

SHRM Nebraska Legislative Update

Presented to Lincoln Human Resource Management Association

August 14, 2012

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SHRM Nebraska State Council

Most slides provided with permission of Michael Aitken, Vice President of
Governmental Affairs SHRM



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Environment

Economic Issues Still Dominate Americans' National Worries

What do you think is the most important problem facing this country today? [OPEN-ENDED]

Top mentions

	% Mentioning
The economy (general)	31
Unemployment	25
Dissatisfaction with government	12
Federal budget deficit	11
Healthcare	6
Lack of money	5
Ethical/Moral decline	4
Education	4

Gallup, June 7-10, 2012



GALLUP®

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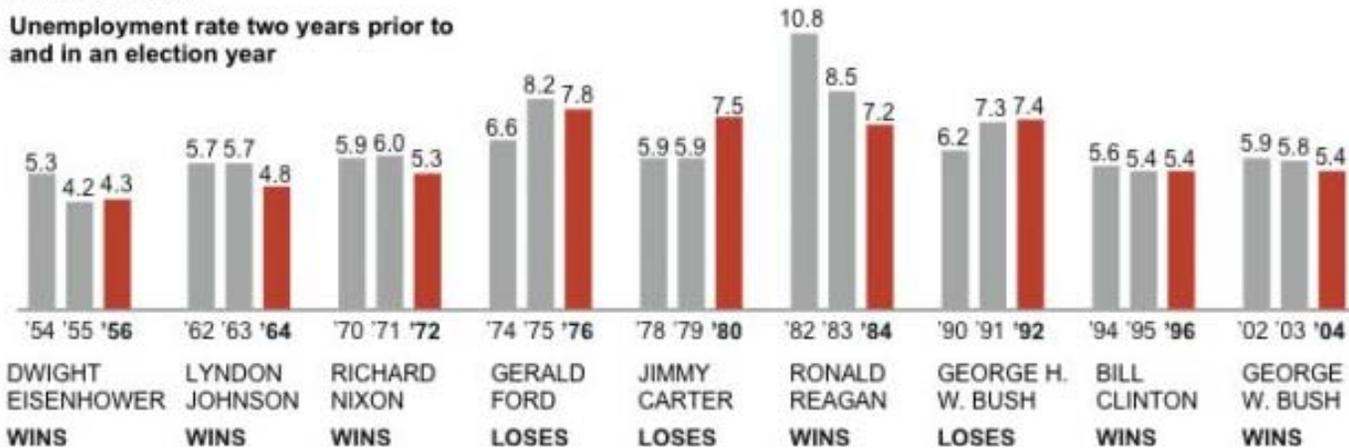
Environment

In Elections, Jobless Trend Matters More Than Rate

Incumbents win reelection when unemployment is down

No incumbent president has lost when unemployment fell over the two years leading up to the election. And none has won when it rose.

Unemployment rate two years prior to and in an election year



SOURCES: Bureau of Labor Statistics; The American Presidency Project at the University of California, Santa Barbara

AP

Graphic shows president incumbents wins and losses and their connection to unemployment rates Photo: AP / AP

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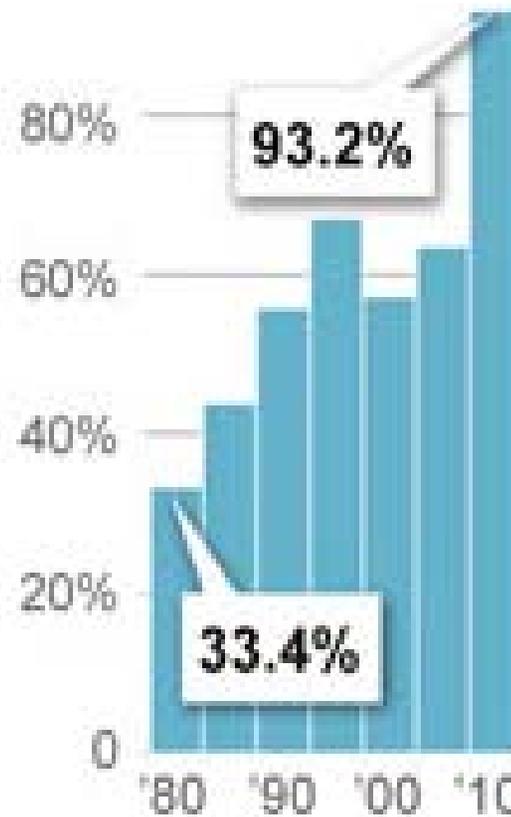
Environment

U.S. Debt Now Equal to U.S. Economy

Growth of U.S. Debt

Percentage of the economy:

Source:
Office of Management and Budget



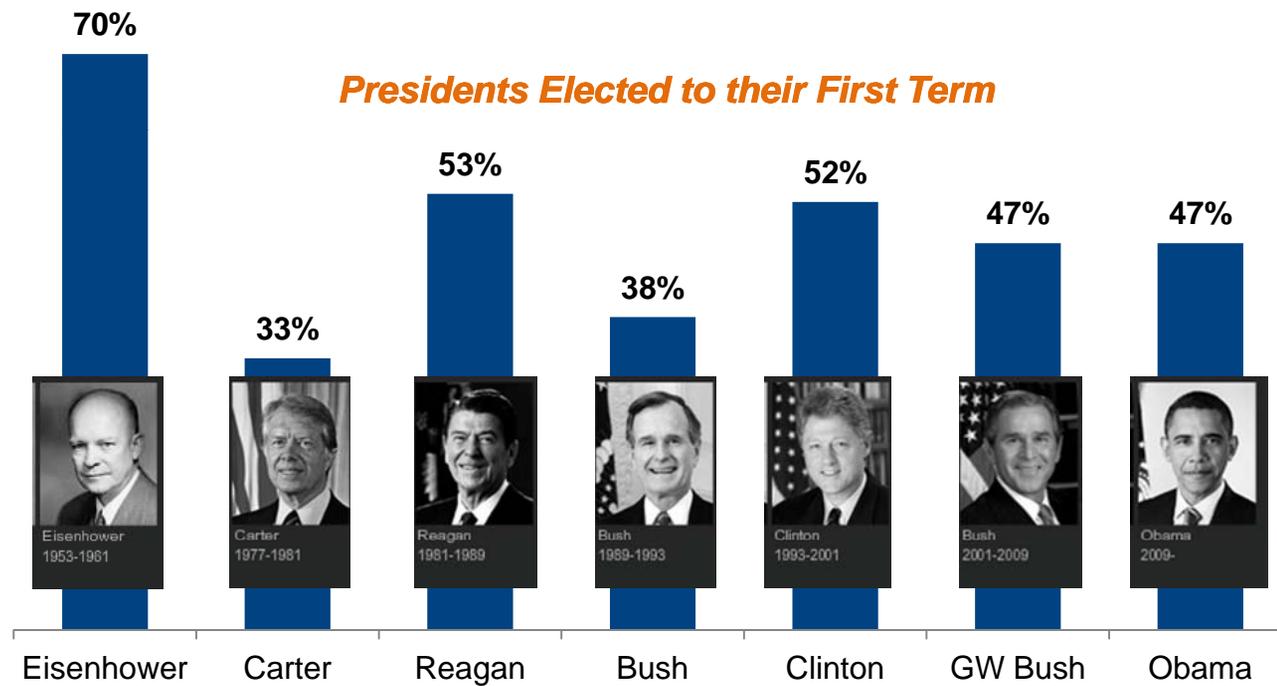
USA Today, January 9, 2012

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November 2012 Elections

Presidential Job Approval Ratings

July of Fourth Year



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November 2012 Elections

General Election: Romney vs. Obama

Polling Data						
Poll	Date	Sample	MoE	Obama (D)	Romney (R)	Spread
RCP Average	6/20 - 7/6	--	--	47.1	44.1	Obama +3.0
Rasmussen Tracking	7/3 - 7/6	1500 LV	3.0	45	45	Tie
Gallup Tracking	6/28 - 7/5	3050 RV	2.0	48	44	Obama +4
CNN/Opinion Research	6/28 - 7/1	1390 RV	2.5	49	46	Obama +3
Newsweek/Daily Beast	6/28 - 6/28	600 LV	4.0	47	44	Obama +3
Democracy Corps (D)	6/23 - 6/27	1000 LV	3.1	49	46	Obama +3
FOX News	6/24 - 6/26	912 RV	3.0	45	40	Obama +5
NBC News/Wall St. Jml	6/20 - 6/24	819 RV	3.4	47	44	Obama +3



