LABOR AND IMMIGRATION
POLICY POSITIONS AND ACTIVITIES
2008

LABOR, IMMIGRATION & EMPLOYEE BENEFITS DIVISION
U.S. CHAMBER OF COMMERCE
Labor and Immigration Positions and Activities

The Labor Relations Committee develops Chamber policy and programs on a wide range of labor and employment issues including: labor-management relations, employment nondiscrimination, minimum wage and wage-hour, occupational safety and health, immigration, union organizing, workplace privacy, work-family balance and leave mandates, and emerging international labor policy. The Labor, Immigration and Employee Benefits division works with the committee in developing the policies that best advance the interests of Chamber members in these areas, and then advocates those positions before Congress and the administration.
Employee Free Choice Act

The Employee Free Choice Act, the top priority of organized labor, would: effectively eliminate federally supervised secret ballot elections and replace them with authorization cards for union organizing; mandate interest arbitration of first contracts rather than collective bargaining; and increase penalties on employers, but not on unions. The bill passed the House in 2007, but stalled in the Senate after a cloture motion failed by nine votes. The Chamber will continue its leadership on behalf of the business community in opposing this bill.

- The Chamber fully expects card check legislation to be at the top of organized labor’s wish list in 2009. Organized labor may try to offer a new version of the Employee Free Choice Act with different, though still highly objectionable, provisions that we must be prepared to counter. Among the provisions that may be offered are: greater union access to employer premises to organize employees; dramatically shorter schedules for elections to limit an employer’s ability to communicate to employees; and restrictions on employer communications to employees.

Re-Empowerment of Skilled and Professional Employees and Construction Tradeworkers (RESPECT) Act

In direct response to a series of National Labor Relations Board (NLRB) decisions, the RESPECT Act would limit the definition of who is considered a supervisor under the National Labor Relations Act (NLRA) and greatly expand the breadth of supervisory employees covered under collective bargaining laws. Not only would this make many more supervisors eligible to be organized, but this bill would greatly limit an employer’s ability to demand loyalty from supervisory
employees. This bill is expected to be introduced again in the 111th Congress, along with other legislation overturning specific NLRB decisions issued during the Bush administration. The Chamber opposes the RESPECT Act.

**Repeal of “Right to Work” Laws**

Legislation was introduced in the 110th Congress, and will likely be reintroduced in the 111th Congress, which would repeal Section 14 (b) of the NLRA that allows states to enact “right to work” laws. These laws enable employees to work at a unionized employer without being fired for refusing to pay union dues or join a union. The Chamber will oppose any attempt to eliminate such laws.

**Union Transparency**

The Chamber supports legislation, known as the Labor-Management Reporting and Disclosure Enforcement Act, that would allow the Department of Labor (DOL) to issue civil penalties against labor unions for failing to comply with financial disclosure requirements.

**Statute of Limitations**

The House passed legislation last year effectively doing away with the statute of limitations for many types of employment discrimination cases when it passed the Lilly Ledbetter Fair Pay Act. Fortunately the bill was blocked in the Senate, though a cloture motion came within four votes of bringing the bill up for debate. The bill would reverse a Supreme Court decision that ruled that the statute of limitations begins to run when an allegedly discriminatory decision takes place, and does not re-set every time an employee receives a paycheck that arguably reflects a long-past decision. The bill before Congress would also extend the class of people who could file claims to spouses and others arguably “affected by” a discriminatory decision and would apply to disparate impact as well as intentional discrimination claims. Similar legislation is expected to be introduced in the 111th Congress and will likely be a high priority.

**Pay Equity Laws**

Several bills that would drastically alter current legal remedies for cases of pay discrimination based on sex were introduced in the 110th Congress, but failed to pass. These bills, which include the Paycheck Fairness Act and the Fair Pay Act, would limit an employer’s ability to defend legitimate pay disparities, make unlimited punitive and compensatory damage available, (in some cases even for unintentional discrimination) and provide for varying degrees of comparable worth pay schemes (which mandate equal pay for different jobs deemed to be of similar value to society), among other provisions. The Chamber will oppose these bills as they are expected to be reintroduced in the next Congress.

