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FORECAST & TRENDS

Labor issues set for Congressional scrutiny in '87

By Ken Rankin
WASHINGTON — While tax reform dominated the legislative landscape for food-service operators during 1986, employment and payroll-related issues figure to surface as the industry's top Congressional concern during the coming year.

With the Democrats in control of the Senate for the first time since 1981, restaurateurs can look forward to a serious debate over the federal minimum wage rate.

Indications are Congressional advocates of a rising national wage floor will mount an aggressive campaign to boost the present \$3.35 hourly minimum wage by 20% or more this session.

At the same time, the industry can expect a flurry of related proposals to reduce the current 40% federal minimum-wage tip credit, to trim the "standard" 40-hour national work week and to create a controversial new "escalator clause" ensuring automatic annual increases in the hourly minimum.

The cost of providing employee "fringe benefits" may also rise sharply this year if Congress continues to press for new legislation requiring employers to offer workers certain non-wage benefits.

The groundwork for such a drive was laid last summer with the implementation of so-called COBRA law requirements obliging restaurateurs and other employers to continue offering health insurance coverage to former employees and their dependents.

Although that law does not apply to firms that do not already offer medical insurance to their workers and does not require employers to pay insur-

ance premiums for departing employees, that may be the next step.

Another plan certain to resurface in 1987 would require employers to offer "parental leave" to all workers with newborn (or newly adopted) children. Variations of that proposal would extend those employee leave benefits to workers with seriously ill children or parents.

At the same time, the new and more heavily Democratic Congress is likely

to be more sympathetic toward employment discrimination legislation. One particularly controversial plan certain to resurface on Capitol Hill this year would declare it an unfair employment practice to require (or even ask) workers to undergo lie detector tests.

Similarly, restaurateurs can count on stepped-up Congressional debate over workplace drug testing and discrimination against employees with such communicable diseases as AIDS and herpes.

Although the fate of the 1986 tax reform bill was sealed last summer, legislative concern over the impact of business meal tax deductibility on the food-service industry is likely to re-emerge as a hot issue in the new Congress.

'Restaurateurs can look forward to a serious debate over the federal minimum wage rate.'

Such groups as the National Restaurant Association plan to conduct extensive studies of the effects of the new 80% meal deduction ceiling, and if the restrictions prove to be as damaging as expected, there will be a fresh drive to repeal that portion of the new tax law.

Another legislative leftover from 1986 certain to resurface in the new Congress—the so-called Malt Beverage Inter-brand Competition Act—could drive up beer prices to restaurants and taverns by limiting variety in industry supply sources.

such laws would be unworkable and unenforceable, consumer and nutrition groups will be arguing that ingredient disclosures are essential to enable allergic individuals to avoid certain types of additives in restaurant food.

Although there will be another drive to secure federal liability reform legislation to ease the food-service industry's "dram shop" problems, prospects for Congressional enactment of sweeping tort law reform appears to be dimming.

Although the last Congress did pass related "risk retention" legislation last year, allowing competing businesses to negotiate insurance coverage agreements jointly with carriers, indications are that any further relief in 1987 will have to come at the state level.

Restaurateurs who rely on highway billboard advertising will face a crucial test early in the new session as Congress resumes debate on the 1987 federal highway funding bill. A key provision of that measure would offer states strong new incentives to accelerate removal of commercial signs on the nation's highways.

The key test of the restaurant industry's lobbying clout next year, however, will focus on the drive to extend the troubled Targeted Jobs Tax Credit program (TJTC).

Although Congress voted to revive the wage subsidy program as part of last year's tax reform bill, the TJTC was extended only through 1988. Industry groups such as the NRA and the Foodservice & Lodging Institute will be pushing hard to secure a multi-year extension of the jobs credits in the 100th Congress.

The measure, patterned after a similar law enacted at the request of soft-drink bottlers, would create a special exemption to the federal antitrust laws enabling brewers to impose exclusive distribution territories on malt beverage wholesalers.