RCP POLL AVERAGE

General Election: Romney vs. Obama

47.1 Obama (D) +3.0

44.1 Romney (R)

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November 2012 Elections

Congressional Job Approval

Polling Data				
Poll	Date	Approve	Disapprove	Spread
RCP Average	5/31 - 6/18	17.8	76.5	-58.7
Associated Press/GfK	6/14 - 6/18	22	75	-53
Gallup	6/7 - 6/10	17	79	-62
FOX News	6/3 - 6/5	17	75	-58
CBS News/NY Times	5/31 - 6/3	15	77	-62

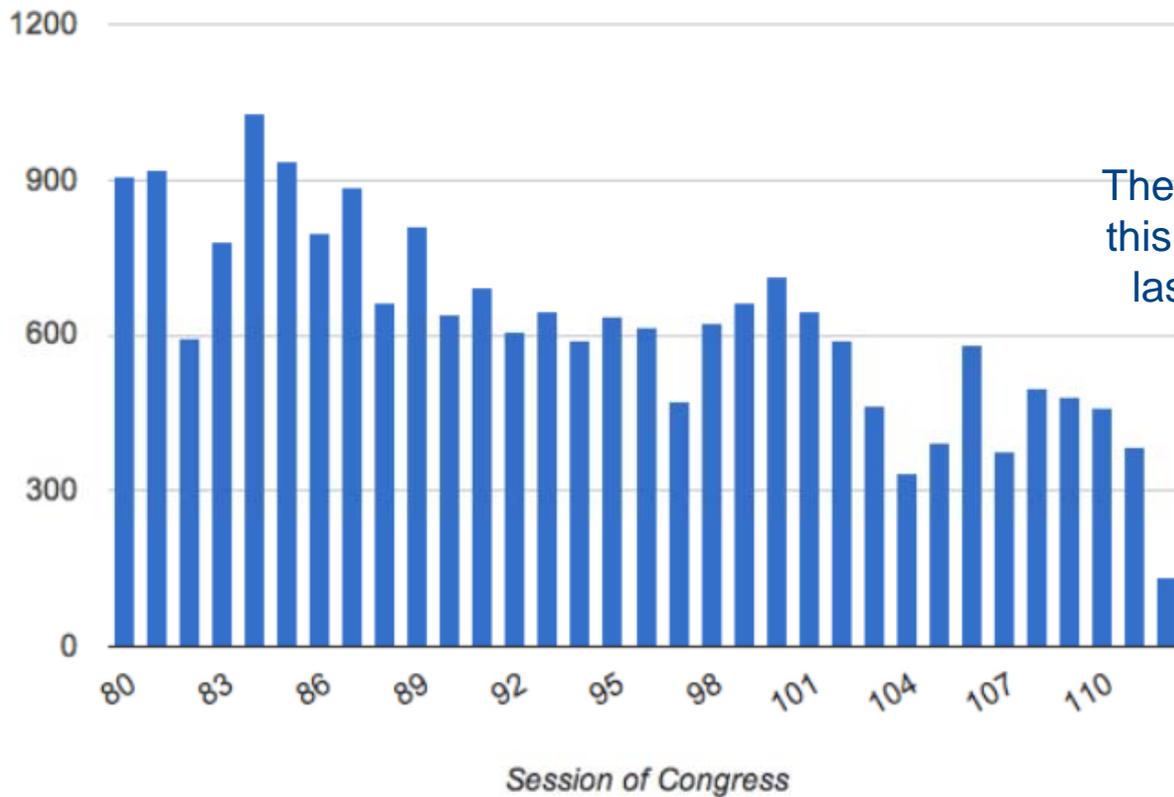


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Congressional Productivity

Public laws passed per session of Congress: 1947-2012

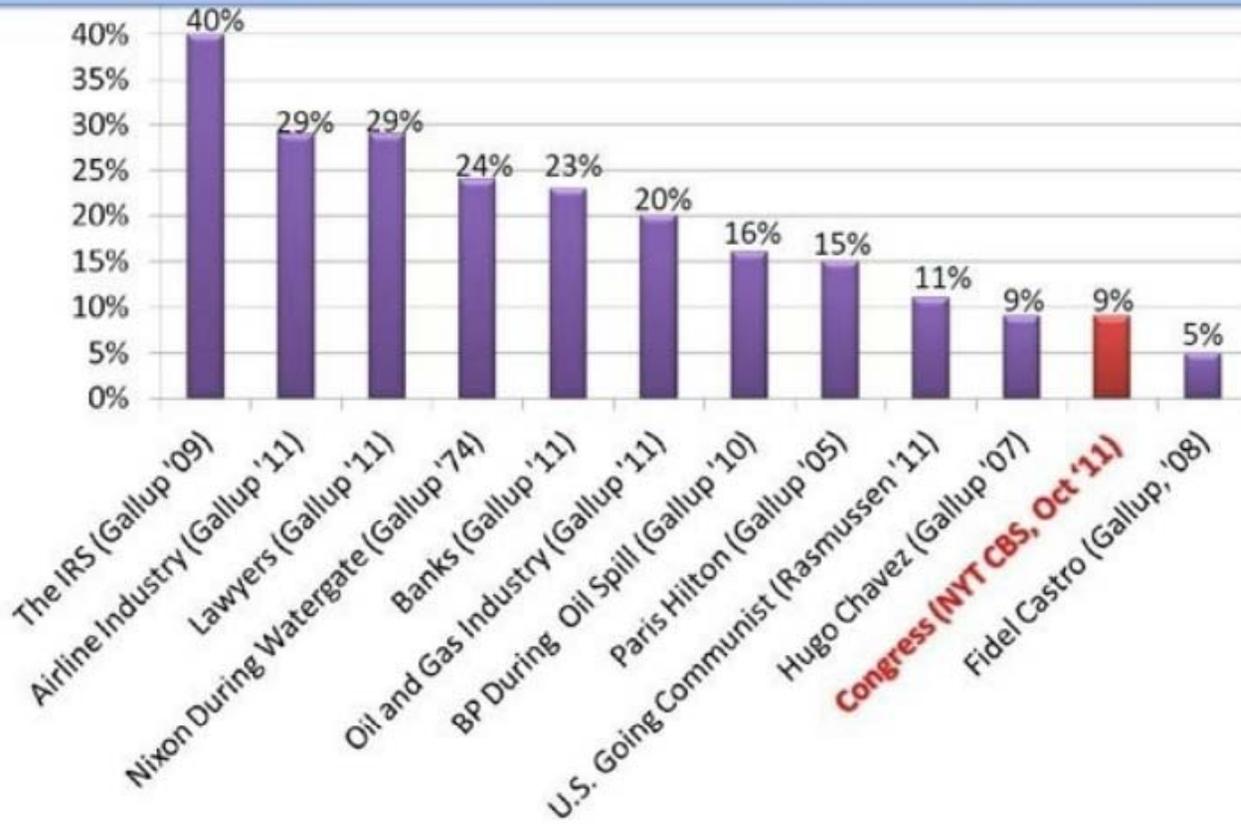


The 112th Congress — this Congress — is the last bar on the right.

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Environment

The Popularity of Congress Today Other Approval Ratings, Compared Against Congressional Approval at 9%

