

Riding the Wave of Change



*The Top HR and Employment Law
Changes from 2009*

&

What's in Store for 2010

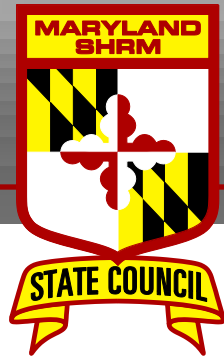


KAREN MICHAEL, PLC



Employment Law, Training, & Consulting

AFFILIATE OF
SHRM
SOCIETY FOR HUMAN
RESOURCE MANAGEMENT



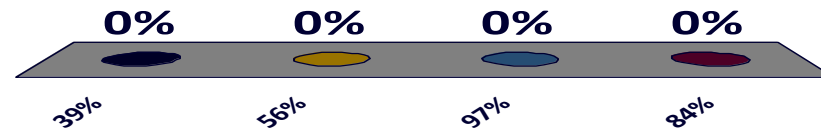
You Mean
THAT's a
Disability??





In 2004, what percentage of plaintiffs who went to trial on their ADA employment discrimination claims lost their cases?

- 1. 39%
- 2. 56%
- 3. 97%
- 4. 84%



Analysis under the ADA



Does the employee have a current disability?

What reasonable accommodation is sought & is it effective to enable the employee to perform the essential functions of the job?

Does the accommodation pose an undue hardship?

What is a “Major Life Activity?”



Caring for oneself

Performing manual tasks

Seeing

Hearing

Eating

Walking

Sleeping

Standing

Lifting

Bending

Speaking

Breathing

Learning

Reading

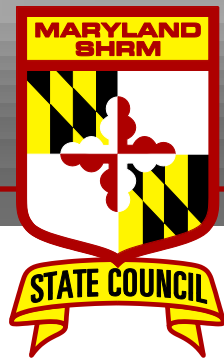
Concentrating

Thinking

Communicating

Working

Major Life Activities that are Major Bodily Functions



Functions of
the immune
system

Normal cell
growth

Digestive

Bowel

Bladder

Neurological

Brain

Respiratory

Circulatory

Endocrine

Reproductive
Functions

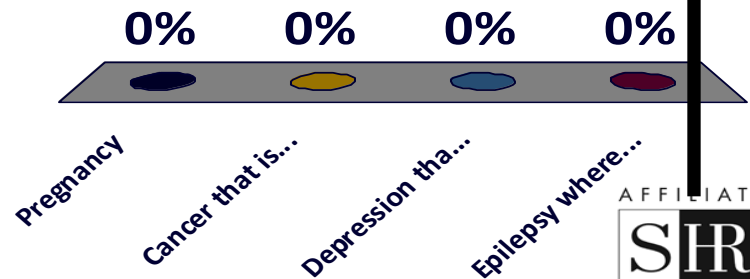


STATE COUNCIL



Which of the following is not a current disability under the new ADA AAA?

1. **Pregnancy**
2. Cancer that is in remission
3. Depression that is fully controlled by medication
4. Epilepsy where the employee has not had any seizures for 3 years



“Significantly Restricted”

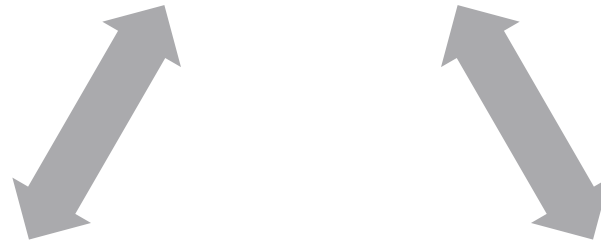


- “An impairment need not prevent, or significantly or severely restrict, the individual in performing a major life activity to be considered ‘substantially limiting’....Rather, determination of whether an individual is experiencing a substantial limitation...is a common-sense assessment based on comparing an individual’s ability to perform a specific major activity...with that of most people in the general population.”
- Includes impairments that are inactive or in remission.
- “Temporary, non-chronic impairments of short duration with little or no residual effects usually will not be considered disabilities.”

Consequences of New Law



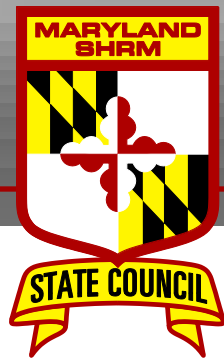
Most impairments
will be a disability



Cases will now
focus on reasonable
accommodations



Cases will no longer
turn on the question
of disability



Why Come to
Work??

Welcome to

Leave

Management





Your company employs 100 people in Baltimore. Sally has worked for your company 4 months. She approaches her manager and tells him she needs “a couple weeks off” due to her chronic severe depression and may need inpatient care. Your policies state that employees are not entitled to any time off until after 6 months. Is Sally entitled to time off under any federal law?

1. Yes
2. No



ADA & ADAAA

- Federal Law – EEOC
- 15 or more employees
- No limit to the time worked



FMLA

- Federal Law – DOL Wage & Hour Div.
- 50 or more employees in 75 mile radius
- Must have worked 1 year and 1250 hours

