

2006 HR Developments & What To Look For In 2007

As we start a new year it's a good time to review workplace developments of 2006 and make sure that you've integrated applicable ones into your policies and practices. The following information highlights a few selected federal developments. Remember to check your state law as well. The states were very busy in 2006. In 2007 you can expect to continue to see a lot of activity on the federal and state levels that will significantly impact the workplace. Several possibilities are also discussed below.

2006 Highlights

- **2006 Elections**

The 2006 elections may have a greater impact on workplaces than all the year's court cases and legislation combined. The recent election not only changed the faces and parties in Congress it will also change the focus and priorities in Washington. The 2006 election had a major impact on state government as well. Prior to November 7th the Republicans controlled a majority of state governorships and more state legislatures than the Democrats. In 2007 this picture will be reversed. Democrats will oversee more state houses and governing bodies.

- **U.S. Supreme Court Broadens Retaliation Protections**

In an important decision in *Burlington Northern & Santa Fe Railway v. White*, the U.S. Supreme Court announced that to prevail in a retaliation claim, an employee does not have to show that allegedly retaliatory conduct affected "compensation, terms, conditions or privileges of employment." Instead, a plaintiff/employee need only prove that a "reasonable person" would have been convinced not to pursue legal rights by the employer's conduct, even if such conduct is unrelated to the workplace. Any employer conduct that is "materially adverse" to an employee can be retaliatory. It probably is now easier to assert a retaliation claim. Remember that it's not unusual for employers to win discrimination cases but then lose related retaliation suits. And, the problem is growing. Retaliation claims have jumped more than thirty-five percent over the last decade.

- **Revised EEO-1 Report**

The U.S. Equal Employment Opportunity Commission (EEOC) implemented the final revisions to the EEO-1 Report, also known as the Employer Information Report. Changes have been made to the ethnic and racial categories including: a new category called "two or more races," dividing "Asian or Pacific Islander" into 2 categories ("Asian" and "Native Hawaiian or other Pacific Islander"), renaming "Black" to "Black or African American," and renaming "Hispanic" to "Hispanic or Latino." Changes to the job categories include: dividing "Officials and Managers" into two categories (Executive/Senior Level Officials and Managers; and First/Mid-Level Officials and Managers) based upon their responsibilities and degree of influence in an organization. Additionally, business and financial occupations were moved from the Officials and Managers category to the Professionals category.

- **New Pension Protection Act**

The new federal Pension Protection Act of 2006 makes significant changes to the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1986. While most of the changes affect pension plans, other types of retirement vehicles (e.g., 401ks) are impacted as well. Funding rules regarding defined benefit plans have been dramatically changed in an attempt to minimize financial risks. Defined contribution plan changes (e.g., 401ks) include modifications to vesting requirements and enrollment procedures. The changes are extensive and should provide full employment to accountants and benefits attorneys for a long, long time.

- **EEOC**

In 2006 the U.S. Equal Employment Opportunity Commission (EEOC) revised its Compliance Manual to address more “contemporary” as well as more subtle forms of discrimination. There is no change in existing law but the new text provides better guidance as to what constitutes discrimination in our changing world. The EEOC also announced that it will focus on patterns, practices, or policies which have significant impact on industries, certain professions, particular geographic areas or companies. This is an important change from the EEOC’s historical emphasis on individual employee cases. The EEOC also issued a new fact sheet regarding the application of the Americans with Disabilities Act (ADA) to applicants and employees who are deaf or have hearing impairments.

- **2007 IRS Adjustments For Benefits & Retirement Plans**

The IRS has announced its 2007 adjustments to benefit and retirement plans limits. 401(k), 403(b) and 457 plan elective deferrals will increase from \$15,000 to \$15,500, with the extra catch-up contribution for those 50 or over staying at \$5,000. The Section 415 limits will rise from \$44,000 to \$45,000 for defined contribution plans and from \$175,000 to \$180,000 for defined benefit plans. Contributions for SIMPLE plans will be set at \$10,500 with a catch-up limit of \$2,500. The 2007 Social Security wage base will increase from \$94,200 to \$97,500. The Medicare tax continues to apply to all wages without limit.

