Legislative and Legal Issues for 2008

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Immigration Reform: Itinerary

- Capitol Hill
- Federal Agencies
- State Legislatures
- The Courts





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Immigration Reform



Immigration marchers in front of University Club

Washington, DC; April 11, 2006

- · America's dynamic economy and demographics -
 - 70 million baby boomers to retire
 - 58 million new workers needed
 - 23 million from natural growth and current immigration levels – still need 35 million new workers

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Demographics

- · Nearly half of current growth is immigrants
- 13% of our population is foreign-born
- An estimated 12 million undocumented workers currently in country – the size of Ohio – with 7 million in the workforce
- Nearly 500,000 undocumented workers cross our borders every year – 98% do so for JOBS

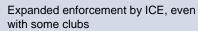


This is an economic issue – the market at work

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Immigration Reform

- · High priority issue, but politically divisive
- Combination of tighter border security & temporary worker program may be needed for bi-partisan support
- Comprehensive program was considered more likely to pass with Democrats controlling Congress
- Goal was to move reform leg this year before presidential campaigns



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Two Camps for Immigration Reform

- Conservatives -
 - Border security first, reform later
 - Less worried about economic side of the issue
 - No resolution of the undocumented workers issue
- Moderates -
 - Secure borders and reform immigration process
 - Provide for stronger interior enforcement
 - Guest worker program
 - Require undocumented workers to pay fines, pay back taxes, learn English, etc.



The Secure Borders, Economic Opportunity & Immigration Reform Act

- DHS Secretary Chertoff and Commerce Secretary Gutierrez led Administration efforts on this issue
- Senators Edward Kennedy (D-Mass.) and Jon Kyl (R-Ariz.) took the lead in the Senate S.1639
- Senate Majority Leader Harry Reid (D-Nev.) wanted to limit debate on the bill
- · Conservatives wanted additional debate time
- When Leader Reid's motion to limit debate failed to pass, he pulled the bill from further consideration

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What the Club Industry Lost

- No increase in border security or interior enforcement measures
- No guest worker program
- No enhancement to the H-2B seasonal worker visa program
- No means to stem the flow of the 500,000 illegal aliens who cross the border each year



 No answer to the problem of the 12 million illegal aliens already here

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The SAVE Act

- Rep. Heath Shuler (D-N.C.) and Sen. Mark Pryor (D-Ark.) introduced the Secure America Through Verification and Enforcement Act
 - Increases number of Border Patrol Agents by 8,000
 - Increases the number of ICE helicopters and boats
 - Requires a "virtual fence" on our borders with drones, sensors, cameras, and other technologies
 - Requires a national strategy be established to secure our international land and maritime borders by 2011
 - Increases penalties for immigration violations and violators in the country

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The SAVE Act

- Issues for businesses:
 - Mandates the use of the E-Verify Program within 2 years for those with 100+ employees and 3 years for those with 30+ employees
 - Must re-verify all current workers within 4 years
 - Provides safe harbor for employer
 - Prohibits deduction of wages from employer's taxes if the wage was paid to an illegal alien – 6 yr. look back
 - Requires an employee to resolve a No-Match letter within 10 business days or he must be fired



 Stuck in Committee - Discharge Petition filed 3/11/08

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The Senate's Piecemeal Approach

- · Force the debate on Democrats for 2008
- 11 Republican Senators filed 15 bills:
 - More jail time for illegally entering the U.S.
 - A 2010 completion date for the 700 mile fence
 - A requirement that English be the official language used on all fed. documents and for all services
 - A penalty for states knowingly issuing driver's licenses to illegal immigrants
 - A requirement that illegal aliens in prisons be deported rather than released back into the country
 - Use of E-Verify and immediate use of the No-Match

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The Roadmap for 2008

- · Border security must be first
- · Both House and Senate bills do this
- Little interest in broader immigration reform packages in 2008
- Many Democrats oppose anything that is <u>not</u> comprehensive

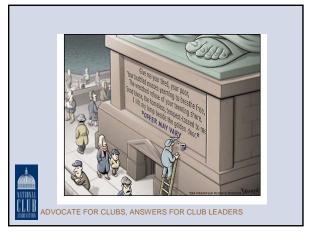


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Immigration Background

- 1996 guest worker programs failed to consider the market -- cap numbers too
- 2008 40% of independents place illegal immigration as #1 priority
- Ohio 5th special election in Dec. 2007 Bob Latta (R) won by 14% all on antiimmigration issues
- Will continue to be controversial issue

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H-2B Legislation in Congress

- Visas for seasonal workers capped at 33,000 from Oct - March & 33,000 from April - Sept
- Cap reached for first half of FY 2008 before year even started
- Cap for 2nd half of year reached 3 months in advance
- In FY '06 the cap was nearly double the current number because of the Returning Worker Exemption (RWE) which expired 9/30/07







