SHRM’S 2016 GUIDE TO
PUBLIC POLICY ISSUES

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The Society for Human Resource Management (SHRM)

Founded in 1948, the Society for Human Resource Management (SHRM) is the world’s largest 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 (CFGI)

The Council for Global Immigration (CFGI) is a strategic affiliate of SHRM. It is a nonprofit trade association comprised of leading multinational corporations, universities and research institutions committed to advancing the employment-based immigration of high-skilled professionals. CFGI bridges the public and private sectors to promote sensible, forward-thinking policies that foster innovation and global talent mobility.

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 deliver timely insights 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 SHRM 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 policy and to communicate to members of Congress and regulatory agencies about the impact of workplace policy 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.
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:
- ★ Immediately take action on SHRM’s public policy issue alerts.
- ★ Easily connect to your members of Congress.
- ★ Learn more about and sign up for SHRM’s rapidly growing member advocacy army, the A-Team.
- ★ Take advantage of various SHRM-provided advocacy tools and materials, such as the SHRM Advocacy Mobile App.
- ★ Join 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: President Barack Obama, as part of a November 2015 initiative focused on reintegration for the formerly incarcerated, called on Congress to pass legislation that would prevent employers from including a check box for criminal convictions on the employment application (“ban the box”) for federal hiring and hiring by federal contractors. He also instructed the Office of Personnel Management to delay inquiries into criminal history until later in the government’s hiring process.

The Equal Employment Opportunity Commission (EEOC), whose April 2012 guidance on the use of criminal background checks in the employment process recommended that employers ban the box and conduct an individualized assessment for those individuals screened out due to a criminal record, has also held hearings examining the use of credit checks in employment. In addition, eleven states currently limit employers’ use of credit information in employment: California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maryland, Nevada, Oregon, Vermont and Washington. Nineteen states plus the District of Columbia have adopted ban-the-box restrictions; these states are California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Rhode Island, Vermont and Virginia. Seven of these jurisdictions expand the requirement beyond public employers to include government contractors or private employers.

OUTLOOK: In recent months, bipartisan efforts for criminal justice reform and to provide greater employment opportunities for the formerly incarcerated have focused on the use of criminal background checks in the hiring process. In the 114th Congress, Senator Cory Booker (D-NJ) introduced the Fair Chance Act, which would prohibit federal agencies and federal contractors from requesting that job applicants disclose criminal history information before receiving a conditional offer of employment. In addition, Senator Elizabeth Warren (D-MA) reintroduced legislation to ban the use of credit reports in the employment process. While legislation focused solely on background checks is unlikely to advance in the 114th Congress, bipartisan efforts on criminal justice reform that include restrictions on the use of criminal reports could. The EEOC has continued its focus on potential barriers to employment, and could publish guidance on the use of credit information and the use of social media in the employment process.
**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. Proposals that ban the box on an employment application should not unintentionally restrict an employer’s ability to conduct a background check. 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.
- Proposals that “ban the box” on an employment application should not unintentionally restrict an employer’s ability to conduct a background check.
- 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 U.S. Bureau of Labor Statistics, in 2014 women who were full-time wage and salary workers had median weekly earnings of $719, which is about 83 percent of the median weekly earnings of male full-time wage and salary workers ($871). 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 continue to be an important focus of the public policy debate in the coming months. However, the main piece of legislation on compensation equity, the Paycheck Fairness Act (PFA), faces an uphill battle in the current environment. 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 of these expected challenges, congressional leaders are exploring alternative approaches to address compensation equity.

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. One proposal would amend the Fair Labor Standards Act to prohibit employers from retaliating against employees who discuss their compensation. This legislation echoes President Obama’s 2014 executive order prohibiting federal contractors from discriminating against employees who disclose compensation information. At the end of January, the Equal Employment Opportunity Commission (EEOC) issued a proposed rule revising its annual EEO-1 report to include the collection of summary pay data by gender, race and ethnicity from employers with more than 100 employees. The change replaces an earlier Office of Federal Contract Compliance Programs compensation data collection effort and applies to all employers, not just federal contractors.

