

LABOR AND EMPLOYMENT LAW UPDATE



THE 2008 ELECTION: WHAT'S AT STAKE FOR EMPLOYERS?

History shows that presidential elections can have a profound and immediate impact upon federal labor and employment law. Before the 1992 presidential election, the idea of a federal law mandating family and medical leave had languished in Congress for years. President Bill Clinton signed the Family and Medical Leave Act into law on February 5, 1993, 16 days after taking the oath of office.

In his first month in office in February 2001, President George W. Bush revoked Executive Orders signed by President Clinton and signed new Executive Orders which (1) ended labor-management partnerships in the management of federal agencies, (2) ended requirements that newly retained federal building contractors first offer jobs to displaced employees of the prior federal building contractor, (3) required federal contractors to notify employees that they are not required to join a union or maintain union membership to retain their jobs and (4) provided for neutrality in the awarding of federal contracts to union and non-union contractors.

For the first time in eight years, a new President will take the oath of office on January 20, 2009. The success or failure of several employment-related initiatives currently before Congress likely depends upon whether the person taking the oath is Republican Senator John McCain or Democratic Senator Barack Obama.

DISABILITY DISCRIMINATION: Recent U.S. Supreme Court decisions have narrowly construed the definition of “disability” under the Americans With Disabilities Act. Two companion bills before Congress endeavor to reverse these decisions by defining the term “disability” in broader terms.

The U.S. House version of the bill, the ADA Amendments Act of 2008, was passed on June 25, 2008 by a vote of 402-17. The U.S. Senate version, the Americans With Disabilities Restoration Act, enjoys bipartisan support which includes both Senator McCain and Senator Obama, who is a co-sponsor of the bill.

SEXUAL ORIENTATION DISCRIMINATION: Currently, there is no federal law prohibiting sexual orientation discrimination in the private workplace. The Employment Non-Discrimination Act (“ENDA”) is a bill which seeks to add sexual orientation to the categories already protected by federal discrimination laws, such as sex, race, religion, national origin, disability and age. The ENDA would not apply to employers with fewer than 15 employees, the military, private membership clubs and religious organizations.

The House passed the ENDA on November 7, 2007. The bill is now before the Senate. Senator Obama has expressed support for the bill; Senator McCain voted against an earlier version of the proposed legislation.

PAY DISCRIMINATION I: In May 2007, the U.S. Supreme Court in *Ledbetter v. Goodyear* held that the deadline for filing a charge of pay discrimination under Title VII of the Civil Rights Act of 1964 accrues from the date of the pay-setting decision, not each subsequent payment. The Ledbetter Fair Pay Act (“LFPA”) is a bill which proposes to reverse the Supreme Court decision and allow the deadline to be reset with each payment.

The LFPA was passed by the House on July 31, 2007, but subsequently died in the Senate. Senator McCain has expressed opposition to the bill; Senator Obama was a co-sponsor of the proposed legislation.

PAY DISCRIMINATION II: The Equal Pay Act of 1963 requires that men and women be given equal pay for equal work in the same establishment. The Paycheck Fairness Act (“PFA”) is a bill which seeks to amend the Act to (1) allow claimants to sue for compensatory and punitive damages - not just back pay; (2) place the burden on employers to prove that wage gaps are based upon a factor other than sex; and (3) eliminate the “establishment” limitation.

The PFA passed the House on July 31, 2008. The bill is presently before the Senate where Senator Obama is a co-sponsor. Senator McCain has expressed opposition to the bill.

UNION ORGANIZING: The National Labor Relations Act presently provides an election process administered by the National Labor Relations Board to determine whether or not a union should be certified as a collective bargaining representative. The Employee Free Choice Act (“EFCA”) is a bill which proposes to eliminate this process in favor of one which allows a union to be certified where a majority of employees sign written authorizations favoring union representation.

The House passed the EFCA on March 1, 2007, but the bill subsequently died in the Senate. Senator Obama was a co-sponsor; Senator McCain voted to block a Senate vote on the proposed legislation.

PARENTAL LEAVE FOR FEDERAL EMPLOYEES: The Family & Medical Leave Act, which applies to federal employees, provides up to twelve weeks of unpaid leave for specified family and medical reasons. The Federal Employee’s Paid Parental Leave Act (“FEPPLA”) is a bill which would allow federal employees (1) four weeks of paid parental leave for the birth or adoption of a child, and (2) up to an additional four weeks of accrued paid annual or sick leave.

The FEPPLA was passed by the House on June 19, 2008. The bill is now before the Senate where Senator Obama is a co-sponsor. Senator McCain’s position is unknown.

OTHER INITIATIVES: In addition to initiatives which have already passed the House, there are other noteworthy initiatives before Congress. The Re-Empowerment of Skilled & Professional Employees and Construction Tradeworkers (RESPECT) Act, for

example, is a bill which aspires to reverse recent NLRB rulings classifying certain employees as “supervisors” not protected by the National Labor Relations Act.

ADDITIONAL QUESTIONS? If you have any questions about proposed labor and employment initiatives or any other labor and employment law problem, please contact Robert G. Chadwick, Jr. at Campbell & Chadwick, P.C.

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