

2018 HR Florida Legislative Conference January 24-25, 2018

The Trump Administration and the 115th Congress: The Washington Outlook for HR Public Policy

Patrick J Brady, Senior Advisor, Government Relations, HR Florida State Council, provided the following outlook:

Current Washington Environment

- Republicans control the House 239 to 193 Democrats
- Republicans barely control the Senate 51 to 47 Democrats and 2 Independents
- 35.8% of the people polled by Real Clear Politics believe the country is headed in the right direction and 55.7% believe we are headed in the wrong direction (pretty much the same as in 2010)

Tax Reform Public Law No: 115-97

Effects on HR

Wins

- Preserves Employer-provided education assistance
- Preserves Qualified Tuition Reduction Programs
- Preserves Dependent Care Flexible Spending Accounts
- Preserves the Work Opportunity Tax Credit
- Preserves Medical Savings Accounts
- Preserves Catch-up Provisions for High Earners

Changes Impacting HR

- Commuting benefits are no longer tax deductible for employers. Employees may continue to exclude from taxable income only up to \$260/month.
- Biking benefit is no longer tax deductible for employers. Employees must include in taxable income. (2018 limit \$20/month)
- **Moving Expenses** – No longer a deductible business expense for employers. Employees cannot deduct moving expenses and any stipend provided by employers will be include as taxable income.
- **Other Fringe Benefits** – Such as employer-provided meals and onsite gyms are no longer tax deductible business expenses for employers. Employees still do not have to claim as taxable income.
- **Employee Achievement Awards** – No longer tax deductible for employers. Employees NOW required to include in taxable income, ie., Cash, Cash equivalents, gift cards, gift certificates, vacations, meals, lodging or tickets to theater or sporting events.
- **FMLA Credit for Employers** – Provides an employer a credit of 12.5-25 percent of the wages paid to a qualified employee utilizing FMLA.

2018 HR Policy Priorities:

- Expansion of Employer-Provided Education Assistance Benefits

2017-2018 Public Policy Agenda for Labor and Employment

- Pres. Trump created a new “2 for 1” Rule – requiring elimination of 2 regulations for every new regulation – focusing on regulations that eliminate/inhibit jobs, outdated or cost exceed benefits
- NLRB board remains in a 2-2 tie of Democrats and Republicans
 - December activity – cases overturned on joint employment, micro-unions; neutral handbooks should receive more latitude
 - RFI on 2015 “ambush” election rule is due Feb 28
 - **October – target date for NPRM (Notice of Proposed Rule Making on Overtime Rule (as Texas court struck down the final Obama Administration’s overtime rule)**
- EEOC will be reviewing:
 - Final Guidance on Sex Discrimination
 - Final Wellness Rules under ADA and GINA by August
 - EEOC Best Practices on Harassment and draft guidance
 - The stayed EEO-1 Compensation Data Collection Rule will be reviewed
- Mandatory paid sick leave is growing state by state
 - Currently provided in Washington, Oregon, California, Arizona, Rhode Island, and various cities in the northeast and Great Lakes areas
 - Several bills currently in Congress to mandate paid leave but action is unlikely
- A SHRM-developed bill, Workflex in the 21st Century Act, has been introduced that would expand paid leave and workplace flexibility opportunities for all employees
 - Amends ERISA by adding to the definition of an ERISA plan a “Qualified Flexible Work Arrangement Plan” (QFWA) that must include 2 components for all employees: compensable leave and a workflex option.
 - Additional information provided in the PowerPoint on the GPSHRM website
 - Handout on table
- Healthcare...according to the 2016 census...
 - 55.7% of Americans have employment-based healthcare coverage
 - 9.1% were uninsured
 - President Trump has been unsuccessful in repealing the ACA
 - Under the new tax law, the Individual Mandate is still applicable for 2017 and 2018, but the penalty has been reduced to “0” in 2019
 - The House Ways and Means is considering a package to delay some ACA taxes in the first quarter of 2018. The Employer Mandate would get a retroactive repeal from 2015 and a delay through 2018
 - Additional potential tax delays:
 - Cadillac tax
 - Health Insurance Tax (HIT)
 - Medical device tax

- Over-the-counter medication tax

Additional information in the 2018 National Outlook PowerPoint on GPSHRM website.