- **Immigration**

The Department of Homeland Security has issued several new rules relating to immigration. The Bureau of Immigration and Customs Enforcement (ICE) has published an interim rule dealing with the use and retention of electronic I-9s and a proposed regulation regarding how employers should deal with notices that employee Social Security numbers are “mismatched.”

- **National Labor Relations Board**

Several interesting NLRB rulings occurred in 2006 including decisions that “charge” nurses should be considered supervisors and therefore are ineligible to join unions, that an employer could not prohibit a union from using the company email because the system had been used for many other non-business activities, and that struck down a mandatory arbitration policy in an employee handbook which required arbitrating all disputes “relating to or arising out of employment” because it might be misunderstood to prohibit employees from filing an unfair labor practice charge. It’s a common misperception that the NLRB and its rulings only apply to union environments. Therefore it’s important for non-union workplaces to understand the issues as well.

What To Expect In 2007

- **The States**

Look for the states to continue to take a large role in attempting to solve the major issues of the day. The Democratic power shift will likely mean even more attention to wage issues, health care (we’ll all be watching Massachusetts to see how that works), identity theft, and immigration. While, at first glance immigration may appear to be a federal issue, there has already been much state activity surrounding benefits for immigrants, increasing fines for hiring illegals, and rewarding organizations who participate in state immigration programs with state contracts. Although it’s not likely that there will be a rush to adopt a San Francisco style paid leave program, expect more states to become involved in family and medical leave and other leave issues.

- **The Federal Government**

Healthcare & Retirement. We can expect lots of talk in this area as businesses who can't pay skyrocketing costs and consumers who fear losing coverage speak more and more loudly. However, given the narrow Democratic majorities and the 2008 presidential election looming don't expect big things to happen. There may be continued discussion regarding expansion of mental health benefits and other coverage, electronic health records and more flexibility for employees with Section 125 Flexible Spending Accounts. Retirement security is also an issue touted by top Democrats.

Minimum Wage. While there have been many rumblings the past few years about raising the federal minimum wage from \$5.15/hour nothing has happened. Expect that to change as Democrats take control of both houses of Congress. The Democrats intend to take on this issue very early and quickly in 2007. Past proposals have included a \$2.10 increase over a couple of years.

Leave. There have been numerous proposals to "clarify" as well as expand the Family and Medical Leave Act (FMLA). Proposed changes have included increasing the number of organizations that must provide leave (down from 50 employee organizations), to increasing employee eligible, allowing leave to be taken for school meetings, routine medical appointments, domestic abuse, and elder care. There have also been past proposals that would require paid sick leave.

Identity Theft. The states have taken the lead in this area, passing legislation regarding the use/protection of Social Security numbers, among other things and notification requirements if there are security breaches. The federal government is likely to take an increased role.

Immigration. This remains a hot topic for the nation and will continue to be a significant issue for employers. There likely will be more initiatives that impose additional work eligibility and identity verification procedures as well as increased penalties for employers who violate the rules. Concerns are growing that we need to continue to be able to attract highly skilled (aka technology and science) foreign employees. The U.S. Visa program may also receive attention.

Discrimination. The states have taken the lead here lately as well passing legislation regarding genetic and sexual orientation discrimination. Congress has addressed some genetic discrimination issues. Anticipate more discussion in both of these areas.

Department of Labor and Equal Employment Opportunity Commission. Changes may be seen in the actions and priorities of these agencies as well as others that deal with human resource issues. The Democratic Congress will be able to monitor and provide stronger oversight of their actions. This could result in more regulatory actions coming out of these groups.

Interested in reprinting the above information?

As a service to the human resource community, we are pleased to allow our white papers to be reprinted. However, when reprinting this article, you must maintain the accuracy and intent of the content, and you must include a final credit paragraph which includes our name, HRN Management Group, and a link to our site at www.hrnonline.com. Need text version? Let us know.

performance_{pro}

**Are You Satisfied With Your
Performance Evaluation?**

If not, consider Performance Pro. It's flexible, easy to use and will save you time!