



## **LEGAL AND LEGISLATIVE UPDATE: NOVEMBER 2007**

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### **“RESPECT” IN THE WORKPLACE**

Currently, the House of Representatives is considering legislation that would redefine the term “supervisor” under the National Labor Relations Act. Specifically, H.R. 1644, the Re-Empowerment of Skilled and Professional Employees and Construction Trades Workers Act seeks to remove from the definition of supervisor the authority to “assign...other employees” and the “responsibility to direct.”

What does this mean for employers? By eliminating the phrases “assign” and “responsibility to direct” from the NLRA, an employee who is deemed to be a supervisor must spend a majority of their time in a supervisory capacity. Thus, the RESPECT Act would narrow and reduce the number of employees who qualify to be classified a “supervisor” under the NLRA. The legislation would require that employees classified as supervisors be engaged in management duties for more than fifty percent (50%) of their work time, which would create issues relating to tracking and enforcement for employers. This is significant because supervisors are not covered under the NLRA and cannot become members of a union.

SHRM opposes the Act, because directing staff and assigning work are inherent supervisory duties. Further, according to SHRM, the 50% requirement is arbitrary and does not truly reflect the reality in many workplaces where supervisors perform a variety of duties.

SHRM is, therefore, encouraging its members to email their congressional representatives through the SHRM website to voice your opposition to the Act. See [http://www.shrm.org/government/hrvoice/alerts\\_published/CMS\\_023164.asp](http://www.shrm.org/government/hrvoice/alerts_published/CMS_023164.asp)

## **SOME FMLA CHANGES?**

In late September, a top official with the United States Department of Labor indicated that the DOL is taking a hard look at its FMLA medical certification process, including possible changes to the forms for certifying leave. Although the DOL continues to insist that no regulatory changes are being contemplated, the DOL has recognized that the certification process was one of the key concerns during its recent request for comments. Among the potential changes being considered include whether certain questions on the Certification forms are redundant, whether the development of checklists would be helpful in completing the forms and whether some of the Certification questions can be simplified.

Thus, although the DOL continues to insist there are no major FMLA reforms on the horizon, many employers would be encouraged by efforts to at least streamline the current FMLA certification process.

For more specific guidance on these issues, you may reach Mr. Gold at (717) 237-6702 or by email at [kgold@rhoads-sinon.com](mailto:kgold@rhoads-sinon.com).