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Legislative Update

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Email to: **Membership**
From: **David Radziej**

Welcome to the first issue of the Legislative Update for the 2010 session. This report will be issued approximately every two weeks during the session, or when breaking news/alerts arise. Following the updates from the state capital is a watch list of federal employment law issues, compiled by member Seaton, Beck & Peters, P.A. - thanks to Doug and Emily for highlighting these important issues! If there are others in your organization not receiving the Legislative Update that would like to, feel free to forward us their email address. If you have any questions or concerns, please contact me at 651-789-5503.

Eighty-sixth Legislature off to a Fast Start

As the Minnesota Legislature began on February 4, many hoped that legislators would be ready to start work in a bipartisan manner. Although the legislators and staff have already assumed a very fast pace, things are already not terribly collegial in committee and on the floor. Questioning the intentions and interpretations of the presiding officer on the Senate floor and late night hearings indicate that this year at the Capitol may be a rough one. Normally, in the last year of a biennium, there is a focus on capital investment, called a bonding bill. This year is no exception. Members of the bonding finance division traversed the state this past summer and fall viewing many of the requested sites or projects. Legislators who wish to have a local project funded by the bill need to be aware that the House and Senate bills both come in at amounts over the Governor's bonding proposal amount -- \$300 million more.

Even before session, much energy was spent on finding a solution to those cut by the reductions in funding to general assistance medical care (GAMC). At last count the House bill has undergone 17 official versions. Late this week, the Governor expressed his concern with the funding source for this bill -- surcharge increases on hospitals and health plans. The Governor clarified through one of his key commissioners that the surcharge increases were nothing more than tax increases that would fall victim to his veto pen if not changed.

With many additional groups requesting financial assistance from the Legislature via tax credits such as the angel investment tax credit (or the grant version favored by House Tax Chair Ann Lenczewski), it is not clear how gaps in state funding will be solved let alone how calls for increased spending could exacerbate the roughly \$1.2 billion budget deficit. Already in the House alone, *500 new pieces of legislation have been introduced*. Most of these bills will not make it into the state books either because they do not meet agreed to committee deadlines, they are voted down, or because they cost too much.

Governor's Race

Although the Governor Tim Pawlenty has announced he is not running for Governor, many legislators are including the Speaker of the House Margaret Anderson-Kelliher and the former House Minority Leader Marty Seifert. Marty leads his party in terms of straw poll support from caucus night February 2 although the Speaker came in second behind current Minneapolis Mayor R.T. Rybak. Three other House members are also running for Governor as is the Senate Tax Chair Tom Baak, the Senate Health Policy Chair John Marty and former U.S. Senator Mark Dayton.

State of the State Address

In his state of the state address delivered on February 11, the Governor stressed that the people that know how to grow jobs are generally not hanging around at the Capitol but are in the private sector and have already done it. He outlined a six-part package of tax cuts and incentives called the Jobs Creation Bill to spur job growth. The package includes a 20 percent reduction in the corporate tax rate, an angel investment tax credit to provide incentives at the early stage of a company's development, and a capital gains exemption for qualifying investments, among other items.

State Budget

With the release of the Governor's supplemental budget early next week, a large part of the focus will then shift to the Legislature to reject, embrace, or compromise parts of what the Governor outlined in both his address and the budget bill. As the \$150 million GAMC "fix" outlined above occurred in committee this week, it occurred to PIM that this budget hole will need to be met by some other means (other than surcharges on plans and hospitals). *We will keep watch at the Capitol for these and other looming questions in the days and weeks ahead.*

So Long 2009 ... Predictions for Employers in 2010

The Celebration of the 2010 New Year signified the conclusion of 2009, marking a year (and a decade) many were happy to see come to an end. Very little employment legislation was passed in 2009 (two exceptions are noted below), but we were given some indication of what employers might expect in the next few years. Labor/union law issues will be addressed in another *LawFax*, but here are five employment law issues employers should keep an eye out for in 2010.

Health Care

Following the passing of the healthcare bills by the House and Senate on Christmas Eve, some people thought healthcare reform had already happened. Nearly a month later, however, we continue to wait and see if Congress will be able to merge the bills into one to send to the President for his signature. If healthcare reform is passed, here are a few issues that may arise for employers:

- Requirements for employers with more than 50 employees (5 in construction!) to offer health insurance to employees;
- Changes to preexisting conditions limitations;
- Dependents being covered until a later age;
- Required changes to summary plan descriptions; and
- Significant tax increases.

Also, one of the few pieces of legislation passed in 2009 that directly affected employers was the COBRA subsidy. The subsidy, which was originally set to expire on December 31, 2009, has been extended through February 28, 2010. The subsidy extension allowed for an additional six (6) months of premium assistance for Assistance Eligible Individuals and tax credits for employers; therefore, Assistance Eligible Individuals are entitled to fifteen (15) rather than nine (9) months of coverage. (Notices should be revised accordingly.) Congress may be poised to pass another extension as there is another bill pending in the Senate (S. 2730) that would extend the expiration date of the subsidy to December 31, 2010, as well as reduce the individual premium contribution from 35% to 25%.

Contagious Illnesses

In 2009, the H1N1 sparked debate among employers about the best way to manage contagious illnesses in the workplace. One of the ways employers can help prevent uncertainty in the workplace surrounding these types of pandemics is to consider implementing a contagious illness policy. These policies can help employers wanting to have a consistent and predictable response for all contagious illnesses and avoid the risk of discrimination claims.

The Economy and Unemployment

In 2009, many employers took measures to cut costs by either reducing hours or laying off employees. Although these necessary measures helped many employers stay in business, they also increased potential exposure for potential litigation ranging from wage and hour disputes to discrimination claims, especially now that pay discrimination claims, under the 2009 Lily Ledbetter Act, can be brought much later than previously. Any employer that has not recently reviewed and revised its layoff, overtime and payroll policies and procedures should do so in 2010, thereby ensuring that it meets all federal and state laws and rules and reduces the risk of back-pay claims.

Enforcement and Penalties Ramping Up

With many new pro-employee officials nominated for positions at the Department of Labor, Wage and Hour Division, OSHA, OFCCP, and other departments, and their investigative budgets increased, employers should be aware that investigations and fines will be on the rise in 2010. For example, in 2009, OSHA assessed its largest fine in its history against BP of North America. OSHA issued the \$87.4 million dollar fine after an explosion injured and killed a number of employees (for what OSHA called BP's failure to correct potential hazards). An employer's best defense for all types of investigations and audits is to implement and continually update its policies, training and procedures.

E-Verify and No Match

President Obama has stated that he fully supports E-Verify and has required that recipients of the stimulus package using E-Verify have continuous eligibility for funding. In 2009, the Department of Homeland Security reversed the 2007 No Match Rule under which employers formerly received notice of social security numbers which didn't "match" the employee. Immigration reform remains on the agenda and the debate may be reignited if healthcare reform is passed.

Doug Seaton and Emily Ruhsam are attorneys with Seaton, Beck & Peters, P.A., "The Lawyers For Employers." The firm has been a member of the association for many years and dedicates its practice to advising and representing employers in handling every type of labor, employment, and human resources law issue, problem, planning need, audit, dispute, complaint, charge or lawsuit.