

Federal Legislation Quick Guide

April 23, 2008

Pending Legislation—Human Resources and Employment Law

Note: The following chart summarizes federal legislation that is currently under active consideration by Congress or has recently been enacted into law. In most cases, other bills have also been introduced on the same issue, but are not being actively considered by Congress at this time. For more information on the summarized bills, or to find other bills on the same issue, go to the Library of Congress Web site at <http://thomas.loc.gov>.

Genetic Nondiscrimination

Current Legislation	<ul style="list-style-type: none">■ Genetic Information Nondiscrimination Act of 2007 (H.R. 493/S. 358).
Status	<ul style="list-style-type: none">■ H.R. 493 as passed by the House in April 2007 was added to the House-passed mental health parity bill (H.R. 1424) upon passage on March 5, 2008.■ The Senate Health, Education, Labor and Pensions (HELP) Committee approved S. 358 by a vote of 19 to 2 on January 31, 2007.
Outlook	<p>S. 358 may come to the Senate floor for a vote sometime this week via a unanimous consent vote or by a cloture vote which would eliminate further opportunity for debate. It is likely that S. 358 will pass the Senate by a wide margin due to strong bipartisan support for the bill. An agreement was reached to bring the bill to the Senate floor after Sen. Coburn (R-OK) released his “hold” on the bill and dropped his pursuit of the inclusion of a business necessity exemption. An earlier Bush administration Statement of Administration Policy (SAP) stated that while it generally supports GINA, it is concerned that the bill does not create an “adequate firewall” to keep plaintiffs from suing under employment law remedies for health care benefits.</p>
Details	<p>H.R. 493/S. 358 would bar group health plans or health insurers from requesting, requiring, or purchasing genetic information for underwriting purposes, to deny health coverage or to raise premiums. The bill would also establish federal privacy standards and protection for genetic information. A provision for injunctive relief would be created under ERISA for violations that would cause irreparable harm to the health of the participant or beneficiary. Equitable relief would include an administrative penalty of \$100 per day of noncompliance and the retroactive reinstatement of coverage. Administrative penalties would be limited to the lesser of 10% of the aggregate amount paid by an employer during the preceding taxable year for group health plans or \$500,000 for unintentional violations. Under the Public Health Service Act, the administrative penalties would be similar to that created under ERISA. The legislation would establish a commission to review the developing science of genetics and advise Congress on the advisability of providing for a disparate impact cause of action.</p>

Genetic Nondiscrimination (continued)

Details (continued)	H.R. 493 would also (1) impose an excise tax on employer sponsors for health plan noncompliance equal to \$100 per day for the noncompliance period; (2) extend the provisions to adopted children, seniors who purchase Medigap policies, and people participating in clinical trials; and (3) require the HIPAA privacy law to be amended to conform to the bill's provisions. The bill would allow group health plans and insurers to request genetic testing or information, subject to a minimum necessary standard, for purposes of claims processing and benefit management.
Effective Date	H.R. 493/S. 358 would become effective 18 months after the date of enactment. The commission would be set up six years after enactment.

WARN Act

Current Legislation	Trade and Globalization Assistance Act of 2007 (H.R. 3920).
Status	The House approved H.R. 3920 on October 31, 2007 by a vote of 264-157.
Outlook	The WARN Act provisions could be dropped during conference committee negotiations of the broader TAA bill (S. 1848). As it currently stands, President Bush would veto H.R. 3920.
Details	H.R. 3920 would expand the coverage of the WARN Act provisions to employers with 100 or more employees (irrespective of part-time status), and expand the definition of a "plant closing" to include any closing of a single site or one or more facilities or operating unit within a single site that results in employment loss during any 30-day period for 50 or more employees. The term "mass layoff" would be modified to include a loss of employment at a single site for 50 or more employees. The bill would lengthen the required notification period to 90 days (from 60 days under current law). It would also require that the notice be provided to employees (regardless of bargaining unit representation) and to the Department of Labor (DOL), which is required to use it to notify members of Congress with affected constituents. Employers would also have to provide employees with information about benefits and services available under the WARN Act. Civil penalties on employers that fail to provide employees with appropriate notices would be increased to two times back pay, and failure to post appropriate notices would be subject to a maximum \$500 penalty for each offense. Notice requirements would be waived if a plant closing is due directly or indirectly to a terrorist attack on the U.S.
Effective Date	H.R. 3920 would become effective January 1, 2008.

