State Public Policy and Its Impact on HR

New state legislation involving issues such as same-sex marriage, mandated leave and so-called pay-or-play health insurance has made the headlines and shown how devolving power to the states can have a wider impact on society and the workplace beyond state lines. Much of the legislation emerging from the states affects employment law, making it more necessary than ever for human resource professionals to stay aware of new laws and to follow trends in state legislation. Human resource professionals have practical experience dealing with some of the most important issues addressed by state legislation, such as health care, leave and wage issues. For this reason, HR professionals have a significant contribution to make in the development of state employment legislation.

The Current Context

A shift of power away from the federal government to the states, particularly for social and regulatory issues, has meant a raft of new legislation emerging from the states. Some of the state legislation has had a greater influence on the national political landscape than may have been envisioned by proponents of devolution. For this reason, awareness of trends in bellwether states, even for individuals and employers living outside of their jurisdiction, is important. Political partisanship, widely discussed in the media with the focus mainly on the U.S. Congress, may have even greater implications at the state level. Finally, continuing budgetary problems mean that states have to make important decisions about where to spend and where to make cuts.

Key Areas of Developing State Legislation

The SHRM State Affairs program identifies, analyzes and monitors key legislation emerging from the states that could have a significant impact on human resource functions either because it involves employment law or because it involves issues that could eventually have implications for the workplace. Some of these include mandated leave laws, same-sex marriage, Fair Labor Standards Act (FLSA), offshoring, health care, immigration, corporate tax, conceal-and-carry laws and protections for victims of domestic violence.

Potential Future Drivers of State Legislation

In the immediate future, it is not expected that there will be a great deal of new legislation from the states due to the run-up to state and national elections. However, changes in the power balance within state legislatures after the election could mean the introduction of many new proposals that affect HR public policy in 2005 and 2006, though this may also depend somewhat on economic conditions and national election outcomes. Perhaps more likely, the outcome of elections at the national level will affect the extent of influence legislation emerging from bellwether states will have on the national political debate. The regional impacts of globalization, especially those concerning offshoring and trade, may encourage the development of new state legislation as may other global issues such as the effect of international conflicts on homeland security, especially where the costs of security are being shouldered by the states. Budgetary constraints are likely to be a continuing problem for states, and many may eventually need to change some programs as a result of financial pressures. This may not be easy, since demographic changes make it likely that there will be higher demand for state-financed social programs, especially government health care programs.
The Current Context
State legislatures are busier than ever. In 2003 alone about 100,000 bills were introduced in state legislatures. As human resource professionals know all too well, many of these bills concern employment law and have a direct impact on the work of the human resource function. This makes it imperative for HR professionals to be aware of new state legislation concerning the workplace. But on a broader level, state legislation may be becoming more influential, and this makes it important for everyone to have an awareness of state legislative trends.

Devolving of power to the states
One of the reasons state legislation may be becoming more influential is because of broader political trends that are devolving more power to the states. As states are given more power, one outcome is more legislation emerging from the states addressing a wider number of issues. Today’s version of this trend may have started in the 1990s, when states began to make changes to welfare, and has been strengthened by a Republican majority in Congress and a push toward smaller federal government with more authority focused on the state and local levels, at least for social and regulatory programs. This drive is powered by the belief that giving states more flexibility allows them to better address local problems.

Budgetary constraints
State governors and other state officials have generally been enthusiastic about a trend that brings them greater control over the execution of key programs, but this enthusiasm has been tempered in the past few years by concerns over budgetary constraints. Many states had difficulty meeting their budgets during the most recent economic downturn, and the majority of governors reported that the slowdown in the national economy was the main cause of these difficulties, according to the National Governors Association’s analysis of governors’ state-of-the-state addresses. These difficulties appeared to reach their height in 2003, but the improvement in the national economy seems to have governors somewhat more optimistic for the near future. However, because state budgets are unlikely to rebound as quickly as the national economy, most report that their states are still facing major economic challenges, especially in finding ways to pay for mandated programs, and will need to make important decisions about where to make cuts.