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H-2B Visa Legislation

- · Rep. Bart Stupak (D-Mich.) introduced Save Our Small and Seasonal Businesses Act of 2007
 - H-2B visas approved in past 3 years aren't counted against cap for the current year
 - Makes permanent the returning worker exemption
- Sen. Barbara Mikulski (D-Md.) and Sen. John Warner (R-Va.) introduced same bill with major difference the Senate bill provides the returning worker exemption for only 5 years.
- Rep. Thelma Drake (R-Va.) introduced the Giving Relief to Our Small Businesses Act in February - 2 year RWE Politics is stopping these bills from moving forward

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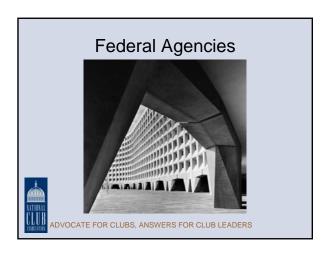
Increasing American Wages & Benefits Act

- Sponsored by Sen. Bernard Sanders (I-Vt)
- Strengthens labor provisions in the H-2B program
- Drafted by labor unions and includes:
 - The right for a worker to sue if hiring the H-2B worker "directly or adversely affected his wages or working condition'
 - Requirement to send special notice to the state HQs & local offices of unions re job openings
 - Requirement to pay the govt's prevailing wage
- House & Senate leadership hard-pressed to say "no"
- Sen. Durbin (D-III.), Majority Whip, is a co-sponsor

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Congressional Hispanic Caucus

- Forced Speaker Pelosi (D-Calif.) to remove H-2B from as attachment to earlier bills
- · Positioning this as an "immigration" issue not as a temporary worker issue
- Caucus sees H-2B as a well regarded piece of legislation and they are using their opposition to secure other immigration fixes
- Even though having no RWE is potentially harmful to Hispanic workers, 15 of the 21 CHC members are still against letting it go through without broader reforms
- They are trying to work it into the SAVE Act



New SSA No-Match Regulations

- No-match letters issued by SSA to warn employer about questions regarding identity of worker
- 138,000 letters issued in 2006
- Estimated 5% of US workforce is unauthorized
- · Occupations with highest proportions:

Agricultural 29%
Roofers 29%
Construction laborers 25%
Grounds maintenance 25%

- Painters 22%
- Cooks 20%



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SSA No-Match Regulations

- New rules were to have gone into effect 9/14/07
- Employers were to:
 - Check their records for typos within 30 days
 - If no errors, notify employee to check information in records
 - If employee found no errors, employee must resolve discrepancy with SSA local office within 90 days
 - If no resolution, employer must use different I-9 documents and a photo id to re-verify employee – all within 3 days
 - Total of 93 days to resolve issue
- Federal court stayed the issuance of the letters government appealed
- · DHS is revising the rules for May 2008 re-issue

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Dealing with a No-Match letter

- A letter is not grounds for immediate termination
- Help your employee resolve issue with SSA you are on the hook
- When reviewing the new I-9 information remember actual vs. constructive knowledge
- If no resolution, you must weigh being prosecuted for employing an illegal alien vs. being sued for discrimination



• Document everything you do to resolve the issue

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Other Immigration Related Regs.

- DoJ increasing fines for knowingly employing an illegal alien – up by \$100 to \$5,000/employee – starting 3/27/08
- New DoL H-2B visa regs. that will speed processing of applications by moving it from a gov't-certified system to an employer-attestation system – 2008
- DHS reduced the number of documents an employer may accept under Form I-9
 - From 29 to 24 docs to prove identity & work authorization
 - Effective 12/25/07



In the States: Immigration

- Over 1,400 pieces of legislation related to immigration were considered in state legislatures this year – 2.5 times what was introduced in 2006
- Bills covered a broad spectrum: education, law enforcement, voting, public benefits, etc
- Many of these bills forbid employers from "intentionally or knowingly hiring an illegal immigrant"
- Challenge of new AZ statute because of strict penalties imposed, including loss of a business license, & because it is seen by some as a federal issue that states cannot pre-empt

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State Action in 2008

- · Employing Illegal Aliens
 - Filed in IN in 1/08 and in CA and NJ in 2/08
 - Requires use of E-Verify safe harbor for employer
 - Allows suspension of the employer's business license for first offense and revocation for future offenses
 - In 2007 244 state immigration laws enacted and more will come in 2008



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The Courts



H-2B/FLSA Litigation

- Application of Fair Labor Standards Act to H-2B workers (<u>Juan Javier Rivera</u>, et al. <u>v. The Brickman Group</u>, <u>Ltd.</u> January 7, 2008 WL 81570 (E.D.Pa.),
- If an H-2B worker pays for recruiter, visa and transportation costs, the employer must reimburse those costs
- If the employer deducts the cost from the 1st paycheck -- could mean the employer has not paid minimum wage