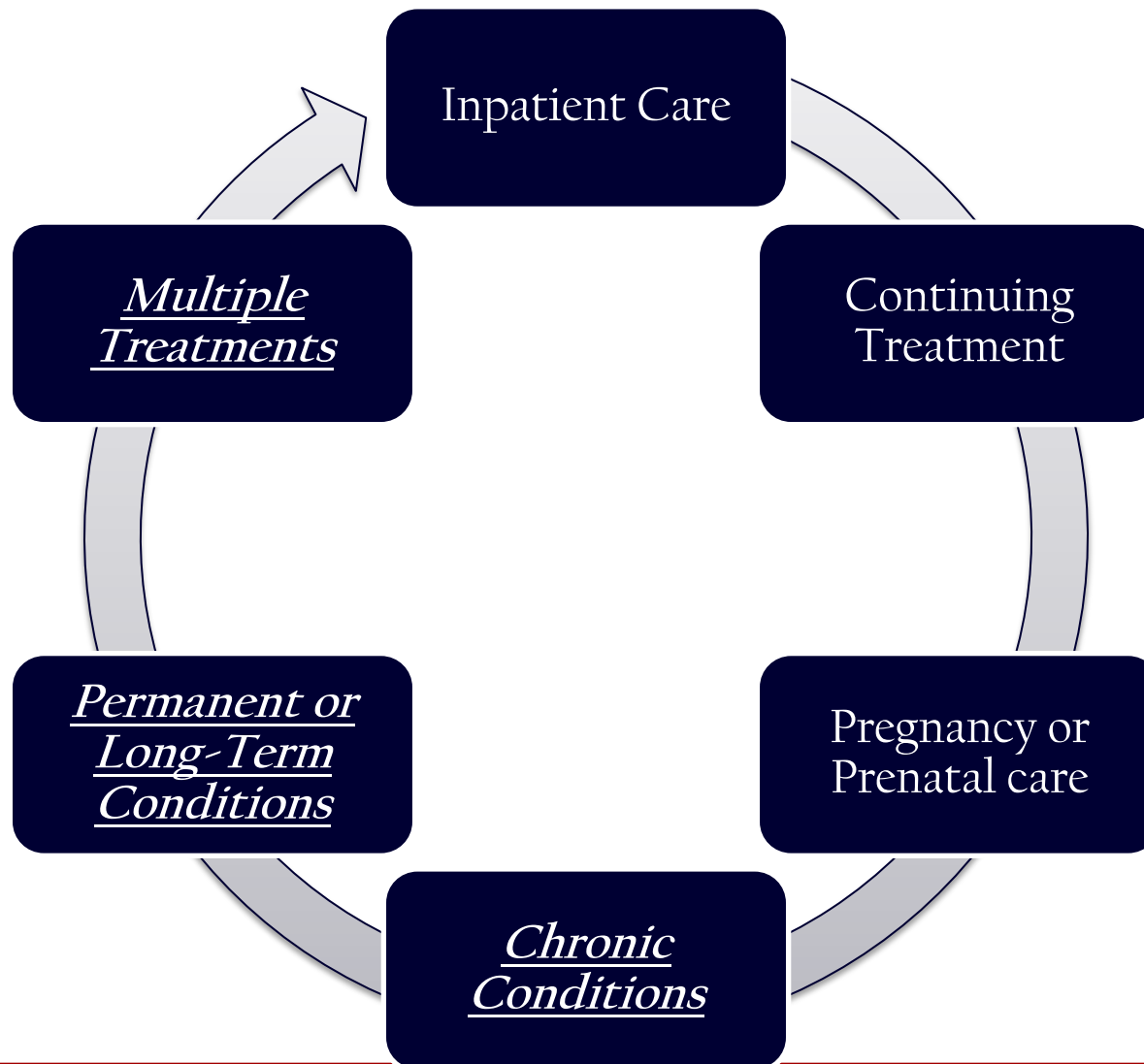
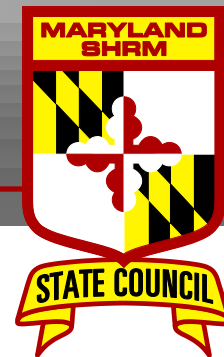
Worker's Compensation

- Governed entirely by state law

Maryland Flexible Leave Act

- Employers with 15 or more individuals to use "leave with pay" for an illness in the employee's immediate family which includes a child, spouse or parent.
- Leave with pay is considered time away from work for which an employee is paid and includes sick leave, vacation time, and compensatory time.

FMLA Serious Health Condition Includes:

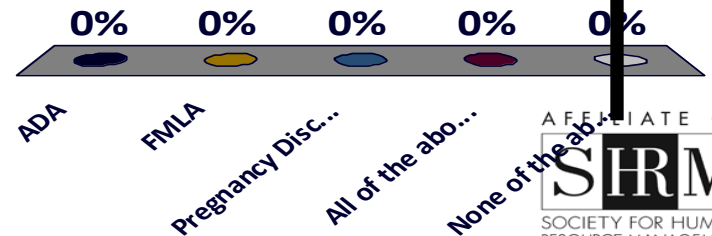




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Sally is pregnant and eligible for FMLA. She is able to work, but her job requires her to be out in the heat during the day. Sally doesn't want to take off work because she wants to be paid for her leave once the baby is born. She asks her employer for a reasonable accommodation. She is entitled to a reasonable accommodation under the:

1. ADA
2. FMLA
3. Pregnancy Discrimination Act
4. All of the above
5. **None of the above**

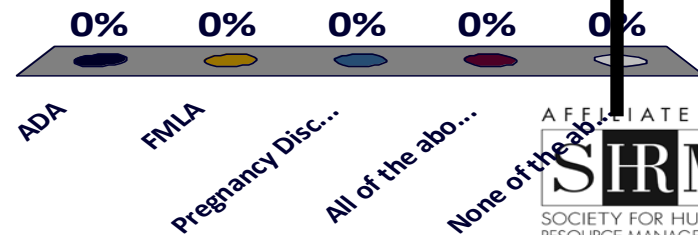




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Ann has worked full-time for the City of Cantoo for 1.5 years. For the last 10 weeks, she has been out on leave due to a pregnancy-related condition. After she has the baby, she promptly asks for her 12 weeks of leave to care for the baby. The City is on a rolling 12 month period for leave. Ann is eligible for the 12 weeks of requested leave under the:

