

Maine SHRM Government Affairs

Update & 124th Maine Legislature Wrap Up

April 22, 2010

The 124th Legislature adjourned on Monday April 12th after some rather impressive work this session including this last bipartisan push to pass the bond package to go to voters on June 8th. For what was supposed to be a short session, they reviewed a lot of legislation. For more on the upcoming primary and ballot questions, please see: <http://www.maine.gov/sos/cec/elec/upcoming.html>

Here are the bills that we tracked with the final disposition for each.

Passed

Please note how the bill may have changed from the original. Unless otherwise noted, they are effective July 12, 2010.

- **LD 1566** – *An Act Relating to the Membership of the Worker’s Compensation Board* – Original bill was replaced with an amendment offered providing for members to recuse themselves in certain circumstances. It clarifies the current restrictions on the Workers’ Compensation Board membership with regard to any possible conflict of interest between a member and an issue in front of the board so that, *in addition to the conflict of interest provisions in section 152, subsection 8, a member of the board may not take part in reaching a decision or recommendation in any matter that directly affects an insurer, self-insurer, group self-insurer or labor organization that the member represents.*
- **LD 1545** – *An Act To Protect Maine Workers* – Protects Maine workers in the logging industry from being undercut by foreign bonded labor by requiring employers who hire bonded labor to provide proof of ownership, or a bona fide lease, of equipment as required by the Commissioner of Labor. The law aims to correct abuses within the system where employers may hire foreign contracting firms who have equipment, which is a violation of federal and state law. The amendment requires employers seeking bonded workers to form and participate in a recruitment clearinghouse that assists in evaluating and referring potential logging occupation workers.
- **LD 1565** – *An Act To Amend the Laws Governing the Knowing Misclassification of Construction Workers.* This bill took many twists and turns and the amendment adopted allowed for sweeping powers to stop work not found in any other state agency. There was strong opposition to this bill, but it did pass and granted the Workers’ Compensation Board authority to stop work in addition to the penalties provided for already in the code in cases where construction hiring agents and subcontractors do not provide appropriate Workers’ Compensation coverage. *This bears watching because a part of the debate included expanding this beyond the construction industry, which could greatly impact independent contractors in other sectors of Maine’s economy.*
- **LD 1708** and **LD 1769.** These were the bills extending the State’s miniCOBRA eligible population and ensuring that ARRA subsidy will be available to miniCOBRA recipients in Maine respectively. LD 1769 was an emergency measure effective March 26th and it contained provisions to automatically adopt any future ARRA extensions.
- **LD 1198** – *An Act to Reform Insurance Coverage To Include Diagnosis for Autism Spectrum Disorders.* It requires individual health insurance policies and contracts as well as group policies, contracts and certificates for health insurance to provide coverage for the diagnosis and treatment of autism spectrum disorders for persons 5 years of age and under. Coverage for applied behavior therapy is subject to a maximum annual benefit of \$36,000 per year. Would require health insurance companies to provide coverage of the diagnosis and treatment of autism spectrum disorders for individuals age 5 and younger.
 - Health insurance companies will be required to provide coverage of the following:
 - Habilitative or rehabilitative care - including applied behavior analysis or other professional or counseling services necessary to develop, maintain and restore the functioning of an individual to the extent possible
 - Psychiatric care
 - Psychological care
 - Therapeutic care - meaning services provided by certified speech, occupational, or physical therapist
 - Coverage for Applied Behavior Analysis (ABA) is subject to an annual maximum of \$36,000; no limits on the number of visits to an ABA provider
 - No dollar or number of visit limitations on other covered treatments unrelated to ABA
 - As with all Maine state benefits mandates, it applies to state regulated insurance plans - it does not apply to ERISA regulated self-funded plans. ***There had been concern about the interplay between this law and the newly issued Federal Mental Health Parity & Addiction Equity Act of 2008 interim final regs. You will want to ensure you comply with both if you are an employer with 50 or more employees and are in an insured plan subject to this new law.*** Here are the regs: <http://edocket.access.gpo.gov/2010/pdf/2010-2167.pdf> . History here: http://www.cms.hhs.gov/healthinsreformforconsume/04_thementalhealthparityact.asp
 - Applies to plans issued or renewed on or after January 1, 2011.

