

HR POLICY ASSOCIATION

the association of chief human resource officers





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HRPA HR POLICY ASSOCIATION®

CONCURRENT SESSION #1

Union Activity, Employee Voice and the Regulatory Climate

June 2, 2022

The factors that enable employee voice in an organization are complex, and some observers question whether unions are the most effective tool for workers to use their voice. Union representation has declined since peaking in the 1970s, but recent factors have led to a resurgence in interest including the COVID pandemic, the increase in the "gig economy" and the "great resignation".

The panelists agreed that the current environment presents a problem and companies need to rethink how workers utilize their voice. As it pertains to collectively bargained union workforces, the panel also agreed that the current system is too adversarial.

The sources of the problem vary, depending on the perspective of the panelist. From a union perspective, an unfair U.S. regulatory environment has enabled a \$50 Trillion transfer of wealth from the working majority to the owner minority. This perspective believes that the norm in the United States should be a shift towards workers being represented by unions as opposed to the current 6% or so of represented workers in the U.S. today.

From an employer perspective, HR departments are looking to address employee concerns and require flexibility to do so. Workers should not have to pay union dues to have their concerns surrounding worker safety, pay and benefits be addressed by the companies they work for.

The question was raised as to whether union representation is needed to achieve worker goals - can companies actively hear and respond to the employee voice without the presence of unions? The advent of social media and other factors have led to companies evolving in how they address and hear employee concerns.

Although the solution is uncertain, this is clearly an evolving issue that will require attention of HR leaders.

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CONCURRENT SESSION #2

Employee Expectations and Wellbeing

June 2, 2022

Employee expectations on wellbeing have shifted and employees are looking to employers to play a primary role in their mental, social, physical, emotional, and financial wellbeing. Today, social media allows employees to share what has become the norm, so transparency is more important than ever. But there's a disconnect between executives and employees on the perception of wellbeing benefits. While employers rate their wellbeing benefits at 7.6 out of 10, their employees rate them much lower - 4.4 out of 10. Employers will need to close this gap to improve their culture and the wellbeing of their workforce.

How are companies addressing this gap? Here is some advice for companies seeking to address employee expectations on wellbeing:

- Ground your approach to wellbeing in your purpose and values and stick to it.
- For many of us, safety has become a core value in recent years, but it's no longer just physical, it encompasses mental and emotional wellbeing. You may need to reframe the issue to gain acceptance - for example, what happens if someone is mentally unwell? If they are, they likely can't focus on physical safety.
- Remove the stigma of discussing mental health, reinforce that it's OK to not be OK and that it's safe to take advantage of wellbeing benefits.
- Make wellbeing personal. Flexibility and wellbeing are different for every person and leaders need to demonstrate it, be authentic and tell their story.
- Stay in learning mode. Employee voice is more critical than ever, and it's OK to get it wrong, get feedback and pivot. Candid conversations with employees are one of your best assets to know what really matters to them.
- Transparency is key. Whether in hiring or retaining, educating your employees on the value of their total benefits increases acceptability.
- And finally, as costs are rising, failing to implement a holistic approach to wellbeing is no longer an option. Be on the agenda with your management committee and board, come with the internal and external data and be ready to engage in the dialogue about what is best for your employees.

There has been a big shift in employee expectations regarding wellbeing. Mental, emotional, physical, financial and career growth are all integrated. We must meet people where they are, in a holistic, personal, and meaningful way. Resources are only as good as employees using them and benefiting from them.

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CONCURRENT SESSION #3

Employee Voice, Societal and Political Discourse and Employer Responses

June 2, 2022

In an environment of increasing polarization, bitter disagreements in our societal discourse have begun to spill into the workplace. In a recent survey, 99% of respondents reported spending 3.5 hours per week managing conflict at work. After years of asking employees to "bring their whole selves to work", companies are now faced with managing the expression of diverse views and opinions on social and political issues.

So, what suggestions do HR leaders have to help companies determine how to navigate increasing pressure by employees to take positions on divisive and polarizing issues?

