"Flexible Work Terms and Conditions" Proposal: Yet Another Burden for Employers

Insights
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At the same time human-resources professionals are wondering how they can keep up with the work necessitated by *existing* employment laws, Senators Bob Casey (D. PA). and Tom Harkin (D. IA) have introduced S. 3840 to "permit employees to request, and to ensure employers consider requests for, flexible work terms and conditions . . .." This objective sounds benign enough; as usual, the devil is in the details, many of which would be supplied by what would no doubt be extensive regulations prepared by the U.S. Labor Department.

Under this bill, employees would have a right to submit an application for a change in how many hours they must work, the times they must work, and/or where they are assigned to work. At a minimum, the application would have to state the change sought, the impact the employee "thinks" it would have, and how "in the employee's opinion" this effect might be handled. The proposal does not say whether the time an employee spends preparing this application would have to be counted as hours worked.

An employer would then be required to consider this application, including that management would have to:

- Meet with the employee about the matter within 14 days;
- Provide a written decision with 14 days after that, including stating the grounds for any such denial in terms established by the law and regulations;
- Entertain any request for reconsideration the employee makes pursuant to his or her "right" to do so within 14 days;
- Meet with the employee about the reconsideration request within 14 days after it is made;
- Provide an adequate written decision on the reconsideration request with 14 days after that;
- Permit the employee to attend these various meetings with "a representative of [his or her] choosing" (subject only to the representative's having unspecified "qualifications" that regulations would define); and
- Postpone any such meeting if the employee's representative is "not available" to attend.

It would be unlawful to "interfere with, restrain, or deny" the employee's exercise of these rights, as it would be to discriminate or retaliate against the employee in this regard. Among other things, the U.S. Labor Department would be empowered to investigate alleged violations and to assess civil money penalties of from $1,000 to $5,000, and employers would face tough remedies for alleged retaliation or violations of other kinds.

It is of course difficult to say whether or how soon there might be any significant action on this measure, at least if it stands alone. However, if recent history is any guide, this sort of proposal might find its way into an unrelated omnibus bill of some *other* kind, the passage of which is pressed in a post-election November rush.