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More Labor for HR

The incoming Obama administration and pro-worker legislation lined up on Capitol Hill are poised to increase human resources' administrative burden. Could this be the end of strategic HR?

By Mark Schoeff Jr.

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Barack Obama did not get around to appointing a labor secretary until most of the rest of the Cabinet had been tapped. But after his inauguration January 20, workplace law could zoom along on a much faster track.

In one of his final Cabinet nominations, Obama named Rep. Hilda Solis, D-California, to head the Department of Labor. She doesn't have a long record on employment policy, but she will by the time she is done working with Congress on a legislative slate featuring bills that would make it easier for workers to form unions and sue for pay discrimination as well as guarantee them paid sick days—the Employee Free Choice Act, the Lilly Ledbetter Fair Pay Act and the Healthy Families Act, respectively.

Those bills will form the foundation of what one observer calls the most intense Capitol Hill activity on HR issues in a generation.

Like thousands of other HR professionals across the country, Sally Savoia, vice president for HR at Praxair in Danbury, Connecticut, is warily watching Washington.

Although the bills could be amended, they are likely to significantly increase HR administrative duties such as record keeping and auditing—sapping resources that could otherwise be devoted to strategic areas including talent management.

"It's less time available to be the business partner," Savoia says.

Obama and congressional Democrats have vowed to pull more Americans into the middle class. They will attempt to accomplish the goal in part through a lengthy workplace policy agenda that relies on strong government enforcement and employee empowerment. Solis, 51, plans to crack down on wage and hour violations as well as pay discrimination.

The approach will force many HR professionals to concentrate on ensuring their companies are in compliance with new laws and tougher oversight from the Department of Labor.

A raft of bills, all of them introduced in the last Congress but stopped at various points in the legislative process, have gained momentum with increased Democratic majorities on Capitol Hill. The House approved the Ledbetter bill and a companion measure on January 9.

The biggest obstacle to Democratic aspirations, a presidential veto, will be removed once Obama is in the White House. He promoted many of the ideas

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While businesses tend to fear the Employee Free Choice Act as potentially ruinous, the prospective legislation also promises to provide an economic stimulus—for lawyers, that is.

2. Unionization Bill May Require HR

When President Ronald Reagan broke the air traffic controllers union in 1981, it accelerated the decline of collective bargaining. Today, only 7 percent of private-sector workers and 12 percent in the overall economy are organized.

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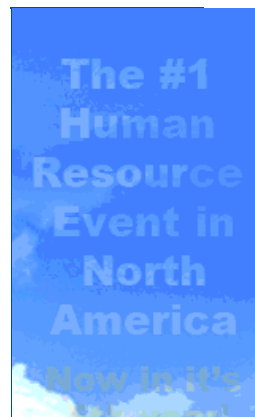
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during his campaign. They are now "teed up for one of the most active congressional cycles for HR public policy issues in the last 30 years," says Michael Aitken, director of government relations for the Society for Human Resource Management.

Strain on HR

Savoia says most of the workplace agenda is well-meaning but poorly conceived. It could force her HR department of 150 to operate differently. About 35 percent of her staff work in payroll and benefits administration. The other 65 percent are HR generalists.

One of the areas she likes generalists to focus on is training. Now they may get caught up navigating a sea change in employment and labor law for Praxair, which manufactures industrial gases and coatings, has a worldwide employment of 28,000 and posted \$9.4 billion in sales in 2007.

"They will spend less time on the workforce development side of their jobs because they are going to spend more time on making certain the organization follows the [new] rules," Savoia says.

She may have to hire more administrative staff and invest in new IT data collection systems that will enable the company to track absences more precisely than it can now under a mostly honor system, Savoia says. In the midst of a recession, the changes could eat into her department's fixed budget.

"I don't think the current staffing levels will allow human resources departments to be both strategic and administrative in nature if more than a few of these labor laws are passed," says Stan Wilson, managing partner of Elarbee Thompson in Atlanta.

HR will have to adjust because the legislative agenda gives employees more leverage. The changes will dramatically increase a company's liability exposure, according to Gerald L. Maatman Jr., a partner at Seyfarth Shaw in Chicago.

"Employers should immediately audit their existing employment policies, compensation schemes, safety initiatives, workplace demographics, subcontractor arrangements, workplace dispute resolution mechanisms and union avoidance measures, as well as invest considerably more time and energy to the administration of human resources generally," Maatman wrote in a November 24 report.

As it tries to keep up with the transformation, the challenge for HR is to cast compliance as strategy. HR professionals will have to demonstrate to executives that keeping the company in line with changing laws is central to risk management.

They can't be perceived as "just crossing t's and dotting i's," says former SHRM chief executive Susan Meisinger.

She draws an analogy to the finance department. It is charged with filing corporate taxes. But that administrative function and other duties it performs can be broadly defined as providing financial stability. HR administration is similar, Meisinger says.

"Do it as part of your risk-management responsibility," Meisinger says. "But don't let it define you as a profession. It can't be perceived in the organization as all you do."

In explaining compliance requirements to the C-suite, HR leaders should not just send a memo on the details of the new workplace rules. They should emphasize that they're helping the company avoid lawsuits.

"It's a matter of vocabulary and how you articulate what you're about to



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your colleagues," Meisinger says. "The language of risk and liability is much better understood by other executives."

There will be plenty of both contained in the proposals that Congress will take up over the next few months.

