Montana State Council

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LEGISLATIVE UPDATE

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Grover Wallace – Montana State Legislative Director

Newly Proposed H-1B Fee Would Add Over $100K to Hiring Costs

The Trump administration is proposing a new $103,265 fee on employers seeking H-1B workers through the annual visa lottery, a move that would dramatically increase the cost of hiring skilled foreign workers and further disrupt an already uncertain talent pipeline.

The fee would apply to all H-1B petitions subject to the annual 85,000-visa cap, according to U.S. Citizenship and Immigration Services (USCIS), as stated in a proposed rule scheduled for publication in the *Federal Register* Aug. 25. That includes the 20,000 visas reserved for foreign workers with qualifying U.S. master's degrees or higher.

The proposed fee would be paid on top of existing H-1B filing fees, payable at the time of filing. The next H-1B cap season begins in spring 2027.

The fee would not apply to cap-exempt H-1B petitions, including many positions at universities and nonprofit or government research institutions.

SHRM LINK ARTICLE: Newly Proposed H-1B Fee Would Add Over $100K to Hiring Costs

EEOC Settlement Highlights Risks of Outsourcing ADA Accommodations

Employers may outsource the administration of disability accommodation requests, but a recent Equal Employment Opportunity Commission (EEOC) settlement serves as a reminder that they cannot outsource responsibility for complying with the Americans with Disabilities Act (ADA).

Penney OpCo LLC, which does business as JCPenney, agreed to pay $99,000 and take remedial measures to settle an EEOC disability discrimination lawsuit involving a warehouse employee undergoing treatment for breast cancer.

According to the EEOC, the employee worked at JCPenney's logistics center in Forest Park, Ga., when she was diagnosed with breast cancer and requested time off for medical appointments. She submitted a written accommodation request and medical documentation of her treatment and need for leave to the company's third-party benefits administrator (TPA), but JCPenney denied the request.

The time she took off for cancer treatment was subsequently counted against her under the company's attendance points policy. After she accumulated more points than the policy permitted, she was fired on July 3, 2023, the EEOC alleged.

The agency sued under the ADA, alleging disability discrimination. As part of the settlement, JCPenney agreed to provide monetary relief, train relevant managers on their ADA responsibilities, and periodically report on certain accommodation requests. The company will also establish a process for monitoring how its third-party administrator handles ADA accommodation requests and a review procedure before terminating employees who may have pending disability accommodation requests.

SHRM LINK ARTICLE: EEOC Settlement Highlights Risks of Outsourcing ADA Accommodations

Newly Confirmed Members Reshape the NLRB

August 14, 2026 | Rachel Zheliabovskii

The National Labor Relations Board (NLRB) has two newly confirmed members, giving Republicans a firm majority at an agency that plays a central role in shaping federal labor law.

The Senate confirmed James Macy and David Prouty to the NLRB on Aug. 7 as part of a larger package of federal nominees. Macy, a Republican and longtime management-side labor attorney, joins the Board for the first time, while Prouty, a Democrat with an extensive union-side background, was confirmed for a second term. Their confirmations give Republicans a 3-1 majority on the five-member Board.

Who Are the New Members?

Macy brings more than four decades of experience representing employers in labor and employment matters. Before his nomination, he served in the U.S. Department of Labor (DOL), including as director of the Office of Workers' Compensation Programs and acting administrator of the Wage and Hour Division. President Donald Trump nominated Macy in April to a five-year term expiring Aug. 27, 2030.

Prouty, meanwhile, has spent much of his career representing organized labor. Before joining the NLRB in 2021, he served as general counsel of SEIU Local 32BJ and previously held positions with UNITE HERE and the Major League Baseball Players Association. His new five-year term runs through Aug. 27, 2031.Both nominees appeared before the Senate Health, Education, Labor and Pensions Committee in June, and the committee advanced their nominations in July before the full Senate vote.

SHRM LINK ARTICLE: Newly Confirmed Members Reshape the NLRB

PWFA Requirements Extend Beyond the ADA's and FMLA's Mandates

August 6, 2026 | Allen Smith, J.D.

While there is some overlap among the Americans with Disabilities Act (ADA), Family and Medical Leave Act (FMLA), and Pregnant Workers Fairness Act (PWFA), the PWFA goes beyond the ADA and the FMLA in many ways.

The PWFA "imposes distinct obligations on employers to reasonably accommodate pregnant and postpartum employees and applicants," said Alex Barnett, an attorney with Alston & Bird in Atlanta.

"Employees who might not qualify for a reasonable accommodation under the ADA may be entitled to one under the PWFA," she said. "Likewise, employees who are ineligible for FMLA leave could still be qualified to receive leave as a reasonable accommodation under the PWFA."

Even if the employer is not covered by the FMLA, leave may be required by the PWFA, added Clara "C.B." Burns, an attorney with Kemp Smith in El Paso, Texas.

Leave is an accommodation that may be reasonable and appropriate under the PWFA, but the PWFA regulations provide that leave cannot be required if there is another reasonable accommodation that would allow a pregnant employee or a nursing mother to remain working, Burns said.

"HR professionals need to ensure that they are involved in — and documenting — the accommodation process so that front-line supervisors are not rejecting accommodation requests without knowledge of legal requirements," she cautioned.

SHRM LINK ARTICLE: PWFA Requirements Extend Beyond the ADA's and FMLA's Mandates

Union Organizing in Healthcare: What's Driving the Surge?

August 4, 2026 | Kimberly Ricci

If you're in HR at a hospital or health system, you are no doubt aware of persistent union activity. The data backs up that observation, but there are still surprises to be had.

More than Nursing Unions Are Growing

Get ready to say goodbye to a common assumption, because this isn't simply a flurry of nursing unions descending upon hospitals to organize. Rather, data drawn from January 2021 to June 2026 (during which unions filed 1,843 representation petitions), shows that most petitions being filed are not coming from registered nurse (RN)-only units. Instead, anywhere from 57% to 75% of units in hospitals, ambulatory settings, and in skilled nursing and residential care are non-RN in orientation.

Those petitions are being filed by lab workers, tech staff, housekeepers, drivers, and more. This shows that employers who assume that nurses are the main union target could miss important signs that a significant amount of activity is happening elsewhere.

Unit Size Matters

The non-RN numbers aren't the only place assumptions fall apart. Granted, the sheer number of healthcare representation petitions filed against general medical and surgical hospitals during the first quarters of 2026 and 2024 makes it appear as though representation filings are holding steady at 60 petitions for both years. It would be easy to assume that no change happened, but as with most things involving labor relations, it's not that simple.

SHRM LINK ARTICLE: Union Organizing in Healthcare: What's Driving the Surge?

THANK YOU