**The Civil Rights Act of 2008**

The Civil Rights Act of 2008 is a wide-ranging bill that would rewrite many provisions of civil rights law. Among the changes proposed are: eliminating the cap on punitive and compensatory damages for Title VII and Americans with Disabilities Act (ADA) claims; amending the Equal Pay Act to limit employer defenses and adding compensatory and punitive damages for even unintentional equal pay violations; amending the Federal Arbitration Act to void pre-dispute binding arbitration; providing that the NLRB may award back pay (for time not worked) to undocumented workers discriminated against in violation of the NLRA; and numerous other amendments designed to overturn court decisions on technical, but important issues such as the scope of disparate impact under the Age Discrimination in Employment Act. The Chamber expects a similar bill to be introduced in the 111th Congress and will oppose such a bill.
Family and Medical Leave Act (FMLA) and other Leave Mandates

Various bills introduced in the 110th Congress would have rewritten the FMLA to mandate paid sick and maternity leave, expand the reasons for employees to take leave, and decrease the size of businesses covered by the law. While none of these bills saw action in the 110th Congress, the goal of expanding the FMLA, especially converting unpaid leave into paid leave, remains a high priority for Democrats. The Chamber opposes these expansions of the FMLA because they would further interfere with an employer's ability to maintain a reliable, stable workforce, and because they would exacerbate well-documented employee misuse of this law.

- The Healthy Families Act (HFA) would require employers with 15 or more employees who work 30 hours a week or more to provide seven paid sick days annually, and prorated amounts to part-time workers. The bill would also allow employees to take leave to care for a family member or anyone “whose close association with the employee is the equivalent to a family relationship” and prohibit an employer from adjusting their current leave practices to absorb the burden represented by this new mandate. While this bill did not move in the 110th Congress, it is widely expected be reintroduced in the 111th Congress and could receive significant action early in 2009. The Chamber opposes the HFA.

Occupational Safety and Health Act Amendments and New Ergonomics Regulations

The Protect America’s Workers Act, introduced in the last two Congresses, would amend the Occupational Safety and Health Act by dramatically increasing the penalties for workplace injuries and deaths. It would create a new civil penalty structure for a death in the workplace with a willful violation ranging from $50,000 for a first violation to $250,000 for repeated violations. Previously, civil penalties topped out at $70,000 regardless of whether a death was involved. Other changes include no longer requiring a death for criminal penalties to be sought, and the penalties would now be felonies instead of misdemeanors with imprisonment increasing from a minimum of six months to a minimum of 10 years for a first offense, and from a minimum of one year to a minimum of 20 years for any repeated offenses when a worker dies as the result of willful violations. There are also new felony levels of imprisonment if a willful violation results in serious bodily injury to an employee, beginning at five years for a first violation and going up to at least 10 years for repeated offenses. In addition, this bill creates a right for a victim (injured employee or surviving family member) to be involved in citation settlement negotiations and increases protections for whistleblowers. This bill did not see any action in the 110th Congress, but the penalties provisions are expected to be introduced separately in the 111th Congress. The Chamber will oppose such dramatic increases in Occupational Safety and Health Administration (OSHA) civil and criminal penalties.

- Issuance of an ergonomics regulation remains a high priority for labor unions and many Democrats in Congress since the Clinton OSHA ergonomics regulation was invalidated by Congress in 2001. The Chamber will continue to lead the opposition to any efforts by the next Congress or administration to issue a new ergonomics regulation.

Alternative Dispute Resolution Methods-Binding Arbitration

Several bills introduced in the 110th Congress would have effectively eliminated a useful, efficient and cost-effective method to settle disputes outside of the courtroom. These bills would largely benefit trial lawyers and create more costly and frivolous litigation. The Chamber opposes these bills, and expects that they will be reintroduced in the 111th Congress.