- **LD 425** - *An Act To Require Private Insurance Coverage for Certain Services for Children with Disabilities* also requires insurers to pay for coverages not previously required. This bill requires individual and group health insurance policies and health maintenance organization contracts to provide coverage for children's early intervention services after a referral from a primary care provider for children from birth to 3 years of age if the child has an identified developmental disability or delay. Coverage is limited to \$3,200 per year per child up to a maximum of \$9,600 by the child's 3rd birthday.
- **LD 20** - *An Act To Require Insurance Companies To Cover the Cost of Prosthetics* - Under current law, health insurance carriers are required to provide coverage for prosthetic devices, but coverage is not required for those devices containing a microprocessor. The amendment removes the exclusion for prosthetic devices that include a microprocessor. Insurers were very concerned with the cost, but the committee felt usage would be low.
- **LD 1498** - *An Act to Adopt a Drug Benefit Equity Law* - The law bars health insurance carriers from favoring pharmacies. It prohibits a carrier from refusing to contract with a pharmacy provider that meets the terms and conditions established by the health plan and requires that coinsurance, copayment and deductible factors be applied uniformly regardless of the type of pharmacy the health plan enrollee chooses.
- **LD 1626** - *An Act To Amend the Unemployment Compensation Laws Regarding Vacation Pay* was enacted, but not as an emergency measure as originally proposed. The law now allows laid off workers to collect unemployment benefits earlier because terminal vacation pay was removed as disqualifier.
- **LD 1524** - *An Act To Ensure Equity in Unemployment Compensation Claims*- This was enacted as a resolve. Original bill had sought to address the situation of 2 employers who both lay off the same employee within 30 days of each other. It required that both employers be considered the claimant's last employer for purposes of the laws governing unemployment compensation. The resolve changes this and mandates a study to see how other states do this, with report due back in January, 2011.
- **LD 1620** - *An Act To Protect Health Care Consumers from Catastrophic Debt* - First-in-the-nation legislation banning annual and lifetime caps on insurance policies, protecting those suffering from severe illness from also facing catastrophic debt often incurred during the treatment of many fatal diseases. The elimination of annual or lifetime caps would directly benefit Mainers battling cancer and fighting other chronic diseases such as hemophilia, cystic fibrosis, Parkinson's and multiple sclerosis. *This legislation may offer more protection for Mainers because it takes effect and is more universal than similar provisions under federal healthcare reform, but again, this applies to insured products only, not self-insured employer sponsored medical plans.*
- **LD 1464** - *An Act To Amend Licensing, Certification and Registration Requirements for Health Care Providers and Other Facilities.* Beginning October 1, 2010, a facility or health care provider subject to the licensing or certification processes of chapter 405, 412 or 419 shall obtain, prior to hiring an individual who will work in direct contact with a consumer, criminal history record information on that individual, including, at a minimum, criminal history record information from the Department of Public Safety, State Bureau of Identification. The facility or health care provider shall pay for the criminal background check required by this section.
- **LD 1537** - *An Act To Amend the Statute of Limitations under the Maine Human Rights Act* - passed as a resolve requiring a report to the Judiciary joint standing committee by February 1, 2011 concerning case processing revisions and recommendations for legislative action, all to reduce the time for investigating complaints. The report must include the estimated costs of the revisions and the recommendations. Bill had originally sought to shorten from 2 years to one year the period within which the Maine Human Rights Commission must conclude an investigation of a complaint.
- **LD 1711** - *An Act To Clarify The Status of Prisoners* - This law clarifies when prisoners are considered employees for the purpose of Workers' Compensation coverage.
- **LD 1709** - *An Act To Enhance Public Awareness of Lyme Disease* - The law reflects the amended bill and was enacted as an emergency measure effective March 8th. It establishes the month of May as Lyme Disease Awareness Month and directs the Maine Center for Disease Control and Prevention to make appropriate information available to the public to improve education and awareness about the prevention, diagnosis and treatment of Lyme disease. It clarifies the annual reporting requirements on Lyme disease and other tick-borne illnesses to include information on diagnosis as well as treatment. It also requires the Maine Center for Disease Control and Prevention to maintain a publicly accessible website to provide public awareness and education on Lyme disease and other tick-borne illnesses, including links to resources made available and recommended by the United States Department of Health and Human Services. It also requires health insurers to report claims data related to Lyme disease diagnosis as well as treatment. (The original bill had benefits mandates which is why we were tracking it.)

Failed

- **LD 1665** - *An Act to Prevent the Spread of H1N1* - the bill was voted Ought Not To Pass by a large majority out of committee and was subsequently voted down in both houses. This bill was originally drafted to mandate paid sick time, making Maine the first in the nation to adopt such a law if it had remained in that form. We opposed the legislation because one-size fits all employer mandates don't work in today's workplace where maximum flexibility it required to meet the needs of a changing workforce. When concerns arose about support of the bill, the bill was altered to instead guarantee job protection for 5 days without the benefits mandate, however, there were concerns with the approach as well, not only in how it impacts attendance and performance policies, but also how it might dovetail with myriad other entitlements like FMLA and ADA both on the state and

federal levels. The national Healthy Families Act bill be coming up on the national stage, likely in the next Congress and may come back to ME as well. Workplace flexibility and paid sick leave are hot topics as evidenced here:

http://paysickdays.nationalpartnership.org/site/PageServer?pagename=psd_index . You may also wish to revisit SHRM's position as Chair of the National Coalition to Protect FMLA: <http://www.protectfamilyleave.org/about/index.cfm> .

