

Federal Legislation Quick Guide

June 11, 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>.

WARN Act

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| 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. The Senate Health, Education, Labor, and Pensions Committee held a hearing on H.R. 3920 on May 20, 2008. |
| Outlook | The WARN Act provisions could be dropped during conference committee with the Senate bill (S. 1848), but the timing of a conference is uncertain. 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)

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| 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. The Senate Health, Education, Labor, and Pensions Committee held a hearing on H.R. 3920 on May 20, 2008 focusing on the WARN Act provisions. |
| Outlook | <p>The Senate Finance Committee hopes 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. 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) has 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)

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| <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

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| <p>Current Legislation</p> | <ul style="list-style-type: none"> ■ Secure America Through Verification and Enforcement Act of 2007 (SAVE Act) (H.R. 4088/S. 2368/S. 2366). ■ New Employee Verification Act of 2008 (NEVA) (H.R. 5515). ■ High Skilled Per Country Level Elimination Act (H.R. 5921). ■ An Act to amend the Immigration and Nationality Act to authorize certain aliens who have earned a master's or higher degree from a United States institution of higher education in a field of science, technology, engineering, or mathematics to be admitted for permanent residence. (H.R. 6039). |
| <p>Status</p> | <ul style="list-style-type: none"> ■ 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 (identical to S. 2368) that was referred to the Senate Finance Committee. ■ H.R. 5515 was introduced by Rep. Sam Johnson (R-TX) on February 28, 2008. ■ H.R. 5921 was introduced by Rep. Lofgren (D-CA) on April 29, 2008. ■ H.R. 6039 was introduced by Reps. Lofgren (D-CA) and Cannon (R-UT) on May 13, 2008. |

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

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| <p>Outlook</p> | <p>H.R. 4088 has gained bipartisan support. Two companion bills to H.R. 4088 were introduced in the Senate and referred to different committees. Rep. Drake (R-VA) on March 11 filed a discharge petition to move H.R. 4088 directly to the floor, which Currently has 189 out of the 215 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. CBO estimates the bill would cost \$17.3 billion over ten 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 ten 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. On May 6, the House Ways and Means Social Security Subcommittee held a hearing on the impact of a mandatory e-verification program on the Social Security Administration. At the hearing business groups reiterated its support for H.R. 5515. The hearing was also held, in part, to highlight the complexity of immigration issues in order to relieve some pressure from Congress to act on immigration policy.</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>H.R. 6039 has bipartisan support in the House and could be added to another vehicle later in the year.</p> |
| <p>Details</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> |

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

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| <p>Details (continued)</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. H.R. 5921 would eliminate the arbitrary per-country caps for employment-based immigrants and increase available green cards by allowing the Department of Homeland Security and the Department of State by rolling over green cards that go unused each year into the next fiscal year. At the outset, the bill would allow issuance of 210,000 visas that went unused between FY 1992 and 2007.</p> <p>H.R. 6039 would amend the Immigration and Nationality Act to allow foreign born master's and doctorate level graduates in science, technology, engineering, and mathematics from American universities faster access to visas and green cards if the students have secured employment with U.S. employers without numerical limitations.</p> |
| <p>Effective Date</p> | <p>H.R. 4088/S. 2368/S. 2366 would become effective on the date of enactment.</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>H.R. 5921 would become effective on the first day of the first fiscal year after the date of enactment.</p> <p>H.R. 6039 would become effective on the date of enactment.</p> |

Fair Pay Discrimination

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| Current Legislation | <ul style="list-style-type: none"> ■ Lilly Ledbetter Fair Pay Act of 2007 (H.R. 2831). ■ Fair Pay Act of 2008 (S. 2945). |
| Status | <ul style="list-style-type: none"> ■ The Senate failed (by four votes) to end debate and vote on H.R. 2831 on April 23, 2008. ■ Sen. Voinovich (R-OH) introduced S. 2945 on April 30, 2008. |
| Outlook | <p>Senator Kennedy (D-MA) would like to bring a bill up for another vote this year. While the President would support some changes to remedy what happened in the <i>Ledbetter</i> case, he would likely veto H.R. 2831 as currently drafted because it is so broad. S. 2945 is a more narrowly crafted bill that could generate support.</p> |
| Details | <p>H.R. 2831 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>S. 2945 would require that the statute of limitations on a pay discrimination claim begin when the employee “knew or should have known” about the discrimination. Employees would then have 180 days to file a claim with the EEOC.</p> |
| Effective Date | <p>H.R. 2831 would be effective May 28, 2007 and apply to all pay discrimination claims pending on or after that date.</p> <p>S. 2945 would be effective as if enacted on May 28, 2007 and apply to all claims of discrimination in compensation under title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, title I and section 503 of the Americans with Disabilities Act, and sections 501 and 504 of the Rehabilitation Act of 1973, that are pending on or after that date.</p> |

