

Contact: Amanda H. Beck
(202) 789-8604

FOR IMMEDIATE RELEASE

June 30, 2010

abeck@hrpolicy.org

HR Policy Association Presses for “Holistic New Approach” to Employment Regulation as the Key to Recovery, Long-term Job Growth

Letter to Office of Management and Budget Suggests Starting With Antiquated Wage and Hour Laws that Inhibit Flexible Workplace Policies

Washington, DC—HR Policy Association is calling on the Obama administration to boost economic recovery and growth by adopting a “holistic new approach” toward employment regulation, starting with comprehensive reform of the Fair Labor Standards Act (FLSA), an inflexible, industrial era workplace standard that has failed to keep pace with changes in the modern American workplace.

“The ability of employers to add new jobs to the economy depends to a large extent on the costs associated with those jobs,” Association Chief Policy Officer and General Counsel Daniel V. Yager wrote in a letter responding to the Office of Management and Budget’s request for suggestions about regulatory changes that might promote economic growth.

“The most significant driver of the American economy for the past two centuries has been the ability of the private sector to create economic opportunities and jobs. Yet we see a disturbing trend in the recent regulatory climate that instead seems to view employers as a malevolent force that must constantly be placed under severe restraints.”

Numerous factors influence an employer’s decision as to whether it is economically feasible to expand its workforce. But when it comes to workforce regulation, these factors include, among others:

- the administrative costs associated with compliance with a law or regulation;
- the time spent by human resource officers, supervisors, managers, and company leadership in planning and ensuring compliance with each workplace rule;
- the legal costs associated with establishing protocols to ensure compliance while maintaining continuous internal auditing to make certain that these protocols are being followed;
- the potential legal costs for addressing complaints or defending against enforcement actions brought by the government or private parties where allegations of noncompliance are involved (including the costs of settlement where the expense of defending such actions may exceed the potential liability; and
- the inability to achieve savings or competitive advantages as a result of restrictions that preclude the development of more efficient and productive workplace policies and procedures.

With these economic realities in mind, the Association is entreating the administration to undergo a broad re-examination of the impact of the nation’s regulatory structure covering the workplace and the employee relationship. “We need to ask whether the nation has reached a tipping point where the nation’s labor, employment, and benefit laws have become so complex, burdensome, and difficult to administer that they have become both counterproductive and job killers,” explains the letter.

The Association believes that the FLSA represents a well-motivated and sincere attempt to protect employees from exploitation by employers, but that its regulations have, with time, been translated into “countless vague inconsistent rules and exceptions that are increasingly out of step with the times.” Regrettably, the basic structure of the FLSA, which was enacted in 1938, has never been fundamentally reexamined, and its regulations have not kept pace with changes in the workplace.

As a result, the Association’s member companies have run up against countless complications related to the statute’s inflexibilities in the modern workplace, including many of the following:

- Work schedules are carefully designed to avoid excessive overtime – even if employees would prefer to work eight days in a row, with six days off in a row, the employer cannot afford such a schedule because it would involve at least two full days of overtime.
- Employers have to impose strict policies against the use of personal digital assistants (PDAs) and other social media outside of working hours, out of fear that FLSA violations will occur because of employees engaging in work that is not being tracked.
- The law creates disincentives toward engaging employees who are not exempt from overtime in trouble-shooting and decision-making because of the need for involvement outside of their normal working hours.
- Employers are discouraged from paying bonuses and other forms of incentive pay to nonexempt employees because the law requires such amounts to be included in the employees’ rate of pay for purposes of calculating overtime.

The Association is deeply concerned that the FLSA, along with other existing employment policy, is undermining U.S. competitiveness, innovation, and employment growth.

As the letter concludes, the “dual objectives of promoting growth and encouraging flexible workplace policies should compel the administration to re-examine the FLSA in light of today’s workplace, rather than moving forward with the aggressive enforcement policy that the Department of Labor has outlined... We invite the administration to join us and other stakeholders in a dialogue that seeks to address the many questions we have raised in an informed manner, with the goal of targeting enforcement resources where they are truly needed, while enabling the American workplace to evolve in a manner that best suits the needs of 21st Century employers and employees.”

10-83

###

To view HR Policy Association’s comment letter to OMB, visit:

<http://www.hrpolicy.org/downloads/2010/10-77%20OMB%20FLSA%20Letter%20Final%206.13.10.pdf>

HR Policy Association is the lead organization representing chief human resource officers of major employers. The Association consists of more than 300 of the largest corporations doing business in the United States and globally, and these employers are represented in the organization by their most senior human resource executive. Collectively, their companies employ more than 20 million employees worldwide and have a combined market capitalization of more than \$7.5 trillion. These senior corporate officers participate in the Association because of their passionate interest in the direction of human resource policy. Their objective is to use the combined power of the membership to act as a positive influence to improve public policy, the HR marketplace, and the human resource profession. For more information visit www.hrpolicy.org