Card-check measure

The Employee Free Choice Act would allow a union to form when a majority of workers have signed cards authorizing a collective bargaining unit. Under current law, a company can demand a secret-ballot election conducted by the National Labor Relations Board.

This bill has the highest profile on the workplace agenda. It is the No. 1 priority for unions, whose share of the private-sector workforce has dwindled to 7 percent.

Organized labor is thrilled that Solis, a co-sponsor of the bill during her congressional tenure, will be an ally from her perch as labor secretary. The AFL-CIO gives her voting record a rating of 97 percent. Business groups are vigorously opposing the measure and urging Obama not to push it forward as companies are struggling to cope with the recession.

Opponents say the bill will drive up business costs. Supporters assert that collective bargaining is the best way for workers to increase their wages and benefits.

"It's not a coincidence that the widening income gap in the United States of America tracks the decline in union density," says former Rep. David Bonior, D-Michigan and chairman of American Rights at Work as well as an Obama economic advisor.

Greater employee participation in unions will benefit business, Bonior argues, because it will give workers bigger paychecks and more spending power to buy cars, refrigerators and houses. It also will produce workforce management gains.

Harley-Davidson, Kaiser Permanente and AT&T are companies that have allowed card-check elections. "They have cooperative working relationships with their unions," Bonior says. "That relationship results in a more productive workplace."

Savoia, however, disputes that notion. Praxair is partially organized already.

"We operate well with our unions," she says.

But Savoia is concerned that strengthening the union movement will lead to work rule changes that hamper her ability to design jobs and move people to new positions based on demand.

"There is a significant impact on productivity in the workforce," Savoia says. "There's just less flexibility."

Sick leave

A bill being criticized for limiting company latitude on benefits is the Healthy Families Act, a measure that would mandate seven paid sick days each year. Much of the consternation comes from companies that have paid-time-off programs in place. It's not clear how the bill would affect PTO days.

Praxair has a more traditional system of separate vacation days and sick days. But Savoia has misgivings because the bill does not define "day" or sick time.

A bigger headache is that the bill would prohibit companies from changing their benefits plans once the measure becomes law. Policymakers want to

prohibit firms from cutting existing programs in order to make room for the seven sick days.

"To say you can never change your plan going forward is a handcuff on us that we don't want," says Mike Spicci, director of global benefits at Praxair.

Pay discrimination

Keeping tabs of who is taking sick days is only one of the record-keeping challenges posed by the bills. A pay discrimination measure would require a potentially exponential increase in the preservation of compensation-decision trails.

The Lilly Ledbetter Fair Pay Act would overturn a 2007 Supreme Court ruling. In its controversial 5-4 decision, the court held that pay discrimination suits must be filed within 180 days of the original discriminatory action. Under the Ledbetter bill, each paycheck that has been diminished by discrimination would restart the statute of limitations, leaving companies vulnerable to suits for decades. Critics say it would alter the parameters of all discrimination cases, not just those involving pay.

Companies would conceivably have to justify each pay decision over an employee's entire tenure.

"You're going to have to get a vault for all the records you'll have to keep," Meisinger says.

Obama came out strongly in favor of the Ledbetter bill during his campaign. It was a highlight of several forums on women's issues hosted by future first lady Michelle Obama.

For Obama, the Ledbetter bill is a matter of fairness. "Lilly Ledbetter's problem was not that she was somehow unqualified or unprepared for higher-paying jobs," then-Sen. Obama said during a campaign rally. "Her problem was that her employer paid her less than men who were doing the exact same work."

Savoia doesn't dispute the underlying thrust of the bill—equal pay for women. But she would like parameters on filing a suit.

"Is this something I can live with as an HR professional?" Savoia says. "It is if you put in a time limit. It's legislation with good intentions but bad thinking around it. I'll be forced into a settlement. It will always cost me money."

HR has responded to major new laws in the past and will do so again, says Don Lindner, manager of practice leadership for WorldatWork, an organization that specializes in benefits policy.

When pension laws were first passed in 1974 and the Family and Medical Leave Act became law in 1993, they posed enormous administrative challenges.

"There were opportunities for HR people to step up and be noticed," Lindner says. "They added to their reputations—and value to their organizations."

Lindner adds that HR must maintain a positive attitude about sorting out the new laws. "You sit back and say, 'How can we leverage this to our advantage?'"

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shawnlancaster wrote:

Could this be the end of strategic HR? How one responds to this question and the content of the article I feel is more indicative of the reader than the topic of the article. Everything in this article is about basic table stakes in HR and should have been done relatively flawlessly for the last 10-15 years as the HRIS systems have matured. Basic (though important) administrative duties of HR should have mature HRIS systems supporting streamlined processes - just as accounting and sales support have invested resources over the years to improve efficiency, lower cost and improve accuracy. Accounting or sales would never tolerate inefficient, inaccurate and potentially liable business practices. Its just too important to the business. (Note: This is not a knock on the exec from Praxair - as they are a good organization and well run, but rather the HR profession as a whole) However, now is the perfect time for HR organizations to take this global slow down to refocus and reposition their HR function for the future, just as their businesses are doing. BTW: The analogy that Sue uses is slightly off in its meaning. HR is very much like Accounting - with a set of core principles, processes and areas of expertise which help manage people. Finance is responsible for providing the analytical frameworks and models for business leaders to make capital allocation decisions. I consider these as separate (though connected) as Finance is toward Accounting. HR for most organizations rarely provide the same level of systematic decision making as Finance and type of support the finance organization provides. There are often individuals within HR who can provide this level support, but often it is not the HR function as a whole.

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