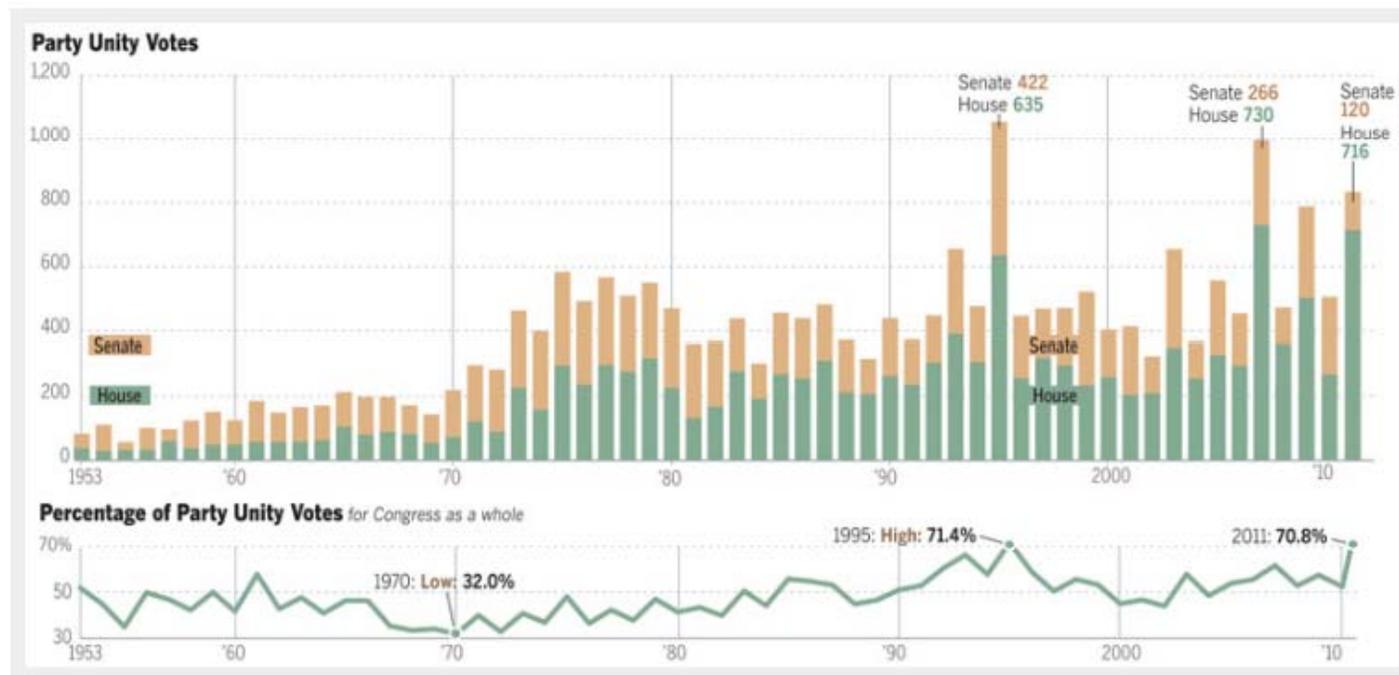


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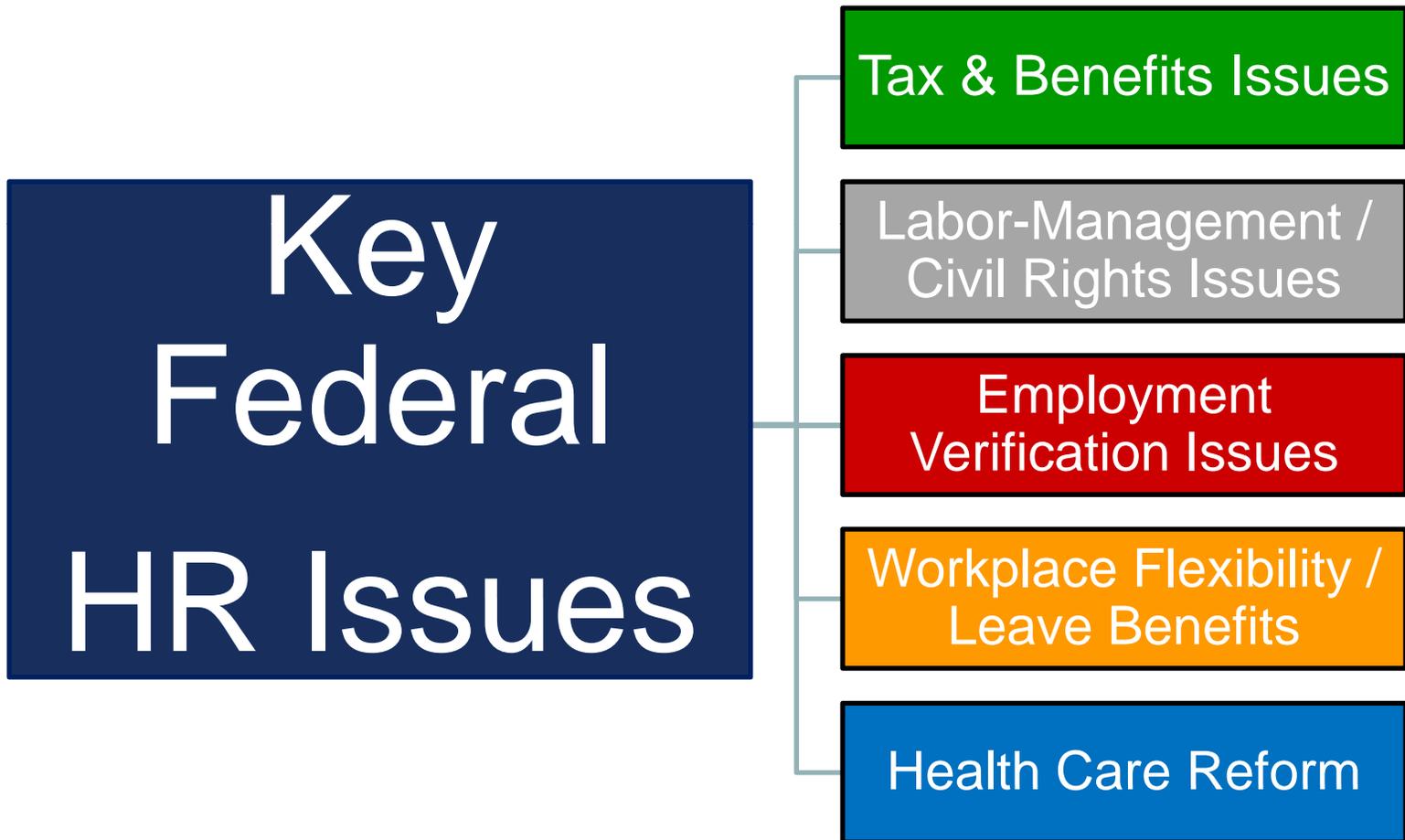
Congressional Polarization

- Another way of seeing the same thing is to look at Congressional Quarterly's "Party Unity" score, which measures the number of "in which a majority of Democrats opposed a majority of Republicans." In 2011 — so, in this Congress — the House set a new record on that measure, with 75.8 percent of its roll call votes pitting Democrats and Republicans against each other:



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Key HR Issues



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Public Policy Agenda 2012

Public Policy Agenda 2012

- Tax and Benefits:
 - Fiscal Cliff:
 - Taxmageddon or Tax Cuts - December 31, 2012 ??
 - Debt limit increase – Jan/Feb 2013
 - Statutory spending caps – 2012-2019
 - Sequester – January 2013 through 2021

- Labor and Employment:
 - Pay attention to regulatory initiatives at DOL, EEOC and NLRB.

 - Some appropriation riders are possible.

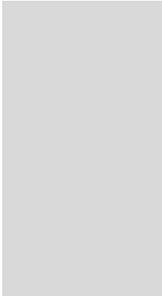


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Public Policy Agenda 2012

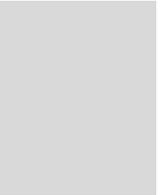
Public Policy Agenda 2012

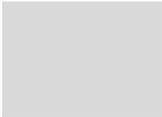


- Immigration Reform:

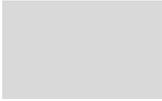
- Comprehensive immigration reform is impossible in this environment despite President's call for it in the State of the Union.
 - Enhanced employment verification and targeted immigration reform are possible.
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- Workplace Flexibility:

- Advocates continue to push expansion of FMLA/paid sick leave at state and local level but enactment at federal level impossible.
 - Obama Administration's focus on work-flex will continue.
 - Proposed regulation at DOL.
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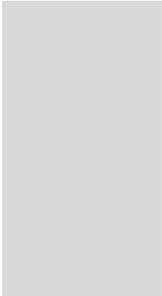
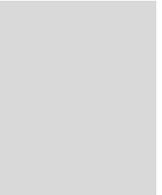