State budgetary constraints are unlikely to ease considerably even with an improved economy. Issues such as the federal deficit may make it less likely that states will see a major increase in federal funds. In addition, almost all states now have laws that require them to have a balanced budget. There has also been renewed interest in many states in constitutional tax and expenditure limitations that limit government growth and define the tax and spending base, and in the use of population and inflation indicators to determine expenditure growth. With future increases in expenditure likely to be limited, states could continue to have difficulty meeting budgetary shortfalls, but there are some indications that the economy may not be entirely to blame for state budget problems. A USA TODAY analysis of state financial performance in mid-2003, when the National Governors Association reported that state governments were in the midst of the worst economic crisis since World War II, showed that some states dealing with declines in tax revenue were able to balance their books more successfully than others (see Figure 1).

Though the study showed the differences in spending, it did not address how successfully state spending contributes to positive improvements in the state’s social, economic or natural environment. This is an important consideration as some state spending could result in savings or revenue generation in other ways by attracting employers and highly skilled workers through high quality of life and successful business development initiatives. As states diverge in both the amount of tax revenue and the way they spend it, this issue will become more critical. Residents in some states may develop a higher tolerance for increased taxes than residents in other states if they believe that tax revenues are used efficiently by their state government, and, in particular, if they believe the programs or services this revenue pays for add considerably to the standard of living within the state. The areas where this is most likely to be a consideration are education and health care, both of which are experiencing sharp increases in costs for both states and individuals. Not only do these two issues represent a major proportion of the increase in state spending over the past decade, but they are also areas of major concern for voters. In spite of budgetary constraints, some state budget analysts expect actual tax revenue to increase over 2004 and spending to rise in most states. Here again, education and health care are likely to be key areas of spending.

Political partisanship
Many political commentators point to increased partisanship in politics on the national level and believe that political partisanship
may also be on the increase at the state level (see Figure 2). Many analysts argue that this is the result of gerrymandering that creates safe seats for the incumbent candidate or political party. This, in turn, encourages candidates to focus on getting the party base out to vote rather than appealing to more centrist voters outside of the party. It is estimated that only around 25% of American voters today live in a county where elections are competitive. The rest live in so-called “landslide counties” where the vast majority of voters support a single party—a big difference compared with 1976 when over 70% of voters lived in competitive counties (Bishop, 2004).

Other political analysts point to the relationship between growing political polarization and the growth of income inequality. Not everyone agrees that partisanship is growing among the electorate, but many political analysts make the case that it is growing among politicians. Both Republicans and Democrats in Congress vote along party lines to a much greater extent than they did in past decades, and it is likely that similar trends are influencing the states. Within a state, this landslide effect may even be somewhat more extreme because there could be greater consolidation of income levels, ethnic groups and even age brackets or other demographic or economic traits. This consolidation of factors may have some bearing on voting patterns and is more likely to occur within a state than across the nation. This may be leading to the introduction of programs, policies or laws in some states that are radically different from those in other states.

Global economic changes and more intense competition for jobs

Global economic changes may also be transforming the environment in which states develop policies and legislation that impact the workplace. Competition between states may be growing, while competition for jobs from regions outside of the United States has been getting more attention. As a result, states are offering tax breaks to encourage large employers to invest in them and create jobs while trying to address international issues, such as trade disputes or offshoring, that affect them at the state or regional level. Health care is also an important issue within this context because it is the leading cause of rising structural costs for large employers, especially manufacturers. Though most states have not taken major steps toward radical changes to health care policy, this issue may be increasingly viewed as critical in relation to job creation—either

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**Figure 1**  
State Money Management: Best and Worst

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<thead>
<tr>
<th>BEST</th>
<th>SPENDING RESTRAINT</th>
<th>BOND RATING</th>
<th>TAX SYSTEM</th>
<th>TOTAL STARS</th>
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because state attempts to broaden access to health care could be seen to scare away large employers or because doing nothing increases employer costs to such an extent that jobs are seen to be lost as a result. States relying on jobs from the kinds of industries that are having the most trouble dealing with spiraling health care costs are likely to be the most concerned about this issue.

