

SHRM Advocacy Team – Shaping Public Policy



Leading People. Leading Organizations.

October 9, 2014 – North Dakota State HR Conference



Bob Carragher
Senior Advisor for State Affairs
SHRM Government Affairs

The World Is a Bit of a Mess

DISPATCH

Putin Takes Off the Gloves in Eastern Ukraine



Top army official: Israel underestimated Gaza militants

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Topics for Discussion

Today's presentation is designed to:

- ✓ Acquaint you with SHRM's Government Affairs Focus;
- ✓ Give you a flavor of the current political climate in Washington;
- ✓ Review some of the HR public policy developments that have been announced recently in Washington;
- ✓ Showcase the SHRM Advocacy Team and the role you could play in raising the visibility of the HR profession among public policy makers.

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A Mixed Bag for the US Too



BREAKING NEWS
Jobless rate falls below 6%
Rate is at lowest level since 2008

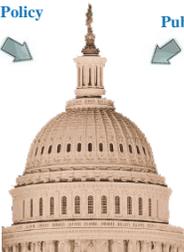
U.S. Drought Monitor

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SHRM's Public Policy Focus

Key Issues

- ✓ Labor and Employment
- ✓ Immigration Reform
- ✓ Tax Reform / Retirement Security
- ✓ Civil Rights
- ✓ Health Care
- ✓ Workplace Flexibility



Federal Public Policy

State Public Policy

Member Advocacy

Regulatory / Judicial Affairs

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On the Political Front in Washington, We're in a Wait & See Mode



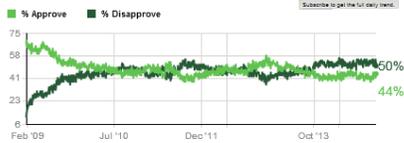
Obama's Odds With Congress: Bad to Worse

CANTON

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President Obama's Approval Rating

Gallup Daily: Obama Job Approval
Each result is based on a three-day rolling average



Gallup tracks daily the percentage of Americans who approve or disapprove of the job Barack Obama is doing as president. Daily results are based on telephone interviews with approximately 1,500 national adults; Margin of error is ±3 percentage points.

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November 4 – What Will Happen?

BATTLE FOR THE SENATE

Current Senate: 57 Democrats | 43 Republicans

SENATE MAP SENATE VOTING LIFE HOUSE MAP GOVERNORS MAP GOVERNORS VOTING LIFE

45 Democrats | 10 Vacancies | 45 Republicans

State	Party	Class	Term Expires
AK	Dem	Class 1	2015
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Executive Orders & Memos for Federal Contractors

- Executive Order barring discrimination based on sexual orientation and gender identity for federal government and federal contractors.
 - Issued July 21, 2014;
 - Does not expand exemption for religious orgs.
- Presidential Memorandum -- Advancing Pay Equality Through Compensation Data Collection.
 - Issued April 8, 2014;
 - Directed DOL to issue proposed rule which came out August 6;
 - Comments due November 6, 2014.
- Executive order on retaliation for discussion of pay.
 - Issued April 8, 2014;
 - DOL proposed rules expected.

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SHRM Member Testifies - House of Representatives Hearing on Fair Labor Standards Act (FLSA)

- ✓ Nancy McKeague, SHRM member with the Michigan Health and Hospital Association
- ✓ Hearing on "Improving the Federal Wage and Hour Regulatory Structure" in July 2014



Executive Orders & Memos for Federal Contractors

- ✓ Executive Order on Fair Pay & Safe Workplaces
 - Issued July 31, 2014;
 - Requires prospective contractors to disclose labor law violations from past 3 years (14 covered federal statutes + state laws);
 - Each agency will designate a Labor Compliance Advisor to determine whether the contractor demonstrates a "lack of integrity or business ethics";
 - DOL to define to help agencies determine if violations were serious, repeated or pervasive.
 - Proposed rules from both DOL and the Federal Acquisition Regulatory Council anticipated.
 - Administration holding listening sessions.
- ✓ Other Executive Orders Expected After the Elections
 - Immigration-related
 - ?

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Pending Regulations

- FMLA updated definition of "spouse"
 - Proposed rule issued June 27, 2014;
 - Expands eligibility for FMLA benefits to employees same-sex marriages valid in the state (or foreign country) where the marriage was entered into;
- SHRM comments:
 - Commended agency for using same definition used by IRS, USCIS, DOD.
 - Requested clarification on how an employer can efficiently determine whether same-sex marriage is recognized by a state or foreign country;
 - What type of proof may an employer request to determine valid marriage;
 - Clarification that an employer may ask for clarification on a case-by-case basis.

