

Employment Changes Come At Dramatic Pace

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The current Administration and Congress continue to make significant changes to employment regulations and laws. This article summarizes some of the major changes that all employers should be familiar with.

Health Care Reform

The Patient Protection and Affordable Care Act was signed into law by President Obama on March 23. There are literally hundreds of changes included in this bill, but a few of the most important changes include: (1) states must create insurance exchanges where citizens may purchase health insurance; (2) nearly every citizen will be required to maintain health insurance or face a fine; (3) companies with 50 or more employees may be subject to large fines if they do not offer health insurance to their employees; (4) employers with 25 or fewer employees may receive a tax credit of up to 35% of their paid premiums if they offer healthcare coverage to their employees; (5) most employers must provide "reasonable" unpaid breaks to new mothers to express breast milk in a private area other than a bathroom.

Hire Act Of 2010

New legislation signed on March 18 provides that any private employer hiring a new employee between the present and January 1, 2011 is exempt from paying the employer's share of the new employee's payroll tax effective with the employee's first paycheck. However, the employee must (1) certify by signed affidavit that he or she has not been employed for more than 40 hours during the previous 60-day period ending on the date the individual begins employment; and (2) must not be hired to replace another employee of the employer unless the prior employee left voluntarily or was terminated cause. A copy of the form affidavit is available at: <http://www.irs.gov/pub/irs-pdf/fw11.pdf>.

There is also a business credit granted for the retention of these newly hired employees for 52 weeks. The employer receives the lesser of \$1,000 or 6.2% of the wages paid to the retained worker during the 52-week period of employment if (1) the retained worker remains employed for a period of not less than 52 weeks and (2) the worker's wages earned in the second 6 month period are at least 80% of the first 6 months.

President Obama Extends The Cobra Subsidy And Federal Emergency Unemployment Compensation

Last week, President Obama signed new legislation extending the deadline to apply for Federal Emergency Unemployment Compensation from April 5 to June 2, and extending the claim period from September 4 until November 6, 2010. The legislation also included an extension to the Federal COBRA subsidy until May 31, 2010. Congress is still considering another bill which will provide a longer extension for the federal unemployment and COBRA subsidy benefits.

Final Rule Released Regarding Project Labor Agreements

One of President Obama's first acts as president was to implement Executive Order 13502 entitled Use Of Project Labor Agreements for Federal Construction Projects. This Executive Order declared that the federal government's policy was to encourage federal agencies to require project labor agreements on all federal construction contracts over \$25 million dollars.

On April 13, the Federal Register published final rules implementing this Executive Order. The final rule reiterates the federal government's dedication to requiring Project Labor Agreements on large federal construction contracts, and provides factors for agency planners to consider in making a decision whether to require a project labor agreement. In addition, the final rule allows agencies to require that bidding parties submit a copy of a project labor agreement

along with their bid offers. A copy of the final rule is available at: <http://edocket.access.gpo.gov/2010/2010-8118.htm>.

EEOC's New E-RACE Initiative

The EEOC has increased enforcement of its new E-RACE initiative. This is a renewed effort by the Commission to focus on race and color discrimination. Recent handouts published by the Commission, along with lawsuits filed by the EEOC, show that the EEOC may be focusing on background and credit checks. The EEOC is cracking down on employers whose selection criteria, including background and credit checks, has an impact on the selection rate of a particular race or color of applicant and is not related to the requirements of the job. You can find more information about the EEOC's E-RACE initiative at www.eeoc.gov/initiatives/e-race.

Two Pro-Union Members Are Sworn In To The National Labor Relations Board

Over the Easter break, President Obama appointed Craig Becker and Mark Peirce to the National Labor Relations Board via recess appointments. Becker was a very controversial pro-union nominee, and Congress was not expected to approve his nomination. Obama also nominated Republican Brian Hayes to fill the final position on the Board, however, Mr. Hayes did not receive a recess appointment. This means that three of the four present Board members are considered extremely pro-union. Companies can expect major changes in the coming year from the NLRB.

DOL Renews Focus On Unpaid Interns

The Department of Labor has publicly stated that it intends to renew its focus on Companies which offer unpaid internships to young workers or students. The Department of Labor has reminded state agencies that in order for internships to be unpaid, they must meet six criteria: (1) the training must be similar to what would be given in school or at an academic institution; (2) the training must be for the benefit of the trainees; (3) the trainees must not take the place of regular employees, and must work under close observation; (4) the employer may not derive an immediate advantage from the trainees; (5) the trainees should not be entitled to a job at the end of the training; and (6) the trainees are not entitled to wages for the time spent training. Given the DOL's renewed focus, employers should ensure they are properly classifying interns, trainees and summer clerks.

President Issues Memorandum Regarding Hospital Visitation For Same Sex Partners

On April 15, President Obama ordered the HHS Secretary to issue rules requiring hospitals which participate in Medicare or Medicaid to allow hospital visitation rights to same-sex partners. This order itself did not create any such rights, however, it is a sign that rules and/or regulations will likely be released in the near future granting greater rights to same sex couples.

OFCCP Publicly Announces Intention To Be More Aggressive

The Office of Federal Contract Compliance Programs (OFCCP) released its new strategic plan in early April, stating that it intends to become more aggressive with employers. The OFCCP's new strategy puts a strong burden on employers to be proactive in evaluating their workforce by gender, race, national origin, religion, ethnicity, disability and veteran status, focusing on hires, promotions and terminations. Along with this new strategy, the OFCCP has received a 28% increase in its 2010 budget. With investigations on the rise, federal contractors need to make sure that they are self-auditing their hiring, pay and promotion practices for any potential disparate impact on protected classes. Contractors should also review their Affirmative Action Plans yearly for compliance.

ICE Begins Audits Of I-9 Forms

In early March, the United States Immigration and Customs Enforcement (ICE) issued notices of inspection for over 180 businesses in the Southeast. Within the last year, ICE has audited over 650 businesses for I-9 compliance. Once an employer receives a notice of an ICE audit, they have only three days to prepare the Company's Form I-9 records, and violations may result in fines from \$110 to \$1100 per violation. Now is a great time to make sure your employees are properly and fully completing their I-9 forms.