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Public Policy Agenda 2012

Public Policy Agenda 2012

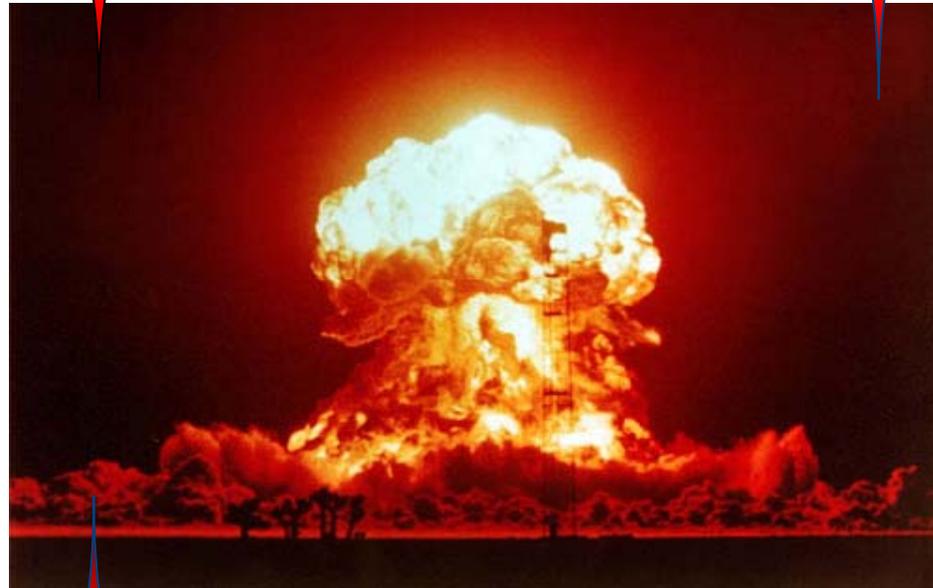
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- Health Care Reform:
 - Supreme Court upheld the constitutionality of the Patient Protection and Affordable Care Act (PPACA) on June 28.
 - Not the last word on health care reform:
 - Efforts to “repeal and replace” will continue regardless of who controls congress or the administration.
 - Regulatory oversight and guidance continues.
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Tax and Benefit Issues

Fiscal Cliff
Dec 31, 2012

Statutory Spending Caps
2012-2019



Sequestration
Jan 1, 2012

Debt Ceiling Increase
Jan/Feb 2013

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Tax and Benefit Issues

Tax and Benefit Issues

- Bipartisan deal was signed into law in August 2011 to raise the debt limit and cut federal spending by \$1 trillion over 10 years. Debt limit will need to be increased early in 2013. Current U.S. debt is \$15.3 trillion.
- Failure of the Joint Select Committee on Deficit Reduction, “the Super Committee,” triggers \$984 billion sequester over the next nine years in both discretionary and mandatory pending effective in January 2013.
 - The sequester cuts will apply equally each year between defense (\$54.7 billion) and non-defense (\$54.7 billion) programs.
 - The \$54.7 billion in non-defense cuts will come from both mandatory (entitlement) and discretionary (non-entitlement) programs.
- Sequester includes a 2 percent cut (or \$11 billion dollars) in Medicare reimbursements and \$5.2 billion in cuts in other mandatory programs (supports for farm prices, student loans, and other smaller programs).

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Tax and Benefit Issues

Tax and Benefit Issues

- “Taxmageddon” looms on the horizon as \$5 trillion in various tax provisions are set to expire on December 31, 2012. Key tax cuts include:
 - Payroll tax cut
 - Bush Era tax cuts
 - Section 127 Employer-Provided Education Assistance
 - Employer-Provided Transit Benefits
 - Alternative Minimum Tax

- The House and Senate will attempt to extend the Bush Era tax cuts in the next few weeks but the effort is unlikely to advance past either chamber until the “Lame Duck” session.

- Debt ceiling expected to be hit in January/February 2013.

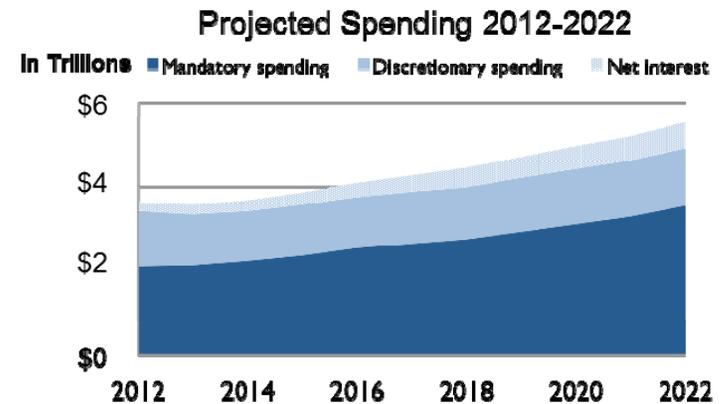
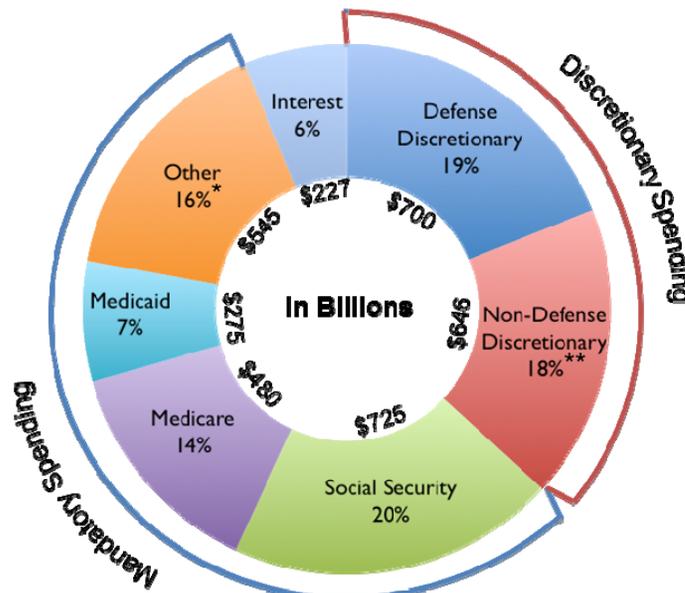
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Tax and Benefit Issues

Budget Primer: Spending

Not All Spending Is Created Equal Mandatory Spending Is Consuming More and More of the Budget

Total 2011 Spending – \$3.598 Trillion



*Consists of spending on unemployment compensation, federal civilian and military retirement, veterans' benefits, the earned income tax credit, food stamps and more.

**Consists of spending on programs related to health, income security, education, veterans' benefits, transportation and other activities.

Source: Financial Management Service Bureau of the United States Department of Treasury; Congressional Budget Office Historical Budget Data, 2011.

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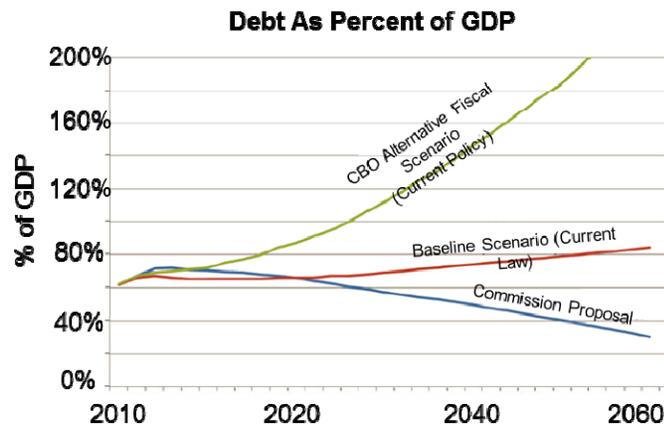
Tax and Benefit Issues

Proposed Solutions: Commissions and Committees

Bipartisan Commissions Emphasize Shared Sacrifice

Simpson-Bowles Commission

Spending: Cut to 21% of GDP
Revenues: Capped at 21% of GDP

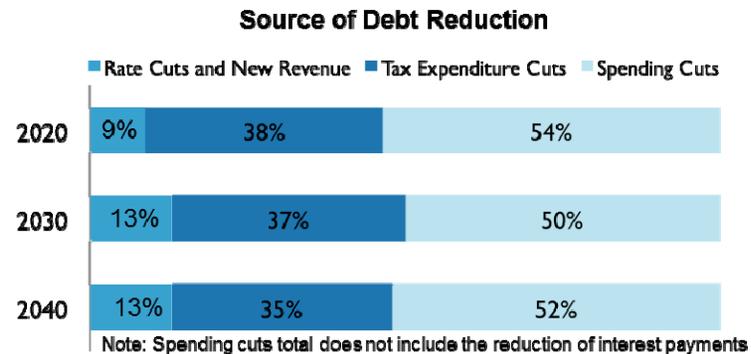


"Every modest sacrifice we refuse to make today only forces far greater sacrifices of hope and opportunity upon the next generation."

