencies and state legislatures have considered proposals to restrict or prohibit certain background investigations. Currently, eight states limit employers’ use of credit information in employment: California, Connecticut, Hawaii, Illinois, Maryland, Oregon, Vermont and Washington.

Outlook: Legislative efforts to ban or limit the use of credit and criminal checks in the employment process are unlikely in the 113th Congress, but the EEOC may publish guidance on the use of credit information in the employment process. In addition, several state legislatures may 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 the Civil Rights Act of 1964.
Background: Workplace violence is a major concern for organizations, especially in the wake of recent gun-related incidents. According to the U.S. Bureau of Labor Statistics, the majority of homicides committed in U.S. workplaces are the result of shootings. Homicides involving firearms are one of the top five causes of occupational deaths in the United States and the leading cause of workplace deaths for women.

The Occupational Safety and Health Act requires employers to provide a workplace “free from recognized hazards that are causing or are likely to cause death or serious physical harm.” In a 2006 SHRM survey of HR professionals, 98 percent of respondents stated employers should be allowed to determine their own worksite policies regarding whether to allow weapons on workplace property.

Issue: SHRM believes that employers must retain the freedom and responsibility to assess the safety needs of their organizations and establish appropriate policies. This is paramount to the overall success, sustainability and safety of the workforce.

Outlook: To date, 17 states have enacted laws that restrict an employer’s right to enforce a no-weapons policy on company property. Other states (particularly in the Midwest and South) are expected to consider similar legislation in future sessions.

SHRM Position: SHRM opposes any restrictions on the right of employers to determine their own worksite policies regarding weapons on company property (including parking lots). SHRM’s position in no way involves the broader issues of gun control or gun ownership.

TALKING POINTS:

- SHRM supports providing employers the flexibility and responsibility to decide which policies are most appropriate for their facilities to ensure a safe workplace for employees.
- SHRM believes its position on this issue is supported by the 1917 Supreme Court decision Buchanan v. Warley. In that case, the court decided that owners of private property have property and liberty rights that are protected from improper state action by the due process guarantees of the Fifth and 14th Amendments to the U.S. Constitution.
Sexual Orientation Nondiscrimination

Background: Federal laws protect employees from discrimination in the workplace on the basis of race, national origin, gender, religion, disability, pregnancy and age, but not on the basis of sexual orientation or gender identity. 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: In recent years, many employers have begun adopting policies barring the consideration of sexual orientation or gender identity in employment decisions. The District of Columbia and 21 states already prohibit such workplace discrimination by law, but there is no similar federal statute. If enacted, the proposed Employment Non-Discrimination Act (ENDA) would prohibit workplace bias based on sexual orientation and gender identity at the federal level.

Outlook: The Senate Health, Education, Labor and Pensions Committee is likely to consider ENDA in 2013. Prospects for enactment may prove difficult, however, in the current divided Congress. In the absence of legislative activity, the executive branch may prohibit discrimination in employment on the basis of sexual orientation through the regulatory and federal contracting process.

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. The Society supports legislation that would ban workplace discrimination based on sexual orientation. SHRM also 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 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.
- SHRM supports efforts to ban workplace discrimination based on sexual orientation.