- **LD192** - *An Act To Index the State Minimum Wage to Inflation* – The bill that would have tied the state's minimum wage to the rate of inflation was unexpectedly withdrawn by Labor Committee Co Chair Representative John Tuttle of Sanford in March. Both workers and employers expressed concerns about the potentially negative impact on the state's job market. The state's current minimum wage is \$7.50 an hour -- 25 cents higher than the federal minimum -- and some lawmakers feared another increase could have a chilling effect on jobs. Representative Tuttle also had an earlier bill, **LD 403**, that sought to increase the minimum wage that he chose not to move forward with in mid-January.
- **LD 1552** - *An Act To Improve Employment Opportunities for Maine Workers in the Forest Industry* - Would have required a landowner to notify the Department of Conservation, Bureau of Forestry if forest land is harvested by a harvester who uses bonded labor under the federal H2 bonded labor program under 20 Code of Federal Regulations, Section 655.200 et seq. If a landowner or a harvester employed by or under contract to the landowner uses bonded labor under the federal H2 bonded labor program or the landowner fails to provide the required notification, the land must be withdrawn from the Maine Tree Growth Tax Law and a penalty assessed under the commercial forestry excise tax to compensate the State for the General Fund contribution to the cost of forest fire protection activities.
- **LD 1761** - *An Act to Authorize a General Fund Bond Issue to Create a New Electronic Medical Records Infrastructure* – Would have authorized a general fund bond issue to purchase the software and hardware necessary for health care providers to exchange patient health records electronically.
- **LD 1262** - *An Act To Restrict Gifts to Health Care Practitioners from Pharmaceutical and Medical Device Manufacturers* – It would have: Prohibited most gifts and payments to health care practitioners from pharmaceutical and medical device manufacturers; included medical devices in the definition of "prescription drug" for the purposes of requirements involving a pharmaceutical manufacturer's giving of gifts to health care practitioners and reporting marketing expenses; established requirements for pharmaceutical manufacturers' giving sample products to health care practitioners; required the Department of Health and Human Services to report a pharmaceutical manufacturer's gifts and payments per health care practitioner instead of in the aggregate; limited the confidentiality of pharmaceutical manufacturers' reporting information to trade information protected by state and federal law; required the Department of Health and Human Services to post the department's annual report regarding a pharmaceutical manufacturer's marketing expenses on a publicly accessible portion of the department's website; and allowed the Department of Health and Human Services to raise the fees of pharmaceutical manufacturers to cover reasonable costs of the department.
- **LD 757** - *An Act to Improve the Transparency of Certain Hospitals* - This bill would have made medical organizations that receive over \$250,000 annually in public funds for medical services subject to the freedom of access laws. We had tracked this measure due to possible interaction with GINA, HIPAA and other confidentiality considerations in carrying this out.
- **LD 1365** - *An Act To Establish a Single-payer Health Care System* – voted ONTP in the face of national healthcare reform.
- **LD 1715** - *An Act To Provide the Finance Authority of Maine with Flexible Health Care Options* - This would have included employees of the Finance Authority of Maine as those eligible to participate in the State Health Plan.
- **LD 1681** - *An Act to Implement a Maine Unemployment Insurance Work Sharing Program*- Would have created a work-sharing program to provide an alternative to layoffs during a temporary slowdown in business. Under a work-sharing plan, an employer elects to avoid layoffs by reducing the number of regularly scheduled hours of work for all workers in a specific unit or department or the business as a whole. Unemployment insurance benefits for the reduced hours of work are then payable as a proportion of the benefit amount for a full week of unemployment.
- **LD 1738** - *An Act to Create a Duty to Report Serious Injuries* – Would have required persons observing a serious injury to report to emergency officials and create a cause of action against a person who fails to report as required. We tracked this bill to see how it might impact the workplace – would it override current policy?, would it have created employee on employee reporting outside the workplace etc.)

Bills not exactly pertinent to our efforts, but you might like to know about can be found below*

In other recent news, the MHRC decided to postpone work on their guidebook recommending approaches to accommodating transgendered students: <http://www.bangordailynews.com/detail/141166.html> .