Finally, a growing number of states are pursuing legislation to address compensation equity. Notably, California recently amended its equal pay law to incorporate many provisions from the PFA legislation.
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-Based Immigration

BACKGROUND: In an increasingly global and interconnected world, access to the best and brightest talent is vital for employers to address the skills gap and for the United States to compete. 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. Building the workforce of today and tomorrow means being able to hire, train and retain employees who have the skills to get the job done no matter where they were born or where they are in the world.

Although comprehensive immigration reform has been a significant focus of previous congresses, it is unlikely to materialize as a legislative priority before the 2016 elections. In November 2014, in lieu of congressional action, President Barack Obama issued a series of executive actions. In 2015, while many of the President’s actions were held up in the courts, the agencies began to issue some relief for employers of high-skilled professionals, including work authorization eligibility for spouses of certain H-1B visa holders and new guidance for L-1B intracompany transfers. Additionally, the U.S. Supreme Court will issue a ruling this year on whether the President’s executive action to provide temporary relief from deportation and work authorization for millions of undocumented individuals should take effect.

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 the need to modernize the U.S. immigration system is 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.

OUTLOOK: Speaker of the House Paul Ryan has said he will not consider comprehensive immigration reform before the elections. While some relief for employers of high-skilled professionals has been and continues to be implemented under President Obama’s executive actions, significant relief is unlikely through Congress this year as congressional focus is on enhanced border security and new limits on H-1B workers. The most significant impact on immigration, however, will come from a U.S. Supreme Court decision in 2016 that will decide if the President’s executive action for undocumented workers is constitutional.
**SHRM POSITION:** SHRM and its affiliate, the Council for Global Immigration (CFGI), support policies that ensure that the workforce of today and tomorrow 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 Known Employer pilot that speeds up immigration processes by eliminating bureaucracy and improving both consistency and predictability in the application process. This would save resources for both the government and compliant employers. We look forward to working with the government on the Known Employer pilot program in 2016. In addition, we 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 employment-based immigration systems both for employees seeking permanent residence through green cards and for temporary workers in the United States. 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. U.S. employers competing in a global market need access to the best professionals worldwide while investing in the domestic pipeline for U.S. workers.**

- **Employers recognize the importance of families and support policies that provide spouses, partners and children of foreign professionals with visas and work authorization.**
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. In addition, 22 states and localities require the use of either E-Verify or a specified alternative for some or all employers. 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, 2016.

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 that 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 that 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: Comprehensive immigration reform in 2016 is unlikely given the politics of the current presidential and congressional elections. In fact, Speaker of the House Paul Ryan has said he will not consider reform before the 2016 elections unless it takes the form of a border security or interior enforcement bill. This means Congress could consider more-targeted, step-by-step approaches to address concerns with border security, worksite enforcement and maintaining a legal workforce. Congress must reauthorize E-Verify before September 30, 2016. Absent congressional action, additional states and localities could enact measures to require E-Verify as part of the employment verification process.
**SHRM POSITION:** SHRM and its affiliate, the Council for Global Immigration (CFGI), support policies that provide employers with modern tools that eliminate redundancies and build upon E-Verify’s success. While the U.S. 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.
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 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); is paid on a salary basis (that is, salary does not fluctuate based on the hours that the individual works); and is paid above a salary threshold set by regulation. Under the current regulations, employees must be paid more than $455 per week ($23,660 per year) to satisfy the salary threshold for exemption.

ISSUE: On March 13, 2014, President Barack Obama directed the Department of Labor (DOL), through a Presidential Memorandum, to “modernize and streamline” the FLSA overtime regulations. On June 30, 2015, the DOL published proposed changes to regulations defining the “white-collar” overtime exemptions. Key provisions of the DOL's proposed update include:

★ UPDATING THE SALARY THRESHOLD. The DOL proposed increasing the salary threshold for overtime pay from $23,660 to $50,440 per year as of 2016. This would be a 113 percent increase in the salary threshold and would move the salary level to the 40th percentile of earnings for all full-time salaried workers.

