



## LEGISLATIVE EFFORTS TO EXPAND EMPLOYEE RIGHTS SIGNAL CHALLENGES FOR HR PROFESSIONALS

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Human resource professionals should brace themselves for proposed legislation that could significantly increase employees' rights and corresponding legal exposure to employers. While it is too soon to predict whether these proposed laws will be enacted, there is no doubt that state and federal governments appear increasingly willing to embrace expansions of employee rights in the workplace. This new trend may have long reaching repercussions for HR professionals and personnel practices.

1. Expansion of Wisconsin Fair Employment Act: The Wisconsin legislature is considering Senate Bill 165 which would require employers to pay compensatory and punitive damages for violations of the Wisconsin Fair Employment Act. The proposed law would also require employers to pay a "surcharge" to the state, equal to 10% of the compensatory and punitive damage award. This legislation is similar to the legislation that was proposed several years ago, and which state SHRM organizations successfully defeated through a grassroots lobbying effort.

The "surcharge" proposal is a new twist on the previous proposal and is similar to "headhunter" laws which have been enacted in the state of California and which entitle that state government to a share of any monetary awards imposed against employers. The existence of "surcharges" creates serious issues with what is supposed to be a neutral judiciary system. Employers should question how the State, whose courts and agencies are supposed to serve as neutral decision-makers, could continue the illusion of being "neutral" when the state receives 10% of the award if the employee wins.

Once again, SHRM members are encouraged to contact your legislators and oppose this legislation.

2. Expansion of the Definition of "Supervisor": The federal government is reviewing legislation known as the "Re-Empowerment of Skilled Professional Employees and Construction Trade Workers ("RESPECT") Act". This legislation would significantly narrow the definition of "supervisor" under the National Labor Relations Act by excluding supervisors who are deemed supervisors by virtue of their authority to assign or direct work. The purpose of the legislation is to allow more employees to be eligible

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to be represented by unions, and to avoid being classified as members of management. (The legislation is an overt attempt to overrule recent NLRB decisions which recently clarified the legal definition of “supervisor”.)

Once again, this legislation, if enacted, would present new challenges for employers, who may be treating various groups of supervisors and lead persons as members of management for purposes of the NLRA and other state and federal legislation.

(Author’s personal note: Do the acronyms given to some of these new bills appear to be blatant examples of political “spin”? For example, the RESPECT legislation, which would preclude certain employees from being recognized as members of management and being afforded all of the prestige and career recognition associated with management, hardly seems like an effort to allow these individuals to achieve greater respect. Likewise, the hotly debated “Employee Free Choice Act” would eliminate employees’ ability to vote on unionization by secret ballot, and allow unions to force employees to announce their intentions openly in the presence of union organizers and co-employees. This process would be ripe for coercion and intimidation, in comparison to a government regulated secret ballot. Thus, the title “Free Choice Act” seems a curious choice for this bill.)

3. Expansion of Americans with Disabilities Act: Legislation known as the “ADA Restoration Act of 2007” was also recently introduced in Congress. This legislation would amend the Americans with Disabilities Act to significantly expand the definition of disability. It would eliminate the requirement that a disability “substantially” limit a major life activity and instead simply require that a disability be a physical or mental impairment. Employees who are able to use mitigating measures to reduce or even eliminate the impact of their medical condition would still be considered as “disabled” and be entitled to accommodation and protection under the Act.

While the Wisconsin state law definition of “disability” is already broader than the ADA definition, the state law remedies are much more limited. An expansion of the ADA would significantly increase the financial exposure to employers for violating the law’s complicated provisions.

4. Expansion of Family and Medical Leave Laws: State and federal governments have both recently reviewed legislation which would expand FMLA laws to provide additional time off for employees who are required to care for family members injured as a result of military conflict. The federal legislation would provide up to six months of FMLA leave for these needs. The state law would allow FMLA when an employee or their family member has been called to active duty.

5. Time Periods for Filing Wage Claims: The federal government is also considering legislation that would expand the time frame for which pay disparity claims could be brought against employers. This legislation would directly overrule the recent United States Supreme Court decision in Ledbetter v. Goodyear Tire & Rubber and would enable employees to pursue reimbursement for pay disparity dating back years.

While it is too early to predict the likelihood of passage of these laws, they certainly evidence a new trend toward expanding employee rights, and, correspondingly, expanding employer liabilities. New legislation, if passed, will require employers to react quickly to the changes in these laws, and to immediately increase efforts to train upper managers and front-line supervisors on these changes. Additional information on any of this legislation can be obtained by contacting the author.