— Alan Simpson, Erskine Bowles, January 2011

Domenici-Rivlin Plan

Spending: 26% to 23% of GDP by 2020
Revenues: Capped at 21.4% of GDP



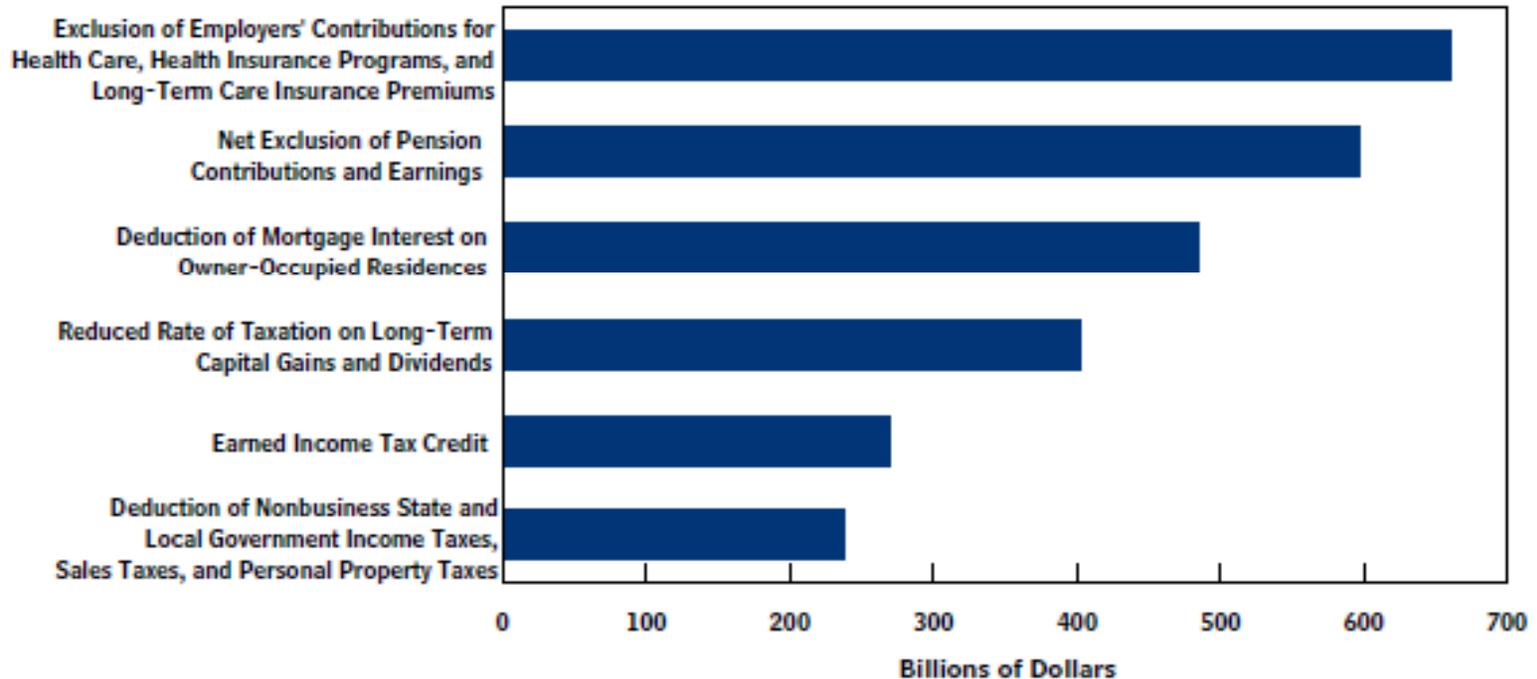
"The only hope is for the two parties to come together around a bipartisan plan...and work together to make it a reality."

— Pete Domenici, Alice Rivlin, November 2010

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Tax and Benefit Issues

Cumulative Budgetary Effect of Major Income Tax Expenditures 2010 to 2014



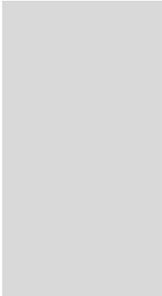
Source: Joint Committee on Taxation.



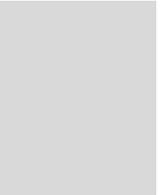
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Tax and Benefit Issues



Employee Educational Assistance Act of 2012 (H.R.4137)

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- Introduced in the House by Representatives Sam Johnson (R-TX) and Richard Neal (D-MA) during SHRM's 2012 Employment Law and Legislative Conference.
 - The legislation would extend and make permanent Internal Revenue Code Section 127, which allows an employer to provide up to \$5,250 per year tax-free in tuition, fees, and books to employees for courses on the undergraduate and graduate levels.
 - Currently, Section 127 is set to expire on December 31, 2012.
 - SHRM is the co-chair of the Coalition to Preserve Employer Provided Educational Assistance www.cpepea.com.
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Tax and Benefit Issues

Moving Ahead for Progress in the 21st Century Act (P.L. 112-141)

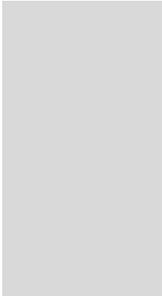
- Signed into law by President Obama on July 6, the law provides funding for highway and transit programs but also contains provisions that modify the calculation used by an employer to compute their pension liabilities to a defined benefit plan.
- Under current law, pension plans may discount their future pension contributions using a modified yield curve rate based on one of three discount rates taking into consideration the current interest rate.
- The new law includes a provision to smooth interest rates and essentially lower required minimum funding levels by allowing defined benefit pension plan sponsors to choose between using the yield curve rate to calculate funding liabilities or opt for a "smoothed" interest rate that is within a percentage of a 25-year average interest rate.



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Tax and Benefit Issues

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- From 2012 to 2015, this smoothed interest rate will be within 10% of the 25-year average and, from 2016 onward, it will be within 30% of the 25-year average.
 - The law also increases what the PBGC will be allowed to charge employers for their defined benefit premiums. Single employer plan flat-rate premiums will increase to \$42 per participant (from \$35) for 2013 and to \$49 for 2014, and will be indexed afterwards. Multiemployer plan flat-rate premiums will be increased by \$2 per participant for 2013.
 - For plan years beginning after 2012, the rate for variable-rate premiums (\$9 per \$1,000 of unfunded vested benefits) is indexed and the per-participant variable-rate premium is subject to a limit. The limit is \$400 for 2013 with indexing thereafter. In addition, the rate for variable-rate premiums per \$1,000 of unfunded vested benefits is increased by \$4 for 2014 and another \$5 for 2015.

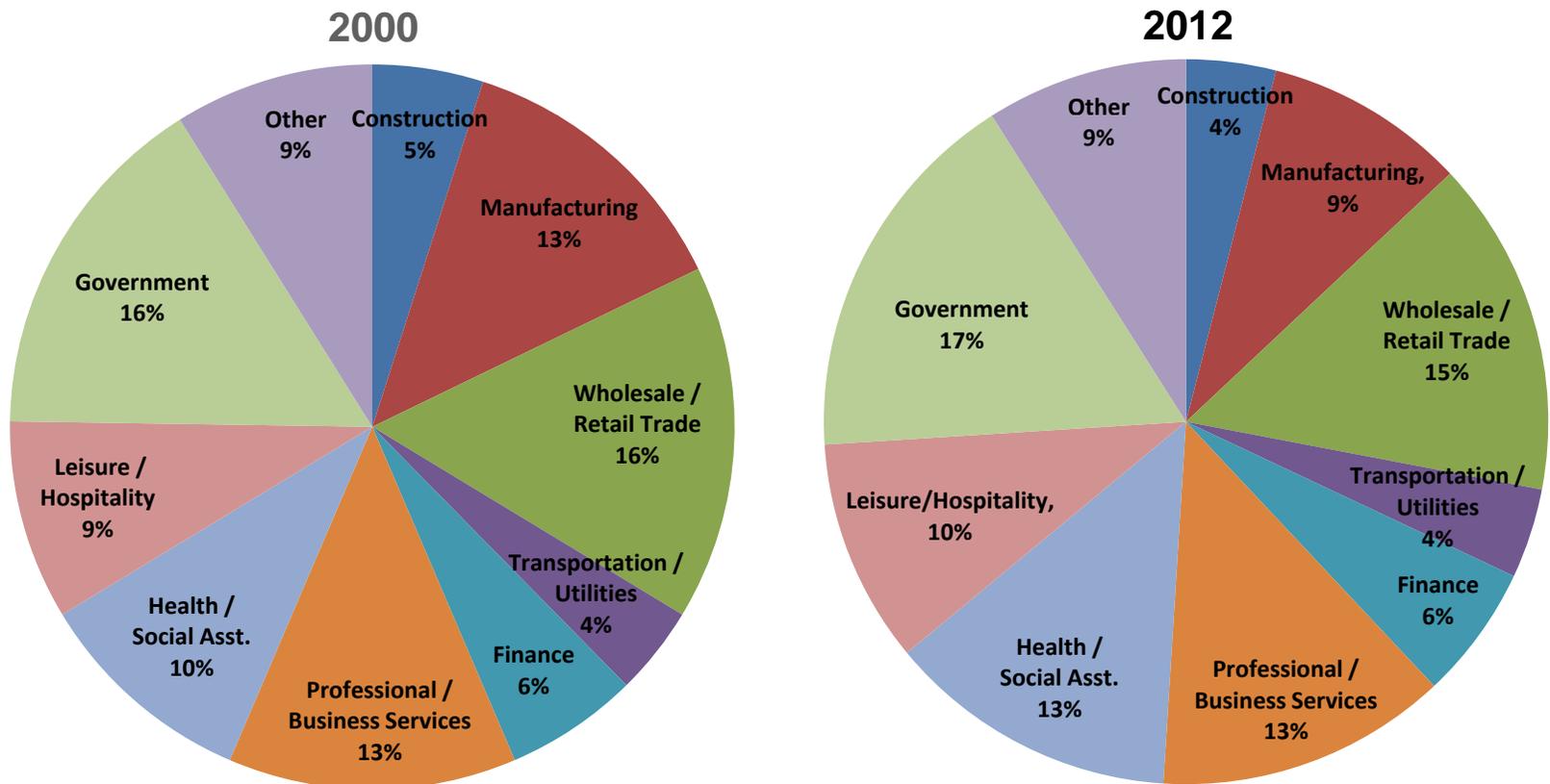
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Labor-Management / Civil Rights Issues