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Pending Regulations

- NLRB's expedited election rule (ambush elections)
 - Final rule is imminent;
 - Will be challenged before the ink is dry.
- EEOC pregnancy discrimination guidance
 - Issued July 14, 2014;
 - Expanded coverage for pregnant employees including expanded accommodation requirement;
 - SHRM report at www.bit.ly/EEOCpregnancy.
- DOL's changes to the overtime rules white collar exemptions under FLSA
 - Increasing salary level; looking at duties test;
 - Listening sessions;
 - Proposed rule likely in early 2015.

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National Labor Relations Board Key Case

- *Purple Communications* on use of employer electronic communications for Section 7 purposes.
- NLRB is revisiting *Register-Guard* case which held that employers have a basic property right to regulate use of employer-owned property.
 - SHRM June 16, 2014 brief argues:
 - Employers would lose ability to ensure workplace productivity;
 - Employees have alternative channels of communication.

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National Labor Relations Board Key Case

- ✓ *Browning-Ferris Industries* – On how Board determines if 2 separate entities are “joint employers.”
- ✓ Joint employers are saddled with all duties of direct employers including the duty to bargain.
- ✓ SHRM June 26, 2014 brief argues:
 - Board should maintain its current “direct control” standard that has been in effect for the past 30 years;
 - Changing standard would disrupt stability and predictability organizations currently enjoy.
- ✓ Decisions may be delayed due to *Noel Canning’s* invalidation of hundreds of cases decided without a proper quorum.

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U.S. Supreme Court-Upcoming October Term

- ✓ *Mach Mining v. Equal Employment Opportunity Commission*
 - Title VII mandates that EEOC attempt to conciliate or settle through informal means before filing a lawsuit
 - 7th Circuit held that no judicial review is available on whether EEOC properly pursued conciliation efforts. Other circuits disagree.
- ✓ *M&G Polymers USA, LLC v. Tackett*
 - What inference can be drawn from a collective bargaining agreement (CBA) that is silent as to duration of retiree health benefits
- ✓ *Young v. United Parcel Service*
 - Accommodations for pregnant employees;
 - Pre-ADAAA case could invalidate EEOC’s new guidance.

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SHRM Advocacy Team: Shaping HR Public Policy



“America is not governed by the majority, but by the majority of those who participate.”

Thomas Jefferson

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Current Issue in Congress

Debarment of Employers with FLSA Violations

- Representative Keith Ellison (D-MN) Amendment, offered to multiple appropriations bills.
- It would prohibit federal funds from being used to enter into a contract with any company that has a violation of the Fair Labor Standards Act (FLSA) within the last five years.
- Federal Contractors, we need your help!



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It’s A Fact!

*Of the 535 Members of the United States Congress, only **1** (Senator Mike Enzi from Wyoming) comes from an HR background.*

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SHRM Advocacy Team: Shaping HR Public Policy



Our Greatest Asset – Our Members!

Then-Senator Byron Dorgan with Members of ND SHRM Leadership Team - 2012
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North Dakota Delegation in Congress



Sen. Heidi Heikamp (D)



Sen. John Hoeven (R)
Appropriations

SHRM Committees of Interest:

- ✓ Appropriations
- ✓ House & Senate Labor Committees
- ✓ House & Senate Tax Committees



Rep. Kevin Cramer (R-Al Large)

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The SHRM A-Team

- ✓ Developed to ensure when policy decision-makers (legislators, regulators, etc.) develop workplace policy, the voice of HR is heard via a "local network"
- ✓ Since MoC's are most responsive to *their* constituents, informs legislators of policy impacts upon employers in *her / his* district
- ✓ SHRM members best understand / are best suited to communicate how public policy affects employees, employers & the HR profession as a whole
- ✓ SHRM members are constituents with an *interest* in policy that will sway legislators and develop credible and influential relationships with elected officials
- ✓ Can serve either as an Advocacy Captain or an HR Advocate

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SHRM Advocacy Team: Shaping HR Public Policy



Get To Know Your Legislators!

Face time is important. Make every effort to connect with your elected officials.

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A-Team Status: September 2014

- ✓ 7,600+ active team members
- ✓ 354 Advocacy Captains designated across the country
- ✓ In North Dakota, we'd like to secure at least **1**, but preferably **3** Advocacy Captains and a number of HR Advocates

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And Most Importantly:



Don't Forget to Vote November 4 (or earlier, if needed)

The deadline to register to vote this November in North Dakota – NO deadline, but 1 of 5 forms of ID.

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Thank You!

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