



# HR NEWS

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## 2018 SHRM Employee Benefits Survey Published

The Society for Human Resource Management (SHRM) has published its **2018 Employee Benefits** report. The annual survey was conducted in February and March of 2018. The survey asked human resources professionals about their practices relating to more than 300 benefits. Over 3,500 members responded to the survey. Healthcare organizations are the third highest participants, accounting for 17 percent of respondents. Smaller organizations (less than 500 employees) make up 68 percent of participants.

[2018 SHRM Employee Benefits Survey Published](#)

## Supreme Court Overturns Fair Share Union Fees For Public Sector Workers

On June 27, the US Supreme Court announced its decision in a case that challenged the constitutionality of requiring mandatory payment of "fair share" or agency fees by non-member public sector unionized workers. The Court, by a 5-4 vote, overruled the **1977 Abood v. Detroit Education Association** case, finding that Abood was "poorly reasoned." The Court ruled that an Illinois state fair share fee law violates the First Amendment of the Constitution. According to Justice Samuel Alito, who authored the majority opinion, "public-sector agency-shop arrangements violate the First Amendment, and Abood erred in concluding otherwise." A majority of states have passed "right to work" laws that allow public sector employees to opt out of all union dues and fees. But 22



states, including Pennsylvania, still required public sector workers to pay agency fees. **Janus v. American Federation of State, County and Municipal Employees, Council 31, No. 16-1466, Supreme Court of the United States.**

[Supreme Court.gov](https://www.supremecourt.gov)

## NLRB Rules on Weingarten Representation Rights

In a 2-1 decision, the National Labor Relations Board (NLRB), in **Circus Circus Casinos, Inc.**, held that the validity of an employee's request for Weingarten assistance at an investigatory interview or disciplinary hearing hinges on the nature of the request and the circumstances surrounding it.

In 1975, the US Supreme Court, in *NLRB v. J. Weingarten, Inc.*, ruled an employer is required to abide by an employee's request to have a union representative or other third party present at a meeting which the employee reasonably believes may result in discipline. It is the employer's responsibility to make the request.

In the *Circus Circus Casinos* case, a divided three-member NLRB panel undertook a factual analysis of whether an employee had provided adequate notice of his desire for representation at a disciplinary interview. On the day of the meeting, the employee told the employer for the first time that he had unsuccessfully requested union representation and that he would not be represented at the meeting.

The employee did not ask for union or other representation, indicate he would like the presence of a representative, ask whether he needed or should have a representative, or seek a delay in the interview to secure one. His employment was terminated and he filed an unfair labor practice charge with the NLRB.

NLRB members Mark Pearce and Laruen McFerran ruled that the mere mention of the employee's inability to secure union representation served as notice that he desired representation. Chairman John Ring concluded that the employee had not made a legally sufficient request to the employer to provide adequate notice of his desire for Weingarten rights. The Board ordered the employee's full reinstatement to his former position or its equivalent with full back pay, and reimbursement of job-search and interim-employment expenses (366 NLRB No. 110, *Circus Circus Casinos, Inc. d/b/a Circus Circus Las Vegas*, 28-

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## DOL Publishes Guidance on Caregiver Registries

The US Department of Labor's Wage and Hour Division (WHD) has released **Field Assistance Bulletin (FAB) 2018-4: Determining Whether Nurse or Caregiver Registries are Employers of the Caregiver**. The Field Assistance Bulletin provides guidance to Wage and Hour Division (WHD) field staff to help them determine whether home care, nurse, or other caregiver registries are employers under the Fair Labor Standards Act (FLSA). A registry is defined as an entity that typically matches people who need caregiving services with caregivers who provide the services, usually nurses, home health aides, personal care attendants, or other home care workers. According to the Bulletin, a registry that simply facilitates matches between clients and caregivers, even if the registry also provides certain other services, such as payroll services, is not an employer under the FLSA. A registry that controls the terms and conditions of the caregiver's employment activities may be an employer of the caregiver and therefore subject to the requirements of the FLSA. Specific examples are provided.  
[DOL.gov](http://DOL.gov)