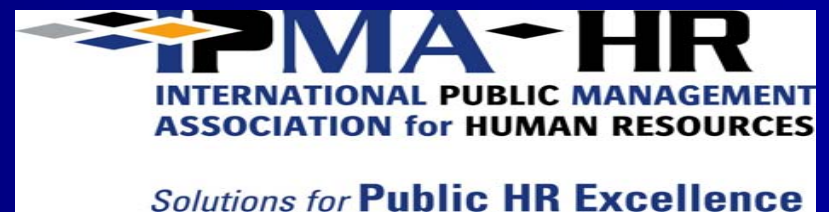


Legislative Update

IPMA-HR
2008 Southern Region
Conference
April 20-23
Virginia Beach

Presented by
Tina Ott Chiappetta
Senior Director Government Affairs



FMLA

- One of the most important changes this year is the expansion of the FMLA for military families
- Two parts – one effective now allows caregivers 26 weeks of leave per 12 month period to care for injured/ill servicemember



FMLA



- Second part allows eligible employees up to 12 weeks of leave for “any qualifying exigency” related to a son/daughter, spouse or parent’s call to active duty
- Not effective until regulations are finalized (but DOL urges employers to provide leave now)

FMLA

- Which brings us to the second important development this year
- Issuance of proposed FMLA regulations
- IPMA-HR filed comments on April 11, 2008
- Conducted survey in March and provided DOL with results

FMLA

- The proposed changes to the current regulations are primarily in the areas of notice and certification



FMLA

- What's missing from the proposed regulation?
 - Definition of a serious health condition
 - Changes to intermittent leave
 - IPMA-HR urged DOL to address these issues but the agency said it lacks the authority

FMLA

- Final regulations expected soon – in part because they are needed to implement the military leave provisions

Mandatory Collective Bargaining

- This issue remains at the forefront of IPMA-HR's legislative agenda
- The bill requires all state and local employers to engage in collective bargaining with their police, fire and EMS personnel
- It unnecessarily federalizes an inherently state and local government function
- No evidence that the legislation would improve service delivery
- Potentially high cost to state/local governments

Mandatory Collective Bargaining

- On October 1, 2007, Senator Judd Gregg (R-NH) introduced his version of the Public Employer-Employee Cooperation Act
- The bill, S. 2123, has 27 co-sponsors including 9 Republicans
- Strong Republican support makes opposition an uphill battle

Mandatory Collective Bargaining

- In December, IPMA-HR and other state/local groups including NACo and NLC achieved a victory
- Stopped lawmakers from adding the bill to unrelated legislation
- May be a short-lived victory depending on the legislative agenda for the second session of the 110th

Mandatory Collective Bargaining

- Background: The House of Representatives passed their version, H.R. 980 by a veto-proof margin of 314-97 in July 2007

Mandatory Collective Bargaining

On June 5, Neil Reichenberg IPMA-HR Executive Director testified before the House Subcommittee on Health Education Labor and Pensions on H.R. 980 – a mandatory collective bargaining bill



Cell Phone Policy



- Bills have been introduced in the House and Senate to remove cell phones from “listed property”
- Very important for employers
- Current law requires no personal use unless reimbursed fully – including pro-rata share of the monthly service charge
- Some jurisdictions – particularly out west have been fined upwards of \$200,000

Cell Phone Policy

- Call or email your representatives and Senators
- Urge them to support H.R. 5450 and S. 2668
- "Modernize Our Bookkeeping In the Law for Employee's Cell Phone Act of 2008"

ADA Restoration Act



- Bills in House & Senate would overturn Supreme Court opinions from 1999 and 2002
- Broaden definition of disability by eliminating “substantially limited in a major life activity”

ADA Restoration Act

- Eliminate Supreme Court requirement that impairments be considered in their corrected state – e.g. vision problems with eyeglasses, diabetes with insulin
- Bills are supported by Republicans & Democrats
- 244 cosponsors in the House



