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ICCFA Magazine author spotlight

► Ramsey is the HR specialist for The Foresight Companies LLC. She has a unique perspective on the challenges funeral and cemetery business

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MORE FROM THIS AUTHOR

► Ramsey writes a quarterly blog on HR matters that can be viewed at www.theforesightcompanies.com

HR LEGISLATION

A year ago, funeral home owners were well aware of changes in overtime regulations expected to go into effect before the end of 2016. Today, the legislative landscape has changed, but that doesn't mean you can stop thinking about what's going on in Congress. There are a number of bills under consideration that could affect your funeral home.

Employment legislation: What's in the pipeline

Last year many funeral business employers were frantically attempting to address the potential change to their payroll based on implementation of the Fair Labor Standards Act Overtime Rule which was anticipated to go into effect on December 1, 2016.

The enactment of this rule was stalled by a Texas District Court judge issuing a nationwide injunction in November. Then President Trump paused, via a presidential memorandum, all proposed federal regulations that had not yet taken effect. Does that mean that the FLSA Overtime Rule is dead?

What about other new or proposed employment regulations that might impact funeral business owners? For employers, the environment under which they try to operate a business is often caught up in the ever-changing waves of new employment laws or regulations at both the state and federal levels.

At mid-way through 2017, let us take a closer look at some of these critical employment regulations and laws in an effort to help funeral business operators understand how to effectively navigate these issues.

Status of the FSLA Overtime Rule

First and foremost, the FSLA Overtime Rule is not yet dead. The Department of Justice, on behalf of the Department of Labor, filed a request for an expedited appeal with the U.S. Circuit Court of Appeals for the 5th Circuit on December 1, 2016.

Since then, the DOL has requested and been granted two extensions of the

deadline for presenting opening briefs and responses to the court. As of this writing, the DOL's extension gives them until June 30, 2017, to present these briefs and responses. So, while the overtime rule has been put on a back burner by the current administration, the judicial process is still proceeding.

There are indications that if the injunction is appealed, it will never formally be entered into the Federal Register and thus it will never be implemented. It is quite possible that the current administration will bring forward their own overtime rule which would favor employers more than the current one.

The bottom line is that funeral business operators do not have to currently comply with the rule but should be aware that revisions to overtime regulations may be forthcoming.

Working Families Flexibility Act

While the FSLA Overtime Rule has languished in the appeals court, the House of Representatives passed the Working Families Flexibility Act, now under review by the Senate. Whether it will pass the Senate is questionable at this point.

However, should it pass, this act would allow employers to offer employees compensatory (comp) time in lieu of paid overtime. Further, the act gives the employer the discretion of whether to provide the employee the comp time versus the paid overtime.

The big question stems from whether or not the employer can defer providing employees their earned comp time for a significant period of time.

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Pregnant Workers Fairness Act

The Pregnant Workers Fairness Act (PWFA) is another legislative act that was reintroduced in May 2017 to Congress by a bipartisan group of senators and representatives. The act is intended to provide protection to pregnant workers not covered under the American with Disabilities Act (ADA), as the courts have determined that pregnancy is not a disability.

The PWFA resembles the ADA in that it would require employers to make reasonable accommodations for employees who have limitations stemming from pregnancy, childbirth or related medical conditions, unless the accommodation would impose an undue hardship on the employer.

The PWFA would prohibit employers from discriminating against pregnant employees should they need to request an accommodation as a result of their condition. It also would prevent employers from requiring pregnant employees to use their paid or unpaid leave when they are not provided a reasonable accommodation allowing them to remain on the job.

For the funeral industry, this could have some strong implications, as more women continue to enter the workforce as funeral directors/embalmers, positions where lifting significant weight might occur. During pregnancy many doctors advise women not to lift more than 25 pounds.

The PWFA's current draft says that only businesses with 15 or more employees would be required to comply with this act. However, if not only full-time but also part-time employees are counted, many funeral businesses may find they would be required to comply.

Paycheck Fairness Act

Funeral business owners should also be aware of the Paycheck Fairness Act (PFA) which is currently in the Committee on Health, Education, Labor and Pensions. While the Equal Pay Act of 1963 made it illegal for employers to pay unequal wages to men and women who perform substantially

equal work, women who work full time are still commonly paid substantially less than men in the same position.

The intent of the PFA is to address this gap in compensation between men and women. This is accomplished by tightening language in the Equal Pay Act which creates a loophole for employers to use to justify gender pay discrimination.

The act also would prohibit employers from screening job applicants based on salary history or retaliate against employees for discussing their salaries with co-workers.

In addition, the proposed act would open the door for plaintiffs who file gender-based wage discrimination to claim the same remedies available to plaintiffs who file race- or ethnicity-based wage discrimination. Also, this act allows for the creation of class-action lawsuits to address systemic pay discrimination.

The continuing increase in the numbers of women entering funeral service makes this a critical act for employers to watch.

Fair Chance Act

While the Fair Chance Act (associated with the Ban the Box movement) was stalled after its initial introduction in late 2015, more states have jumped on board by implementing state legislation requiring the removal of the conviction history question on job applications for private employers. At this point, 27 states have passed this type of legislation.

Many jurisdictions also are incorporating the best practices of the 2012 U.S. Equal Employment Opportunity Commission guidance on the use of arrest and conviction records in employment decisions.

The Fair Chance Act encourages employers to make assessments of job applicants based on their skills and experience rather than instantly deeming an individual unqualified based on a conviction record.

The belief is that if an employer considers the age of the offense and its relevance to the job, employment opportunities would be made available to a large segment of Americans who struggle to find employment simply based on a past transgression which may or may not have any relevance

to the position they are seeking.

The act also provides that job candidates be given an opportunity to review background-check results.

The Fair Chance Act is on the Senate legislative calendar and may be addressed this year, as it does appear to have bipartisan support. However, more importantly for funeral business operators is the fact that more states are looking at the possible introduction of Ban the Box legislation.

Where it is adopted, private employers must change job applications used during the hiring process. It would be wise to determine if your state has or is considering implementing such legislation so you can be prepared.

Minimum wage

Let's not forget about the minimum wage. President Obama instituted an executive order that established a new minimum wage for all federal contractors. Since that time, multiple states have passed legislation increasing the minimum wage requirement, as well as creating a process by which the wage rate will be adjusted for the cost of inflation going forward. In fact, 19 states enacted new minimum wage rates for 2017.

It is critical that funeral business owners know what the minimum wage requirements are in their state as well as being aware of any proposed increases.

All in all, 2017 is projected to be a busy year for employment legislation. Given the focus that funeral business owners have on serving their families and communities, it is understandable that you may not always be aware of these possible employment regulations.

Unfortunately, many of the proposed regulations discussed in this article can have a significant impact on your budget and business practices, so it is important that you keep your ears tuned to the changing regulatory employment environment so you are not caught off guard.

Having a relationship established with an HR specialist or employment law attorney is an excellent way to avoid the pitfall of not being prepared when new legislation is enacted.