Trade Adjustment Assistance (TAA)

Current Legislation	<ul style="list-style-type: none"> ■ Trade and Globalization Adjustment Assistance Act of 2007 (S. 1848). ■ Trade and Globalization Assistance Act of 2007 (H.R. 3920).
Status	<ul style="list-style-type: none"> ■ S. 1848 was introduced by Sens. Baucus (D-MT) and Snowe (R-ME) on July 23, 2007 and is awaiting action in the Senate Finance Committee. ■ The House approved H.R. 3920 by a vote of 264-157 on October 31, 2007.
Outlook	<p>Although the TAA program expired at the end of December, the Labor Department states the program is still operating. The Senate Finance Committee is expected to mark up S. 1848 in the coming months and is willing to compromise on other issues in exchange for White House support for this bill.</p> <p>TAA legislation is a top trade priority for Senate Finance Committee Chairman Baucus, and he has stated that he will not consider approving trade agreements until the TAA program is reauthorized. Rep. Nancy Pelosi (D-CA) stated that she does not see any chance for the approval of the U.S.-Colombia trade agreement until a TAA bill is passed. The White House issued a Statement of Administration Policy stating that while the president generally supports a reauthorization of TAA, he would veto H.R. 3920. However, in his State of the Union address, the president urged Congress to renew the TAA and make changes to help workers affected by trade. Analysts indicate that there now appears to be room for compromise on TAA.</p>
Details	<p>S. 1848 would reauthorize all TAA programs through September 30, 2012. The bill would extend TAA benefits to service workers who are affected by international trade, and would streamline the application process by allowing the DOL to certify entire industries for the TAA program. The legislation would increase the refundable, advanceable health care tax credit (HCTC) from 65% to 85% of monthly health insurance premiums. The bill would allow TAA recipients who are not enrolled in training programs would be eligible for the HCTC, and would amend the creditable coverage calculation period to exclude the time between the loss of coverage and the time when the individual receives notice of eligibility for the HCTC. In addition, spouses and dependents would continue to be eligible for the HCTC if the worker becomes eligible for Medicare, in the case of divorce, or death of the worker. The bill would require COBRA coverage continue during the time that the worker is TAA-eligible. In addition, VEBAs would be added to the list of qualifying coverage for the HCTC.</p>

Trade Adjustment Assistance (TAA) (continued)

<p>Details (continued)</p>	<p>H.R. 3920 would reauthorize all TAA programs through September 30, 2012. The bill would streamline the application process by allowing the DOL to certify entire industries for the TAA program. The bill would extend TAA benefits to service workers, to all secondary workers, and provide for automatic certification for workers covered by an International Trade Commission injury determination. The bill would increase the limit on wages in eligible reemployment from \$50,000 a year to \$60,000 a year and the maximum wage insurance benefit (over two years) from up to \$10,000 to up to \$12,000 (to account for inflation). The bill would also extend the 0.2% FUTA surtax through calendar year 2012. This tax would be applied to employers on the first \$7,000 in wages for each employee, equaling a maximum of \$14 per worker, per year. H.R. 3920 would increase the refundable, advanceable HCTC for qualified insurance premiums from 65% to 85% and allow the end-of-year credit to be applied to premiums for qualified insurance that are paid prior to a TAA-eligibility determination (provided the person is ultimately determined eligible for assistance) or December 31, 2007, whichever is later. The bill would allow workers not enrolled in a training program and who are receiving unemployment insurance to be eligible for the HCTC, and would amend the creditable coverage calculation period to exclude the time between the loss of coverage and the time when the individual receives notice of eligibility for the HCTC. The bill would allow spouses and dependents to continue to receive the HCTC when the worker becomes eligible for Medicare, dies, or is divorced. Finally, the GAO would be required to conduct a study on the HCTC to help Congress develop an alternative health benefit for trade-displaced workers.</p>
<p>Effective Date</p>	<p>S. 1848 would become effective 90 days after the date of enactment. The HCTC would apply to taxable years after December 31, 2007.</p> <p>H.R. 3920 would become effective January 1, 2008, and the HCTC would sunset after December 31, 2009.</p>

Immigration Reform and Employment Verification System/VISA Programs

<p>Current Legislation</p>	<ul style="list-style-type: none"> ■ Security Through Regularized Immigration and a Vibrant Economy Act of 2007 (STRIVE Act) (H.R. 1645). ■ H-1B and L-1 Fraud and Abuse Prevention Act of 2007 (S. 1035). ■ Secure America Through Verification and Enforcement Act of 2007 (SAVE Act) (H.R. 4088/S. 2368/S. 2366). ■ Giving Relief to Our Small Businesses Act (H.R. 5233). ■ New Employee Verification Act of 2008 (NEVA) (H.R. 5515). ■ A bill to authorize the Department of Homeland Security to use an employer's failure to timely resolve discrepancies with the Social Security Administration after receiving a "no match" notice as evidence that the employer violated section 274A of the Immigration and Nationality Act (S. 2710). ■ Global Competitiveness Act of 2008 (S. 2839). ■ A bill to amend the Immigration and Nationality Act to adjust the visa program (S. 2868). ■ Seasonal Workforce Assistance Act (H.R. 5849).
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Immigration Reform and Employment Verification System/VISA Programs (continued)

