AFFILIATE OF SHRM SOCIETY FOR HUMAN RESOURCE MANAGEMENT

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Cut and Paste Post
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The Legislature Continues…

Governor Bullock Signs Chamber Priority Into Law

On Thursday, Governor Steve Bullock signed HB 232 (Knudsen) to strengthen exclusive remedy in work comp into law - a top Chamber priority for the 2013 Session. The new law adds an evidentiary standard - clear and convincing evidence - for the courts to utilize to determine whether an act that injured a worker was intentional or deliberate. Although HB 232 strengthens "exclusive remedy" - the doctrine that work comp is the sole remedy for an injured worker - the law in no way reduces an injured worker's access to full work comp benefits.

There have been 4 bills submitted to the Governor for signing.

HB 226: **Exempt computer professionals from OT pay.**
HB 127: **Revise unemployment insurance laws**
SB 128: **Revise when unemployment insurance rates not affected by benefits paid.**
SB 185: **Revise veteran public employment hiring laws.**

In national news:

Huge Jump in I-9 Audits

3/15/2013 By Allen Smith

The number of I-9 audits multiplied over the past decade, rising from almost none—just three in 2004—to 500 in 2008 and 3,004 in 2012.

Employers should pay attention accordingly, as the fines for substantive and procedural violations of the Immigration Reform and Control Act (IRCA) can add up quickly, Daniel Brown, an attorney with Fragomen in Washington, D.C., said on March 12, 2013, at the Society for Human Resource

Management's 2013 Employment Law & Legislative Conference.

Penalties

For knowing violations, IRCA penalties range from:

$375-$3,200 for each unauthorized employee for a first offense.

$3,200-$6,500 per unauthorized worker for a second offense.

$4,300-$16,000 per worker for a third offense.

For paperwork violations, the fines range from $110 to $1,100 per violation, he added.

When the government assesses penalties, the biggest factor it examines is the percentage of reviewed I-9 forms that have errors, said Brown, who is a former counselor to the assistant secretary at the U.S. Immigration and Customs Enforcement (ICE). If more than 50 percent have paperwork violations, for example, the paperwork fines typically are $900 per I-9, which may be adjusted up or down, he added.

Put Yourself, Not Notaries, on the Hook

One frequent error employers make is failing to have someone physically present on their behalf while the new employee holds the I-9 in his or her hands and the employer representative fills out Section 2.

"The law has not kept up with business practice," Brown remarked, noting that ICE has refused to ease up on this requirement even though telecommuting far from any office is commonplace. "Large employers ask all the time how they're to do this," he said.

A notary public is one option, but increasingly, notaries are hesitant to act in this capacity out of fear that they may be held liable if there are I-9 penalties later.

"We've helped employers prepare memos to take to notaries noting that the employer would be on the hook, not the notary," he said, explaining that this makes it more likely the notary will agree to act on the employer's behalf.

The notary doesn't need to act in his or her official role as a notary, Brown added. A new employee's mother could act on the employer's behalf, though that wouldn't ordinarily be advisable, he joked.

A local law firm is another option.

Or an employer may send a new employee to a bank, which probably has a notary who could act on the employer's behalf.

"It's a difficult thing to find a solution, especially within three days," Brown acknowledged. Section 2 of the form must be completed within three business days of the employee's first workday.

The notary is not required to sign the form as an agent of the employer but may simply sign it. And notaries should put the company's address below the signature, not their own, but write in their name, Brown said.

Targeted Employers
I-9 audits used to be random, but now they are more often the result of disgruntled former employees complaining to ICE.
Also, ICE likes to go after companies connected with the nation's critical infrastructure, such as those that run power plants, food-service businesses, those connected to airports, or anything else that seems like "homeland security writ large," Brown said.

Allen Smith, J.D., is manager of workplace law content for SHRM. Follow him on Twitter ***@SHRMlegaleditor****.*

Federal Legislative Action Alert!

Please e-mail your U.S. Representative and ask them to VOTE YES on H.R. 1120, the Preventing Greater Uncertainty in Labor-Management Relations Act !

On January 25, 2013, a federal court ruled that three members of the National Labor Relations Board (NLRB) were unconstitutional "recess appointments," thereby putting into question the validity of all actions of the NLRB since the appointments in January 2012.

SHRM is supporting U.S. Representative David Roe's (R-TN) new bill, **H.R. 1120, which effectively puts NLRB activity on hold until federal courts resolve the recess appointment uncertainty.** SHRM believes the bill will provide short-term clarity to HR professionals on the application of hundreds of NLRB rulings promulgated since January 2012.

The House of Representatives will vote on the bill this week, so this is your opportunity to share the HR perspective on labor-management relations.

Please Take This Action:
Write your Representative using SHRM's HRVoice program, follow these steps:

1. Log onto the SHRM Advocacy Action Center by clicking HERE
2. **Personalize your message** with your own story
3. Include your home mailing address.

Background: President Obama on January 4, 2012 appointed Sharon Block, Terence Flynn, and Richard Griffin as Board members to the NLRB. On January 25, 2013, the U.S. Court of Appeals for the District of Columbia unanimously held in *Noel Canning v. NLRB* that these appointments to the NLRB were not valid "recess" appointments under the U.S. Constitution because they did not occur during an "intersession" recess of the U.S. Senate. Yet, these appointed Board members have not stepped down from the NLRB and continue to issue decisions, despite the possibility that all NLRB case decisions since January 2012 ultimately

may be invalidated. If the Supreme Court ultimately finds that the NLRB does not have authority to issue rulings, organizations with cases before the NLRB may need to litigate matters a second time.

The NLRB announced March 12, 2013 that it will seek U.S. Supreme Court review of the federal court's decision in *Noel Canning*, which ensures the validity of all NLRB actions will be in question for several more months or years. Until the Supreme Court decides the *Noel Canning* case, there is substantial question as to whether the NLRB has the authority to issue decisions.

Issue: H.R. 1120 would require the Board to temporarily stop issuing decisions until either the Supreme Court says it has the authority to do so, or the Senate confirms new members to the NLRB. It would also prohibit the enforcement of any action taken after January 2012 that required a valid quorum.

Outlook: The U.S. House of Representatives will vote on H.R. 1120 this week. The U.S. House Committee on Education and the Workforce approved H.R. 1120 on Wednesday, March 20.

SHRM Position: SHRM strongly supports balanced public policy in labor-management relations and recognizes the right of employees to choose whether to join a labor union. The *Noel Canning* decision created substantial uncertainty for employees and employers whether the NLRB's recent and future actions have the force of law. SHRM supports H.R. 1120 because it would provide clarity about NLRB actions until a potential Supreme Court decision in *Noel Canning*.

SHRM is pleased that H.R. 1120 does not prevent NLRB regional offices from either enforcing the National Labor Relations Act based on prior, valid decisions or processing unfair labor practice charges filed by an employee, employer or union.

Should you have any questions regarding H.R. 1120, you may contact **Michael Layman, SHRM Government Relations Senior Associate, at** michael.layman@shrm.org.

Supreme Court Hears Same-Sex Marriage Cases Affecting Benefits

During the final week of March 2013, the U.S. Supreme Court heard long-awaited challenges to federal and state restrictions on same-sex marriages. On March 27, the court heard arguments in a case seeking to overturn a section of the federal Defense of Marriage Act (DOMA), which was enacted in 1996 and denies federal benefits to married same-sex couples. A day earlier, the court heard arguments in a case seeking to restore same-sex marriage in California. Rulings in both cases are expected by the end of June.