- The Arbitration Fairness Act would eliminate all pre-dispute arbitration agreements. The bill was favorably reported out of a subcommittee of the House Judiciary Committee, but did not receive full Committee action.

- The Fairness in Nursing Home Arbitration Act and the Automobile Arbitration Fairness Act would eliminate pre-dispute arbitration agreements in nursing home contracts, and in automobile sales, respectively.
“Blacklisting” Legislation Applicable to Federal Contractors

At the end of the Clinton administration, regulations were proposed to prevent contractors from bidding on, or participating in, federal contracts based merely on allegations of violations of labor, environmental and other laws and therefore would have deprived contractors of their due process right under the law. Fortunately, they were withdrawn early in the Bush administration, and longstanding federal acquisition regulations already provide sufficient penalties prevent contractors with inappropriate records from being able to bid on or receive federal contracts. Recent bills have sought to revive the “blacklisting” leverage against federal contractors who are not favored by various interests. The Chamber will continue to fight attempts by organized labor and its allies to blacklist federal contractors for inappropriate reasons.

Patriot Employers Act

The Patriot Employers Act would designate certain companies as “patriot employers” making them eligible for preferential tax treatment. These patriot employers would pay at least 60 percent of each employee’s health care premiums; uphold a position of neutrality in employee organizing drives; maintain or increase the number of full-time workers in the United States relative to the number of full-time workers outside the United States; pay a salary to each employee not less than an amount equal to the federal poverty level; and provide a pension plan, among other requirements. While this bill did not move in the 110th Congress, it could see action in the next Congress. The Chamber strongly opposes this legislation because it rewrites an array of critical workplace laws in the guise of providing tax benefits to certain employers.

Working Families Flexibility Act

The Working Families Flexibility Act would allow an employee to tie up an employer with an array of challenges and investigations, including possible litigation, if an employer denied a request for a change in working conditions such as hours or location. The Chamber strongly opposes this bill.

International Influence on U.S. Labor Law

The AFL-CIO has been filing complaints with increasing frequency against the United States with the International Labor Organization (ILO), trying to create international pressure to change U.S. law. Similarly, some would like to force the United States to adhere to ILO standards inconsistent with current U.S. law or insert their interpretation of ILO Conventions into the labor provisions in trade agreements. The Chamber will continue to oppose these backdoor methods of rewriting U.S. labor and employment laws.

Angelo Amador, Director, Immigration Policy for the Chamber is greeted by Senator Daniel Akaka (D-HI) after testifying before Congress.

Randel Johnson, Vice President of Labor, Immigration & Employee Benefits for the Chamber testifying before Congress.
Comprehensive Immigration Reform

The Chamber supports bipartisan comprehensive immigration reform and has repeatedly called for legislation to: provide for increased national security and control of our nation’s borders including a workable, and accurate employment verification system; create an efficient temporary worker program that allows employers to recruit immigrant workers when domestic workers are unavailable; and allow for earned legal status leading to legal permanent residency for qualified and screened undocumented immigrants now in the country after a lengthy test period, the paying of fines, and working toward achieving English language proficiency.

- Comprehensive reform was taken up in the 110th Congress, but despite extensive negotiations and significant support from the business community led by the Chamber, the bill was unable to get the necessary 60 votes in the Senate to proceed. The problems with the current immigration system remain and the Chamber will continue to lay the groundwork for comprehensive reform in the next Congress.

High-Skilled Worker Visa and Green Card Reform

- The Chamber supports an increase to the H-1B high-skilled visa cap and/or the creation of a cap that is both flexible and responsive to the needs of the market. The cap has been reached numerous times and will continue to be reached until the supply of these visas catches up with demand. The current cap is set artificially low at only 65,000 per year, with an additional 20,000 per year for U.S. college graduates. This is virtually the only non-permanent visa available for U.S. companies to recruit foreign high-skilled workers educated in U.S. universities.