★ ANNUAL AUTOMATIC UPDATES. The DOL proposed increasing the minimum salary threshold on an annual basis by pegging it to changes in the 40th percentile or by indexing it to inflation using the Consumer Price Index for All Urban Consumers, which measures the cost of goods and services for urban consumers.

★ POTENTIAL CHANGES TO THE DUTIES TEST. While the DOL did not propose specific changes to the duties test, the department indicated that it is considering changes by asking for input on whether the concurrent duties test is still useful and if the test should require that employers track time to ensure that exempt employees spend a certain percentage of their time performing exempt duties.

OUTLOOK: The DOL is currently reviewing more than 290,000 comment letters it received in response to the proposed overtime regulation. A final rule is expected to be published between late spring/early fall. SHRM voiced its concerns on behalf of the HR profession through a comment letter signed by 50 SHRM state councils, 307 SHRM chapters and the Council for Global Immigration, a SHRM strategic affiliate. SHRM also chairs the Partnership to Protect Workplace Opportunity, the lead voice of the employer community responding to the regulations, which submitted a comment letter signed by 133 employer groups. If the DOL does not make changes in the final rule in response to concerns outlined by SHRM and the employer community, congressional attempts to block or delay the rule are expected.
SHRM POSITION: SHRM appreciates and supports the Obama Administration’s interest in updating the salary level. However, using a different methodology and a higher salary level set at the 40th percentile of weekly earnings ($50,440 per year in 2016 est.) for an increase of 113 percent presents challenges for employers whose salaries tend to be lower, such as small employers, nonprofits, employers in certain industries, and employers in certain geographic regions of the country that tend to have a lower cost of living, such as the Southeast and Midwest.

Of equal concern, SHRM opposes automatic increases, which have been considered in the past but rejected. Automatic increases ignore economic variations of industry and location and make it hard for HR to manage merit increases for those near the salary level. In addition, as more employees become nonexempt due to the dramatic increase in the proposed salary level, the need for those employees to track time to ensure that they are not working overtime will limit their workplace flexibility. SHRM is also concerned that the DOL may make changes to the duties test in the final rule that 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.

TALKING POINTS:

★ While SHRM agrees that the salary threshold should be raised, a 113 percent increase will have long-term impacts on the workplace, with a larger impact expected in the nonprofit sector, on small businesses and in geographic areas with a lower cost of living.

★ SHRM opposes automatic increases, which have been considered and rejected in the past. Automatic increases ignore economic variations of industry and location.

★ Based on a recent SHRM survey of its members, 70 percent believe that, if this rule is finalized, employers will restrict the use of overtime, leading to a potential reduction in employees working overtime hours. Employers must monitor labor costs closely and will make changes to stay within budget.

★ According to a recent SHRM survey, 67 percent of HR professionals believe the proposal will likely decrease workplace flexibility and autonomy for employees, as well as require employees to closely track their work hours.
Federal Contractor Employment Practices

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 to receive federal contracts.

ISSUE: The Obama Administration has focused attention on the federal contracting community as a venue for pursuing its workplace policies. One of these initiatives is the Fair Pay and Safe Workplaces executive order. Regulations and guidance implementing this order were proposed in May 2015. These regulations would require 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 proposed regulations would require 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.

The regulations also include provisions requiring contractors to provide information on how pay is determined on each employee’s paycheck. In addition, contractors with contracts over $1 million would be prohibited from agreeing with employees in advance to arbitrate certain civil rights claims.