- Listen to your employees' voices through employee resource groups and other employee listening methods.
- Be transparent. If you are still determining a position on a topic, say so. When you roll out your position, share the rationale and the basis upon which you made the decision.
- Use your values and mission to frame your position. Realize you don't need to weigh in on every single controversial topic; instead, focus on the topics that align with your values, mission, or brand.
- Drive a culture of inclusion (that includes remote and new employees) to deepen interpersonal relationships, which in turn, can dampen the impact of conflict.
- When directly challenged, try to think about what positive you can take from it. For example, when receiving a strong negative reaction to a position, recognize that the employee's willingness to speak out is shows a level of comfort and trust. And make them feel heard. Often your willingness to reach out directly via a phone or video call to the employee can significantly reduce the tension.

When considering interactions in the workplace, disagreement can be positive when it breeds innovation and ideas. But it can morph into conflict due to a phenomenon called "naïve realism." Naïve realism is the belief in the objectivity and accuracy of one's own views and opinions. As a result, when others disagree with our point of view, we try to persuade them of why they are wrong. If they continue to resist, we assume that they are either stupid or biased, and disagreement turns into conflict.

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CONCURRENT SESSION #4

Workplace Technology, HR Strategy, and the Talent Crunch

June 2, 2022

Over the last year, over 47.8 million American workers left current jobs resulting on average attrition of 4 million monthly. This statistic has provided a major challenge for organizations and even bigger challenge for CHROs when seeking new ways to improve the employee experience. Leveraging technology to understand employee sentiment has gained traction, especially considering the pandemic. Organizations have developed engagement surveys for their workforces, which have proven to be a key success factor. Many have leveraged various technologies, both in-house developed and third-party tools to gain insights into the when, where, and how employees want to work.

Engagement technology is also being used to pulse organizations at specific points in time. While a few organizations still utilize the annual survey model, the shift to more of a real time approach has gained significant traction over the past two years. This cadence provides greater speed to insight which creates opportunities for HR to react faster to employee sentiments and drive real change.

Top concerns for organizations were around safety and well-being; training and development; and organizational trust. Through the power of technology and use of artificial intelligence, organizations provided immediate resources to their workforce. This was especially important for the healthcare sector given mental health and burnout challenges.

Through a partnership, one company was able to provide its employees access to resources to make sure they were physically, mentally, and financially well. This signaled to the workforce that the company cared about their wellbeing.

Trust in organizations continues to be a key concern with the workforce. With increased usage of AI during the hiring and screening processes, employees have greater concerns that organizations are invading their privacy. While the use of AI can create real insights and drive faster change, CHROs felt cautious about leveraging the various tools powered by AI. In a survey conducted during the session, approximately 43% stated implicit bias was a key concern when using AI, while 21% had concerns around increased legal scrutiny, and rounding out the top three at 16% was its potential negative impact on corporate culture.

Overall, technology is becoming more and more helpful within HR organization due to sheer volume, and usage can be valuable as long as it's not done in a "creepy" way. Technology is the future and HR needs to continue to find ways to think proactively and how you use it to differentiate the employee experience to make it more fulfilling and compelling.

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2

CHRO Summit Policy Takeaways

Force multipliers aka all of government approach will be prevalent no matter mid-term Election outcomes

Both political parties interested in elevating the employee voice

Employees expect more from companies (social issues and benefit offerings)

Companies need to be proactive and remain vigilant to ensure that you do not engage in any unfair labor practices

When Federal legislation is lacking, the states and localities will take action



Pending Legislative Issues

The Pregnant Workers Fairness Act (H.R. 1065/S. 1486)

The Protecting the Right to Organize (PRO) Act of 2021 (H.R. 842/S.420)

America COMPETES Act (H.R. 4521)

Paycheck Fairness Act (H.R. 7/S.205)

Forced Arbitration Injustice Repeal (FAIR) Act of 2022 (H.R. 963/S.505)

The Wage Theft Prevention and Wage Recovery Act (H.R. 7701/S. 4174)

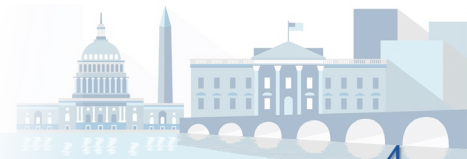
The Workforce Mobility Act (H.R. 1367/S. 483)

Bipartisan Discussion Draft of Comprehensive Consumer Privacy Bill

Paid leave (Concept Paper)

Mental Health/Telehealth

Drug Pricing and Transparency



The Pregnant Workers Fairness Act

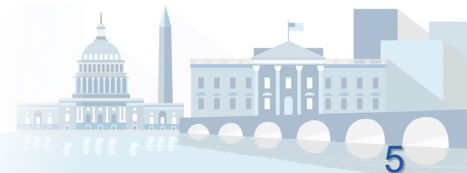
**Passed the House
on May 14, 2021,
by a 315-101
bipartisan vote**

Would require employers to provide "reasonable accommodations" for pregnant employees and job applicants. Specifically, employers would have to provide reasonable accommodations to employees and job applicants for pregnancy, childbirth, and related medical conditions, unless such accommodations create an undue hardship for employers.