1. ADA
2. FMLA
3. Pregnancy Discrimination Act under Title VII
4. All of the above
5. None of the above



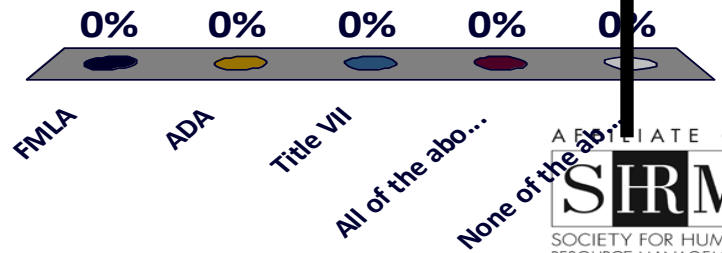


STATE COUNCIL

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Fred works for a large company. His wife is on disability leave from her job due to recovery from cancer. He has just returned from a 12 week leave himself for back problems. He asks for 6 weeks to care for his wife as a reasonable accommodation. Fred is entitled to the leave under the :

- 1. FMLA
- 2. ADA
- 3. Title VII
- 4. All of the above
- 5. None of the above

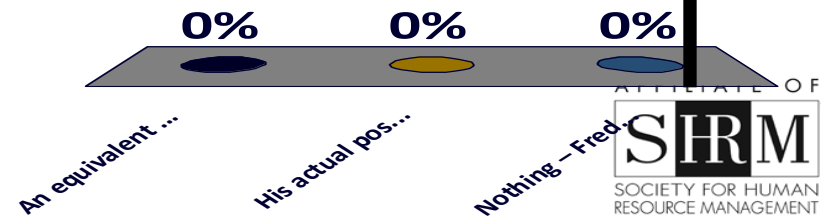




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Fred is out on FMLA for back surgery relating to a condition in his spine he has had for many years. During his leave the company filled his job and expected to return him to an equivalent job. At the end of 12 weeks, he comes back to work and complains that his actual job was filled. He does not dispute that the new job is equivalent in terms of pay, benefits and terms & conditions of employment. Based on these facts, Fred is entitled to:

1. An equivalent position
2. His actual position, so long as it is not an undue hardship
3. Nothing – Fred should be fired!

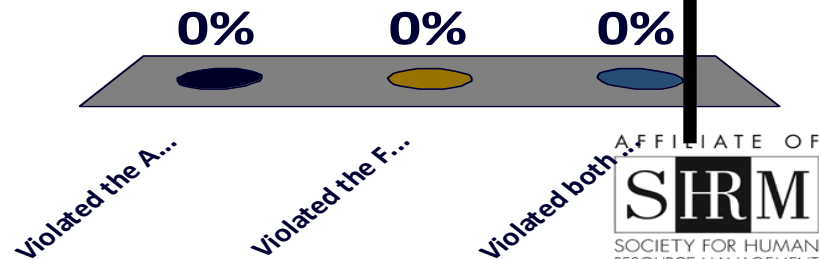




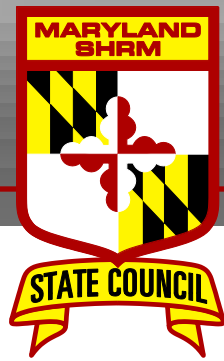
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Jesus has diabetes. He has worked full-time for the City of Cantoo for one year. Jesus provides medical documentation that he needs to do a better job of regulating his blood sugar, and asks for time off in order to do so. The City engages him in the interactive process and suggests alternatives other than leave, and tells him that their suggested alternative is effective, thereby not allowing him the time off. The City has:

1. Violated the ADA
2. Violated the FMLA
3. Violated both the ADA and the FMLA



Leave in Perspective



Know the
Rules

Analyze each
situation
under each
law

Provide the
greatest right
and go from
there



The Year of the Union

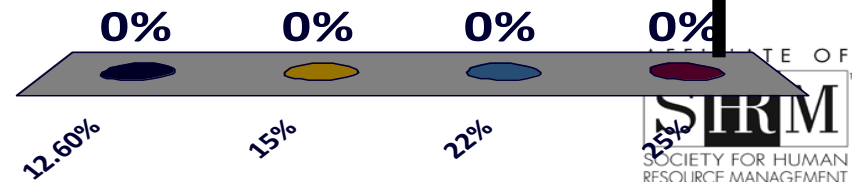




In 2008, the Bureau of Labor statistics reported this percentage of the workforce in Maryland belonged to a union:

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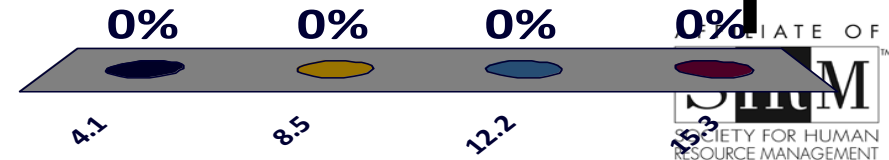
1. 12.6%
2. 15%
3. 22%
4. 25%