OUTLOOK: Final regulations and guidance implementing the Fair Pay and Safe Workplaces executive order are expected to be published in the spring/summer of 2016. The executive order is expected to be implemented in phases, with additional guidance addressing which state laws are equivalent to the 14 federal labor laws to be published later for public comment. In Congress, policymakers have convened multiple hearings on how this order will negatively impact federal contractors and included language in a recent funding bill to deny requested funds for a new office to oversee the order. While this language sends a strong message about congressional frustration with the order, the Department of Labor will likely still be able to implement the rule.
**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 Fair Labor Standards Act 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.
Health Care Reform

BACKGROUND: More than five years after enactment, implementation of the Affordable Care Act (ACA) requirements remains challenging mainly 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 already in effect, the 40 percent excise tax on employers that provide high-cost health plans, known as the “Cadillac tax,” takes effect in 2020.

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. 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. As a result of the rising cost of coverage, the implementation of the excise tax and the complexity of the ACA, many organizations are changing health care benefits or turning to other health care design strategies, such as health savings accounts, private exchanges, wellness programs and disease management programs. In addition, SHRM believes the ACA has inadequate cost-containment measures, namely medical liability reform, and other restrictions that limit employer plan design.

OUTLOOK: Congress has already passed legislation to dismantle major provisions of the ACA through the budget reconciliation process. However, the legislation was blocked by a veto from President Barack Obama. While full repeal of the ACA is not feasible in 2016, proposals calling for health care reform and the repeal of the ACA will likely dominate the campaign trail in the race for the White House. In addition, the political future of the ACA will depend on the November congressional elections and control of the next Congress. While congressional changes to the law in 2016 are likely to be minimal, regulatory guidance from the Equal Employment Opportunity Commission (EEOC) and the Internal Revenue Service (IRS) is anticipated. The EEOC has challenged ACA-compliant employer wellness programs, claiming that medical screenings are in violation of the Americans with Disabilities Act (ADA) and, in some cases, the Genetic Information Nondiscrimination Act (GINA). To reinforce its perspective, the EEOC issued draft guidance on the ACA’s standards for employer wellness programs as they relate to the ADA and GINA. The EEOC will consolidate the two draft guidances and will likely issue final implementation regulations in the first quarter of 2016. In addition, the ACA’s tax-related requirements remain complex, burdensome and, in some respects, unclear. As a result, in 2016 we anticipate the IRS will continue to examine how organizations are complying with the requirements and will possibly issue new notices to refine guidance and final regulations.
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. SHRM also supports efforts to fully repeal the ACA excise tax on high-value employer-sponsored health plans.

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 a “full-time” employee as one who averages 40 hours of service per week.
- SHRM supports full repeal of the ACA excise tax on high-value employer-sponsored health plans.
Labor-Management Relations

BACKGROUND: Private-sector unionization rates continue to decline. According to the Bureau of Labor Statistics, only 6.6 percent of people working in the private sector in 2014 were members of a union. Furthermore, the overall U.S. 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. While the National Labor Relations Board’s (NLRB’s) 2014 data reveal that unions won 68 percent of all representation elections and elections were conducted in a median time of 38 days, data collected since the Board’s expedited, or “ambush,” election rule went into effect in April 2015 indicate that the average time to election is shortening.

ISSUE: Union leaders, some in Congress and the Obama Administration have argued that current laws and regulations governing union representation favor management and hinder employees’ ability to organize a union. As a result, the Department of Labor (DOL) and the NLRB have promulgated numerous workplace rules and decisions to make organizing easier, including a focus on nonunion workplaces and increased scrutiny of whether employer policies interfere with employees’ right to organize under the NLRA.

OUTLOOK: The NLRB and the DOL continue to advance regulatory initiatives that will affect employer-labor relations in the workplace. In the wake of the “ambush” election rule, stakeholders are tracking its implementation with preliminary data indicating that since the rule’s effective date, the median number of days from petition to election has decreased. The 114th Congress passed legislation to block the “ambush” election rule, but it was vetoed by President Barack Obama in March 2015. In the Browning-Ferris case, the NLRB greatly expanded its application of the “joint-employer” concept, which could ease the way toward unionization by including a larger group of employees and other workers in a potential bargaining unit. As a result of the Browning-Ferris case, legislation was introduced to restore the previous joint-employer definition. While the legislation has gained some traction, neither congressional chamber has enough votes to override an expected presidential veto.