The reasonable accommodation standard and associated protections contemplated by the PWFA largely resemble what employers are currently required to do for employees with disabilities under the Americans with Disabilities Act (ADA). The ADA does not consider pregnancy a disability.

OUTLOOK: A vote is pending in the Senate.

HRPA Position: The Association has been a vocal supporter of the bill as a much-needed update to employment discrimination law that effectively clarifies an employer's accommodation obligations in accordance with already existing law.



The Protecting the Right to Organize (PRO) Act

**Passed the House
on March 9, 2021,
225-206 (5 R's)**

Card check elections
First contract arbitration
Legalization of secondary boycotts
Removal of procedural rights for employers in
Ban on right to work laws
Codification of the ABC test for independent
Personal liability for corporate reps
Ban on class action restrictions in arbitration agreements
Ban on captive audience meetings

OUTLOOK: The PRO Act's chances in the Senate remain uncertain. Regardless, President Biden could implement several of the PRO Act's provisions on federal contractors through EO (Biden Labor Task Force), while others could be imposed on all employers through regulation (such as IC status).

HRPA Position: The Association has consistently voiced its opposition to the PRO Act as legislation that does not actually meaningfully update federal labor law, but instead serves merely as a union wish list that tips the labor relations balance towards organized labor.



America COMPETES Act – PRO Provisions

The House-passed America COMPETES Act includes labor relations proposals from the Protecting the Right to Organize (PRO) Act

The labor provisions would apply to employers accepting federal funding, as well as their contractors and subcontractors, impacting workplaces regardless of their relationship with the federal government

The House bill would undermine employee privacy by abolishing the use of secret ballots in union elections and diminish the role of HR in shaping the final terms of collective bargaining agreements

OUTLOOK: Conference committee members in talks to resolve the differences between the House’s America Creating Opportunities for Manufacturing, Pre-Eminence in Technology, and Economic Strength (COMPETES) Act, and the Senate’s United States Innovation and Competition Act of 2022 (USICA).

HRPA Position: The Association has urged conference committee members to oppose the inclusion of the PRO provisions.

Paycheck Fairness Act

**Passed the House
on April 15, 2021,
217-210 (1 R)**

Significantly increases employer liability to pay discrimination lawsuits

Under the PFA, “sex” is defined to include “sexual orientation or gender identity”

Severely limits ability to use traditional, legitimate pay factors

Prohibits wage history inquiries and prevents employers from limiting wage

Increases damages for gender pay discrimination lawsuits and increases class

Brings back collection of pay data and other wage-related data by the EEOC

OUTLOOK: The PFA stalled in the Senate, failing to receive a single Republican vote out of the ten needed to overcome the filibuster. The PFA’s failure to get past the filibuster in the Senate means its chances of becoming law anytime soon are doubtful – it is also likely ineligible to be packaged as part of a reconciliation bill. Nevertheless, the pay data collection provisions of the bill are likely to be taken up by the EEOC.



Forced Arbitration Injustice Repeal (FAIR) Act

**Passed the House
on March 17,
2022, by a vote of
222-209**

Would ban mandatory pre-dispute arbitration agreements related to employment, consumer, antitrust, or civil rights matters, with few exceptions.

Contains a stipulation that parties could voluntarily agree to arbitration after a dispute arises. In addition, the legislation would exempt collective bargaining agreements between employers and labor organizations.

OUTLOOK: The FAIR Act awaits action in the Senate, where its prospects for passage are slim. To date, the Senate Judiciary Committee, which has jurisdiction over this issue, hasn't acted on the companion legislation, S. 505.

HRPA Position: The Association will continue to reach out to Senators and their respective staff to educate them about the use of arbitration agreements in employment settings and advocate against enactment of the FAIR Act into law.