State of the Unions

Changing U.S. Workforce

(Industry Employment as Share of Workforce)



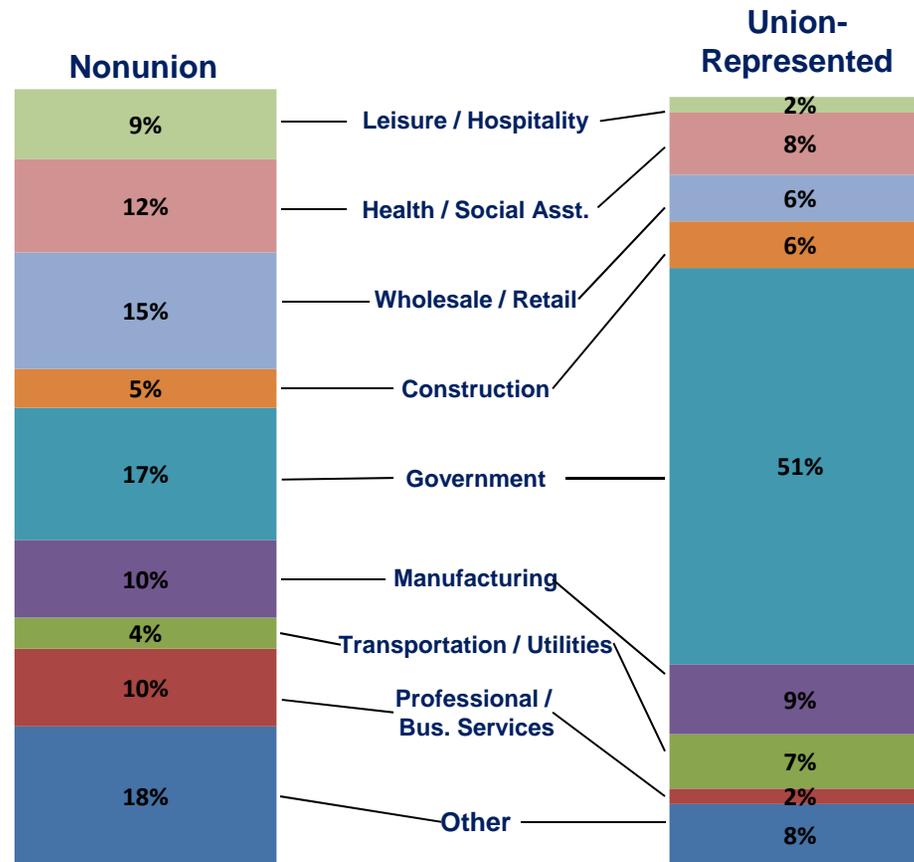
Source: Bureau of Labor Statistics

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Labor-Management / Civil Rights Issues

State of the Unions

Nonunion & Union Workforces 2011
(Employment by Industry as Share of Workforce)



Source: Bureau of Labor Statistics

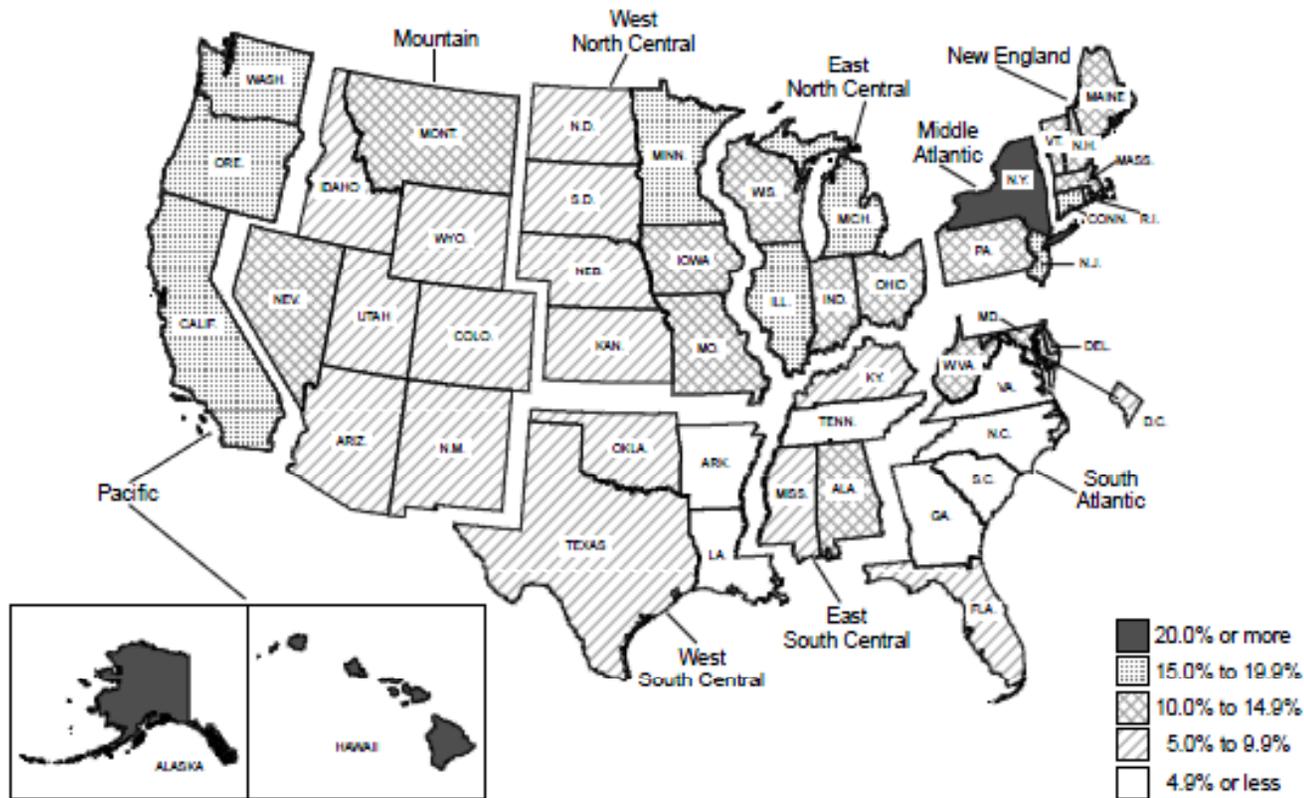
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Labor-Management / Civil Rights Issues

State of the Unions

Union Representation Rates by State

(U.S. rate = 11.8 percent)



Source: Bureau of Labor Statistics

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Labor-Management / Civil Rights Issues

Labor-Management / Civil Rights Issues

- Divided Congress and election year politics mean most labor-management legislation will not move through Congress.
- However, keep focus on the Agencies particularly EEOC and DOL.
- NLRB regulatory activity at board level has decreased with Flynn's impending departure and recent court setbacks:
 - Quick election
 - NLRB Posting Requirement
- However, several major decisions are being advanced by the agencies:
 - *Specialty Health Care*
 - *D.R. Horton*

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Labor-Management / Civil Rights Issues

National Labor Relations Board

Quick Election Rule

- National Labor Relations Board voted November 30 to proceed with modified final rule on procedures in union representation cases.
- Final rule was approved on December 21.
- Provisions took effect April 30, 2012, but the U.S. District Court for the District of Columbia invalidated the rule on May 14 on the basis that the board did not have a proper quorum in passing the rule.
- Board Member Flynn had indicated he will not participate in any votes prior to his resignation on July 24.