In addition, the DOL is expected to issue a final regulation in March 2016 that would significantly narrow the “advice exemption” under Section 203 of the Labor-Management Reporting and Disclosure Act. The change to the “persuader” rule would expand an employer’s obligation to report the financial expenditures for consultants to provide the employer advice on unionization matters. In 2016, the Obama Administration will be under increased pressure to finalize this and other labor-focused policy priorities before the presidential election. Likewise, Congress will continue efforts to overturn or modify these NLRB decisions and will need to overcome certain Democratic opposition in the form of a Senate filibuster or will need the votes to override a certain presidential veto.
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’s “ambush” election rule, the Browning-Ferris decision, the proposed DOL “persuader” rule, and actions by the NLRB that impinge on an employer’s ability to create reasonable workplace policies constitute imbalanced approaches to labor-management relations.
Retirement Security and Employer-Sponsored Benefits

BACKGROUND: Employer-sponsored benefits are a key component of a comprehensive benefits package that employers use to attract and retain top talent. Employers carefully construct a benefits package that reflects the needs and demands of their specific workforce. Fringe benefits, such as subsidies for parking and transit, tuition assistance for undergraduate and graduate degrees and wellness incentives are an important part of a thoughtful, comprehensive benefits package.

Two of the most widely utilized benefits are employer-provided health care and retirement savings plans. According to the SHRM 2015 Employee Benefits research report, 85 percent of employers offered a preferred provider organization (PPO) health care plan, while 43 percent offered a health savings account—up 8 percentage points from 2011. With regard to retirement options, 90 percent of employers surveyed provided a defined contribution retirement plan and 26 percent provided a defined benefit pension plan. Employer-sponsored retirement plans are the main conduit for employees to save for a financially sustainable retirement.

ISSUE: Any effort to reform the tax code will certainly affect both employers and individuals. For example, because employee benefits enjoy tax-free status and account for the largest annual loss in revenue to the federal treasury, it is likely that tax reform will involve an examination of employer-sponsored fringe benefits, including retirement plans, health care benefits and educational assistance programs. Eliminating tax incentives could dramatically affect an employer’s ability to offer a comprehensive benefits package to its employees.

Retirement plans in particular are under scrutiny, with multi-employer defined benefit pension plans continuing to face numerous challenges, including meeting funding and solvency obligations, Pension Benefit Guaranty Corp. premium increases, and conflicts with nondiscrimination testing due to solvency obligations. Additionally, in 2015, the Department of Labor (DOL) proposed a new definition of “fiduciary” that would, among other things, expand the types of retirement investment advice covered by fiduciary protections.

OUTLOOK: While full tax reform efforts will likely not occur in 2016, proposals that attempt to alter the current tax treatment of employer-provided benefits will have implications for HR professionals. Despite the successes of the employer-provided retirement system, modifications to the current system are being discussed in the second session of the 114th Congress. Several of the reform proposals that have emerged will have far-reaching consequences, especially for retirement and health care benefits. While Congress has taken many steps to support the defined benefit system, serious concerns remain, including impending failure of the multi-employer pension system as a whole. In response to the DOL’s proposed fiduciary rule, legislation has been introduced in the House of Representatives and Senate to combat the reach and scope of the DOL’s rule.
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.

As part of SHRM’s comprehensive strategy on this issue, SHRM chairs the Coalition to Protect Retirement, in order 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:

★ Employer-sponsored benefits are a key component of a comprehensive benefits package that employers use to attract and retain top talent. Two of the most widely utilized benefits are employer-provided health care and retirement plans.

