

Government Affairs Update



SOUTHERN REGION CONFERENCE
NEIL REICHENBERG
IPMA-HR EXECUTIVE DIRECTOR
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Mood of the Country



- According to surveys:
 - Only 28% are satisfied with the way things are going in the US
 - The economy remains the top concern
 - Other concerns include the way government operates in Washington, national security and terrorism, healthcare, & deficit/government spending
 - Neither Democrats (38%) nor Republicans (30%) are viewed favorably

Congress



- Discord and partisanship remain in the Congress both between and within the political parties
- 19% approve of the job Congress is doing according to Gallup
- *"We really don't have 218 votes to determine a bathroom break over here on our side, so how are we going to get 218 votes on transportation, or trade, or whatever the issue?"*
 - REPRESENTATIVE CHARLIE DENT, a Pennsylvania Republican, on divisions in his party

Economy



- According to the Bureau of Labor Statistics, in April, 223,000 jobs were added and the unemployment rate is 5.4%
 - 62 consecutive months of job growth/Job growth averaged 246,000/month in 2014 & 191,000/month in the past 3 months
 - 8.5 million remain unemployed & 2.5 million are long-term unemployed (jobless for at least 27 weeks)
- Labor underutilization rate in April was 10.8%
- In the first four months, government gained 7,000 jobs
- Wages are stagnant increasing 2% over the past year
- Debt ceiling suspension ended on March 15, 2015 and will need to be extended this year

Public Sector Jobs Lag the Private Sector



- Private-sector employment has grown over 10% from its 2009 low
 - 2.95 million jobs added in 2014 – best year since 1999
 - All the private sector jobs lost during the recession have been gained back and added some more, and private-sector employment grew 2.5 percent last year
- State-government employment is 1.2 percent below and local government is 2.5% below what it was in 2009

Tax Reform



- Both parties want to focus on policies designed to assist working families
- Interest in tax reform is growing:
 - Congressional committees are working on tax reform proposals
 - Tax-free employee benefits such as pension contributions (\$137 billion in 2013), and employer sponsored health insurance (\$248 billion in 2013) may be looked at as a source of revenue
- IPMA-HR is part of the Public Pension Network that has written to the Senate Finance Committee urging that any tax reform proposals continue to support the ability of state/local governments to design, invest, finance & manage their public employee retirement systems

TOUCHDOWN!

... UNDER 'DYNAMIC SCORING.'

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Overtime Regulations



- In March 2014, President Obama directed the Secretary of Labor to revise the FLSA overtime regulations for executive, administrative, and professional employees
- Goal is to increase the number of employees who qualify for overtime
- To be considered exempt, employees must be paid at least \$455/week – this amount will be increased
- Increase is expected to be between \$42,000 - \$50,000/year

Overtime Regulations



- The duties tests for each of the exemptions are likely to be revised
- Secretary of Labor stated that the DOL is working overtime on finalizing the proposed regulations
- The proposed regulations have been sent to the Office of Management & Budget for review
- IPMA-HR will be involved in the revisions

Minimum Wage



- Congressional Democrats have introduced the Raise the Wage Act (S. 1150/HR 2150) that would increase the minimum wage to \$12/hour by 2020 & adjust for inflation starting in 2012
 - President Obama raised the minimum wage to \$10.10/hour for federal contractors
- For the first time, a majority of states – 29 + the District of Columbia have minimum wages above the federal minimum
- Walmart & McDonald's announced they are increasing pay for employees above the minimum wage

Healthcare Reform - Subsidies



- The US Supreme Court held oral argument in a case (*King v. Burwell*) that raises the issue as to whether the ACA allows subsidies to those who sign up through the federal exchange
- The challengers believe that those subsidies are being provided unlawfully in 34 states that use the federal exchange
- The law as drafted limits subsidies to an exchange established by the state
- Decision expected by the end of the term in June

Healthcare Reform - Subsidies



- The Rand Corporation estimates that eliminating the subsidies provided for people who purchase coverage through federally run health insurance markets would sharply boost costs and reduce enrollment in the individual market from 13.7 million people to 4.1 million
- Unsubsidized individual market premiums would rise by 47%

Health Care Reform - Definition of Full-Time Employees



- By a vote of 252 – 172, the House of Representatives passed a bill (H.R. 30) that would raise the definition of full-time employment under the ACA from 30 hours per week to 40 hours per week
- A similar bill (S. 30) has been introduced in the Senate
- The Congressional Budget Office estimates that the bill would add \$50 billion to the deficit over the next decade and result in 1 million fewer people getting health insurance benefits at work
- The White House said the president would veto the bill
- IPMA-HR supports the bill