The influence of bellwether states

Bellwether states are those that have often led the way in enacting laws that were later taken up by a large number of other states or were even eventually encoded into federal law. Obviously, employers and individuals living and doing business in such states must be aware of the legislation that will affect them. But employers and individuals in other states may also need to be aware of these trends because they may have wider implications beyond state lines, either by demonstrating the effectiveness or ineffectiveness of government intervention in a particular area that may influence whether or not other states implement similar laws or programs, or because of their wider social impact. The SHRM State Affairs program identifies the following states as bellwether states and lists the legislation that is likely to have the biggest impact on employers, other states or the nation overall:

California
- The nation’s first paid leave mandate (2002): Six weeks of mandated paid leave for California employees for family or medical leave purposes.
- Pay-or-play health care system (2003): Mandated health care coverage expansion for organizations with 200 or more employees.
- Mandating health care coverage for domestic partners (2003): Part of broader trend involving Domestic Partner Registry that requires employers to provide health insurance to registered couples.

Hawaii
- Expanded sick leave use (2003): Allowable use of sick leave to care for expanded dependents or reciprocal beneficiaries.

Illinois
- Comparable worth (2003): Comparable pay for substantially similar work (substantially similar is not defined in the law).

Maine
- Dirigo Health Care Reform Act (2003): State-sponsored health care plan aimed at increasing coverage to individuals who cannot afford or do not have access to employer-provided health insurance.

Massachusetts
- Legalization of same-sex marriages (2003): Judicial decision that requires the Massachusetts Legislature to recognize same-sex marriages.

New Mexico
- Equal pay task force (2003): Task force created by the state Legislature to examine gender-based pay disparities.
- Sexual orientation and gender identity civil rights (2003): Adds both sexual orientation and gender identity to the state’s protected class in the state’s civil rights code.

When bellwether states introduce new kinds of legislation, it does not always mean that many other states will eventually introduce similar legislation. In fact, sometimes the opposite occurs, as in the case of Massachusetts’ legalization of same-sex marriages. In this case, more states responded to the Massachusetts ruling by introducing legislation that would block the legalization of same-sex marriage than those that proposed similar legislation.

Key Areas of Developing State Legislation

Following is an overview of key legislation emerging from the states. These issues were selected because of their potential impact on many states, coverage in the news media, origin in bellwether states or frequent inquiries about these issues from SHRM members.
**Mandated leave**

The federal Family and Medical Leave Act (FMLA) of 1993 was developed as a result of states enacting family leave policies. It is aimed at helping employees meet family obligations by providing job protection and continuation of employee benefits in the case of the birth or adoption of a child or for the care of a spouse, child or parent who has a serious health condition. The FMLA applies to employers with 50 or more employees and allows for 12 workweeks of unpaid family and medical leave. Some states have expanded family leave laws that apply to workers not covered by the FMLA. Some states, such as California, Hawaii, Washington and Minnesota, require employers offering sick leave to allow employees to use such leave to care for sick family members.

California is the only state to have a paid family leave law. Criteria for leave are similar to those of the federal FMLA, but in addition, under the new law, California workers receive up to 55% of their pay for up to six weeks up to the maximum payment of $728 per week. There has been resistance from employers against the law because of fears that it will have a negative impact on productivity and costs. For this reason, most states are unlikely to follow in California’s footsteps in the near future, though at least nine are considering some version of the California model, and several already offer expanded family leave beyond the criteria outlined in the federal FMLA.

States also have other statutes that relate to employees’ rights to time off for family reasons. An example of this is Hawaii’s Paid Leave for School Conferences bill which applies to public employees and was passed in 2003. Hawaii also passed an Expanded Sick Leave Usage bill in 2003 that covers employees who have worked at least six months, allows employees to take time off to care for a spouse or reciprocal beneficiary and does not restrict the age of the employee’s child. Rather than paid leave, the expansion of beneficiaries may be the area where the most change in state family leave law will occur in the medium term. Though mandated paid leave may not catch on in most other states, there may be some support for incentives such as tax credits to encourage employers to offer paid leave.