- The Chamber supports clearing the backlog of employment-based (EB) permanent visas, also know as green cards, and increasing the number of EB green cards available so that employers can recruit and retain the skilled talent they need in today’s global economy.

- The Chamber supports the elimination of per country limits on EB green card distribution, thus removing bottlenecks for employees from high-demand countries.

- The Chamber supports exempting highly educated, foreign-born students earning an advanced degree in science, technology, engineering or mathematics from a U.S. university from the annual EB green card and H-1B visa limits.

Seasonal H-2B Visa Return Worker Exemption

- The H-2B visa program for seasonal nonagricultural workers is capped at only 66,000 visas per year, and this cap has been reached year after year. The Chamber has advocated for the Save Our Small and Seasonal Business Act, which would permit returning, compliant workers that have participated in the
H-2B visa program in one of the past three years to be exempt from the cap. This bill will likely be reintroduced in the 111th Congress, and the Chamber will continue to support this bill and to look for other avenues to help employers obtain the workers they need.

- The Chamber will monitor expected regulations from the Department of Labor and Department of Homeland Security (DHS) on the H-2B program to ensure that the H-2B process is not overly burdensome or unfair to employers.

**H-2A Agricultural Worker Visa Reform (AgJOBS)**

The Chamber supports a compromise bill which would reform the H-2A agricultural visa program, while providing a reasonable mechanism for the most experienced, but unauthorized, agricultural workers to earn legal status subject to strict conditions.

**Immigration Enforcement**

- The Chamber will continue to fight ill-advised enforcement-only bills, many of which mandate all employers begin using an employment verification system in a short time period without adequate testing.
- The Chamber led the legal fight against DHS’s “No Match Regulation,” resulting in an injunction currently blocking the regulation from taking effect. The Chamber will continue to follow and challenge the department’s implementation of this regulation.
- The Chamber will monitor and continue to oppose the efforts to amend the federal acquisition regulations to mandate that federal contractors use the E-Verify program, which is currently a voluntary program, and has been shown to be unreliable and inefficient.

**Implementation of Border and Travel Programs**

- The Chamber supports DHS’s mandate to implement the US-VISIT biometric entry/exit system to track travel to and from the United States. However, the Chamber opposed the DHS proposed rule requiring air and sea carriers to develop, implement and pay for the entire US-VISIT exit component. The Chamber will continue to monitor this unfair burden on companies.
- The Chamber will continue to follow the expansion of the Visa Waiver Program, which permits visa-free travel from certain low-risk countries to the United States. The Chamber will also monitor the DHS implementation of the new Electronic System for Travel Authorization to all Visa Waiver Program countries to ensure that it does not unduly inhibit or reduce travel.
- The Western Hemisphere Travel Initiative, which requires travelers—including Americans and Canadians—to carry specific documents to cross the border, is set to go into effect at the land borders in June 2009. The Chamber will closely observe its impact on travel and continue to call for flexibility in its implementation to avoid unduly harming the integrated North American economy.
- The Chamber supports increased funding for Customs and Border Protection (CBP) to guarantee adequate staffing, extended hours of service, and upgraded technology and infrastructure at land ports of entry.

**Visa Processing for Business, Student, and Tourist Travelers**

- The Chamber continues to work with the Department of State to improve the overall travel process. While many improvements have been made in recent years, much more remains to be done to make the United States a more attractive travel, study, and business destination.
- The Chamber is a member of the Secure Borders Open Doors Advisory Committee to the Departments of Homeland Security and State. The committee is working with the departments to help streamline the travel process with recommendations and oversight.
- The Chamber supports efforts to modernize the U.S. Citizenship and Immigration Services’ (USCIS) information technology, coupled with updated processes, to improve efficiency in addressing the increased demands in immigration visa processing.