<p>Status</p>	<ul style="list-style-type: none"> ■ The House Immigration, Citizenship, Refugees, Border Security, and International Law Subcommittee held a September 6 panel hearing on H.R. 1645. ■ Sens. Durbin (D-IL) and Grassley (R-IA) introduced S. 1035 on March 29, 2007. ■ H.R. 4088 was introduced by Reps. Shuler (D-NC) and Bilbray (R-CA) on November 6, 2007. On November 15, 2007, Senator Pryor (D-AK) introduced S. 2368, which was referred to the Senate Judiciary Committee. On the same day, Sen. Vitter (R-LA) introduced S. 2366, which is identical to S. 2368, but it was referred to the Senate Finance Committee. ■ H.R. 5233 was introduced by Rep. Drake (D-VA) on February 6, 2008. ■ H.R. 5515 was introduced by Rep. Sam Johnson (R-TX) on February 28, 2008. ■ S. 2710 was introduced by Sen. Sessions (R-AL) on March 5, 2008. ■ S. 2839 was introduced by Sen. Cornyn (R-TX) on April 10, 2008. ■ S. 2868 was introduced by Sen. Gregg (R-NH) on April 16, 2008. ■ H.R. 5849 was introduced by Rep. Melancon (D-LA) on April 17, 2008.
<p>Outlook</p>	<p>H.R. 4088 was introduced toward the end of 2007 setting the stage for possible action this year, and has gained bipartisan support. Two companion bills to H.R. 4088 were introduced in the Senate and referred to different committees.</p> <p>Rep. Drake (R-VA) on March 11 filed a discharge petition to move H.R. 4088 directly to the floor, and it currently has 181 of the 218 signatures needed to succeed. House Ways and Means Committee Chairman Rangel (D-NY) and Rep. McNulty (D-NY) sent a "Dear Colleague" letter to fellow Democrats urging them not to sign the discharge petition because H.R. 4088 would overwhelm the Social Security Administration and cost the agency over \$1 billion in the first year. The letter also noted that the current e-verify system has a 4.1% inaccuracy rate that would prevent these workers from keeping their jobs if H.R. 4088 became law. The CBO issued a cost estimate April 4 stating that the bill would reduce revenues by \$17.3 billion over 10 years because its mandate to use the electronic employment verification program "would result in an increase in the number of undocumented workers being paid outside the tax system." Further, it could cost the private sector over \$136 million, and could cost state, local, and tribal governments about \$68 million in 2008. CBO said the bill would cost the federal government \$33 billion over 10 years but that includes all other provisions of the bill.</p> <p>H.R. 5515 has been endorsed by some employer groups and Rep. Johnson is in talks with Democrats regarding this bill. S. 2710 was introduced as part of a package of fifteen immigration enforcement bills. The sponsors of these bills invoked a procedural rule to bring the bills directly to the floor, where they will try to attach them to other moving vehicles. This is the only bill that would affect employers and could have a chance of passing.</p>

Immigration Reform and Employment Verification System/VISA Programs (continued)

<p>Outlook (continued)</p>	<p>The President's Export Council (PEC) sent a letter to President Bush April 8 urging a significant increase in the number of employment-based visas to remain competitive in the 21st century. The PEC recommended the following be included in any immigration reform legislation: foreign nationals who receive graduate-level degrees from U.S. universities should be exempt from H1-B and green card limits and should be immediately eligible for a green card upon graduation; H1-B and EB (given to foreign nationals who invest money and create jobs in the U.S.) visas should be increased by as much as three times the current level, and accompanying family members should not be counted, and any unused quotas should be carried over to the following year; and modernize the visa process to remove duration limits for H1-B and L visa holders.</p>
<p>Details</p>	<p>H.R. 1645 would require the Department of Homeland Security (DHS) and Social Security Administration (SSA) to develop and certify a technology standard for a new employment verification system within 180 days of enactment. Large employers with 5,000 or more employees in the United States would be required to participate in the new verification system within two years after the date of enactment. Under the new system, an employer would submit an initial inquiry to verify an individual's identity and employment eligibility within five working days after employment commences. The employer would receive confirmation or non-confirmation of an employee's work authorization within one working day after the initial inquiry. Manual verification would be required when the system is unable to initially determine an employee's work eligibility status. An employee would have 15 days to submit additional documentation to verify an individual's identity and eligibility. However, an employer would have to terminate an employee upon final non-confirmation from the system.</p> <p>An employer would have to retain a paper, microfiche, microfilm, or electronic copy of documents during a period beginning on the date of the hire and ending on the date that is the later of three years after the date of hire or one year after the individual's employment is terminated.</p> <p>Effective upon date of enactment, anti-discrimination provisions would prohibit employers from using the new system to discriminate against applicants or employees based on nationality including terminating employees due to an initial non-confirmation, using the system to screen employees prior to offering employment, and using the system selectively. The bill also establishes a safe harbor for employers who use the new verification system. Further, employers who repeatedly violate the new employment verification system would be barred from federal contracts, grants, or cooperative agreements for a five-year period.</p> <p>Under the bill, employers who hire or employ unauthorized immigrants would be subject to civil penalties of at least \$500 but not more than \$4,000 per unauthorized immigrant for a first time offense. An employer who has been fined only one time within a 12 month period would be subject to penalties not less than \$4,000 but not more than \$10,000 per unauthorized immigrant. An employer who has been fined more than one time within a 12 month period would be subject to not less than \$6,000 but not more than \$20,000 per authorized immigrant. Employers who knowingly hire unauthorized immigrants would be subject to penalties up to \$20,000 per unauthorized immigrant and/or imprisoned for not more than three years.</p>