2018 State of Florida Proposed Workplace Legislation

Regular session ends March 9

Met with Rep. Frank White and Jennifer Biggs, Legislative Asst to Sen. Doug Broxson

Legislation Highlights:

SB 166 & HB 1441– Minimum Wage...AGAIN

In addition to the rate of inflation adjustment, increases minimum wage by \$1 on September 30, 2018 and by \$1.50 each September 30 thereafter through 2022. (Add'l \$7 by 2022 in addition to inflation increases)

HR Florida's Position: While HR Florida does not oppose an increase in the minimum wage, the proposed legislation is too much, too fast. In addition, it does not provide for an annual review to determine what impact additional increases may have on the economy prior to implementation. For these reasons, we oppose the legislation as written.

2/13/18 Update: In House committee since 1/12/18 – no movement in the Senate

SB 300 & HB 307 – Whistleblower & Florida Civil Rights Act Amendments

Amends public sector Whistleblower Protection Act (Ch. 112) to increase time limit for filing complaints from 60 to 365 days and amends the Florida Civil Rights Act to codify rule that actions for discrimination must be commenced within four years after the alleged discriminatory act.

HR Florida's Position: HR Florida opposes this legislation as we believe 60 days is ample time for an employee to file a whistleblower complaint and the statute of limitations for claims under the Florida Civil Rights Act should mirror that under federal law (i.e., within 90 days after the receipt of a right to sue notice).

2/13/18 Update: Senate made revisions to the times proposed, deleting the extension to 365 days and adjusted other timeline dates. Judiciary committee approved 2/13/18; No movement in the House.

HB 225 & SB 1828 – Discrimination Against Employees Who Evacuate

Prohibits employers from taking retaliatory action against employees who leave their place of employment to evacuate under an emergency evacuation order and return within 14 days.

Excludes law enforcement personnel, firefighters, EMTs and paramedics and other employees who are expected to provide emergency services to the public. Permits a civil action for an injunction, back pay, compensatory damages, attorneys' fees and costs.

HR Florida's Position: HR Florida opposes this legislation as it is too broad. HR Florida believes that 14 days from the date of evacuation is extreme and employees may take advantage of this policy. HR Florida is open to providing input on a new bill next year.

2/13/18 Update: In Senate committee 2/5/18 but no votes; No movement in the House

SB 798 & HB 1223 – Background Screening (a/k/a “Ban the Box”)

Prohibits employers from inquiring into an applicant's criminal history prior to the applicant's initial interview and prior to making a conditional offer of employment. Excludes: jobs where federal, state or local law require consideration of criminal history; law enforcement; criminal justice; and, volunteers.

HR Florida's Position: HR Florida is opposed to this legislation as it impairs an employer's ability to obtain information on an employee's background until after a conditional offer of employment is made. HR Florida is open to providing input on a new bill next year.

2/13/18 Update: No movement in the House or Senate

SB 318 & HB 49 – Internship Tax Credit

Provides a tax credit of at least \$2,000 to employers hiring degree-seeking students as interns.

HR Florida's Position: HR Florida is neutral as to the proposed legislation. HR Florida is open to discussing a new bill next year, which seeks to include degree-seeking students from all schools as this bill only provides for students in State schools.

2/13/18 Update: No movement in the House or Senate.

SB 950 & HB 651 – State Employment

Prohibits solicitation of charitable contributions within work hours in working areas. Does not prohibit non-coercive communications between employees or (in Senate Bill), solicitation at authorized public events in non-work areas.

HR Florida's Position: HR Florida opposes this legislation as employees are a major source of funding for non-profits and they should have the option of contributing.

2/13/18 Update: Passed in the House 1/31/18 100-13; 2nd reading in the Senate 2/1/18 – passed in several committees

SB 1036 & HB 25 – Labor Organizations

Requires labor organizations registering with the state as the representative of a bargaining unit in the public sector to provide information regarding the percentage of its members who pay dues. If the percentage drops below 50%, the labor organization must then petition the Public Employee Relations Commission for recertification as the representative of the bargaining unit. Organizations failing to comply may have their certification revoked.

HR Florida's Position: HR Florida supports this legislation as it holds it helps to ensure that labor organizations adequately represent their workforce.

2/13/18 Update: House passed 65-41 1/25/18; No movement in the Senate.