

2010 Legislative Wrap-Up

*What Happened in HR and
Employment Law*

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What were the dynamics this session?

- 60-day session
- \$2.8 billion deficit
- High unemployment
- Revenue flat
- Cutting spending
- Raising taxes
- Election year
- Special Session!



Where did HR fit in?

- Less activity than normal
- Main issues:
 - Leaves of absence
 - Workplace regulations
 - Wage & hour issues
 - Labor & management – collective bargaining
 - Workers' compensation
 - Unemployment insurance

Leaves of absence

Leave for legislators

- HB 2993
 - Employers of more than 25 employees must:
 - Provide a job-protected leave of absence to employees elected to serve in a regular or special session of the Legislature
 - “Unless employer’s circumstances have so changed as to make it impossible or unreasonable to do so.”
 - Status: Did not pass

Leave for civil air patrol

- SB 6647
 - Protects members of the Civil Air Patrol from discharge or discipline for leaving employment during an emergency service operation
 - Search and rescue missions designated by USAF
 - Disaster relief or humanitarian aid requested by FEMA
 - USAF civilian support
 - Counter-drug missions
 - Allows for wrongful discharge or discipline complaint to L&I with reinstatement or injunctive relief
- Status: Passed

Family leave for kids' school

- HB 2444
 - New provision added to state family leave act
 - All employees of all employers entitled to four hours of unpaid leave during any 12-month period to attend or participate in child's educational activities
 - In addition to any other FMLA/FLA leave
 - Employer and employee must mutually agree upon time of leave
 - Employer may require 48-hour written notice and verification afterwards of participation.
 - House amendment: Clarifies not 4 hours *per kid*
- Status: Did not pass

Leave for pandemic flu

- HB 2764
 - During a period of pandemic influenza declared by the Department of Health
 - An employer of 20 or more full-time employees may not discharge or discipline employee
 - For an absence from work due to symptoms of pandemic influenza or seeking diagnosis or care for pandemic influenza
 - Absence may be supported by certification
 - Provides for administrative reinstatement process through L&I
- Status: Did not pass

Public Employee Military Leave

- HB 2403
 - Clarifies public employees' leave of absence for military duty to specify:
 - National Guard service is included
 - Employee may only be charged with leave days for days in which he or she was regularly scheduled to work
- Status: Passed

Workplace regulations

Law enforcement honesty

- SB 6590
 - Response to *Kitsap County Deputy Sheriff's Guild v. Kitsap County* case (termination of deputy for acts of dishonesty overturned on appeal)
 - Declares it to be the public policy of Washington that:
 - All commissioned, appointed, and elected law enforcement officers
 - Comply with their oath of office and
 - Agency policies regarding the duty to be truthful and honest in conduct of official business
- Status: Passed

Medical Marijuana

- SB 5789
 - Expands providers who may prescribe medical marijuana to include:
 - Physician assistants, naturopaths, ARNPs.
- Of interest to employers:
 - Disability accommodation issues
 - Marijuana use accommodation issues
 - Drug-free workplace policy issues
- Status: Passed

L&I Subpoenas

- HB 2555
 - L&I may issue subpoenas to enforce production of information to ensure electrical licensing and installation information
 - Status: Passed
- HB 2789
 - L&I (and ESD and Revenue) may seek judicial subpoenas to investigate “underground economy” activity (failing to register and pay required taxes)
 - Status: Passed

Human Trafficking Posters

- SB 6332
 - Requires international labor recruitment agencies and domestic employers to provide workplace rights information to foreign workers
 - L&I will integrate information into required labor law postings
 - Civil action is authorized if disclosure not made
- Status: Passed

Farm Labor Internships

- SB 6349
 - Requires L&I to create farm labor internship program
 - Exempts interns from minimum wage, unemployment insurance, and other employment standards
 - Limited (by amendment) to pilot program in Skagit and San Juan counties.
- Status: Passed

Wage & hour issues

Intermittent rest breaks

- HB 2737
 - Codifies L&I's meal and rest break rule; BUT:
 - Regarding intermittent breaks, requires employer to obtain waiver from L&I
 - Waiver would certify that the nature of the work is permissible for intermittent rest breaks
- Status: Did not pass

Meal & rest breaks - Hospitals

- HB 3024
 - Hospitals must provide employees uninterrupted 30-minute meal and rest breaks of at least 10 minutes every four hours
 - Exceptions for emergencies
 - Rest break can be taken any time within four hour period
 - Strong anti-retaliation provision for reporting missed breaks
- Status: Did not pass

Training wage

- HB 3139
 - Requires L&I to develop special training certificate allowing employer of 50 or fewer employees to:
 - Pay training wage of 75% of the minimum wage for up to 680 hours in a year
 - Worker protections:
 - May use certificate only once per employee
 - Trainees may be no more than 10% of workforce
 - Discharged trainee may not be replaced with another trainee for one year from date of discharge.
- Status: Did not pass