**Same-sex marriage**

In May 2004, Massachusetts, through judicial ruling, became the first state to legalize same-sex marriage. Perhaps more than almost any other state legislative issue, this has demonstrated how developments in one state can have a rapid impact on state legislation across the country. The ruling by the Massachusetts Supreme Judicial Court has led to the introduction of proposals of legislation to legally define marriage as specifically between one man and one woman in over 35 states in the form of constitutional amendments, marriage statutes and nonbinding resolutions. At the same time, four other states—California, New York, Rhode Island and Vermont—have introduced legislation that, if taken up, would also allow same-sex couples to marry.

One of the key issues to emerge from the Massachusetts ruling is whether same-sex couples with marriages performed in one state are recognized as married couples in other states. This is related to the Defense of Marriage Act (1996), which allows states to define marriage but does not require other states to recognize another state’s designations of marital status. The outcome of this debate will determine how issues such as inheritance, taxes, hospital visitation rights and access to spousal employment benefits will develop.

**Offshoring**

The development and impact of offshoring could influence some trends in state legislation, though not necessarily through bills that directly limit the use of offshoring. Instead, the emphasis could be on creating programs and initiatives that support key regional industries and eliminate business costs that may contribute to the use of offshoring. However, many states are indeed introducing bills specifically addressing the issue of offshoring in some form or another. Several states have introduced bills that would prohibit the use of offshoring of work to be performed on state contracts. Others prohibit health care providers from using transcription services located outside of the United States. Another area of concern is homeland security. Some states, such as California, have introduced legislation that would ensure that no work involving information that is confidential or essential to homeland security is performed outside of the United States.

**Health care**

The most controversial state law related to health care is California’s new law on employer-provided health insurance, known as SB 2. The law includes provisions that require employers with 200 or more employees to provide health insurance. This may eventually be lowered to employers with 50 or more employees if the state Legislature passes a tax credit to help offset costs. It will also limit employees’ share of health insurance premiums to 20% and will ban employers from eliminating current health insurance plans. Business leaders are working to overturn the law in a referendum that will appear on the November ballot. The outcome is likely to have important implications for the health care debate at both state and national levels. Though Hawaii currently also requires employers to pay for employee health insurance, California’s position as one of the world’s largest economies increases its impact.

Other key health care legislation emerging from the states includes Maine’s Dirigo Health Care Reform Act. This voluntary program, offered starting from the beginning of July, is aimed at businesses with fewer than 50 employees, the self-employed and
individuals currently without health insurance, though the plan may also be offered to larger businesses after the first year. It will offer subsidies to individuals with incomes less than 300% of the poverty level. The program does not increase taxes but is self-financed through employer and employee payments and Medicaid dollars, though state funds will be applied in the first year only. California and Maine will be closely scrutinized by other states as they attempt to deal with rising health care costs and higher numbers of uninsured citizens. Maine Rx (1999) is a major (and the first) statewide attempt to curb prescription drug costs by leveraging state buying power. The Massachusetts Legislature is taking up a constitutional amendment guaranteeing universal health care. Though the amendment does not stipulate how this will be achieved, this legislation and other developments in health care proposals in state legislatures show that states are not waiting for health care reform on a national level and are beginning to implement major changes of their own.

**Immigrant policy**
Currently states may form partnerships with federal agencies dealing with immigrant policy, such as the U.S. Department of Justice and the Department of Homeland Security. New legislation is being introduced in Congress for an unfunded mandate that would require states to enforce federal civil immigration law. Under this legislation, states would be required to enact laws granting police officers the authority to enforce federal immigration law, and federal funds would be withheld from states that do not comply. The importance of the Department of Homeland Security is growing in relation to working with states to help enforce immigration laws. As states become more closely involved in the Department of Homeland Security’s efforts, this could have some impact on how rigorously states enforce immigration laws.

