



Washington Update

IPMA-HR Southern Region Conference

April 28, 2010

Presented by,

Tina Ott Chiappetta, CAE

Senior Director of Government Affairs



OVERVIEW

- State and local governments continue to experience impact of poor economy
- Recent FoxLawson/IPMA-HR survey results show raises were at 2% in 2009 and at about 1% in 2010
- IPMA-HR Hiring Outlook survey for 2010 showed 32% of respondents conducting layoffs

OVERVIEW

- Healthcare reform now complete clearing way for more legislative activity
- Top of the agenda
 - Jobs bill
 - Mandatory Collective Bargaining
 - Paycheck Fairness Act
 - Employment Nondiscrimination Act
 - Healthy Families

Healthcare Reform

- A few things to be aware of:
 - Beginning in 2011 you'll need to report healthcare benefits on the W-2
 - Reinsurance Program for early-retirees – applies to employees age 55-64, 80% of costs between \$15k-90k, Est. June 23, \$5 billion available, plans must submit
 - Wellness programs incentives OK'd



Economy & Jobs Bills

- **Unemployment** - Congress extended COBRA subsidy through May 31 and unemployment through June 2.
- **Local Jobs for America Act** - On March 10, 2010 Representative George Miller (D-CA) introduced the [Local Jobs for America Act, H.R. 4812](#). The legislation would provide \$75 billion directly to counties, cities and towns to save and create jobs.



Local Jobs for America Act

- The bill directs \$52.5 billion directly to municipalities with populations greater than 50,000 and \$22.5 billion to states to distribute to municipalities with fewer than 50,000 residents.
- The bill also includes \$24 billion, already approved by the House in December, to help states support 250,000 education jobs, put 5,500 law enforcement officers on the beat, and retain, rehire, and hire firefighters.

Mandatory Collective Bargaining: Public Safety

- Public Safety Employer-Employee Cooperation Act, H.R.413, S. 1611, S. 3194
- Requires states and localities to engage in collective bargaining with police, fire and emergency medical technicians
- Gives the Federal Labor Relations Authority (FLRA) the power to create regulations and ensure that states laws are substantially compliant

Mandatory Collective Bargaining: Public Safety

- States would have two years to pass their own collective bargaining law that meets 5 criteria (including bargaining over wages, hours and terms and conditions of employment)
- Federal creation of bargaining rules would likely impact all states

Mandatory Collective Bargaining: Public Safety

- Passage likely this year
- Came very close to passing during the last session of Congress
- Last session President Bush issued a veto threat. No veto threat exists now
- Hearing held in subcommittee on March 10, 2010
- IPMA-HR, NLC, NACo, NPELRA & NSA provided a witness and written statement for the record in opposition

Paycheck Fairness Act

- S. 182 would enhance penalties for violations of the Equal Pay Act allowing compensatory and punitive damages against state and local governments
- Creates Training and Education Programs
- IPMA-HR provided statements for the record opposing punitive damages as well as the Paycheck Fairness Act because it fails to address gender discrimination

Paycheck Fairness Act

- Senate HELP Committee held hearings on March 11, 2010
- Outlook for passage is fair
- Great deal of bipartisan support
- Passed the House as part of the Lilly Ledbetter Fair Pay Act

Employment Non-Discrimination Act

- ENDA, H.R. 3017, S. 1584 would prohibit employers from discriminating based on sexual orientation and gender identity
- Hearings held in both House and Senate
- Democratic majorities make it more likely to pass
- Business coalition of about 100 big & small companies support the measure



Healthy Families Act

- H.R. 2460, S. 1152 require employers with 15+ employees to provide a minimum of one hour of paid sick leave for every 30 hours worked to a maximum of 56 hours per year
- Issues include part-time employee benefits
- Imposition of federal notification requirements
- For example: no doctor's note unless absence of 3 days or more – commencement of leave cannot be delayed
- 121 cosponsors in the House & 24 in the Senate

