



Newsletters

Labor & Employment Legislative Update

September 21, 2017

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- [Employee's Emotional Distress Claim Not Pre-empted but Not Actionable Emotional Distress Either](#)
- [Obama Administration's Overtime Rule Invalidated](#)
- [EEOC Sues Illinois Employer for Refusing to Provide Disabled Employee Additional Leave](#)
- [New York Paid Family Leave: Tax Implications and Guidance](#)
- [Wisconsin Court of Appeals Green Lights Right-to-Work Law](#)

Labor & Employment Legislative Update

By Tom Luetkemeyer

A number of key legislative initiatives are currently pending before Congress which, if passed, will significantly impact the rights of employers and employees. These bills address a variety of subjects, including union organizing, joint employer liability, wellness programs, paid leave, and E-Verify. (Many of these bills and their impact on employers will be discussed at our upcoming [Annual Labor & Employment Seminar](#) on October 12, 2017.)

- **The Workforce Democracy and Fairness Act.** This bill was introduced in the House of Representatives to reverse what has come to be known as the NLRB's "quickie election rule" and to eliminate, in large part, the concept of micro units. If passed, the bill would amend the National Labor Relations Act to require the NLRB to prohibit balloting until at least thirty-five days after the filing of a representation petition, and prohibit hearings on the representation petition for at least two weeks after the filing. The bill would also alter the factors the NLRB must consider to determine whether employees share a community of interest for purposes of union organizing. As these new factors are more inclusive, it will be very difficult to form micro units. The bill has been approved by the House Education and Workforce Committee, but has yet to be called for a vote in the House.
- **The Save Local Business Act.** This bill was introduced in the House of Representatives in July to amend the National Labor Relations Act by limiting when an employer might be considered a "joint employer" with another entity under both the National Labor Relations Act and the Fair Labor Standards Act. The legislation is a reaction to the NLRB's decision in *Browning-Ferris* which significantly (and notoriously) expanded the notion of

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joint employer liability. The bill has been referred to the House Education and Workforce Committee.

- **The Employee Privacy Protection Act.** This bill was introduced in the House of Representatives to limit the employee contact information employers are required to provide to union organizers during an organizing campaign in what is known as the "Excelsior" list. If enacted, the bill would limit the information provided on the Excelsior list solely to the names of employees in a bargaining unit and one additional piece of contact information such as the employee's mailing address, email address or telephone number. The additional piece of information would be selected by the employee himself or herself. The measure was approved by the House Education and Workforce Committee in June.
- **The Preserving Employee Wellness Programs Act.** Wellness incentives recently have been the subject of EEOC enforcement actions and guidance. A bill was introduced in the House of Representatives to expand the scope of wellness incentives employers may offer workers without violating the Americans with Disabilities Act or the Genetic Information Non-Discrimination Act.
- **The Family and Medical Insurance Leave (FAMILY) Act.** Legislation has been introduced in both the United States Senate and the House of Representatives which would establish a national paid family and medical leave insurance program to be funded by contributions from employers and workers. The companion bills appear to have bipartisan support. The House bill has been referred to the Ways and Means Human Resources Subcommittee and the Senate bill has been sent to the Senate Finance Committee.
- **The Working Family Flexibility Act.** Legislation has been introduced in both the House and the Senate to allow employers to offer compensatory time off instead of overtime for wages for all hours worked in excess of forty. The bill would establish a voluntary program which allows an employee to earn up to 160 hours of compensatory time to be used at his or her discretion. The House bill was approved by the Education and the Workforce Committee and was passed by the House. The Senate bill has been assigned to the Committee on Health, Education, Labor and Pensions.
- **The Accountability Through Employment Verification Act.** On the immigration front, legislation has been proposed in both the House and the Senate to make the E-Verify system permanent and mandatory. If passed, the bill would result in the discontinuation of the use of the I-9 Employment Verification Form. The bill has been referred to the Judiciary Committees of the House and the Senate.

This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.