



2010 Legislative Issues Guide

SHRM®: The Essential Voice
of What's Next in Washington



Society for Human Resource Management

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Health Care Reform

Background > The majority of Americans obtain health insurance coverage through an employer-sponsored plan. Rising health care costs, however, coupled with a severe economic downturn, have continued to burden both employers and employees, and more Americans will lose their coverage in 2010. Currently, 47 million are uninsured. Despite higher per-capita spending on health care than other developed countries, the United States ranks well below other countries on many vital indicators of health status.

HR professionals understand that the status quo is unsustainable and unacceptable. If health care spending in the United States continues to rise with the same upward trajectory, health care costs will consume 34 percent of our GDP by the year 2040 and the number of uninsured will soar.

Issue > Lawmakers, as well as health care purchasers, payers and providers, have advocated for changes to our current health care system. Public policymakers remain engaged in a national debate on how best to achieve comprehensive reforms to that system.

Outlook > Both the House and Senate approved health reform bills in 2009, but neither version has enough support to pass both bodies. Since health care reform has been a top priority for President Obama, the White House is continuing to urge Congress to find a way to pass a comprehensive bill before the 2010 elections or accept a scaled-back, more modest bill.

SHRM Position > SHRM is committed to comprehensive reform that lowers health care costs and improves access to high-quality and affordable coverage, with a minimum of basic services for all Americans. SHRM believes such reform should:

- 1) Strengthen and improve the employer-based health care system;
- 2) Encourage greater use of prevention, promotion, and wellness programs;
- 3) Solidify the Employee Retirement Income Security Act to provide a national, uniform framework for health care benefits;
- 4) Reduce health care costs by improving quality and transparency; and
- 5) Ensure that tax policy contributes to lower costs and greater access.



talking points:

- HR professionals are committed to achieving comprehensive health care reform that provides high-quality, affordable health coverage to all Americans in a manner that strengthens the voluntary employer-based system.
- SHRM is working for passage of health care reform that lowers costs, improves access and quality, and ensures a national, uniform framework for health care benefits.
- HR professionals realize that the current system, in which health care costs are rising faster than inflation, is unsustainable. This is why SHRM has supported legislative efforts to control health care costs, including workplace wellness and prevention programs.

Employer-Provided Educational Assistance

Background > Section 127 of the Internal Revenue Code allows an employee to exclude from income up to \$5,250 per year in educational assistance at the undergraduate and graduate levels, regardless of whether the education is job-related. Section 127 benefits will sunset at the end of 2010.

Issue > Providing tax-free educational assistance is an important tool for employers. It helps build and maintain an increasingly skilled workforce, and positions the United States to remain competitive in a global economy. Almost 20 percent of Section 127 recipients are pursuing science, technology, engineering, and mathematics (STEM) degrees. According to the National Postsecondary Student Aid Study's most recent data, almost one million employees took advantage of Section 127 benefits in 2007.

Outlook > Over the past few years, there have been several unsuccessful efforts to make Section 127 permanent. Attempts to extend or make permanent any tax reductions will be difficult in the current political environment because of other high-cost priorities such as health care and job stimulus legislation—and concerns about the rising federal deficit. An extension of Section 127 would likely need to be part of a larger tax reform package.

SHRM Position > SHRM chairs the Coalition to Preserve Employer Provided Education Assistance, a broad-based collection of groups representing employers, educators and labor. SHRM strongly supports the permanent extension of Section 127 for graduate and undergraduate courses. We also believe that providing tax-free educational assistance is an important tool for employers to attract the best employees, build a skilled workforce, and position the U.S. economy to compete globally.



talking points:

- Tax provisions that encourage employer-provided education and training are among the most effective tools available for employers to attract the best employees and build a skilled workforce.
- SHRM strongly supports permanent extension of Section 127 for graduate and undergraduate level courses.
- During this economic downturn, tax policies should encourage employers to invest in the training and development of their employees. Making Section 127 permanent will demonstrate the U.S. government's strong support for employers to invest in their employees and to promote continuous development of new skills.