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H-2B/FLSA Litigation

- Opens up an award of back pay, punitive damages and attorney's fees for those workers if they sue and win
- Any expense that is primarily for the benefit or convenience of the employer must be paid by the employer – period
- An employer who fails to reimburse or pays the costs and reimburses itself from the employee's first paycheck could be in violation of the FLSA

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Hazleton, Pennsylvania Case

- City's response to need for immigration reform
- A company employing an illegal worker would have its operating permit suspended – revoked if it happened a 2nd time
- Federal Court ruled that this was unconstitutional under the Supremacy Clause federal gov't is the only entity that may regulate immigration



BUT, MO city ordinance and AZ state law upheld by Federal Courts (1/31/08 and 2/7/08) City of Hazleton may appeal court's ruling

Other Key Legislative Issues

- · Challenges to Club Privacy Rights
- · Paid Sick Leave
- Pool Safety Legislation
- · Small Business Health Plans





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Challenges to Club Rights

- Rep. Carolyn Maloney (D-N.Y.) introduced HR 1817, the Ending Tax Breaks for Discrimination Act
 - Stops individuals from deducting meals and other business expenses if they are paid to a "discriminatory club"
 - Broad language if the club has a women's only golf tournament, it could be a "discriminatory club"
- Rep. Maloney's Fair Play-Equal Access in Membership Resolution
 - No member or staffer from the Executive, Legislative or Judicial branch should be part of a private club

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Paid Sick Leave

- Sen. Edward Kennedy (D-Mass.) and Rep. Rosa DeLauro (D-Conn.) introduced the Healthy Families Act.
 - Calls for all employers with 15 or more employees to provide 7 days of sick leave with pay and benefits per year for employees working 30 or more hours per week or a pro rata number of days for those working less than 30 hours a week
 - Kennedy is the Chairman of the HELP Committee so this will get a hearing and a vote

Paid Sick Leave

 CA, CT, FL, MA, MN, NC, OH, PA, TN, & WV have legislation pending for 7+ days of sick leave. Now mandated in San Francisco & DC.

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Pool Safety Legislation



- Federal legislation in House & Senate
- Seven states considered bills this year
- Focus varied from pool safety (drain & pool covers & barriers) to sanitation
- Proposals tend to pass when tied to tragic event
- MD jury awarded \$4 million to family whose son drowned in club pool



 Court found pool management company (not club) liable for failing to adequately train lifeguards & staff the pool

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Pool and Spa Safety Legislation

- Two requirements:
 - Anti-entrapment drain covers must comply with American Society of Mechanical Engineers/ American National Standards Institute (ASME/ANSI) A112.19.8 performance standard or successor standard.
 - Pools and spas with only one drain must install:
 - A safety vacuum release system; or
 - A suction-limiting vent system; or
 - A gravity drainage system; or
 - An automatic pump shut-off system; or
 - Another approved drain disablement device

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Pool and Spa Safety Legislation

- Bill was held up in the Senate by a "hold"
- Finally it was attached to the Energy Bill
- Passed the Senate, passed the House and on December 19, 2007 President Bush signed it
- Clubs must make necessary changes within one year – December 19, 2008
- "Public pools and spas" includes private club pools and spas



Health Insurance

- In 2007 average premium for a family was > \$12,000; of that amount \$3,300 was by the employee.
- State legislatures mandate that insurance providers cover specific individual procedures in standard plans – nearly 1,900 mandates across the country
- Too many mandates mean fewer providers competing for your business
- Small businesses pay nearly 20% more in administrative costs for insurance plans
 57% of uninsured in U.S. work in small businesses

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Small Business Health Plans (SBHPs)

- The Problem
 - Small businesses pay nearly 20% more in administrative costs for insurance plans
 - State legislatures mandate that insurance providers cover specific individual procedures in standard plans
 nearly 1,900 mandates across the country
 - Too many mandates mean less providers competing for your business
 - Of the 47 million uninsured in America, approximately 28 million work in small businesses
 - Premium costs for small businesses continue to rise



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Small Business Health Plans

- · The Solution
 - Spread risk over more individuals by pooling businesses through trade or professional associations
 - Increase the bargaining power of businesses to lower premiums and administrative costs
 - Establish 3 or 4 standard health care plans that include the most typical state mandates thereby eliminating the different mandates found across the country
 - Allow the market to determine the remaining plans that are offered to employers/employees

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House and Senate proposals

- House
 - Successfully passed SBHPs numerous times, only to see it fail in the Senate
- Senate
 - Sen. Michael Enzi (R-Wyo.) introduced a comprehensive plan
 Allows for cross-state pooling for
 - Allows for cross-state pooling for small businesses through associations
- <u></u>

 Provides a government subsidy for low-income individuals to purchase insurance

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