Critics of the measure—who contend such exclusive distributorships would eliminate wholesale price competition altogether—narrowly blocked passage on the "beer bill" last fall. But in return, they agreed to allow the legislation to come up for prompt action in the 1987 session.

Food-service industry lobbyists will also be battling revived legislation to require ingredient disclosure labels on fast-food items and other packaged menu selections in the new Congress.

Although industry leaders maintain

Overtime, immigration top regulators' agenda

NRN Washington Bureau
WASHINGTON — As in the legislative arena, labor-related issues figure to emerge as a key regulatory concern for the nation's restaurant operators during 1987.

Near the top of this year's agenda: the Labor Department's long-awaited proposal to update federal overtime pay requirements for minimum wage-exempt "executive, administrative and professional" (EAP) workers.

Under the current ground rules, *bona fide* EAP employees are generally not entitled to premium pay for "overtime" work (hours on the job in excess of 40 per week), provided they perform certain management duties and receive a minimum weekly salary of \$155.

But neither that salary requirement nor the present "duties test" has been updated for more than a decade. The new Labor Department rule proposal—scheduled to be released later this month—is expected to address both sides of the equation.

While a hike in the weekly salary requirements for overtime exempt managers—reflecting 10 years of inflation—could increase payroll pressure on many restaurants, a relaxation of the present duties test could make it easier for many operators to avoid overtime wages to managerial personnel altogether.

Restaurateurs will also face potential new regulatory problems this year as Justice Department officials at the

Immigration and Naturalization Service (INS) begin policing the new "immigration reform" law passed by Congress late last session.

Although the bill sets stiff penalties for employers of illegal aliens, initially INS agents will be issuing only warnings to violators. A key question mark, however, is whether restaurateurs will be subject to penalties later if they continue to employ undocumented workers discovered during the initial enforcement "grace period."

Another personnel-related regulatory issue expected to come to a head this year involves controversial Labor Department rules preventing teenage restaurant workers from operating or cleaning meat-slicing equipment.

Although a pair of recent rulings by the Labor Department's own administrative law judges have held that those employment restrictions do not apply to the food-service industry, so far top Labor officials have refused to acknowledge the accuracy of the rulings.

The issue could be resolved early this year, however, as the department has already scheduled new rule-making proceedings to reconsider those regulations.

Food safety will also be a hot issue of the regulatory front this year, with sulfite preservatives again in the center of the controversy.

Although the Food and Drug Administration (FDA) has already

banned the use of sulfites on most raw fruits and vegetables, the agency has yet to address the use of the chemicals on potatoes served in restaurants.

In addition to tackling the potato question in 1987, the FDA will also implement new sulfite label disclosure rules for packaged foods this month, and the Bureau of Alcohol, Tobacco and Firearms is slated to implement

similar disclosure requirements for alcoholic beverages early this year.

Don't look for any new federal regulations requiring fast-food ingredient labeling during 1987, however. The FDA has already ruled out such a mandate, and agency officials are further expected to join food-service industry leaders in arguing against legislation to force such disclosures.

Court rulings on drinking age, sex harassment, AIDS foreseen

NRN Washington Bureau
Several issues of concern to the restaurant industry appear headed for critical court showdowns during the next 12 months.

The most closely watched of those cases challenges Congressional effort to force all states to adopt a uniform, 21-year-old drinking age.

The U.S. Supreme Court has already agreed to hear South Dakota's challenge of that drinking law, and if state officials prevail in that case, the federal government could be powerless to penalize states with lower alcohol beverage age limits.

Sexual harassment in the workplace also figures to emerge as a ma-

major area of litigation this year in the wake of the Supreme Court's recent decision holding employers responsible for preventing such practices.

In addition, federal and state officials also appear headed for a courtroom clash over the question of whether employers may legally discriminate against workers with AIDS or other communicable diseases.

The U.S. Justice Department has already taken the position that employers may refuse to employ such individuals because of a concern for the public safety, but civil-rights enforcers in a number of states have adopted opposing policies.