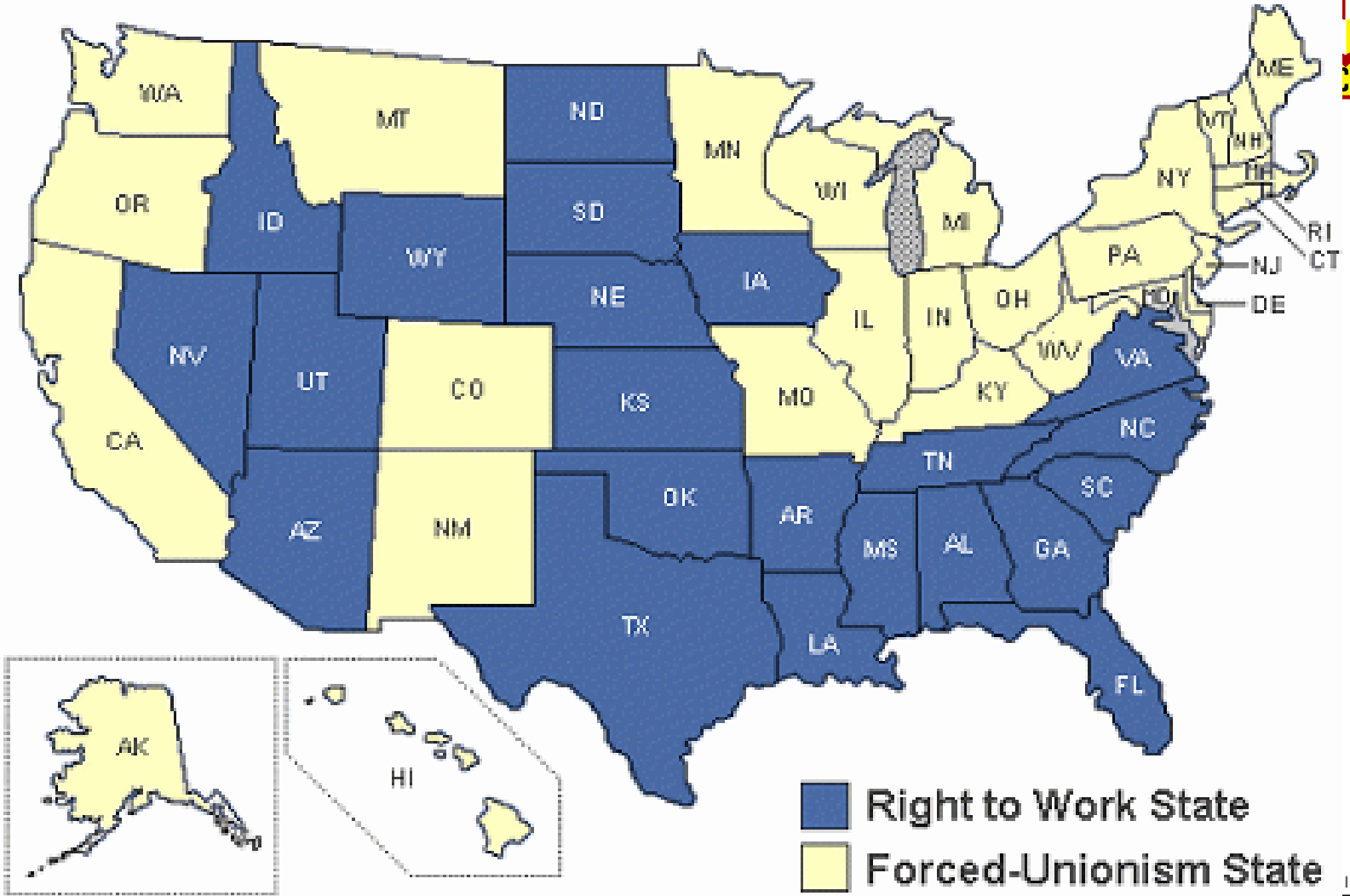


This same study reported that this percentage of employees in Virginia belonged to a union:

1. 4.1
2. 8.5
3. 12.2
4. 15.3

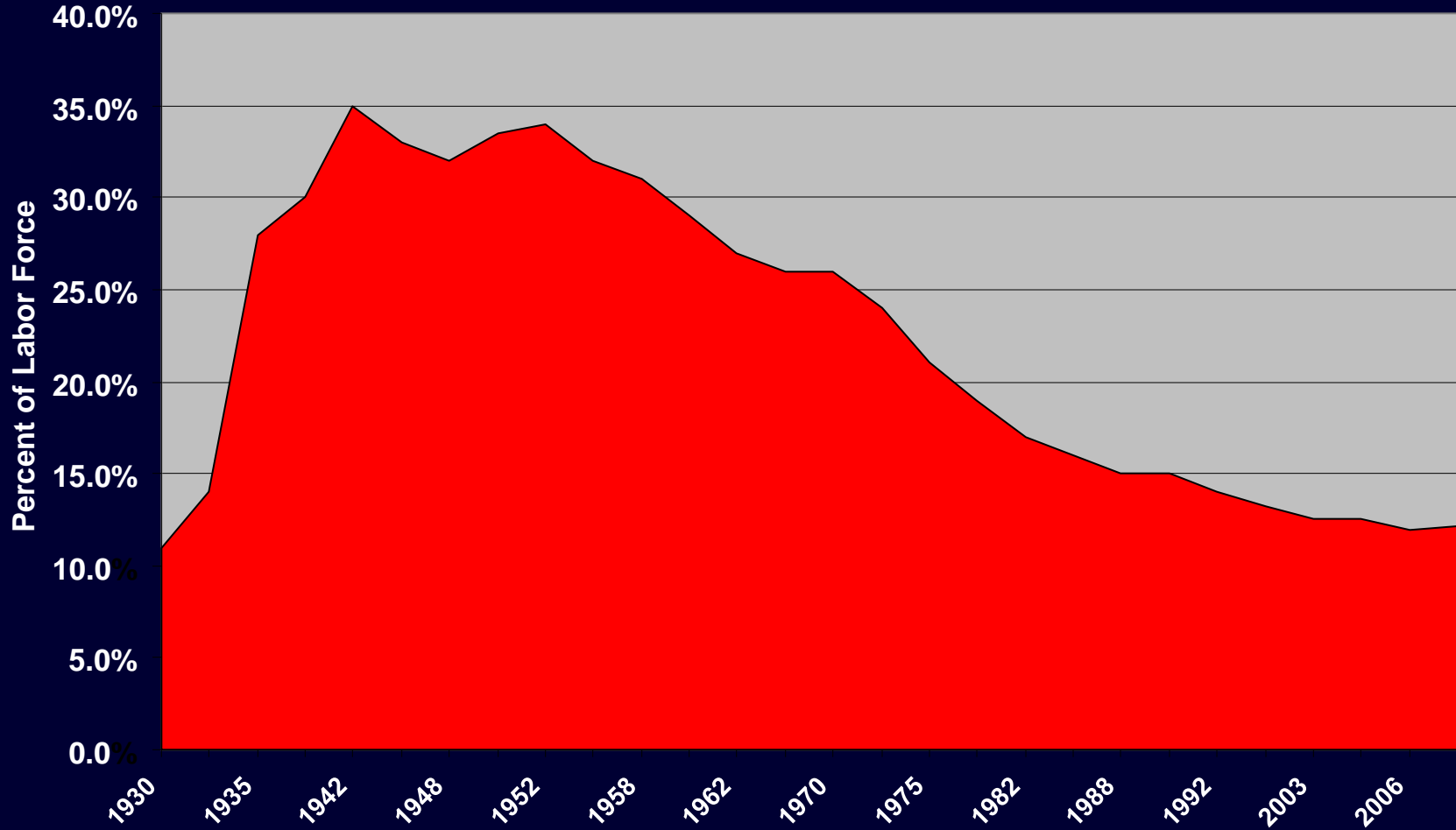
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Right to Work State
 Forced-Unionism State