Immigration Reform and Employment Verification System/VISA Programs (continued)

<p>Details (continued)</p>	<p>H.R. 1645 would also establish a new guest worker program, the H-2C visa, which would be valid for three years and renewable for an additional three-year period. Employers would be required to offer jobs to U.S. workers before hiring guest workers. Employers would be prohibited from hiring guest workers in areas with an unemployment rate higher than 9 percent for workers whose education level is at or below high school diploma. The H-2C visa program would have an initial cap of 400,000, adjusted annually based on market fluctuations. Under the H-2C visa program, applicants would be required to demonstrate that they meet the job qualifications and provide evidence of a job offer from a U.S. employer, complete a background check, undergo a medical exam, demonstrate admissibility to the U.S. and pay a \$500 application fee. H-2C workers would be required to leave the U.S. if unemployed more than 60 days. Such workers would receive labor rights and protections including fair and competitive wages, the ability to travel outside of U.S., whistleblower protections, the ability to change employers, and an opportunity to apply for conditional permanent residence after five years of employment and for eventual citizenship.</p> <p>H.R. 1645 would increase employment-based immigrant visas from 140,000 to 290,000 per fiscal year. Unused employment-based visas from previous fiscal years would be recaptured and made available for future fiscal years. Spouses and children seeking visas after October 1, 2004 under the employment-based category will no longer be subject to the cap, but only 800,000 employment-based visas may be issued to spouses and children during any fiscal year. The bill would also slightly increase per country limits for family and employment-based visas. Under the legislation, H1-B visas would be increased to 115,000, which could be increased in a subsequent year if the cap is reached during a fiscal year but may not exceed 180,000. Individuals with advanced U.S. degrees in science, technology, engineering, or math that are working in a related field three years prior to filing an application would be exempt from the H1-B visa cap.</p> <p>S. 1035 would require all employers seeking to hire an H-1B visa holder to pledge good-faith compliance to hire Americans first and that such visa holder would not displace an American worker. Prior to submitting an H-1B application, an employer would be required to advertise the job opening for 30 days on a Department of Labor (DOL) website. Employers would be prohibited from hiring H-1B employees who are then outsourced to other companies. The bill would also prohibit companies from hiring H-1B employees if they employ more than 50 people and more than 50% of their employees are H-1B visa holders. Under the legislation, DOL would have the authority to conduct random audits of any company that uses the H-1B visa program.</p> <p>The DOL would also conduct annual audits of companies with more than 100 employees that have 15% or more of those employees on H-1B visas. Over a 14-day period, the DOL could review employers' H-1B applications for clear indicators of fraud or misrepresentation of material fact. The DOL could initiate its own investigations without the Secretary of Labor granting authorization. The bill would require DHS to share with DOL any information in H-1B applications indicating that an employer is not in compliance with the program. Under the legislation, H-1B and L-1 employers would be required to pay prevailing wages to H-1B and L-1 employees.</p>
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Immigration Reform and Employment Verification System/VISA Programs (continued)

