

WORKPLACE: What Can We Expect For The Next Four Years?

By Laura Zaroski, J.D.



What can employers expect to face now that we know the Obama administration is here for a second term? Based upon the last 4 years, it appears certain that President Obama and the federal agencies responsible for enforcing the nation's workplace laws will continue to pursue numerous pro-employee initiatives, and place further burdens upon employers.

Wage & Hour Issues – During his first term Obama supported many initiatives and provided further budgeting to the Department of Labor (“DOL”) to pursue employers for Wage and Hour violations. We expect that in the next four years, the DOL will enhance its Wage and Hour enforcement efforts and will continue to vigorously pursue employers with respect to compliance with regulations regarding employee overtime, misclassification, rest and meal breaks, off the clock work, etc. As a result of the increase in Wage and Hour investigations, we expect that more employers will be faced with audits as well as higher civil penalties for noncompliance.

Judicial Appointments – We expect to see further judicial appointments at the District, Appellate and Supreme Court levels that are favorable to employee's rights, and liberal in the interpretation of current laws. Liability theories will likely be expanded by the courts resulting in employers finding that it is harder to receive dismissal of lawsuits or individual causes of action based upon a more liberal and pro-plaintiff judiciary.

Unemployment Issues – As unemployment continues and the number of applicants for each open position remains significant, the possibility for applicants who cannot find employment to file suits for failure to hire and/or discrimination, is heightened. Further, employees who are terminated and cannot find replacement employment may be more inclined to file actions to make up for their lost income.

NLRB – During Obama's first 4 years, the National Labor Relations Board's decisions have clearly favored organized labor. We expect this trend to continue. The NLRB and DOL agency initiatives have been vigorously pursued, and these agencies have taken action both through new decisions that overturn or expand existing case law, as well as administrative agency rulemaking. The NLRB's current initiative to protect “concerted activity” is creating a significant alternative for unrepresented employees to contest employer policies and practices, specifically in cases involving social media. Recent decisions, and expected future decisions, have construed certain policies or actions of the employer as having “interfered” with an employee's rights. These employee-friendly decisions are likely to continue, and the definition of “protected activity” will likely continue to be tested and expanded.

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Equal Employment Opportunity Agency – The EEOC will continue to aggressively enforce its initiatives, including a focus on finding and eliminating systemic discrimination. This initiative includes discrimination in the recruiting, hiring and employment practices, including discrimination against immigrant and migrant workers. The EEOC will also continue its enforcement of the ADA, religious discrimination and retaliation cases. We also expect that the EEOC will add sexual orientation as a protected category.

Immigration – The Obama Administration is expected to continue to press for the passing of a comprehensive immigration bill. The Department of Homeland Security will continue to target employers who hire undocumented workers and continue audits to seek out employers who are noncompliant.

Healthcare Reform – The Supreme Court’s decision upholding the Affordable Care Act’s individual mandate ensured that the health care reform law would remain viable for the foreseeable future. Employers must prepare for the law’s employer mandates that will take effect in the next few years.

No matter what size or type of business, over the next 4 years, Employers will face even more stringent and complicated regulations and rules, and if not in compliance, will face stiffer fines and penalties and potentially—lawsuits—as these issues are resolved. As new regulations continue to be imposed, employers must combat the ever-present issues of discrimination, harassment and termination claims that will always plague the workforce. In order for your clients to successfully navigate the ever-changing employment landscape, insist they purchase an adequate Employment Practices Liability insurance (“EPLI”) policy and that they make use of the Human Resource services that are offered as part of the Policy.

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