ADA Restoration Act

- More hearings are expected this spring and the bill has a chance of passing this year
- IPMA-HR has expressed concern to lawmakers about the impact of the bill on employers
- Particularly the provision allowing all impairments to be considered disabilities under the ADA

Immigration Reform

IPMA-HR is a founding member of the *HR Initiative for a Legal Workforce*

- Comprised of HR associations seeking a workable employee verification system
- Experts, including several IPMA-HR members met last year and created principles



Immigration Reform

- HR Initiative for a Legal Workforce successfully introduced bill – the “New Employee Verification Act”
- Sponsored by Representative Sam Johnson (R-TX) and the bill has 21 cosponsors



Solutions for **Public HR Excellence**

Immigration Reform

- The bill would introduce a new paperless Electronic Employment Verification System (EEVS), requiring employers to confirm eligibility by entering employee identification data through their state's "new hire" reporting program.



Solutions for **Public HR Excellence**

Immigration Reform

- It would also create a voluntary Secure Electronic Employment Verification System (SEEVs) that employers may choose to use in the verification process. This system would include a standard background check and the collection of a "biometric" characteristic.

Retiree Health Benefits



- Long-awaited final regulation issued by the EEOC on December 26, 2007 allows employers to exclude older retirees from health benefits after they become Medicare eligible without running afoul of the ADEA



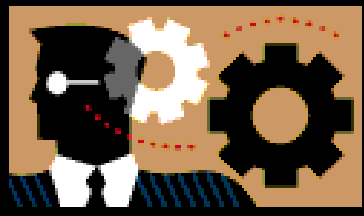
Genetic Discrimination

- House of Representatives passed H.R. 493 on April 25, S. 358 has been considered by Senate Ctte.
- "Genetic Information Nondiscrimination Act" prohibits employers and health plans from discriminating against individuals based on genetic information



Genetic Discrimination

- Concerns include potential for base-less lawsuits
- Patchwork of state laws that could cause confusion for employers
- Unnecessary because only genetic discrimination case to date was resolved successfully under the ADA



ENDA

- Employment Non Discrimination Act passed the House on November 7, 2007 by a vote of 235-184, moves to the Senate
- Prohibits employers from discriminating against individuals based on sexual orientation – provision relating to gender identity was dropped
- This bill has the support of some major business groups

Ledbetter Legislation



- Legislation, H.R. 2831 to overturn *Ledbetter* passed the House on July 31
- The bill is problematic because it eliminates statutes of limitation in nearly all discrimination cases related to compensation
- Senator Kennedy (D-MA) introduced the Senate version. S. 1843 is pending in committee
- A veto threat has been issued by the White House

Supreme Court



- IPMA-HR/IMLA filed brief in support of Oregon on March 28, 2008 in case before the Supreme Court in a “class-of-one” Equal Protection suit in the employment context
- *Engquist v. Ore. Dept. of Agric.*, No. 07-474 is brought by a woman of Indian descent whose Title VII claim was rejected by a jury, she now contends that she was singled out for poor treatment by her government employer
- Decision is expected in June

Supreme Court



- The Supreme Court will also decide whether or not Kentucky violated the ADEA by providing slightly greater benefits to those who separate from service on disability-retirement rather than straight retirement benefits
- *Ky Ret. Sys. V. EEOC*, Docket No. 06-1037 – oral arguments were held Jan. 9

Supreme Court



- Supreme Court has agreed to review case that asks when Title VII's anti-retaliation provisions are triggered
- The employer argues that it is not triggered by its own internal investigation – Sixth Circuit agreed
- *Crawford v. Metro Government of Nashville and Davidson City, TN* (No. 06-1595),



Supreme Court

- Court also agreed to review a burden of proof case under the Age Discrimination in Employment Act
- Do the employees have to show that the employer's reliance on "reasonable factors other than age" is not legitimate or reasonable?
- *Meacham v. Knolls Atomic Power Lab.*, U.S. (No. 06-1505)