



## LABOR AND EMPLOYMENT LAW UPDATE

---

### 2009 Employment Law Review and 2010 Preview

---

Although the employment law developments in 2009 were more moderate refinements than drastic alterations in the balance of power between employers and employees, their impact will nonetheless be felt as we enter into a new decade.

The following is a brief overview of important federal 2009 workplace developments during President Obama's first year in office:

- **Lilly Ledbetter Fair Pay Act.** In one of his first Presidential acts, President Obama signed the Lilly Ledbetter Fair Pay Act into law, thereby extending the time within which employees may bring claims for pay discrimination. Under the new law, a pay discrimination claim can be brought within 180 days of the receipt of any compensation affected by the alleged discriminatory decision. Claims no longer have to be brought within 180 days of the original discriminatory pay decision being made.
- **Family and Medical Leave Act.** During January 2009 new regulations issued by the United States Department of Labor took effect. An important change for employers was the requirement of three separate notices at specific times informing employees of their FMLA rights. The regulations also established rules applicable to the two types of military family leaves that Congress added in 2008. These military leaves were further expanded during October 2009.
- **Americans with Disabilities Act Amendments Act.** The ADAAA went into effect during January 2009, drastically expanding the definition of "disability" and negating the holdings of several pro-employer U.S. Supreme Court decisions.
- **COBRA Subsidy Program Extended.** During February 2009, President Obama signed into law an extension of the COBRA subsidy program, which allowed certain involuntarily terminated employees to purchase COBRA continuation coverage by paying only 35% of the otherwise required monthly premium. Employers were required to pay the remaining 65% of the costs and could then seek reimbursement through a credit on federal payroll taxes. On December 21, 2009, President Obama extended the subsidy period by 6 months.
- **Genetic Information Non-Disclosure Act.** On November 21, 2009, "GINA" became effective. This law prohibits discrimination against employees based on genetic information.

The following is a preview of what employers can expect during President Obama's second full year in office:

- **Employee Free Choice Act.** The EFCA would make it significantly easier for unions to organize. For example, it would require the National Labor Relations Board to certify a union after a majority of a firm's workers has signed union cards or a petition, putting an end to almost all organizing elections and secret ballots. Many expected this law to be approved by Congress during 2009, but it took a backseat to the administration's focus on the economy and on healthcare reform. The pending bill also faced stiff opposition from employer groups, including the national Chamber of Commerce. Expect EFCA to be back in the spotlight, perhaps in watered down form, in 2010.
- **Mandatory Sick Leave.** Multiple bills have been introduced in Congress that would require employers to provide employees with paid sick leave. Some of these bills were written in reaction to the H1N1 pandemic of 2009. If passed, such laws would greatly increase the cost of doing business and would require most employers to reformulate their current leave policies.

- **Mandatory Employee Health Insurance.** After months of debate, the Senate approved its version of health care reform on December 24, 2009, which would require employers with more than 50 employees to provide health insurance to their workers. Under this bill, employers that fail to offer health insurance would be subject to significant penalties. The House passed a similar bill on November 7, 2009, which contains even stricter requirements and penalties for employers. Differences between the Senate and House bills will be resolved in conference committee, with possible final action during early 2010.
- **Immigration Reform.** A comprehensive immigration reform bill was introduced into Congress on December 15, 2009. It would require, among other things, a mandatory electronic employment authorization system similar to E-Verify.

In addition to watching Congressional action on these federal bills, South Carolina employers should monitor several employment-related bills pending before the South Carolina General Assembly, as follows:

- **H.3184:** Requiring all retail food establishments and innkeepers to semi-annually screen all employees to determine if an employee is infected with a communicable disease that can be transmitted by food, and preventing the employment of anyone with such disease.
- **S.28:** Establishing a state minimum wage of \$6.15 per hour. (South Carolina currently has no state minimum wage. It follows the federal minimum wage.)
- **H.3065:** Mandating that employers give up to 2 hours of time off for an employee to vote.

**The year of 2010 will likely prove eventful for employers. However, your employment law attorneys at McAngus Goudelock and Courie are here to assist you. Please contact Amy Jenkins at 843-576-2917 or amy.jenkins@mgclaw.com; Edward Rawl at 803-227-4930 or erawl@mgclaw.com, Webster Harrison at 919-719-8209 or webster.harrison@mgclaw.com or Tracey Downs at 704-643-6303 or tracey.downs@mgclaw.com.**

*This legal update is published as a service to our clients and friends. It is intended to provide general information and does not constitute legal advice regarding any specific situation.*