<p>Details (continued)</p>	<p>H.R. 4088/S. 2368/S. 2366 would require every employer to utilize the E-Verify system to ensure every worker is authorized to work in the U.S. The bills would require federal agencies, federal contractors, and employers with more than 250 employees to implement the E-Verify system immediately. Upon notification from the Social Security administration that an employee's social security number does not match the employee's name or date of birth, the bills would require employers to instruct their employees to correct the mismatch within ten days. If an employee fails to correct the mismatch within ten days, the employer is required to terminate employment. The bills also penalize employers who fail to correct information returns by assessing a penalty of up to 40,000. The bills would also prohibit employers from deducting gross income wages paid to unauthorized aliens.</p> <p>H.R. 5233 would extend for two years the exemption of returning workers from the numerical limitations for H-2B temporary workers.</p> <p>H.R. 5515 would create a new mandatory national employment verification process for new hires. Participation would be voluntary for employers who are not currently required to participate in the E-Verify program. The bill would allow employers to choose between the Employment Eligibility Verification System (EEVS) or a new alternative employment verification system, the Secure Electronic Employment Verification System (SEEVs). H.R. 5515 would require employers to verify work eligibility through either EEVS or SEEVs for all new hires. EEVS would replace the government's current E-Verify program and would be paperless. It would allow employers to confirm work eligibility by entering the employee's data through electronic portals that states currently use to enhance child support enforcement. SEEVs would conduct standard background checks on newly hired employees and authenticate their identity through the collection of biometric data to confirm work eligibility. H.R. 5515 would limit the list of documents needed to confirm work eligibility to either a U.S. passport, state driver's license, and identification card or employment authorization documents for work-authorized foreign nationals.</p> <p>Employers could participate in both EEVS and SEEVs, but failure to participate in either would result in a \$50,000 fine. Those employers with significant employee name and social security number mismatches, would be automatically reported to DHS through EEVS and SEEVs. The employment verification systems proposed by H.R. 5515 would eliminate the need for an I-9 form, but employers would still be required to retain I-9 forms for those workers hired prior to H.R. 5515's effective date. H.R. 5515 would require that public and private sector experts be consulted to maintain privacy and ensure accuracy. Work authorization for citizens would be done by the SSA and non-citizen authorization would be conducted by the DHS. This bill would preempt state and local immigration laws. H.R. 5515 would protect employers from liability for employment related actions taken by employees in response to information provided by either EEVS or SEEVs and provide a safe harbor from prosecution for employers who make good faith efforts to follow the law.</p>
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Immigration Reform and Employment Verification System/VISA Programs (continued)

<p>Details (continued)</p>	<p>S. 2710 will allow DHS to use an employer's failure to timely resolve discrepancies with the SSA after receiving a "no match" letter as evidence against the employer when building a case alleging violation of the Immigration and Nationality Act.</p> <p>S. 2839 would temporarily increase H-1B visa caps and allow employers to "recapture" previously unused H-1B visas and permanent employment-based visas from prior fiscal years. The H-1B cap for advanced degree holders would be raised from 20,000 to 30,000 for fiscal years 2009-2011. This bill will also raise the H-1B visa petition fee from \$1500 to \$2,250. Under this bill, employers filing H-1B recapture petitions or seeking permanent employment based visas will be required to pay an additional \$1500 fee. However, health care facilities in underserved areas would be exempt. This bill would reserve 61,000 of the 218,000 recaptured employment-based visas for nurses and physical therapists. If enacted, S. 2839 would also extend the E-Verify program. S.2839 also includes enforcement provisions. Under these provisions, H-1B workers will only be permitted to work in areas with a demonstrated shortage of American workers. The bill would prohibit employers from relying solely on H-1B workers or advertise exclusively for H-1B employees. S. 2839 would ban employers with more than 50 percent H-1B workers from filing more than 1,000 H-1B petitions in a given fiscal year. Further, S. 2839 would bar employers from outsourcing the labor of H-1B workers by requiring H-1B workers to work only at the worksites of either the employer or the employer's affiliates. The bill will also extend the returning worker exemption for H-2B visas for seasonal or one-time temporary workers and for those workers who fulfill nonagricultural labor needs for industries such as construction, health care, landscaping, manufacturing, food processing, resort, and hospitality services.</p> <p>S. 2868 would amend eligibility requirements for the current lottery system to focus on applicants with advanced degrees as opposed to the current nationality and minimum work/educational degree requirements. Under this bill, the revised program would include qualified immigrants who hold a master's or doctorate degree in the life sciences, physical sciences, mathematics, technology, or engineering. However, S. 2868 would not raise the annual 65,000 visa cap.</p> <p>H.R. 5849 would temporarily exempt for 2008 any foreign seasonal nonagricultural worker that had previously counted towards the H-2B visa cap in 2005, 2006, and 2007.</p>
<p>Effective Date</p>	<p>Under H.R. 1645, the various employment verification provisions would generally take effect 180 days after the date of enactment. The H-2C visa program would become effective one year after the date of the enactment, and regulations would be required within six months after date of enactment. The visa provisions would become effective on enactment.</p> <p>S. 1035 would apply to all H1-B applications filed on or after the date of enactment.</p> <p>H.R. 4088/S. 2368/S. 2366 would become effective on the date of enactment.</p> <p>H.R. 5233 would be effective as if enacted on October 1, 2007.</p> <p>H.R. 5515 would become effective on date of enactment, but the E-Verify pilot program will not end until the new EEVS and SEEVs is established.</p> <p>S. 2839 would be effective on the date of enactment.</p> <p>S. 2868 would make the new lottery system effective October 1, 2008.</p> <p>H.R. 5849 would be effective on the date of enactment.</p>