Employee Representation

Background > Under the National Labor Relations Act (NLRA), enacted in 1935, a union can seek to be certified as the exclusive collective bargaining agent for an organization's employees in one of two ways:

- 1) Through a secret-ballot election; or
- 2) Under limited circumstances, through a "card check" process whereby a majority of employees in a specific work unit sign a card authorizing a union to represent their collective interests.

Unions view card check process as an easier, more direct way to secure the approval of a majority of workers in a bargaining unit.

Issue > For several years, union leaders have argued that the current laws determining union representation favor management and hinder employees' ability to organize a union. To address this concern, organized labor and congressional supporters drafted the Employee Free Choice Act (EFCA).

EFCA would amend the NLRA's organizing rules by allowing unions to bypass private ballot elections in favor of the card check process. The bill would mandate the card check process by compelling an employer to recognize a union if 50 percent plus one of employees in a bargaining unit sign authorization cards. The bill also would require the union and employer to enter into binding arbitration on terms of an agreement if the union and the employer were unable to reach a contract within 120 days of the start of negotiations.

Opponents of card check legislation argue that without a secret ballot, there is the potential for employees to be pressured or coerced into supporting union representation. Further, employers oppose binding arbitration on final contract.

Outlook > During the previous Congress (2007–2008), the House of Representatives passed EFCA, but the bill was tabled in the Senate after a successful filibuster. This year, the Senate may consider EFCA, but many senators have concerns about the legislation. There continues to be talk about a possible watered-down version of EFCA—in an attempt to gain support from at least 60 senators—but no serious, concrete proposal has surfaced.



SHRM Position > SHRM opposes EFCA. We believe that a government-supervised secret-ballot election is the best process for employees to determine whether or not they want to be represented by a union. The rights of employees to consider representation by a union without threats, interrogation, promises of benefits, or coercion by employers or unions must be protected.

talking points:

- SHRM believes in the fundamental right guaranteed by the NLRA of every employee to make a private choice on union representation.
- SHRM recognizes that alternatives (including card checks) can be used under current law to determine the will of a majority of workers, *as long as* both management and labor voluntarily agree on the process.
- SHRM opposes EFCA and any other legislation that would eliminate the option of a secret-ballot election, and impose mandatory arbitration and deadlines for a binding contract.

Paid Sick Leave

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

Issue > Since the 1993 enactment of FMLA and its provisions for unpaid leave, lawmakers have proposed various forms of mandated paid leave, such as paid sick leave for full-time workers and a pro-rata share for part-time workers. As a result of the H1N1 influenza outbreak of 2009, lawmakers and advocacy groups successfully generated greater public attention on leave policies. Heightened concerns about the potential for contagious illnesses to spread throughout workplaces helped renew the debate over mandated paid leave.

Outlook > The most significant piece of legislation proposed to enact a federal paid sick leave standard is the Healthy Families Act (HFA). The bill would provide employees who work at least 30 hours per week with 56 hours of paid leave each year. The HFA—and similar proposals—are likely to be debated in the House and Senate labor committees in 2010.

SHRM Position > SHRM believes that the United States must have a 21st-century workplace flexibility policy that meets the needs of both employers and employees. As opposed to a one-size-fits-all government mandate on all employers, we support a new approach that reflects diverse employee needs and preferences, as well as differences among work environments, representation, industries and organizational size. Such a policy should support employees in balancing their work, family and personal obligations and, at the same time, provide certainty, predictability and stability to employers.

SHRM generally opposes government mandates on employee benefits or leave requirements because they hinder flexible, innovative approaches to meeting employees' needs. We believe employers, not the government, are best situated to respond to the benefit preferences of their current and prospective employees.



talking points:

- SHRM supports efforts to assist employees in meeting the dual demands of work and family, 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 shares the desire of Congress to provide families additional work flexibility, but the current Healthy Families Act represents an unworkable one-size-fits-all mandate that will limit flexibility for employers and employees.
- SHRM is calling for a 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.