**Travel Promotion Act**

The Chamber supports the Travel Promotion Act, which passed the House in the 110th and will likely be reintroduced in the 111th Congress. This bill would create a non-profit entity to communicate U.S. travel policies, highlight improvements in travel experience, and establish a communications and promotion campaign on par with America’s global competitors with no funding from American taxpayers.
Testimony Delivered by Chamber Witnesses or Staff in 2008

- “H.R. 5522, The Combustible Dust Explosion and Fire Prevention Act of 2008” before the House Committee on Education and Labor (3/12/08)

- “The Impact of Implementation: A Review of the REAL ID Act and the Western Hemisphere Travel Initiative” before the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Senate Committee on Homeland Security and Governmental Affairs (4/29/08)

- “Employment Eligibility Verification Systems and the Potential Aspects on SSA’s Ability to Serve Retirees, People With Disabilities, and Workers” before the Subcommittee on Social Security, House Committee on Ways and Means (5/6/08)

- “Hidden Tragedy: Underreporting of Workplace Injuries and Illnesses” before the House Committee on Education and Labor (6/19/08)

- “Determining the Proper Scope of Coverage for the Americans with Disabilities Act” before the Senate Health, Education, Labor and Pensions Committee (7/15/08)

- Department of Justice Hearing on the ADA Title III (Accessibility of Public Facilities) Proposed Regulations (7/15/08)

- “Secret Rule: Impact of the Department of Labor's Worker Health Risk Assessment Proposal” before the Workforce Protections Subcommittee, House Committee on Education and Labor (9/17/08)
Regulatory Comments Submitted in 2008

- NLRB proposed rule: "Joint Petitions for Certifications Consenting to an Election" (3/27/08)
- DOL proposed revisions to the Family and Medical Leave Act regulations (4/11/08)
- DHS proposed supplemental rule on SSA “No-Match” letters (4/22/08)
- Uniform guidelines on employee selection procedures renewal to the EEOC (5/27/08)
- Disparate impact under age discrimination laws to the EEOC (5/30/08)
- DHS extension of Optional Practical Training (OPT) from 12 months to 29 months for select employers and students (6/9/08)
- DHS proposed rule extending NAFTA professional status from one to three years in duration (6/9/08)
- DHS proposed rule requiring US-VISIT biometric exit to be implemented at air and sea ports (6/23/08)
- DHS proposed rule on changes to the Visa Waiver Program to implement the electronic system for travel authorization (8/7/08)
- Federal Acquisition Regulatory Council proposed rule requiring all government contractors to use the E-Verify/basic pilot program (8/11/08)
- DOJ proposed changes to Title III of the ADA (8/18/08)
- OSHA proposed rule on per employee citations for personal protective equipment and the training of employees (9/17/08)
- DOL proposed rule updating regulations issued under the Fair Labor Standards Act (9/26/08)
- DOL proposed rule on agencies’ risk assessment of occupational health risks (9/29/08)

Labor and Immigration Events 2008

- “Engaging Business: Addressing Forced Labor” in Atlanta, GA (2/20/08)
- Washington Representatives Briefing (3/7/08)
- "Binational Tourism Summit” in Buffalo, NY (4/2/08 – 4/4/08)
- Labor Relations Committee Meeting (5/6/08 – 5/7/08)
- “America’s 2020 Summit: Moving People and Products Safer, Faster, Smarter” in Austin, TX (5/22/08 – 5/24/08)
- “Immigration Reform: Work to Be Done” with Wall Street Journal Editorial Board member Jason Riley, co-hosted by the National Chamber Foundation and the Progress & Freedom Foundation (6/19/08)
- Washington Employee Relations Breakfast Group Briefing (9/10/08)
- “Ergonomics in the 21st Century: Toward a New Paradigm Using Science to Shed Myths and Promote Worker Wellness” (9/12/08)
- “Labor Policy at a Crossroads,” co-hosted by the National Chamber Foundation and the Workforce Freedom Initiative (10/2/08)
- Labor Relations Committee Meeting (11/10/08 – 11/11/08)