Fair Pay Discrimination

Current Legislation	<ul style="list-style-type: none"> ■ Lilly Ledbetter Fair Pay Act of 2007 (H.R. 2831). ■ The Fair Pay Restoration Act (S. 1843). ■ Civil Rights Act of 2008 (H.R. 5129/S. 2554).
Status	<ul style="list-style-type: none"> ■ The House approved H.R. 2831 by a vote of 225 to 199 on July 31, 2007. ■ The Senate Health, Education, Labor, and Pension Committee (HELP) held a hearing on S. 1843 on January 24, 2008. ■ Rep. Lewis (D-GA) introduced H.R. 5129 on January 23, 2008. Sen. Kennedy (D-MA) introduced S. 2554 on January 24, 2008.
Outlook	<p>In 2007 S. 1843 bypassed the committee process and was placed directly on the Senate calendar. However, it seems to be moving through the normal committee process now as the Senate HELP committee held a hearing on the bill. The Senate may vote on H.R. 2831 this week, but President Bush has vowed to veto it if it passes the Senate. Senate Majority Leader Sen. Reid (D-NV) filed a cloture petition on April 21 and a vote is expected later this week. H.R. 2831 is considered to be one of the most significant employment policy bills this year as it could be addressed again next year depending upon the outcome of the presidential elections. It is unlikely that any senator who votes in favor of cloture this year on H.R. 2831 will reverse his or her vote on the bill next year. While the President would support some changes to remedy what happened in the <i>Ledbetter</i> case, he would likely veto the legislation as currently drafted because it is so broad.</p> <p>Although H.R. 5129/S. 2554 could see some committee or floor action, it is unlikely to be enacted this year.</p>
Details	<p>H.R. 2831/S. 1843 would overturn the recent Supreme Court decision in <i>Ledbetter v. Goodyear Tire & Rubber Co.</i>, which held that the limitations period for filing a claim begins when the discriminatory act occurs and is communicated to the individual and does not re-start with each paycheck (the “paycheck rule”). The bill would amend Title VII of the 1964 Civil Rights Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Rehabilitation Act.</p> <p>H.R. 5129/S. 2554 would amend the Equal Pay Act to require employers to prove that paying female workers less is job related or in furtherance of a legitimate business purpose. The bill would also allow compensatory and punitive damages for equal pay violations.</p>
Effective Date	<p>H.R. 2831/S. 1843 would be effective May 28, 2007 and apply to all pay discrimination claims pending on or after that date.</p> <p>H.R. 5129/S. 2554 would become effective upon enactment.</p>

Expanded Leave

Current Legislation	<ul style="list-style-type: none"> ■ Healthy Families Act (S. 910 /H.R. 1542). ■ Crime Victims Employment Leave Act (H.R. 5845).
Status	<ul style="list-style-type: none"> ■ On June 21, 2007 the House Education and Labor Subcommittee on Workforce Protections held its first installment of a series of hearings addressing a flexible working environment, during which H.R. 1542 was discussed along with other legislation. ■ Rep. Emanuel (D-II) introduced H.R. 5845 on April 17, 2008.
Outlook	Paid sick leave is expected to receive some attention this year, although a presidential veto would be likely.
Details	<ul style="list-style-type: none"> ■ S. 910/H.R. 1542 would require employers with 15 or more employees to offer seven days of paid sick leave annually to employees who work more than 30 hours per week. The bill would also provide employees who work between 20 and 30 hours weekly or between 1,000 and 1,500 hours annually to receive prorated paid sick leave. Employers would be allowed to request certification from employees who request more than three consecutive paid sick days. Under the legislation, paid sick leave could be used to recover from physical or mental illnesses, medical appointments, or to care for sick family members. ■ H.R. 5845 would amend the Family and Medical Leave Act to allow victims of violent crime or domestic abuse and their immediate family members to attend court proceedings relating to the crimes.
Effective Date	<ul style="list-style-type: none"> ■ S. 910/H.R. 1542 would take effect one year after final regulations are issued. ■ H.R. 5845 would become effective upon enactment.

Military Service and Differential Pay/Tax Relief

Current Legislation	<ul style="list-style-type: none"> ■ Help Our Patriotic Employers at Helping Our Military Employees (HOPE at HOME) Act (S. 384). ■ Defenders of Freedom Tax Relief Act of 2007 (S. 1593). ■ Heroes Earnings Assistance and Tax Relief (HEART) Act of 2007 (H.R. 3997). ■ Military Spouse Education and Employment Act of 2008 (S. 2559).
Status	<ul style="list-style-type: none"> ■ S. 384 was introduced by Sen. Landrieu (D-LA) on January 24, 2007. ■ S. 1593 was introduced by Sens. Baucus (D-MT) and Grassley (R-IA) on June 12, 2007. ■ The House unanimously passed H.R. 3997 on November 6, 2007. The Senate passed an amended bill by unanimous consent on December 12. The House further amended and unanimously passed the bill in H. Res. 884 on December 18. H.R. 3997 returned to the Senate where it was modified again and passed on December 19. ■ S. 2559 was introduced by Sens. Corker (R-TN) and McCaskill (D-MO) on February 6, 2008.