The Wage Theft Prevention and Wage Recovery Act

**The House
Education and
Labor Committee
passed the bill by a
party- line vote of
27-19 on May 18,
2022**

Would drastically increase penalties and liquidated damages for FLSA violations—in some cases by as much as 5,000%—and extend the statute of limitations for FLSA claims;

Removes the “opt-in” requirement for FLSA class action claims—workers would be automatically included in class action claims unless they affirmatively opt out; and

Prohibits pre-dispute arbitration agreements in employment contracts.

OUTLOOK: It is unclear when the bill will be given a full floor vote in the House, where it would likely pass. This would fit with the House leadership’s strategy of showing productivity in a number of areas before the election, notwithstanding the gridlock in the Senate preventing such bills from becoming law.

HRPA Position: Prior to the Committee’s vote the Association voiced strong opposition to H.R. 7701, highlighting the practical realities of FLSA compliance and deficiencies of the bill.



The Workforce Mobility Act

No legislative
action on proposal
(yet)

Would prohibit the use of noncompete provisions in employment agreements except in cases where a business is sold or in partnership dissolution situations.

The bill places enforcement responsibility on the Federal Trade Commission (FTC) and the Department of Labor (DOL) while including a private right of action.

OUTLOOK: The impact of noncompete agreements on competition in the labor market remains a top priority of the Biden administration. Anticipate legislative attention and regulatory action this year.

HRPA Position: HR Policy Association will continue to inform policymakers on the legitimate business use of noncompete agreements and will advocate against proposals to limit and/or ban such uses.



FTC Non-Compete Agreements

President Biden's Executive Order states non-compete agreements are a "barrier to competition"

Includes a directive to the Federal Trade Commission to issue regulations to "limit or ban noncompete agreements"

Several states and localities have already banned non-competes, including CA, ND, OK, and DC, while others, such as IL, MD, and MA have restrictions on their use for lower income employees

OUTLOOK: FTC Chairwoman Lina Khan said the agency is considering a new regulation via a rarely used FTC authority, a section of the 1914 FTC Act, which says "unfair methods of competition in or affecting commerce" are illegal to restrict the use of noncompete clauses by companies, which she said hurt lower-wage workers and can stifle competition for talent.

HRPA Position: The Association will continue to advocate against an outright ban on the business use of non-compete agreements.



Bipartisan, Bicameral American Data Privacy and Protection Act

The discussion draft is a significant step forward in data privacy negotiations in Congress.

HR data not covered—for the most part. Applicant data, employee business contact information, emergency contact information, and information related to an employee necessary for administering benefits exempted

Large companies would be required to annually submit to FTC impact assessments of algorithms used in the employment context

PROA: limited to compensatory damages, injunctive relief, declaratory relief, and attorney's fees and litigation costs

Preemption: Bill would preempt state laws—not including a long list of exemptions

CEOs, chief privacy officers, and chief information security officers to annually and personally certify compliance to the FTC

OUTLOOK: Sen. Cantwell has released her own similar measure, and the House Energy and Commerce Committee will hold a hearing on the ADPPA next week. For all its rough edges, the bill is a significant show of bipartisanship. However, given the limited amount of time left on the legislative calendar, and opposition from a number of business groups, it faces a tough uphill battle this Congress.



Paid leave (Concept Paper)

HWM Draft Paper

Reduce compliance burden by allowing multi-state employers to opt-in to a national paid leave standard accessible through a voluntary annual fee; and

Use employer fees to create a grant fund that expands access to paid leave by targeting gaps in coverage, specifically for small businesses and low-wage workers.

Five-year phase-in period to establish a balance in the Trust and determine size of grant program/set-aside based on employer take-up and fees.

OUTLOOK: Likely to serve as a proposal in the 118th Congress. Committee staff is soliciting feedback to help inform the development of a paid leave proposal.

HRPA Position: The Association will engage to provide direct feedback on the concept paper to help with the development of legislative text.



Mental Health/Telehealth

**Restoring Hope for
Mental Health and Well-
Being Act of 2022
(H.R. 7666)**

Reauthorizes federal treatment and recovery programs and improves integration of BH and primary care (includes HR 5218)

**Mental Health Reform
Reauthorization Act
(S. 4170)**

Reauthorizes expiring federal mental health and substance use disorder programs

**Excellence in Mental
Health and Addiction
Treatment Act**

Expands funding to every state for Certified Community Behavioral Health Clinics

**Mental Health Matters
Act (H.R. 7780)**

Doubles budget for parity enforcement and creates private right of action for parity claims; HRPA opposes

OUTLOOK: Lawmakers are under pressure to pass a comprehensive mental health and substance use package but are struggling to reach agreement on combining several bipartisan bills into a package that is constrained by self-imposed spending limitations. Provisions that increase parity enforcement are generally not supported by Republicans and could stall movement.