Union's Declining Membership 1930 - 2007

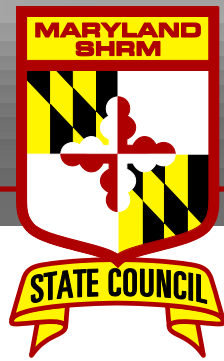


The Employee Free Choice Act was signed into law by President Obama in June 2009.



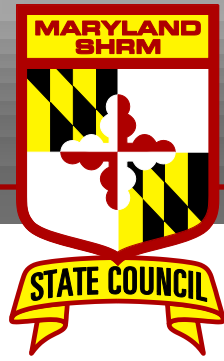
1. True
2. False





Employee Free Choice Act TRIPLE THREAT





THREAT #1 Elimination of Secret Ballot Elections

- If a majority of employees sign cards (50% plus 1) then the union is in.
- Requires recognition of “card check”
- No requirement of secret ballot elections
- Still undecided how to validate the signatures used to obtain the “majority.”



THREAT #2

Forced Agreement on Parties

- After union certified, bargaining must start in 10 days.
- Limits negotiations to maximum of 90 days.
- If no contract reached, union or employer may request federal mediation (which can only last 30 days).
- If no agreement reached, federally assigned arbitrator will settle dispute and draft 2 year contract.

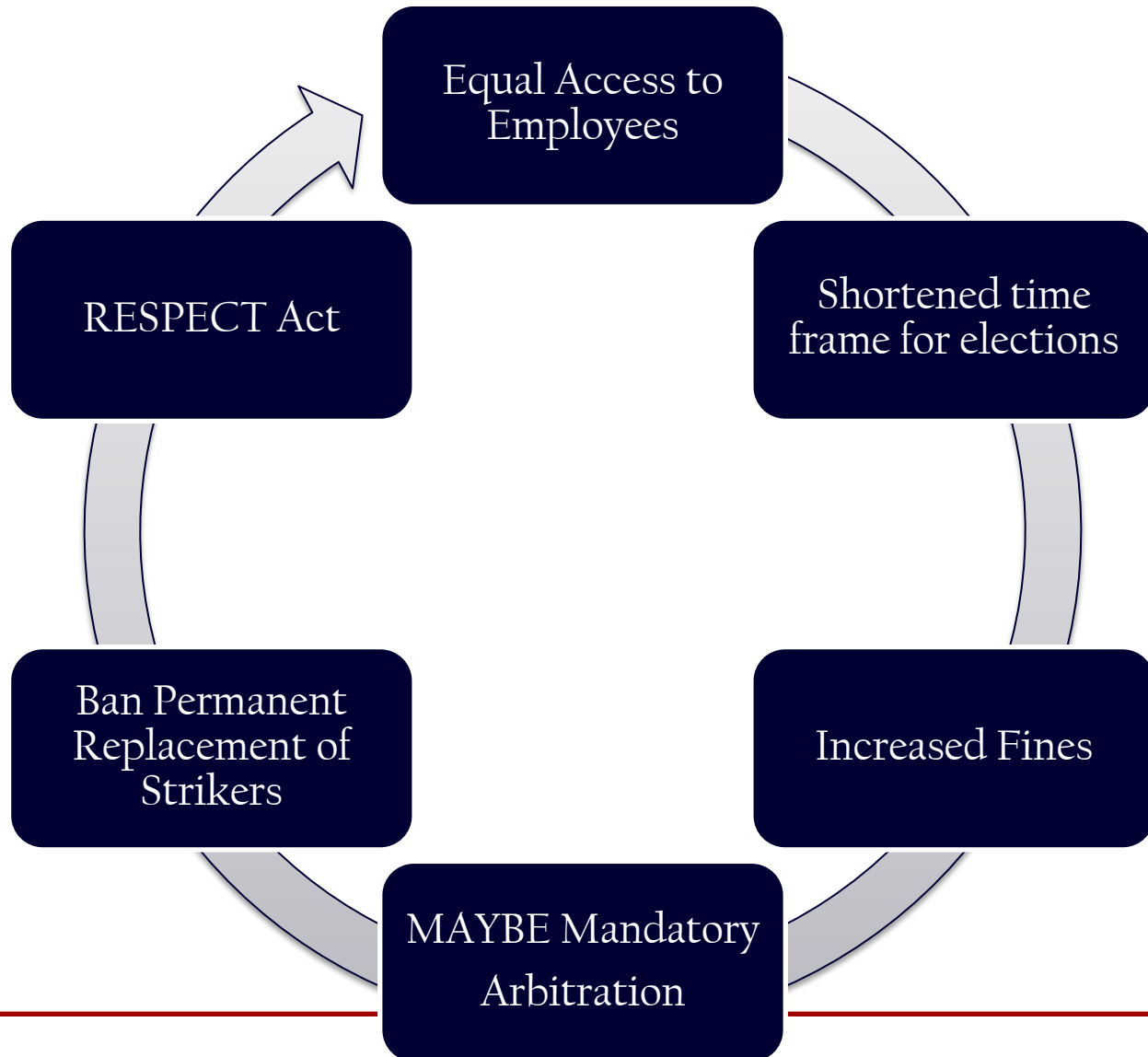
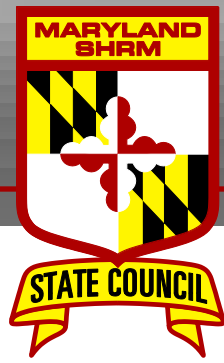