Military Service and Differential Pay/Tax Relief (continued)

Outlook	H.R. 3997 will be taken up again in 2008 where the differences in the House and Senate versions will need to be reconciled in a conference committee.
Details	<p>S. 384 would create an employer tax credit of up to half the salary that an active reservist or guard member would have earned had he or she remained a civilian. Any differential wage payments to active duty military would be reported as “wages” on W-2 forms.</p> <p>S. 1593 would allow the differential military pay for active duty guardsman and reservists to be treated as wages and would be reported on the Form W-2 and subject to withholding. The legislation would make it easier for employers to contribute to their employee’s retirement plans while on active duty. The bill would also make permanent a provision that allows reservists called to active duty for at least 179 days to take penalty-free early withdrawals from retirement plans. The reservists would have two years from the last day of the active duty period to contribute distributions to an IRA.</p> <p>H.R. 3997 would modify USERRA (Uniformed Services Employment and Reemployment Rights Act) to allow the day prior to date of death to be treated as the date the employee returned to work for purposed payment of benefits under a qualified plan. Employers could make certain contributions to a qualified plan on behalf of an employee who was killed or disabled in combat. The bill would also allow differential wages paid by an employer to an employee who is called to active military duty to be included in the calculation of wages for retirement plan purposes. The bill would make permanent an expiring tax code provision permitting active duty reservists to make penalty-free withdrawals from retirement plans, and would allow recipients of military death benefit gratuities to make a tax-free roll over to a Roth IRA or an Education Savings Account. As amended by H. Res. 884, the House added benefits for volunteer firefighters and emergency medical technicians back to the legislation. The bill also would allow volunteer firefighters and emergency medical personnel to exclude any benefits they receive from state or local governments from their taxable income. The exclusion would sunset after 2015. The Senate opposes extending the tax exclusion benefits to volunteer firefighters and emergency medical technicians. In addition, the Senate version of H.R. 3997 includes a provision that would allow reservists previously covered under TRICARE to opt back into a civilian employer’s health insurance plan at any time.</p> <p>S. 2599 would provide employers of spouses of active duty military personnel with a work opportunity tax credit. The value of the tax credit would be doubled for employers who employ these spouses in a professional career, pay a salary of 150 percent of the median annual earnings rate, and allow the spouse to work primarily from home.</p>
Effective Date	<p>Under S. 384, the employer tax credit would apply to taxable years beginning after the date of enactment. The differential wage would apply to plan years beginning after December 31, 2006.</p> <p>S. 1593 would generally apply to years beginning after December 31, 2007.</p> <p>H.R. 3997 would apply to remuneration paid after December 31, 2007.</p> <p>S. 2599 would be effective upon enactment.</p>

Sexual Orientation Discrimination

Current Legislation	Employment Non-Discrimination Act (ENDA) of 2007 (H.R. 3685).
Status	The House passed H.R. 3685 by a vote of 235 to 184 on November 7, 2007.
Outlook	Senate leaders would like to consider the bill this year, and Senator Kennedy has expressed optimism that the bill will pass. The business community has remained largely silent on this issue.
Details	H.R. 3685 would prohibit employers, labor organizations, and other groups from discriminating against employees based on actual or perceived sexual orientation and would prohibit retaliation against these employees. The bill also specifically states that covered employers are not required to treat an unmarried couple in the same manner as a married couple for purposes of employee benefits. Further the bill would not apply to organizations that are exempt from the religious discrimination provisions of Title VII of the Civil Rights Act of 1964. In addition, the bill clarifies that it does not alter the federal Defense of Marriage Act (DOMA) and that the term "married" has the meaning given such term in DOMA.
Effective Date	H.R. 3685 would become effective six months after the date of enactment and would not apply to conduct occurring before the effective date.

Americans with Disabilities Act (ADA)

Current Legislation	ADA Restoration Act (ADARA) of 2007 (H.R. 3195/S. 1881).
Status	<ul style="list-style-type: none"> ■ The House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties held a hearing on H.R. 3195 on October 4, 2007. The House Education and Labor Committee held a hearing January 29, 2008 on H.R. 3195/S. 1881. ■ The Senate Health, Education, Labor and Pensions Committee held a hearing on the bill on November 15, 2007.
Outlook	<p>H.R. 3195/S. 1881 is a top priority for House Education and Labor Committee Chairman Miller (D-CA). Although this bill has gained majority support in the House and a mark up is expected in early March, very few Senators have expressed support for the ADARA. Business groups strongly oppose the legislation as an expansion of the ADA, not a restoration of its original intent, and it would likely be vetoed by President Bush as drafted. Although members of the House Education and Labor Committee generally concurred that some changes may be needed to the ADA to address exclusions created by the courts, Republicans warned that the legislation as drafted could create unintended consequences that dilute the law's protections. The Department of Justice suggested a potential compromise to clarify that for purposes of coverage, a disability must be evaluated without regard to mitigating measures, except for those who can mitigate poor eyesight by wearing corrective lenses.</p> <p>Although the bill could pass easily in the House, Majority Leader Hoyer has instructed disability groups to meet with business groups to discuss potential areas of compromise. Disability groups are pressing for ADARA to be signed into law on July 26, 2008, the anniversary of the ADA. The House is expected to consider ADARA the week of April 14.</p>