Healthcare Reform - Wellness Programs



- The EEOC has been pursuing litigation against wellness programs arguing that penalties render participation in wellness programs involuntary & could violate the ADA & the Genetic Information Non-discrimination Act (GINA)
- ACA & HIPAA allow financial rewards that may be given for wellness program participation that is limited to 30% of the total premium cost or 50% if the program includes tobacco cessation
- Honeywell had a wellness program including biometric screening that allowed employees and spouses to participate & was based on the HIPAA guidelines

Healthcare Reform - Wellness Programs



- The EEOC has issued proposed guidelines addressing the interaction between the ADA and financial incentives that are offered as part of wellness programs
- IPMA-HR will be submitting comments that are due in June

Healthcare Reform - Wellness Programs



- Republicans have introduced legislation (S. 620/H.R. 1189), 'Preserving Employee Wellness Programs Act'
- The bills would consider employee wellness programs that provide financial rewards as provided for in the HIPAA guidelines to be voluntary
- Employees would have up to 180 days to request and complete an alternative wellness program if it is medically inadvisable or unreasonably difficult to participate in the employer's wellness program
- Bills would be retroactive to 3/23/10 – date ACA was signed
- IPMA-HR has endorsed these bills

Healthcare Reform – Excise Tax



- Legislation (H.R. 879/H.R. 2050) that would repeal the excise tax that becomes effective in 2018 have been introduced
- Representative Guinta (R-NH) is the sponsor of H.R. 879 & Representative Courtney (D-CT) is the sponsor of H.R. 2050
- IPMA-HR has endorsed these bills
- IPMA-HR submitted comments to the IRS on its request for information on the excise tax with comments focusing on:
 - Ensuring that the excise tax does not unequally affect older employees/retirees
 - High-risk employees
 - Annual adjustments to premiums

Criminal Background Checks



- Representative Walberg (R-MI) has introduced a bill (H.R. 548) that would amend Title VII so that the use of criminal records or information, as mandated by Federal, State, or local law, by an employer, labor organization, employment agency, shall be deemed to be job related and consistent with business necessity and shall not be the basis of liability under any theory of disparate impact
- Bill is in response to the criminal background check guidance issued by the EEOC
- IPMA-HR supports this bill

EEO-4



- Last year, the EEOC approved a modification to the EEO-4 reporting form to allow respondents to select more than one race/ethnicity similar to the EEO-1 for the private sector
- IPMA-HR submitted comments thanking the EEOC for taking this action
- According to the EEOC, the Office of Management & Budget (OMB) has not yet approved the modification

Municipal Bonds



- IPMA-HR is part of the Don't Mess with Our Bonds Coalition consisting of 51 organizations that is urging the President and Congress to retain the current tax-exempt status of municipal bonds

FLSA Decision



- The US Supreme Court ruled unanimously in the case of *Integrity Staffing Solutions v. Busk* that the time employees spent at the end of a shift waiting to undergo a security screening was not compensable under the FLSA
- An activity must be integral and indispensable to the principal activities that an employee is employed to perform in order to be compensable
- The work of the employees was to gather & ship products from the warehouse shelves and the screenings were not an intrinsic element of either retrieving products or packaging them
- IPMA-HR joined with other state/local government associations in filing an amicus brief urging that the time spent by the employees undergoing security screening should not be compensable

Administrative Procedure Act Decision



- By unanimous decision, the US Supreme Court ruled that the Administrative Procedure Act (APA) does not require notice and public comment when federal agencies issue interpretive rules
- DOL issued an opinion letter saying mortgage loan officers were exempt employees – 4 years later, DOL withdrew the opinion letter in an Administrator’s Interpretation that reached the opposite conclusion
- Case was brought on behalf of employers who believed that DOL should be required to issue notice and allow public comment before changing an interpretation relied on by employers
- Supreme Court ruled that courts should avoid adding procedural requirements not found in the APA
- IPMA-HR filed a brief with other state and local government associations arguing that notice and comment is legally required when significant changes are contemplated

Religious Accommodation Case



- IPMA-HR filed an amicus brief with other state/local government associations in the case of *EEOC v. Abercrombie*, which involves the question of whether an employer is required to provide a religious accommodation for an employee or prospective employee even where the employer does not have actual knowledge of the employee's religion
- The EEOC argues that where an employer “correctly understands” or “correctly perceives” that an employee or prospective employee would require an accommodation, the employer can be liable under Title VII for failing to accommodate the religious need even if the employer's so-called knowledge would be based on stereotyping and assumptions
- Brief argues that the position of the EEOC would require employers to inquire into prospective employees' religion rather than requiring employees to provide notice of a religious accommodation request following a job offer.
- Oral argument held in February



Questions?

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