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Labor-Management / Civil Rights Issues

Department of Labor – Ofc. of Federal Contract Compliance

New Affirmative Action Proposed Rule – 503 Regulations

- OFCCP issued on December 9 proposed rule on nondiscrimination and affirmative action requirements for individuals with disabilities.
- SHRM strongly supports the goal of increasing employment among individuals with disabilities, but the proposed rule places numerous data collection and record-keeping requirements on federal contractors without showing that these requirements will help employers increase their disability hiring.
- Key HR concerns with these proposed regulations include:
 - Encouraging employees to self identify as disabled during pre-and post offer and annual survey;
 - Requiring employers to have a goal of 7% for each job group composed of individuals with disabilities;

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Labor-Management / Civil Rights Issues

Department of Labor – Ofc. of Federal Contract Compliance

New Affirmative Action Proposed Rule – 503 Regulations

- Requiring annual staff training that must include information on the benefits of employing individuals with disabilities, appropriate sensitivity, and legal responsibilities including reasonable accommodation;
- Requiring an annual review of all physical and mental job qualifications including providing a written explanation as to why each requirement is related to the job and;
- Creating personnel logs to track reasons for rejecting individuals with disabilities for vacancies and training programs, and a description of considered accommodations.

- SHRM submitted comments on February 7, 2012.

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Labor-Management / Civil Rights Issues

Equal Employment Opportunity Commission

Barriers to Employment Hearings

- Focus of hearings has been on:
 - Frequency or use of certain practices
 - EEOC concern over potential disparate impact
 - Effective HR practices in each area

- Hearings have been on:
 - **Leave as an accommodation** (June 2011)
 - Use of credit reports (Oct. 2010)
 - Discrimination against the unemployed (Feb. 2011)
 - Mental disabilities (May 2011)
 - Criminal background checks (July 2011)

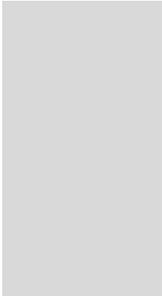
- With the Commissioner Ishimaru's resignation in April, Commission is now deadlocked with two Democrats and two Republicans



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Labor-Management / Civil Rights Issues



Equal Employment Opportunity Commission

Barriers to Employment Hearings

- 
- Working on guidance for “Leave as an accommodation”
 - EECO Board Member Chai Feldman
 - Feldman recently commented that background check guidance displaced leave guidance
 - Suggests it will not be as favorable to employees due to employer backlash on background check guidance

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Labor-Management / Civil Rights Issues

Equal Employment Opportunity Commission

Criminal Reports in the Employment Process

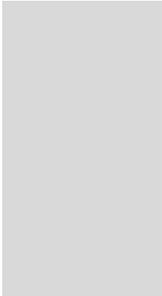
- By a 4 to 1 vote on April 25, Commission issued “guidance” on the use of criminal reports in the employment process.
- Guidance provides information and examples as to when the use of criminal reports in the employment process could violate Title VII. Key provisions include:
 - **Application Questions** – Although the agency did not “ban the box,” the EEOC recommends that employers refrain from asking about convictions in employment applications as a “best practice.”
 - **Individualized Assessment** – Although not required, the Guidance recommends an employer conduct an “individualized assessment” when screening on the basis of a criminal record.



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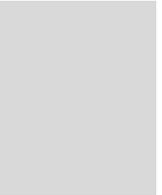


Labor-Management / Civil Rights Issues



Equal Employment Opportunity Commission

Criminal Reports in the Employment Process

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- **Federal Law** – Guidance makes clear that an employer who is conducting criminal background checks to comply with another federal law or regulation (including those governing eligibility for an occupational license, registration or a security clearance) will not violate Title VII.
 - **State Law** – The Guidance makes clear that compliance with state and local laws will not shield employers from potential Title VII issues, because Title VII pre-empts state and local laws that are in conflict with it.

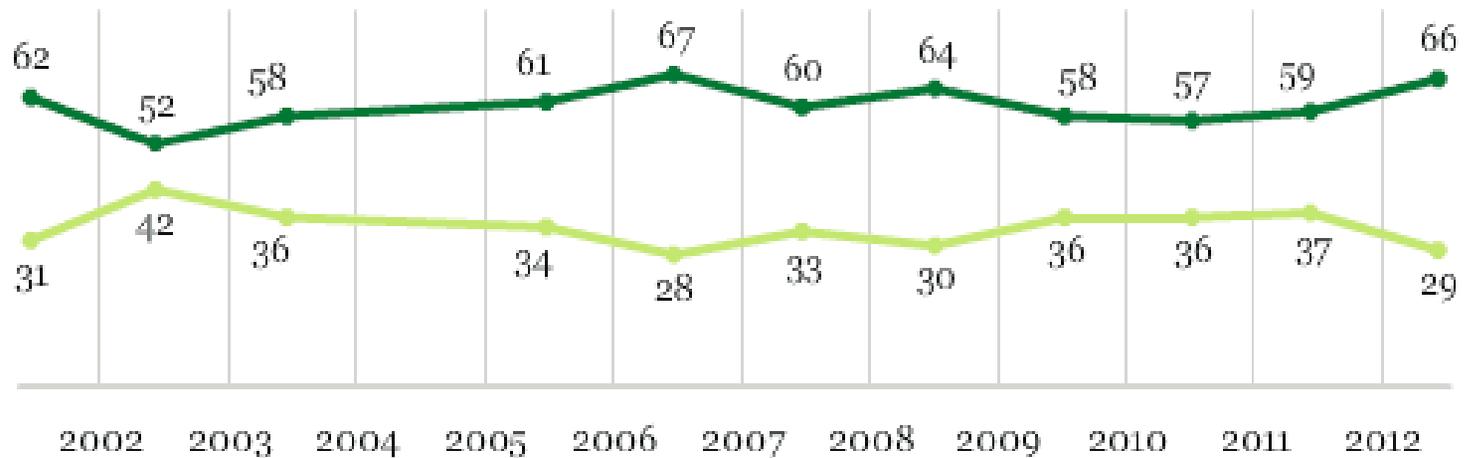
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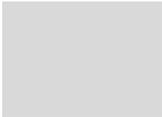
Employment Verification Issues

Americans More Positive About Immigration

On the whole, do you think immigration is a good thing or a bad thing for this country today?

■ % Good thing ■ % Bad thing



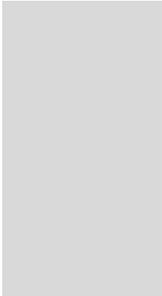
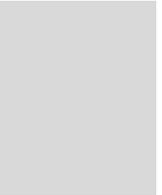


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Employment Verification Issues

Employment Verification

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- Targeted enforcement bills have been the focus of the 112th. The House Judiciary Committee reported out on an electronic verification bill in 2011.
 - SHRM testified on this issue in the House Ways and Means Subcommittee on Social Security in April 2011. SHRM recently submitted comments on this same issue to the House Judiciary Committee in 2012.
- 
- Stepped up enforcement by the Obama Administration continues. U.S. Immigration and Customs Enforcement (ICE) served Notices of Inspections to 1,000 employers on their Form I-9's in June 2011. This brings the number of employers under audit to 2,496, up from the 2010 number of 2,196, and includes over \$10 million in assessed fines.
- 
- In fiscal year 2011, ICE criminally charged a record-breaking 221 business owners, employers, managers and/or supervisors, up from 114 in 2009 and 135 in 2008.