Update on SHRM's Government Affairs Agenda for 2010 and Beyond

SHRM, of course, has a Government Affairs team who keep us up to date on all things federal. I recommend the webinar found at this link: <https://admin.adobeconnect.com/a751956163/p11113006/?launcher=false&fcsContent=true&pbMode=normal>. In summary, here are SHRM's thoughts on what bills are likely to survive/pass during this year:

- **ENDA** - HR 3107/S.1584 - Employment Nondiscrimination in Employment Act of 2009 - SHRM does not endorse this version. The lack of specifics around how to address gender identity issues are of great concern.
- **Protecting America's Workers Act** - HR 2067 - Sponsored by Lynn Woolsey (an HR professional before becoming a Congressperson - yay!) - enhances and expands OSHA.
- **Paycheck Fairness Act** - HR 12/S. 182 - already passed house, considered part 2 of Ledbetter Act, no one wants to be on the record as opposing. Many concerns around how this will impact employer pay practices - will likely need to rework entire process if this passes. **Nothing except for seniority, merit and productivity may be considered.** This means you can't award for anything beyond that. *Really.* So, in its current form, consideration of things like education, training, cost of living, shift differentials, hazard pay would be outlawed. **By the way, Lily Ledbetter recently appeared in Maine. You can listen to her interview on State of the State at: http://www.mecep.org/state_of_the_state.asp**

Others may come back later as well. The Healthy Families act, as mentioned above as quite similar to LD 1665 will be back and EFCA is expected to be brought to a forced vote in the Senate just before the midterm elections to get a temperature check on support.

A word or two about healthcare reform – SHRM has some great resources – I'm happy to provide links to anyone who needs them and will suggest only this program here - Maine Watch on Health Care Reform:

<http://www.mpbnet.com/Television/LocalTelevisionPrograms/MaineWatch/tabid/477/ctl/ViewItem/mid/3470/ItemId/11686/Default.aspx>.

I will keep you posted and will update the MESHRM site with as much information as I can.

Feel free to contact me at anytime with comments, questions or other!

Sarah

Sarah Conroy, SPHR, CEBS
 SHRM Maine State Government Affairs Director
 207.713.8337
seconroy@gmail.com
<http://tinyurl.com/MaineSHRMLegNews>

***Other Bills Not Exactly Pertinent to Our Efforts, but You Might Like to Know About!**

- **LD 1408** - *An Act To Establish the Universal Childhood Immunization Program* - Provides Maine children with access to a uniform set of vaccines and reduces costs of immunizations. The bill will reduce the cost of immunizations by working in conjunction with the federal Centers for Disease Control and Prevention to leverage the contract prices for vaccines at the federal rate.
- **LD 1811** - *An Act To Amend the Maine Marijuana Act* - Taking action on a citizen initiative passed in November by Maine voters calling for medical marijuana to be legalized, the legislature set up a framework for the dispensary and distribution system for medical marijuana. Allows up to eight dispensaries, and sets a process to establish fees for patients, caregivers and dispensaries. **This is an emergency measure taking effect April 9th.**
- **HP 1262** - *Establishing a Joint Select Committee on Health Care Reform Opportunities and Implementation* – Creates a legislative task force to help implement national health care reform.
- **LD 1676** - *An Act To Protect Maine Citizens' Credit* - Prevents health care providers, or debt collectors working for those providers, from reporting certain medical debts on a consumer's credit report as long as a minimum payment is being made to the provider of the medical treatment and if the consumer's income is well below the federal poverty level.
- **LD 1730** - *An Act To Strengthen the Ballot Initiative Process*- Prevents fraud and forgery in the ballot initiative process by creating a registration requirement for petition organizations that are compensated to organize, supervise or manage the circulation of petitions for a direct initiative or people's veto. In order to allow town clerks and the Secretary of State to better detect and track fraud, the bill adds a space on petition forms for a unique identifier and a sequential number representing the petitions circulated. It also requires that a petition be signed and notarized prior to being submitted to a municipal clerk for verification and directs the clerk to make copies of petitions that are suspected to be fraudulent. The bill also extends the time frame to challenge the decision of the Secretary of State to reject or certify petitions and also makes the current law consistent with the Maine constitution, which allows the for a total of 100 days for a final decision on the certification of a petition for a direct initiative or a People's Veto.
- **LD 1778** - *An Act To Enable the Installation of Broadband Infrastructure* - This bill makes a federally supported dark fiber provider a telephone utility and authorizes it to string lines for dark fiber bringing broadband service to un-served and under-served areas. It also establishes a broadband sustainability fee that a dark fiber provider must collect from customers.
- **LD 1646** - *An Act To Establish a Broadband Policy for Maine* - The bill sets goals to expand broadband access throughout the state by establishing state policies that promote universal broadband access and the infrastructure necessary to provide that access statewide.