**Conceal-and-carry laws**
Carrying of concealed handguns is an issue that has implications for workplace safety, especially in the light of recent incidents of workplace violence. For human resource professionals, complying with conceal-and-carry laws while also ensuring the safety of their employees is a key concern. Often concealed weapons laws stipulate that concealed weapons may not be carried in certain locations such as schools, federal buildings or airports and also allow businesses to determine whether they will allow concealed weapons on their property. SHRM’s most recent research on Job Satisfaction in 2004 indicates that feeling safe at work is becoming one of the most important factors in determining job satisfaction, so it is likely that human resource professionals will continue to follow developments in conceal-and-carry laws closely in light of workplace safety concerns.

**Protection for victims of domestic violence**
Related to the issue of concealed weapons and workplace safety is the protection for victims of domestic violence. Many states now offer some employee job protection for victims of domestic violence. Hawaii recently enacted a bill that allows up to 30 days unpaid leave per calendar year for employers with 50 or more employees and up to five days unpaid leave per calendar year for employers with fewer than 50 employees in cases where either the employee or his or her minor child is a victim of domestic violence. Other states extend unemployment benefits to victims of domestic violence. For instance, Washington allows unemployment insurance (UI) benefits for victims of domestic violence or stalking, and Oregon allows victims of domestic violence to collect UI benefits if the health or safety of the employee would be endangered at current or available workplaces.

**Corporate taxes**
As the global market opens up, states are increasingly competing with each other and with other countries for business investment. While that competition is growing, other costs continue to rise—particularly structural and labor costs. Many states are attempting to mitigate these costs and attract and retain businesses and jobs through changes to corporate state income tax that adjust tax formulas in a way that enables them to offer significant tax breaks. However, some critics of the practice argue that the advantages to such strategies are short-lived. There is some concern among policy analysts and some lawmakers that many companies benefiting from tax incentives to invest in local areas do not stay long enough to justify the loss in state revenue. Despite these misgivings, the increase in competition from around the world for manufacturing and other jobs makes it likely that many states will continue to change corporate tax policies in order to attract business investment and compete with low-cost regions both within and outside of the United States.

**Potential Future Drivers of State Legislation**
**Continuing budgetary constraints**
Though the financial picture looks better for the states in 2004, most governors report that state budgetary constraints will be a continuing problem over the coming years. State spending may not decrease substantially due to the need to pay for existing mandated programs where costs are increasing. New state spending is likely to be restrained by the increase in costs associated with existing programs. If power continues to be devolved to the states, this may increase the need for state spending on some programs, where federal
responsibility recedes. This has led critics of devolution to claim that it could eventually result in cutbacks or even the elimination of some social programs. The push toward state responsibility for such programs may be strengthened by some macroeconomic conditions. One example is the federal deficit, which is currently around 7.2 trillion dollars. If foreign investment begins to be affected by the increase in the federal deficit, the federal government may potentially attempt to shift more costs onto the states.

Better economic conditions in 2005 and projections for an even healthier economy in 2006 would indicate that states will not see a decrease in tax revenue over the coming years. But sources of state tax revenue may shift. Corporate income tax, for example, is unlikely to increase as states compete with one another and with other regions around the world to attract business investment and job creation. This may be intensified as structural costs, especially those related to health care, continue to grow, and businesses find it more difficult to compete on labor costs with other nations.

Critics of the states’ budget management and state governors and policy-makers may both be right in their own way. States may not be decreasing spending in spite of budgetary pressure to do so. However, this may be due, at least in part, to the increased pressure on states to provide programs and services that they may not have had to finance in the past because of cuts by the federal government, as well as an increased demand for the use of existing services. Both critics and state policy-makers hope that the new flexibility of the states to execute programs will result in innovative approaches and initiatives that result in more efficient and effective programs as well as cost savings.

**Increase in demand for state benefits**

Demographic changes and the rise in key social costs in education and health care are clearly going to have an impact on state budgets. If the cost of education continues to rise, state spending on education and public universities is going to increase as well. If the number of individuals without health insurance continues to increase, state spending on health care will rise also.

These costs are unlikely to diminish in the coming years. If anything, demographic and economic changes may put even more pressure on the state systems that provide education and health care. For example, an increase in the proportion of elderly within the population may create more demand for certain types of social programs or health services. States competing for knowledge-based businesses may need to invest more in education in order to produce a more highly skilled workforce or in university research and development facilities that encourage the creation of knowledge-based startups and other businesses.