Military Service and Differential Pay/Tax Relief

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| Current Legislation | The Heroes Earnings Assistance and Relief Tax Act of 2008 (H.R. 6081). |
| Status | The House and Senate unanimously passed H.R. 6081 on May 20 and May 22, respectively. |
| Outlook | The president is expected to sign H.R. 6081 into law. |
| Details | H.R. 6081 allows any differential military pay to be included in the calculation of wages for retirement plan purposes and allows employers to report the differential military pay on the W-2. The bill modifies the Uniformed Services Employment and Reemployment Rights Act (USERRA) to require the day prior to the date of death to be treated as the date the employee returned to work for purposes of triggering payment of benefits under a qualified plan retroactive to January 1, 2007, so that plans providing for accelerated vesting, pre-retirement death benefits or other survivor benefits to participants who die in service under the plan to provide the same benefits to survivors of persons who die while on military duty. |

Military Service and Differential Pay/Tax Relief (continued)

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| Effective Date | H.R. 6081 applies to remuneration paid after December 31, 2008 for wage withholding rules. Otherwise, the provision is effective for years beginning after December 31, 2008. |
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Sexual Orientation Discrimination

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| 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 (D-MA) 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)

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| Current Legislation | ADA Restoration Act (ADARA) of 2007 (H.R. 3195/S. 1881). |
| Status | The House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties held a hearing on H.R. 3195 on October 4, 2007. The Senate Health, Education, Labor and Pensions Committee held a hearing on S. 1881 on November 15, 2007. The House Education and Labor Committee held a hearing January 29, 2008 on H.R. 3195/S. 1881. |
| Outlook | Disability groups and employer trade associations have drafted a compromise bill that is more palatable to employers. Currently, both disability and employer groups are trying to gain Congressional support for the compromise. Employer groups are expected to press for enactment prior to the end of this Congress because disability groups may revoke their support for the compromise depending upon the outcome of the Presidential elections. |

Americans with Disabilities Act (ADA) (continued)

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| 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)

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| 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 for positioning purposes in the November elections 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> |

Older Workers

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| Current Legislation | Incentives for Older Workers Act (S. 2933). |
| Status | Sens. Smith (R-OR) and Kohl (D-WI) introduced S. 2933 on April 29, 2008. |
| Outlook | The Senate Special Aging Committee could hold a hearing on S. 2933, but further consideration by the Senate is unlikely this year. Phased Retirement is an emerging policy issue as employers devise strategies to retain valuable older workers and avoid the implications of retiring too early. |
| Details | S. 2933 would provide employers incentives to hire or retain older workers. Under the bill, these incentives would be to remove penalties in certain pension plans for workers who received reduced pay for reduced hours while phasing into retirement, allow seniors to earn delayed retirement credits for Social Security purposes for an additional two years until age 72, instead of 70, and reduce the amount of Social Security benefits lost for those seniors who continue working, but claim benefits prior to normal retirement age. S. 2933 would also form a National Resource Center on Aging and the Workforce within the Department of Labor to collect, organize, and disseminate older worker information, require states to include older worker representatives on the state and local workforce investment boards, set aside five percent of the Workforce Investment Act funds to assist individuals, expand eligibility of the Work Opportunity Tax Credit to include older workers, and clarify that certain defined benefit pension plans define normal retirement age as the earlier of the attainment of a specified age or the attainment of 30 or more years of service. |
| Effective Date | S. 2933 would be effective on the date of enactment. |

Employment Taxes

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| Current Legislation | Heroes Earnings Assistance and Relief Tax Act of 2008 (H.R. 6081). |
| Status | The House and Senate unanimously passed H.R. 6081 on May 20 and May 22, respectively. |
| Outlook | The president is expected to sign H.R. 6081 into law. A Senate supplemental appropriations bill (H.R. 2642) included a provision barring the use of federal funds to pay government contractors that avoid payroll taxes by using offshore companies. Some House staffers believe this is redundant with the expected enactment of H.R. 6081. However, Senate staffers indicate that H.R. 2642 merely implements a ban on the use of federal funds to pay payroll tax evading government contractors while H.R. 6081 amends the tax code to raise taxes on these government contractors. |
| Details | H.R. 6081 would treat foreign subsidiaries of U.S. companies performing services under a U.S. government contract as American employers for employment tax purposes. This bill would hold domestic parent companies jointly liable for employment taxes imposed on the foreign subsidiary. |
| Effective Date | H.R. 6081 would be effective on the date of enactment. |

Paid Leave

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| Current Legislation | Airline Flight Crew Technical Corrections Act (H.R. 2744/S. 2059). |
| Status | The House passed H.R. 2744 by a vote of 402-9 on May 20, 2008. S. 2059 was introduced by Sen. Clinton (D-NY) on September 18, 2007. |
| Outlook | It is uncertain when the Senate will take up S. 2059. |
| Details | H.R. 2744/S. 2059 would amend the Family and Medical Leave Act to include flight attendants and pilots if they have been paid for or worked a minimum of 504 hours a year and at least 60% of the employer's full-time schedule, or the equivalent, in the 12 months preceding the leave. |
| Effective Date | H.R. 2744/S. 2059 would be effective on the date of enactment. |