★ Tax reform efforts should be mindful of the unintended consequences that may arise from changing the tax treatment of employer-provided benefits.

★ Tax incentives should be used to expand access to and participation in health care and retirement savings plans.

★ Efforts that encourage savings, such as increased contribution limits and catch-up contributions for older workers, are beneficial. Additionally, reforms to the single and multi-employer pension system that give employers greater flexibility in order to ensure solvency are greatly encouraged.
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, 93 percent of the Fortune 500 companies include “sexual orientation” in their nondiscrimination policies and 75 percent include “gender identity” in their U.S. nondiscrimination policies. Twenty states and the District of Columbia have passed state-wide laws prohibiting employment discrimination based on sexual orientation and gender identity.

OUTLOOK: Legislation to address sexual orientation and gender identity nondiscrimination is unlikely to advance in the 114th Congress. However, President Barack Obama’s recent executive order extending such protections to employees of federal contractors may renew congressional interest in extending these protections to all workplaces. Further, the impact of a recent federal-sector Equal Employment Opportunity Commission (EEOC) decision could be amplified if courts apply the EEOC’s reasoning that all discrimination on the basis of sexual orientation and gender identity constitutes sex discrimination under Title VII to cases involving private-sector employers.
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.

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. According to SHRM’s 2014 Economic Conditions Survey, 1 out of every 2 organizations reported difficulty recruiting for full-time regular positions over the past year. One-half of those organizations 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.

Certain positions have been identified as more difficult to fill than others, including high-skill jobs as well as middle-skill 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. One opportunity to fix the skills gap may be through expanded apprenticeship programs to help employers address the skills shortages in certain industries and sectors. Additionally, employers that offer education assistance under Section 127 of the Internal Revenue Code (IRC) not only provide a valuable benefit to their employees but also invest in their workforce, ensuring that their employees are prepared for the changes and challenges of a global labor market.

OUTLOOK: President Barack Obama continues to underscore the importance of developing the next generation of workers with the skills needed to succeed. The President emphasizes apprenticeship models as one way to help employers find skilled employees to fill available jobs. The Workforce Innovation and Opportunity Act (WIOA), beginning to be implemented across the country, is designed to help individuals acquire the knowledge and skills necessary for today’s economy and to connect employers to the skilled workforce they need. In addition, numerous federal, state and local initiatives are helping to support the training and hiring of displaced workers, veterans and other untapped job candidates.

Understanding the need for skills development and career advancement, Congress has introduced legislation aimed at strengthening and improving provisions that incentivize employers to contribute to education and skills development. By annually increasing the amount allowed for tax-free education assistance and allowing that benefit to be utilized for student loan repayment, Congress would enable employers to not only attract and retain valuable talent but also empower their employees to expand their skill sets. 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 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-skill jobs. SHRM believes that such training should be encouraged as a sound investment through incentives, rather than through mandates. Expanding the tax treatment of Section 127 of the IRC to index and increase the annual amount employers are able to provide their employees tax-free, as well as extending the benefit to student loan repayment, would encourage training and skills development.

TALKING POINTS:

★ SHRM believes effective partnerships between employers and education and training providers should be demand-driven, focused on the employment needs of employers.

★ SHRM highly encourages the availability of tax incentives, like Section 127 of the IRC, which promote further training, education and skills development.

★ 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 that they are considering 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.

Five states—California, Connecticut, Massachusetts, Oregon, and Vermont—have adopted statewide paid-sick-leave laws, 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/life issues continue to grow.

OUTLOOK: Advocates 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. In the fall of 2015, President Barack Obama issued an executive order which similarly requires that federal contractors allow employees to earn not less than 1 hour of paid sick leave for every 30 hours worked, accruing up to 56 hours of paid sick leave per year. Final regulations implementing this order are called for by September 30, 2016. In addition, H.R. 1439/S. 786, the Family and Medical Insurance Leave Act, would 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.

It is unclear whether 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, will see action in 2016.
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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