Americans with Disabilities Act (ADA) (continued)

Details	H.R. 3195/S. 1881 would amend the definition of “disability” under the Americans with Disabilities Act (ADA) in response to U.S. Supreme Court rulings that narrowly interpreted the definition. The bill would define “disability” to include a physical or mental impairment. For purposes of determining impairment, mitigating measures, such as treatment, medication, device or other measure used to eliminate, mitigate, or compensate for the effect of an impairment would be disregarded. Any adverse action taken against an individual due the use of mitigating measures would constitute discrimination under the ADA.
Effective Date	H.R. 3195/S. 1881 would become effective upon enactment.

National Labor Relations Act (NLRA)

Current Legislation	<ul style="list-style-type: none"> ■ Re-Empowerment of Skilled and Professional Employees and Construction Tradesworkers (RESPECT) Act (H.R. 1644/S. 969). ■ Civil Rights Act of 2008 (H.R. 5129/ S. 2554).
Status	<ul style="list-style-type: none"> ■ The House Committee on Education and Labor approved H.R. 1644 on September 19, 2007 by a vote of 26-20. ■ Rep. Lewis (D-GA) introduced H.R. 5129 on January 23, 2008. Sen. Kennedy (D-MA) introduced S. 2554 on January 24, 2008.
Outlook	These bills could be considered in 2008 but enactment is unlikely.
Details	<p>H.R. 1644 would change the definition of “supervisor” under the National Labor Relations Act (NLRA) by requiring the individual classified as a “supervisor” to have authority over employees for a majority of the individual’s work time and to remove authority to assign other employees and to responsibly direct employees as conditions for being considered a “supervisor.” The revision would permit and protect the rights of certain employees currently classified as “supervisors” to collectively bargain under the provisions of the NLRA.</p> <p>H.R. 5129/S. 2554 would amend the NLRA to allow the National Labor Relations Board to award back pay to undocumented illegal workers who are the victims of unlawful employment practices.</p>
Effective Date	<p>H.R. 1644 would be effective on the date of enactment.</p> <p>H.R. 5129/S. 2554 would be effective on the date of enactment.</p>

Mandatory Arbitration

Current Legislation	Preservation of Civil Rights Protections Act of 2008 (H.R. 5129/ S. 2554).
Status	Sen. Kennedy (D-MA) introduced S. 2554 on January 24, 2008. The House Education and Labor Subcommittee on Health, Employment, Labor and Pensions held a hearing that discussed H.R. 5129 and other employment discrimination issues on February 12, 2008.
Outlook	Although there may be some committee or floor action on the bill, it is unlikely to be enacted this year.
Details	H.R. 5129/S. 2554 would prohibit employment contracts that require arbitration of claims unless the parties knowingly and voluntarily consent to arbitration or the arbitration is part of a collective bargaining agreement.
Effective Date	H.R. 5129/S. 2554 would apply with respect to all employment contracts in force before, on, or after the date of enactment.

Worker Classification

Current Legislation	Taxpayer Responsibility, Accountability, and Consistency Act (H.R. 5804).
Status	Rep. McDermott (D-WA) introduced H.R. 5804 on April 15, 2007.
Outlook	Key members of the Ways and Means Committee have co-sponsored H.R. 5804 along with Rep. McDermott, including Subcommittee Chairman Rep. Neal (D-MA) and Rep. Tierney (D-MA). This bill was introduced in response to hearings held by two Ways and Means subcommittees last year.
Details	H.R. 5804 would reduce the number of workers that can be classified as independent contractors. This bill would repeal the safe harbor provisions of section 530 of the 1978 Revenue Act that prevent the IRS from collecting employment taxes from employers who reasonably misclassify workers. The bill would add internal revenue code section 3511 which would define independent contractor. Under H.R. 5804, workers would also be permitted to petition the IRS for a review of their classification status. This bill would require the Treasury Department to send annual reports to Congress on worker classification that include information on the number and type of enforcement actions against employers that have misclassified workers, relief obtained as a result of those actions, an estimate of the number of employers misclassifying workers, the number of workers affected, and the industries involved, the impact of the misclassification on the federal tax system, and information related to any petitions filed for a review of a classification status. H.R. 5804 would also increase the penalties imposed on taxpayers who fail to file correct information returns with the IRS.
Effective Date	H.R. 5804 would be effective on the date of enactment.