

## **What the Obama Era May Mean For the Work Place The Top 10 Legislative Items to Watch in 2009**

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The recent election of Barack Obama as the 44<sup>th</sup> President of the United States and support by strong Democratic majorities in both the House and Senate may lead to the most significant expansion of pro-employee labor and employment laws since FDR. While the Country's economic troubles may cause the Administration to table some of these proposed laws for a while, employers should be on the look out for the following laws to make their way through Congress:

- 1. Paycheck Fairness Act:** This is the only Act on this list that currently is pending in Congress. This Act would amend the Equal Pay Act (EPA) to prohibit retaliation against employees for sharing salary information with coworkers, allow prevailing plaintiffs to recover compensatory and punitive damages in EPA cases, and facilitate the filing of class actions lawsuits under the EPA. It would also place the burden on employers to prove that any disparities in wages are not sex-based but are job-related and consistent with business necessity. The House combined this Act with the Lilly Ledbetter Fair Pay Act and sent it to the Senate; however, it was not included in the final version of that Act. The Paycheck Fairness Act has also been introduced in the Senate as separate legislation.
  
- 2. Employee Free Choice Act:** Labor leaders pushed strongly for the enactment of this legislation in 2008; however, it was defeated. With the election of President Obama and significant Democratic gains in Congress, there may be a greater likelihood that some form of this legislation will be enacted in 2009. This Act includes a card check provision that would, for all intents and purposes, strip employees of the right to a secret ballot election and would mandate interest arbitration when the employer and union cannot agree on a first contract. The legislation also provides for increased penalties for employers who are guilty of unfair labor practices; these penalties include treble damages and civil penalties of up to \$20,000.
  
- 3. Civil Rights Act of 2008:** This Act was introduced in 2008 as an omnibus bill designed to "restore, reaffirm, and reconcile legal rights and remedies under civil rights statutes." Among other provisions, this Act would eliminate the caps on compensatory and punitive damages under Title VII and the Americans with Disabilities Act and would permit recovery of compensatory and punitive damages for violations of the Fair Labor Standards Act. It would also make mandatory arbitration clauses in employee handbooks unenforceable. Portions of this legislation have been introduced as part of other bills, including the Equal Remedies Act and the Arbitration Fairness Act of 2007.
  
- 4. Expansion of Family and Medical Leave Act:** The FMLA Expansion Act would lower the threshold for companies subject to the FMLA from 50 to 25 or more employees and would also provide up to 24 hours of unpaid leave for parent-teacher conferences or to take family members to the doctor for regular medical or dental appointments.

**5. RESPECT Act (Re-Empowerment of Skilled and Professional Employees and Construction Trade Workers):** This Act would amend the definition of “supervisor” under the National Labor Relations Act (NLRA) by eliminating the words “assign” and “responsibly to direct” from the list. The effect of this law would be that thousands of employees who currently are considered front line supervisors would fall within the definition of employees who are protected by the NLRA.

**6. Employment Nondiscrimination Act (ENDA):** This Act would prohibit discrimination against any employee based upon actual or perceived sexual orientation. Several prior sessions of Congress have considered versions of this legislation and it is likely to be proposed again in 2009.

**7. Bill to Repeal a Limitation in the Labor-Management Relations Act Regarding Requirements for Labor Organization Membership as a Condition of Employment:** This legislation would have amended Section 14(b) of the Labor-Management Relations Act, which grants states the authority to enact “right to work” laws.

**8. Forewarn Act of 2007:** This legislation would have made significant modifications to the Worker Adjustment Retraining and Notification (WARN) Act to, among other things, lower the coverage threshold from employers with 100 or more employees to employers with 50 or more employees. It would also lower the number of employee layoffs that would trigger the notice requirements and increase the length of the notice that must be provided before a plant closing or mass layoff is ordered.

**9. Minimum Wage Increase:** President Obama’s website promises to “raise the minimum wage to \$9.50 an hour by 2011.”

**10. Healthy Families Act:** This Act would require employers with 15 or more employees to provide at least seven days of paid sick leave per year to employees who work more than 30 hours per week.

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