Cell Phone Policy



- Currently employer-provided cell phones are considered a taxable benefit if used for personal calls. Employees must track calls and pay for individual calls as well as a pro rata share of the monthly fee
- IRS changed its position and in a statement on June 16, 2009 asked Congress to change the law so that cell phones are no longer taxable benefits
- President's 2011 budget assumes tax is eliminated
- Very likely to pass – 205 cosponsors House/72 Senate

Genetic Information Nondiscrimination Act

- Genetic Information Nondiscrimination Act (GINA) became effective November 21, 2009.
- Still awaiting final regulations
- Currently being reviewed by OMB

ADA

- Amendments Act effective one year ago but regulations not yet issued
- IPMA-HR filed comments on November 23, 2009 along with NPELRA and IMLA
- Comments suggested that the EEOC change parts of the regulations relating to definition of limited in the major life activity
- EEOC changed it from limited in a broad class of jobs to “type of work”

ADA

- Concern over increased litigation when EEOC throws out years of court decisions relating to definition of “work”
- IPMA-HR also highlighted several other issues relating to implementation
- Regulations appear to define transitory and minor impairments as disabilities in certain circumstances
- Concern over “per-se” list of disabilities



Age Discrimination

- EEOC issued proposed rule in February
- The proposed rule emphasizes the need for an individualized, case-by-case approach to determining whether an employment practice is based on reasonable factors other than age.
- In addition, it provides lists of factors relevant to determining whether an employment practice is “reasonable” and whether it is based on a factor “other than age.”



Age Discrimination

- Factors to Consider:
 - whether the employment practice and the manner of its implementation are common business practices;
 - extent to which the factor is related to the employer's stated business goal;
 - extent to which the employer took steps to define the factor accurately and to apply the factor fairly and accurately (e.g., training, guidance, instruction of managers);
 - extent to which the employer took steps to assess the adverse impact of its employment practice on older workers;
 - severity of the harm to individuals within the protected age group, in terms of both the degree of injury and the numbers of persons adversely affected, and the extent to which the employer took preventive or corrective steps to minimize the severity of the harm, in light of the burden of undertaking such steps; and
 - whether other options were available and the reasons the employer selected the option it did.

Supreme Court



- Court to review case concerning police officers' privacy interest in text messages
- Ninth Circuit ruled that officers have a reasonable expectation of privacy in texts sent on employer-provided devices- *City of Ontario, California vs. Quon*
- Oral arguments held April 19



Supreme Court

- In, *Arthur L. Lewis, Jr. et al., v. City of Chicago*, Docket No. 08-974 Court will decide whether or not a disparate impact discrimination suit is time-barred if a charge is filed with the EEOC more than 300 days after the results of an entry-level firefighter exam are released.
- Oral Argument held for 2/22/10

Supreme Court



- On March 22, the U.S. Supreme Court agreed to review *Kevin Kasten v. Saint-Gobain Performance Plastics Corporation*
- The justices will decide whether or not an oral complaint of a violation of the Fair Labor Standards Act (FLSA) is covered by the anti-retaliation provisions or if more is needed
- Seventh Circuit ruled that oral complaints are not covered: internal complaints okay but must be written
- Oral arguments not yet scheduled – could be next term

Supreme Court



- Court will decide scope of “Informational Privacy” under Fourth Amendment in *NASA v. Nelson*
- Federal Contractors sued based on background investigation that asked about drug use or counseling and asked references for in-depth information on finances/mental health/behavior
- Ninth Circuit ruled for employees - injunction

Supreme Court

- Court agreed to review “Cat’s Paw” case from the Seventh Circuit: *Staub v. Proctor Hospital*
- Question: When will an employer be held liable for the unlawful discriminatory intent of supervisors who influenced but did not make the final termination decision?
- Employee’s boss & boss’s boss both expressed animosity toward Vincent Staub due to military service
- Fired for performance problems by VP of HR, not supervisors





Questions?

- Tina Ott Chiappetta, tchiappetta@ipma-hr.org
- Resources available on IPMA-HR website:
 - <http://www.ipma-hr.org>
 - Advocacy letters
 - Washington Update
 - Sample Policies & RFPs
 - Successful Practices from colleagues