Trends in job benefits may also impact future state spending. The rise in health care costs is making it more difficult for many employers to provide health care as a job benefit and could be behind the rise in the number of uninsured. Continuing increases in health care costs may make it even more difficult for many employers, particularly small companies, to provide health insurance to employees, and this may result in more pressure on the states to provide health care to those without coverage.

**State Affairs Resources at SHRM**

**State Advocacy**
With the increase in state legislation that affects the HR profession, it is more important than ever to get involved in your state’s legislative process. The State Affairs program provides assistance to SHRM members as they participate in the legislative process at the state level. Members may view available resources and access information on how to utilize the State Affairs program as they respond to specific legislation in their state at www.shrm.org/government/states.

**State Policy Tools**
The State Affairs program has developed a number of ways for SHRM members to get involved in the legislative process. Issue toolkits are available online on topics such as workplace violence, reference checking and the Workforce Investment Act. As new issues or legislation are introduced, additional toolkits will be added.

**State Insider Newsletter**
The monthly State Insider online newsletter contains analysis of recent legislative, legal and regulatory action in the states. The issues are broken down by state and provide notification regarding specific legislative trends. Archived issues are also available online for your convenience and continued research.

**State-by-State Information**
Locate any of the 50 states on our interactive map to access state-specific legislative information, including summaries of HR laws enacted in past and current sessions, links to state legislature Web sites and governors’ Web sites, as well as a link to a monthly summary of state law changes.

**Pending Legislation**
Updated biweekly, pending legislation reports allow SHRM members to learn of and track major HR-related legislative proposals in all 50 states. Armed with this information, HR professionals may more effectively engage and influence the public policy process.

For further assistance or with any questions, please contact the SHRM State Affairs program at stateaffairs@shrm.org.
Potential power shifts
Election outcomes on the federal level could affect the trend toward devolution because they could influence the development of federal programs put in the place of state programs. Lawmakers in support of devolution hope it will result in a small federal government, but in some cases, the shift of power to the states could actually result in more federal legislation, and this could influence views on devolving power to the states among policy-makers in both parties. The issue of same-sex marriage is a good illustration because the ruling of only one state was enough to lead to calls for a national constitutional amendment. Other controversial state legislation could provoke similar reactions.

Homeland security
Homeland security will continue to be a key responsibility of the states. An important area will be emergency response planning and protecting prominent potential terrorist targets. This will be a greater expense in states such as New York and California where cities or industries may be greater targets than in less populated states. The cost of these additional responsibilities may have an impact on state budgets resulting in a reprioritizing of spending and possible program cutbacks in other areas.

Conclusion
There are many more issues that are emerging in state legislatures beyond those previously mentioned. Wage and hour issues, especially those involving white-collar workers, are growing in importance, new areas of discrimination legislation and civil rights in the workplace continue to evolve, and issues such as military leave and genetic discrimination are also resulting in the development of policies that could have a significant impact on the workplace. SHRM members are encouraged to e-mail issues and trends in state legislation that are having the biggest impact on their organizations to stateaffairs@shrm.org. The views of members will help shape the research SHRM hopes to conduct that will aim to identify the trends in state legislation that are of most importance to human resource professionals.

Resources

BusinessWeek. (2004, June 14). Does your vote matter?

Cauchon, D. (2003, June 22). Economy not to blame for state’s budget woes. USA TODAY.


National Conference of State Legislators—a bipartisan organization that serves the legislators and staffs of the nation’s 50 states, its commonwealths and territories: www.ncsl.org

Governing—a monthly magazine for state and local government officials: governors, legislators, mayors, city managers, council members and other elected, appointed and career officials: www.governing.com

Stateline.org—a nonpartisan, nonprofit online news publication that reports each weekday on state government: www.stateline.org

Dirigo Health—information about Maine’s Dirigo Health Plan that provides health coverage for small businesses, the self-employed and individuals: www.dirigohealth.maine.gov