THREAT #3

Increased Fines & Penalties

- Puts in place revised system of fines and penalties for violations.
- Up to \$20,000 for each unfair labor practice and triple damages for back wages.
- Only employers can violate – no fines for labor unions.

Karen's Crystal Ball...





Pay Right
Now or Pay
Big Later...

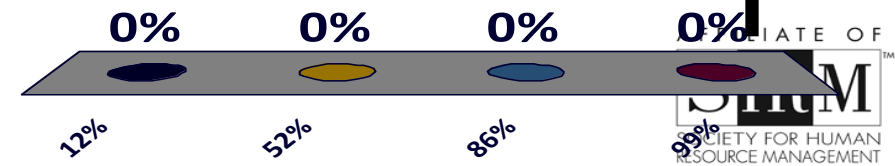
The FLSA
Makes a
Comeback!





During a recent four year time span, the number of federal wage & hour lawsuits increased by:

- 1. 12%
- 2. 52%
- 3. 86%
- 4. 99%

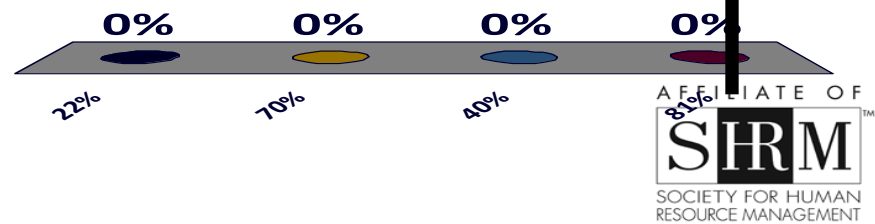




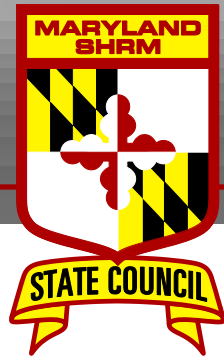
In 2007, what was the estimated percentage of employers who were out of compliance with federal & state wage & hour laws?

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- 1. 22%
- 2. 70%
- 3. 40%
- 4. **81%**



Biggest Mistakes & How to Fix Them



Misclassifying Employees

Providing “Comp” Time

Failing to Pay for Working Time

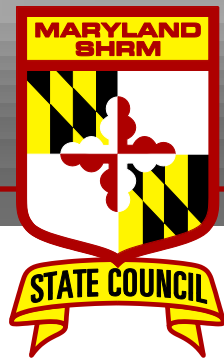
Failing to Pay Overtime for All Hours Worked Over 40 in a Workweek

Can A Tweet Turn into a Termination?



The Impact *of Social* *Networking* *on Business*





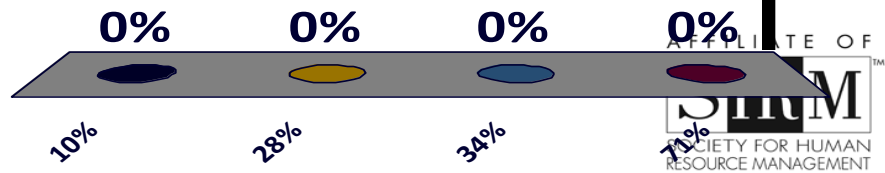
“If GM had kept up with technology like the computer industry has, we would all be driving \$25 cars that got 1000 MPG” - - Bill Gates



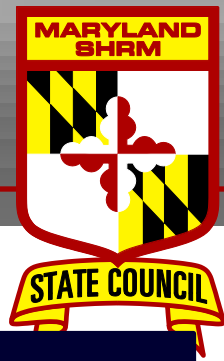
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In a 2008 Careerbuilder.com survey, this percentage of hiring managers said they used social networking sites to decide NOT to hire someone:

- 1. 10%
- 2. 28%
- 3. 34%
- 4. 71%



Why Social Media Sites?



Facebook

- 200+million active users
- 100+ million users log on daily

Linked In

- 39 million users

twitter

- Estimated between 5 and 10 million users

Employee “Rant” Sites



Glassdoor



Jobvent



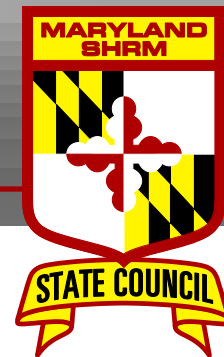
LiveJournal



Telonu



Criticat



A Toxic Combination?

Employees

Computers

Some Legal Issues to Consider...



