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POINT

President Obama has expressed his support of employee- and labor-friendly legislation, and with the Democratic majority in Congress, employers can expect to experience further swift and significant changes in the labor and employment law and regulation framework.

The first change has already come to pass:

- On January 29, 2009, President Obama signed into law the Lilly Ledbetter Fair Pay Act ("Ledbetter Act") (Pub. L. 111-2), which extends the time limitation in which an employee may bring discrimination actions under Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act and the Rehabilitation Act. The Ledbetter Act is retroactive to May 28, 2007, and thus, employers have exposure to claims of discrimination pending on or after that date.

Some of the other changes also in the works:

- Employee Free Choice Act ("EFCA") (H.R.800, S.1041): The EFCA eliminates secret ballot elections, has provisions which may send collective bargaining negotiations to binding arbitration, and increases the penalties against employers for unfair labor practices. The House of Representatives passed the bill, and the Senate version is currently pending in a committee. Then-Senator Obama co-sponsored the Senate version of the bill.
- Re-Empowerment of Skilled and Professional Employees and Construction Tradesworkers Act ("RESPECT") (H.R.1644, S.969): The RESPECT Act narrows the definition of "supervisor" under the National Labor Relations Act, thus increasing the number of employees eligible to join a union. Then-Senator Obama co-sponsored the Senate bill.
- Healthy Families Act ("HFA") (H.R.1542, S.910): The HFA requires employers to provide paid sick days to employees. Then-Senator Obama co-sponsored the Senate version of this bill.
- Working Families Flexibility Act ("WFFA") (H.R.4301, S.2419): The WFFA imposes procedural burdens on employers when their employees request a change in the terms or conditions of their employment, such as shift, location and number of hours. Then-Senator Obama co-sponsored the Senate version of this bill.
- Protecting America's Workers Act (H.R.2049, S.1244): The Protecting America's Workers Act amends the Occupational Safety and Health Act ("OSHA") to expand OSHA's coverage to federal, state and local government employees, increases protections for whistleblowers and increases civil and criminal penalties for violations. Then-Senator Obama co-sponsored the Senate version of this bill.
- Fair Pay Act (H.R.2019, S.1087): The Fair Pay Act expands the Equal Pay Act to prohibit discrimination in compensation based on race and national origin. Current law only prohibits discrimination in compensation based on sex. Then-Senator Obama co-sponsored the Senate version of this bill.

- Arbitration Fairness Act (H.R.3010, S.1782): The Arbitration Fairness Act prohibits pre-dispute arbitration agreements in the employment, consumer or franchise context.
- Equal Remedies Act (S.1928): The Equal Remedies Act increases the damages available for intentional discrimination in violation of the Civil Rights Act of 1991. This bill was co-sponsored by then-Senator Obama.
- Paycheck Fairness Act ("PFA") (H.R.1338): The PFA strengthens employees' remedies available under the Equal Pay Act and makes it more difficult for employers to defend against such suits. The House of Representatives passed this bill in 2008, and it is currently pending in a Senate committee.
- Civil Rights Act of 2008 (H.R.5129, S.2554): The Civil Rights Act of 2008, provides for many of the same changes included in the Arbitration Fairness Act, the Equal Remedies Act and the Paycheck Fairness Act, it removes the current prohibition on awarding back-pay for unlawful employment practices to undocumented immigrant workers, and increases damages available to employees under the Fair Labor Standards Act. Then-Senator Obama co-sponsored the Senate version of this bill.

IMPACT

With employers facing new legal requirements, increased penalties for violations and weaker defenses against employee actions, we will be closely watching the development of any employment-related legislation. One thing is certain: it is time to get your corporate house in order. Please call us if you wish to discuss the potential impact of these changes on your organization, or to discuss the possibility of a human resources and/or legal audit. And, of course, watch for updates from Christine D. Hanley & Associates, P.A., as we work to keep you in the know and ahead of the changes.

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