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Employment Verification Issues

Legal Workforce Act (H.R. 2885)

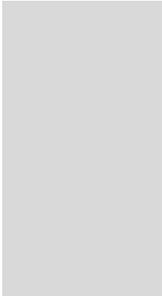
- Introduced by Chairman of the House Judiciary Committee Lamar Smith (R-TX), the bill makes permanent the electronic verification system for employment, E-Verify.
- Federal Contractors would be required to use the system 30 days after enactment. Other employers would be required to participate as follows:
 - employers with 10,000 or more employees, 6 months after enactment;
 - employers between 500 and 10,000 employees, 12 months after enactment;
 - employers between 20 and 500 employees, 18 months after enactment;
 - employers between 1 and 10 employees, 24 months after enactment; and
 - agricultural employers within 36 months of enactment.



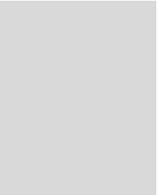
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Employment Verification Issues



Employment Verification Process

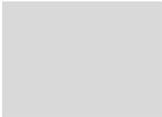
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- Employers would attest through the electronic verification system that they had examined the new hire's employment and identification documents to ensure authenticity. The bill also allows employers to conduct the attestation on a paper form as well.
 - Employers would be permitted to initiate the verification process on the date the offer of employment is extended and ending at the end of the third business day after the employee has been hired. The offer of employment may be conditioned on passing the verification system.
 - Employees would be required to attest they are authorized to work legally in the U.S. and would face criminal sanctions of up to two years in jail and civil penalties for violations of the attestation provisions.
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Employment Verification Issues

Other Key HR Provisions

- The legislation would allow federal immigration law to preempt any state law in regard to: 1) employer fines for immigration-related issues or 2) requiring employers to verify work status or identity for work authorization purposes. States could, however, continue to award business license on the basis of compliance with the federal system.
- Provide employers that have taken action in “good-faith reliance” on the information provided through system from being not criminally or civilly liable under any law for that action.
- Creates a presumption for employers that participate in the system that the employer has not violated the law and the presumption can only be overcome by “clear and convincing evidence of willful noncompliance.”
- Creates a biometric pilot program within 48 months to address the issue of identity theft and the use of fraudulent documents in the verification process.

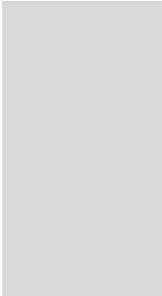
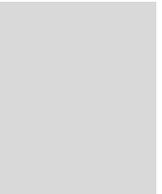


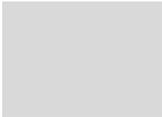
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Workplace Flexibility / Leave Benefit Issues

Workplace Flexibility / Leave Benefits

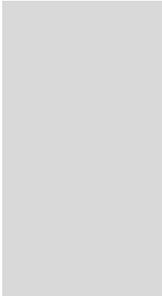
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- Advocates continue to push legislation to expand FMLA benefits and require paid sick leave at the state level but unlikely at the federal level.
 - Families and Work Institute and SHRM announced new partnership: *Moving Work Forward* on February 2011 to encourage greater adoption of workplace flexibility programs at worksites.
- 
- SHRM member Juanita Phillips testified in front of the Senate HELP committee on May 10 on proposed paid leave initiatives and challenges with federal law in implementing workplace flexibility programs.
- 
- SHRM CEO and President Hank Jackson participated in a Senate briefing on SHRM's efforts on workplace flexibility on May 22.
- 
- DOL proposed regulations in February implementing the military leave provisions of the Family and Medical Leave Act.
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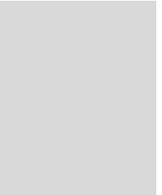
Workplace Flexibility / Leave Benefit Issues



Department of Labor

Family and Medical Leave Act

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- Published in the *Federal Register* on February 15, 2012, the proposed rule primarily covers statutorily-required clarifications of military leave created in the National Defense Authorization Act for FY 2010 and flight crew provisions enacted in the Airline Flight Crew Technical Corrections Act.

 - The proposed rule:
 - Clarifies that coverage includes recent veterans;
 - Defines “serious injury or illness” to include preexisting conditions aggravated in the line of duty and;
 - Expands the amount of leave allowed for rest and recovery from “up to 5 days” to “up to 15 days.”
- 



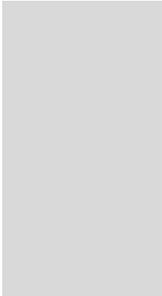
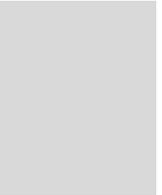
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Workplace Flexibility / Leave Benefit Issues

Department of Labor

Family and Medical Leave Act

- 
- The regulation proposes to modify a provision added to the regulations in 2009, which allows employers to track intermittent or reduced scheduled leave in the shortest period of time that the employers uses to account for other forms of leave (sick, vacation, or personal), provided that it is not greater than one hour.
- 
- The proposed change would prohibit an employer from requiring an employee to take more leave than is used to address the circumstances that caused the need for leave, provided that the employer counts the leave using the shortest increment of leave used to account for any other type of leave.
- 
- SHRM and the Coalition to Protect Family Leave submitted comments on the proposal on April 30. Fourteen SHRM State Councils and over thirty SHRM Chapters signed onto SHRM's comments.
- 
- SHRM**
SOCIETY FOR HUMAN
RESOURCE MANAGEMENT
- 

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Health Care Reform Issues

U.S. Public Reaction to Supreme Court Healthcare Decision

As you may know, the U.S. Supreme Court has upheld the entire 2010 healthcare law, declaring it constitutional. Do you agree or disagree with this decision?

	National adults	Democrats	Independents	Republicans
	%	%	%	%
Agree	46	79	45	13
Disagree	46	16	42	83

USA Today/Gallup, June 28, 2012

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Health Care Reform Issues

Preferences on what Congress Should do Next on Health Care Reform

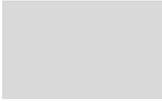
	National adults	Democrats	Independents	Republicans
	%	%	%	%
Expand government's role	25	45	25	6
Keep law in place	13	20	15	5
Repeal parts of law	21	20	26	17
Repeal law entirely	31	7	23	68

USA Today/Gallup, June 28, 2012

GALLUP

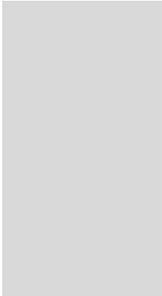


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Health Care Reform Issues

Health Care Reform

- 
- Supreme Court upheld the constitutionality of the Patient Protection and Affordable Care Act (PPACA) on June 28.
 - Not the last word on health care reform:
 - Efforts to “repeal and replace” will continue regardless of who controls congress or the administration (the House voted on July 11 for the 33rd time to repeal PPACA).
 - Regulatory oversight and guidance continues.
- 

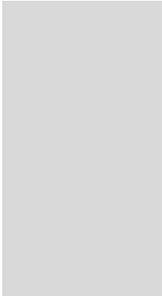


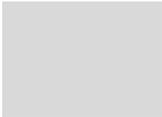
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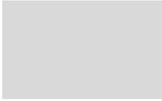
Health Care Reform Issues

Health Care Reform

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- Remaining Obstacles to Enforcement
 - State Exchanges Making Poor Progress
 - HHS does not have funding to pick up shortfall
 - IRS does not have funding for 2,000 new employees needed to enforce taxes
 - House not appropriating funds
 - Under text of law, only state exchanges may pay subsidies to person purchasing insurance – federal exchange cannot
 - Consequence is mandate to purchase, with no price support

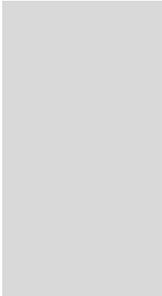


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Health Care Reform Issues

Health Care Reform

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- Next steps for employers:
 - Employers and group health care plans continue implementation efforts.
 - Await and focus on additional guidance from federal agencies.
 - Review not just 2013 requirements but 2014 and beyond.



- Employment Legislation Introduced in Unicameral (Unsuccessful)
 - LB 785 (Christensen) Authorize possession of fire arms at work
 - LB 791 (Mello) Adopt the shared work unemployment compensation program
 - LB 866 (Harr) Fair Employment Act
 - LB 912 (McCoy) Local laws regulating discrimination
 - LB 909 (Laughtenbaugh) Defense to workers compensation claim for knowingly false statement
 - LB 1012 (Laughtenbaugh) Numerous additional defenses to work comp claims



- LB 959 (Janssen) **Reference Check Bill**
 - Governor Signed April 12, 2012 into law
 - Nebraska SHRM a big part of success
 - Up to employers to make this work
 - Immunity for reference provided for past or current employee if
 - Employer has received signed, compliant consent
 - Exception: employee proves that employer knew it was providing false information or acted with malice or reckless disregard of its truth