Employee Rants,
Employee Morale
& Time Waster

Negligent Hiring
& Retention

Harassment
Discrimination

Violation of
Privacy Rights &
ECRA

Workplace
Violence/Risk

Defamation of
Company or
others (Manager
References, etc)

Disclosure of
Confidential
Information

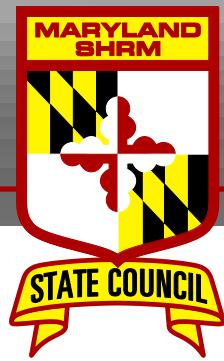
Union
Organizing

Brand Decline

Disparate Treatment



Disparate Impact



Using only a specific networking source (ie: Linked In)

Relying too heavily on social networking sites generally

Using irrelevant information on the sites (ie: amt. of profile information or the one w/ the most friends)

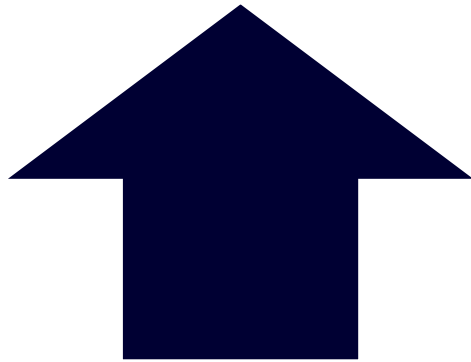


Federal Contractors The OFCCP Wants YOU!

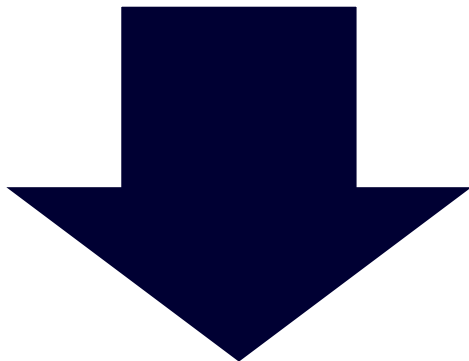




The Risk of “Doocing” an Employee

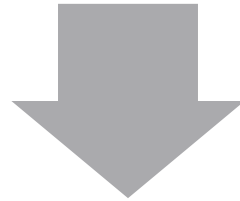


To “Friend”



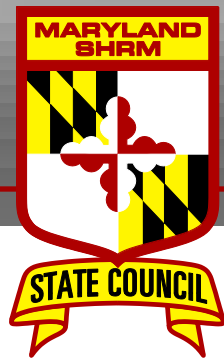
“Not to
Friend”

She said: OMG I HATE MY JOB!!! My boss is a total pervvy wan*** always making me do sh** stuff just to pi** me off! WAN***!



He replied: I guess you forgot about adding me on here? Firstly, don't flatter yourself. Secondly, you've worked here 5 months and didn't work out that I'm gay? I know I don't prance around the office like a queen, but it's not exactly a secret. Thirdly, that "sh** stuff" is called your 'job.', you know, what I pay you to do. But the fact that you seem able to f***-up the simplest of tasks might contribute to how you feel about it. And lastly, you also seem to have forgotten that you have 2 weeks left on your 6 month trial period. Don't bother coming in tomorrow. I'll pop your P45 in the post, and you can come in whenever you like to pick up any stuff you've left here. And yes, I'm serious.

Privacy & Computer Access

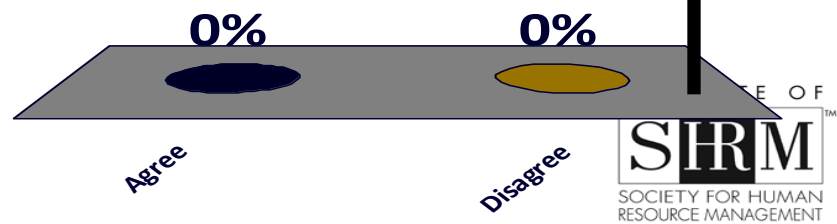


- Hillstone's employee creates a group on a "My Space" page.
- The purpose was stated "to vent about any BS while at work without any outside eyes spying in on us"
- Hillstone found out about the group. One of the managers asked an employee for her password
- After reading the information on the site, two group members were fired

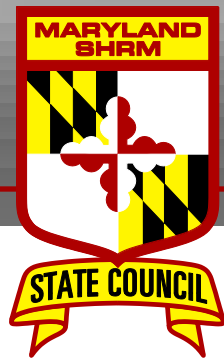


Based on this case study, it was legal for the manager to access the site?

- 1. Agree
- 2. Disagree



First Amendment Rights?



- Dan Leone, a Philadelphia Eagles employee, was upset when Eagles player Brian Dawkins signed with a rival team.
- He posted his opinion on Facebook:

“Dan is [expletive] devastated about Dawkins signing with Denver ... Dam Eagles R Retarted!!”

Managing Media Overload at Work & Off Duty - *Set Expectations*



Build off of your Code of Conduct & Other Policies (ie: Best Efforts, Confidentiality, Harassment, Workplace Violence Prevention)

Prohibit use of computer (including internet) for non work-related matters

No expectation of privacy anything related to the organization on its systems or what is brought into the organization

Prohibit use of company information , posting information about the company without permission (even anonymously), create a “nondisparagement” clause