Drug Pricing and Transparency

Tracking several pieces of legislation aimed at funding FDA and updating approval processes

Build Back Better Medicare Drug Price Negotiation Provisions

Prescription Drug User Fee Act of 2022

Biosimilar User Fee Act of 2022

Generic Drug User Fee Act of 2022

FTC launching investigation into PBM practices but unclear if Congress will move any legislation to act on the report

OUTLOOK: HRP/EmployersRx focused on provisions which reduce drug costs by banning anticompetitive practices and enhancing price transparency.

HRPA Position: The Association supports enabling Medicare to negotiate drug prices IF those prices are available to employer plans.



Regulatory Agenda

2022 Spring Regulatory Agenda

DOL Independent Contractor

EEOC Wellness Program Incentives

DOL Mental Health Parity Requirements

NLRB Activities

FTC Non-competes

SEC Human Capital Metrics



DOL Independent Contractor

NPRM forthcoming

The DOL, [announced](#) the Wage and Hour Division will be issuing a notice of proposed rulemaking to address the distinction between independent contractors and employees. **The WHD will be hosting an employer listening session on Friday, June 24 from 2:30 pm to 4:30 pm ET**

OUTLOOK: The DOL anticipates submitting a draft notice of proposed rulemaking for interagency review this summer.

HRPA Position: The Association will plan to submit formal comments and will continue to urge the agency to provide employers with clear guidance on a standard for determining independent contractor status.



EEOC Wellness Program Incentives

**NPRM expected
late 2022 or early
2023**

In January 2021, the Biden administration withdrew the proposed wellness rules that would have imposed a “de minimis” incentive limit (such as a water bottle or gift card of modest value) for certain employee wellness programs that include disability-related inquiries and/or medical examinations until EEOC chair, Charlotte Burrows could review issue. GOP appointees currently hold a 3-2 edge at the EEOC until July 2022.

OUTLOOK: Once Democrat appointees hold a majority on the commission, we expect the EEOC to propose new rules.



DOL Mental Health Parity Requirements

Proposed guidance expected this year

The Consolidated Appropriations Act of 2021 requires DOL to publish a detailed “compliance program guidance document” that provides “illustrative, de-identified examples” of compliance and noncompliance with the Department’s parity reporting requirements. A January 2022 DOL report to Congress found none of the parity analyses employers initially submitted to DOL in 2021 contained sufficient information to find compliance suggesting more guidance is needed. The report also recommended Congress enact civil monetary penalties for parity violations.

OUTLOOK: DOL is expected to release proposed guidance this summer regarding employer mental health parity obligations.

HRPA Position: The Association will continue engaging with Congress and DOL on our opposition to civil monetary penalties and the difficulties employers face in getting providers into networks. It’s unclear if the Congress will enact the Strengthening Behavioral Health Benefits Act, which provides \$275 million in enforcement funding to DOL over ten years and enables plan participants to bring civil actions over parity complaints.



NLRB Activities

Increased union activity at high-profile companies

Employer workplace rules and policies

"Card check" union elections

Expansion of employee voice

Restrictions on employer speech in union election campaigns

Worker misclassification

Union access to employer property

Increased remedies for unfair labor practices

Increased use of injunctive relief

Interagency collaboration and enforcement



SEC Human Capital Metrics

Proposed rule expected this summer

The Commission will likely produce a more prescriptive set of rules requiring quantifiable data on turnover, skills and development training, compensation, benefits, health and safety, and workforce demographics, including independent contractors

A final rule could be implemented as soon as 2024

OUTLOOK: The SEC is expected to issue an NPRM as early as this summer. The Association's Center staff has met with SEC staff working on the anticipated proposed rules to inform them about company disclosures and how data is defined and collected. We will submit formal comments once an NPRM is published in the *Federal Register*.

HRPA Position: The Association continues to strongly promote a principles-based rule, discouraging overly prescriptive metrics.



What are YOUR priority issues for the remainder of this year?



Save the
Date

The next Washington Representatives Program
is scheduled for

**Wednesday, September 21
at 2:00 pm ET**