Family and Medical Leave Act

Background > Congress enacted the Family and Medical Leave Act (FMLA) in 1993 to provide up to 12 weeks of unpaid leave for the birth, adoption or foster care of an employee's child; or to deal with a "serious health condition," including that of a spouse, child or parent, or for the employee's own medical condition. The FMLA was expanded in 2008 to ensure workplace leave benefits are provided for families of military service members who are called to active duty or return home following a deployment.

Issue > Key congressional committees are considering several legislative proposals to expand the FMLA, including initiatives to provide paid FMLA leave through unemployment insurance funds, to expand coverage protections and to increase the duration of leave.

Outlook > Amid the current economic downturn and political gridlock prior to the 2010 mid-term elections, it is unclear if Congress will expand the FMLA this year. Expanded leave benefits could be popular with employees; however, Congress may be reluctant to impose new costs on employers during challenging economic times.

SHRM Position > Since its enactment in 1993, the FMLA has guaranteed invaluable work and family flexibility for millions of Americans, allowing employees to feel secure in their jobs while attending to important personal and family needs. Although supportive of the FMLA, SHRM opposes further expansion of the Act at this time. SHRM believes that the FMLA must be strengthened to reduce leave-related administrative and compliance problems that continue to threaten the integrity of the law.



talking points:

- SHRM supports the intent of the FMLA, but its implementing regulations have resulted in significant challenges in the workplace. After 17 years of experience administering FMLA leave, HR professionals know first-hand that modifications are needed to serve the best interests of both employees and employers.
- SHRM strongly believes that improvements to the regulations should reflect the original intent of the statute, and that the law should continue to benefit those employees whose family and medical needs meet the eligibility requirements under the Act.

Job Creation

Background > With the official unemployment rate near 10 percent in early 2010 and the Bureau of Labor Statistics estimating the total unemployment rate (which includes actively unemployed individuals, individuals who are no longer looking for employment and part-time workers) at close to 20 percent, Congress has been working on various changes to the tax code to encourage job creation and the hiring of people who are unemployed.

Issue > In addition to congressional extensions of unemployment benefits and the subsidy for individuals purchasing health insurance through COBRA, there are several other “jobs” issues before Congress that are of interest to SHRM.

Providing tax relief to businesses that hire new employees has already been included in a bill passed by the Senate and is likely to be part of any legislation designed to promote employment growth. It also is likely that legislation addressing job creation will provide relief to companies that have underfunded pensions that are being required to make large cash contributions to make up for the shortfall.

Outlook > The House of Representatives passed its version of job creation legislation in December 2009. In February 2010, the Senate passed the first of a series of bills designed to spur job growth. Before the November 2010 elections, we expect Congress to enact a variety of measures that are intended to encourage job creation.

SHRM Position > In general, SHRM supports efforts to spur job creation and provide relief to those who are unemployed. We also support legislation to provide relief to companies being required to make large cash contributions to retirement plans, because in many cases, the cash contributions are forcing layoffs of active employees.



talking points:

- SHRM supports government efforts to assist those individuals who have lost their jobs.
- SHRM supports incentives for employers that will help create jobs and bring people back to work.
- SHRM supports legislation that provides relief to businesses that are being forced to make large cash contributions to cover pension plan shortfalls. In many instances, the cash contributions to pension plans are exacerbating layoffs of active employees.

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, similar working conditions and require substantially the same skills must be compensated equally.

Issue > Studies continue to indicate that, on average, women earn 78 percent of what men are paid. The question is whether gender-based wage disparities are attributable to discrimination, legitimate pay practices or other workplace dynamics. Equal pay advocates want a “comparable worth” pay system to correct this inequity. Congress rejected this concept during the original Equal Pay Act debate because it would mandate the same pay for different jobs.

Outlook > Currently, the Paycheck Fairness Act (PFA) is pending in Congress. The legislation would require employers to base employee pay differentials only on seniority, merit and production. Pay differentials based on the local labor market, education level and prior salary history may be found to be discriminatory by the legislation. In claims of discrimination, the legislation also would shift the burden of proof to the employer. An employer would need to demonstrate that the pay differential is not discriminatory on the basis of sex, 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 local market rates, an employee’s level of education and training, 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 (PFA) that would prohibit employers from taking into consideration geography, skills, industry-specific qualifications and other legitimate factors in making pay decisions.
- SHRM also opposes the provisions in the PFA that would make it extremely difficult for employers to use a “factors other than sex” affirmative defense on Equal Pay Act.