Wage complaint enforcement

- HB 3145 (SB 6456)
- Strengthens L&I's enforcement of wage complaints by:
 - Increasing penalties on repeat violators
 - Allowing L&I to seek a wage bond against bad employers
 - Tolling the statute of limitations
 - Clarifying L&I's investigatory deadlines
 - Allowing wage/penalty collection against fraudulent successor businesses
- Status: Passed

Prevailing wage

- On public-private deals – HB 1992
 - Requires prevailing wage on any construction project involving:
 - Tax incentive, credit, preference
 - Preferred interest rate loans from public entity
 - Below-market sale or lease from public entity
 - Status: Did not pass
- On offsite prefabrication – HB 2805
 - Requires prevailing wage paperwork to be filed by contractors on public works projects using out of state prefabricated items.
 - Status: Passed

Labor & management

Child care centers

- HB 1329/SB 5572
 - Provides for collective bargaining under PECBA between child care center directors and workers and the Governor
 - Bargaining over legislative funding and subsidy rates
- Status: Did not pass

Interpreters

- HB 3062/SB 6726
 - Makes Governor employer of DSHS-contracted language access providers who provide interpreter services to DSHS/Medicaid clients
 - Subjects of bargaining:
 - Compensation
 - Payments, work rules, and reimbursement
 - Certification, professional development, and training
 - Labor-management committees
 - Grievance procedures
 - Other economic matters
- Status: Did not pass

Community & technical colleges

- HB 2584/SB 6746
 - Establishes a challenge process for non-tenured faculty of community and technical colleges whose contracts are not renewed
 - Makes the details of the process subject to collective bargaining
- Status: Did not pass

Higher education employees

- HB 2743/SB 6290
 - Amends PECBA to allow administrative and managerial personnel of institutions of higher education to organize and collectively bargain
- Status: Did not pass

Small businesses - symphonies

- SB 5046
 - Creates new state-level labor relations act applicable to small private employers
 - Employers too small to fall under NLRA
 - Contains card-check provision
 - Puts enforcement jurisdiction under PERC
 - Applies (now) to small symphony orchestras
- Status: Passed

Union neutrality

- Budget proviso regarding Dept. of Social and Health Services
- Relating to Developmental Disabilities and Adult and Aging Services
- No employer receiving state funds to provide care services:
 - “may use these funds to assist, promote, or deter union organization.”
- Dubious legal validity after *US Chamber of Commerce v. Brown* (2007) striking down similar language in California
- Status: Unclear

Workers' compensation

Reform a top priority. Why?

- L&I costs are going up
- Injured worker outcomes are going down
- Workers' comp funds seeing red
- Double-digit increase in 2011 premiums expected
- High costs hamper productivity, job growth

Modest proposal

- HB 2950/SB 6638
 - AWB legislative priority
 - Establishes workers' comp medical provider networks for injured worker care
 - Voluntary settlement agreements
 - Address boom in occupational disease claims
- Status: Did not pass

Privatization

- HB 2879
 - Eliminates L&I's state fund for industrial insurance
 - Establishes a task force to create a private workers' comp system by July 1, 2011
- Status: Did not pass

“Three-way”

- HB 3149
 - Creates a “three-way” workers’ comp system
 - State fund
 - Private insurance
 - Self-insurance
- SB 6799
 - Same as 3149, but slightly different approach
- Status: Did not pass

Task force

- SB 6775
 - Requires L&I to convene business and labor task force to evaluate workers' comp system and suggest improvements to the 2011 Legislature
- Status: Did not pass

What's next?

- Interim discussions
 - Informal task force?
 - Formal task force through budget proviso?
- Initiative
 - BIAW has filed, will pursue “3-way” initiative
- Expect 2011 tax rates to go up significantly, announced this fall

Unemployment insurance

Big Picture

- Exceptionally high increases in employer UI taxes in 2010
- Labor's push for higher UI benefits
- ESD's push for federal dollars

Expanding Benefits

- HB 2647 / SB 6526: “UI modernization” for part-time workers
- HB 2553: Provides part-time worker benefits and grants greater benefits for voluntary quits (“unreasonable hardship”)
- SB 6334: Expands voluntary quit eligibility
- HB 3129 / SB 6793: (Title Only)
 - Part time
 - Voluntary quits
 - Raise multiplier for weekly benefit amount
 - Increase weekly minimum benefit payments
- Status: Did not pass

Addressing Costs

- HB 2648 / SB 6524: Equity for delinquency-tax rates; employers unable to pay UI taxes when due can enter into payment arrangements to lower penalties
- HB 2920 / SSB 6587: “Smoothing” the effect of the social tax rate by capping current rates until 2014
- Status: Did not pass

Conclusion

- The state budget was (is!) the main event
- Few dramatic changes in HR
- Most policy issues held over until 2011
- Workers' comp may be a hot ballot issue
- The election season promises to be exciting
- Stay informed, stay involved!



Thank You!



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