Employees have no expectation of privacy in anything they say about the company

Final Recommendations



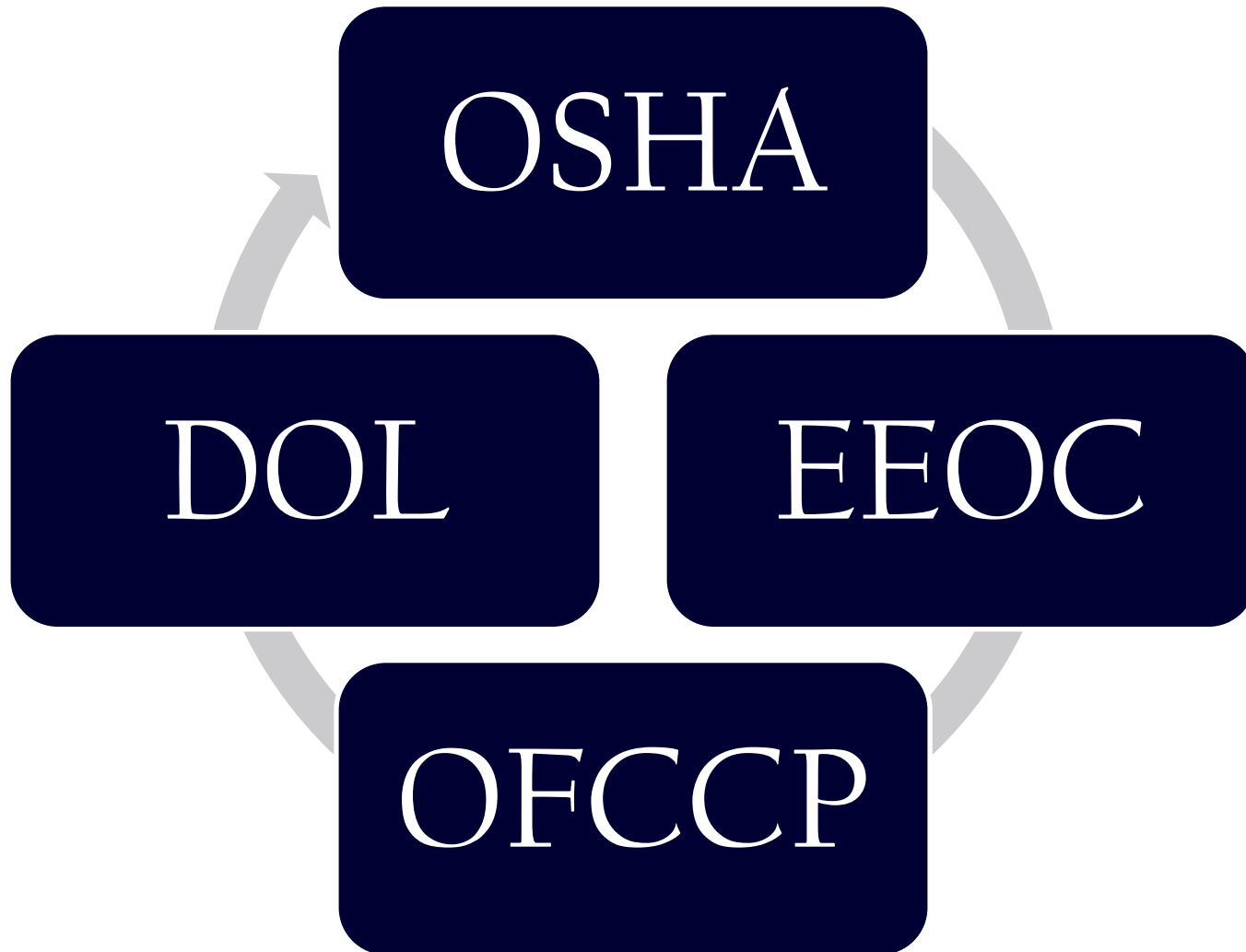
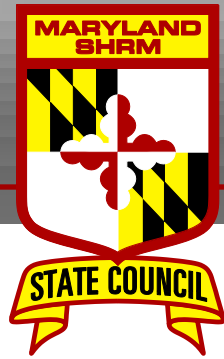
- Be careful with “digital dirt” and consider discrimination, record-keeping & FCRA issues
- Do not let managers or employees “recommend” or provide references, especially on LinkedIn or any other site
- Make sure employees have no expectation of privacy in what they say about the organization
- Write effective policies that set expectations about on and off-duty conduct

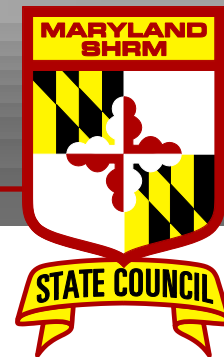


The Government Comes a Knockin'



Enforcement





The Impact of the War on Terror



Military Leave Provisions

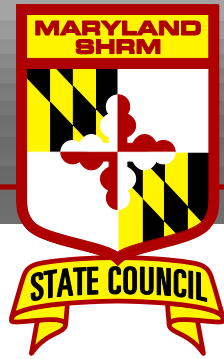


Qualifying Exigency Leave

- 12 weeks based on a calendar year
- Now applies to current members of the armed forces
- Applies to spouse, child or parent

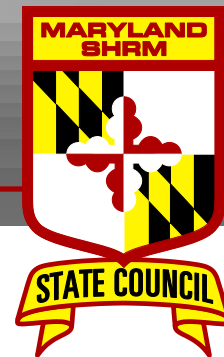
Leave to Care for Injured Servicemember

- 26 weeks based on calendar year
- Spouse, child or parent or “next of kin” of injured servicemember



Weird Laws that May Matter





GINA

Lilly
Ledbetter Fair
Pay Act

Over 2000 Pages of...



Health Care Regulations



#10

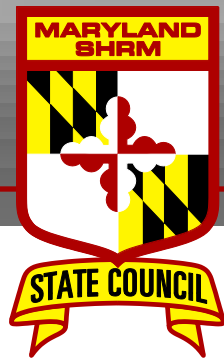


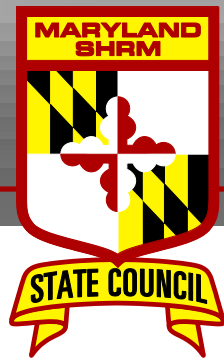
2010 Obama's Wish List



AFFILIATE OF
SHRM
SOCIETY FOR HUMAN
RESOURCE MANAGEMENT

Obama's Wish List





Back to the Basics



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