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. 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.

Outlook > The Employment Non-Discrimination Act (ENDA) would prohibit workplace bias based on sexual orientation and gender identity. The House Committee on Education and Labor is likely to consider ENDA in 2010.

SHRM Position > SHRM believes that employment decisions should be made on the basis of qualifications for a job, not non-job-related characteristics, including sexual orientation. We support legislation that would ban workplace discrimination based on sexual orientation. We also support 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 non-job-related characteristics, including sexual orientation.
- SHRM supports efforts to ban workplace discrimination based on sexual orientation.

Employment Verification

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

Since 2009, federal contractors must use an electronic employment eligibility verification system known as E-Verify for new employees hired during a contract term and employees assigned to the contract. Other employers may choose voluntarily to participate in the system. The program was scheduled to expire in November 2009, but it has been extended by Congress until September 2012.

Recently, an independent research company hired by the federal government to study the effectiveness of the E-Verify program found that E-Verify had identified only half of the illegal immigrants submitted for review. As a result, the undetected half were mistakenly granted work authorizations, clearing the way for these individuals—who are in the United States illegally—to be eligible for American jobs. This shows E-Verify’s vulnerability to identity theft, fraudulent or stolen documents, and mistaken identity.

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

Outlook > Comprehensive immigration reform legislation is not likely in 2010, given the current economic outlook and election year politics. However, efforts to enhance worksite enforcement are taking place as the Department of Homeland Security increases its current nationwide Form I-9 and H-1B audits of employers. Proposals to require employers to use E-Verify may also surface as part of a “jobs bill.”

As a result of SHRM’s leadership, a proposal for a more reliable and accurate alternative to E-Verify, the New Employee Verification Act (NEVA), was introduced during the 111th Congress. NEVA would establish a new

employment eligibility verification pilot program that includes a voluntary biometric-based security feature.

SHRM Position > SHRM believes the federal government must provide U.S. employers with a reliable method to confirm work eligibility. A fully electronic system that uses biometric measures to prevent identity theft, as called for in the SHRM-supported NEVA bill, would give employers the tools they need to hire legal workers quickly, fairly and with confidence.



talking points:

- SHRM and its members share the goal of a legal workforce, which is a key element of any effective immigration policy.
- To achieve this goal, SHRM believes the federal government must develop a new, more efficient, foolproof system that strengthens or replaces the current E-Verify program.
- SHRM is calling for the adoption of a new electronic verification system that would eliminate virtually all unauthorized employment; provide security for employers; protect the identity and personal information of legal workers; and prevent employment discrimination based on national origin or related issues.
- Such a system will help employers hire the workers they need with confidence. It also will ensure legal workers are treated fairly and considered eligible for employment quickly.

Weapons in the Workplace

Background > A major trend in workplace violence involves gun-related incidents. According to the U.S. Bureau of Labor Statistics, the vast majority of homicides committed in U.S. workplaces are the result of shootings. Homicides involving guns are the fourth leading cause of occupational deaths in the United States and the leading cause of workplace deaths for women.

The Occupational Safety Health Act mandates that employers provide a workplace “free from recognized hazards that are causing or are likely to cause death or serious physical harm.” In a SHRM survey of HR professionals, 98 percent of respondents believe employers should be allowed to determine their own worksite policies regarding weapons in the workplace.

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 > Nearly a dozen 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 > In 2007, SHRM adopted a position on weapons in the workplace, opposing any restrictions on employers’ rights to determine their own worksite policies regarding weapons on company property. SHRM’s position in no way involves the broader issues of gun controls or gun ownership.



talking points:

- Workplace violence is a leading contributor to employee deaths. Homicides represent at least 10 percent of all workplace fatalities in recent years.
- Employers should have 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 Supreme Court decision regarding *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 Fourteenth Amendments to the U.S. Constitution.



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