

January/February 2009

NEW JERSEY EMPLOYMENT LAW UPDATE

Jay S. Becker, Esq. & Joseph C. DeBlasio, Esq.

Now that Barack Obama has been inaugurated as the 44th President of the United States, he will be faced with a myriad of labor and employment law issues, including proposed new legislation. Below are just some of the issues that will undoubtedly impact the labor and employment law landscape under President Obama's administration.

Employee Free Choice Act

One of the biggest proposed changes to U.S. labor laws since the mid-1930s may soon become a reality, which could lead to a drastic increase in unionization efforts. President Obama has vowed to pass the Employee Free Choice Act ("EFCA").

The legislation would simplify the process by which a workforce could become unionized. The crux of the bill is to eliminate secret ballot voting during union representation elections. Under current law, a majority of employees must show support for the union as their exclusive bargaining representative, which is generally established by conducting a secret ballot election. Often times, an employer does not even know a union organizing campaign exists until after enough authorization cards have been signed, (known as the "card check"), entitling the union to a secret election. After the card check, but prior to this election, the union and the employer have the opportunity to campaign. Under the EFCA, a union can avoid the secret ballot election process and would be recognized as the exclusive bargaining representative based simply on a majority of the eligible employees signing union authorization cards. Should this bill (or a similar one) pass, an employer could be deprived of its right to campaign, which is when the employer presents to its employees the benefits of remaining union-free.

Under the current law, it can take months for the parties to negotiate the first collective bargaining agreement ("CBA"). Under the EFCA, binding arbitration would be ordered if the union and the employer cannot agree on a CBA within 120 days after the union is certified. Binding arbitration would impose contract terms determined by government arbitrators rather than by the parties themselves.

All employers, regardless of size, should be prepared for the passage of this bill and the impact it may have on their workforce. It is not easy for employers to recognize union card gathering. Thus, employers must take steps to become cognizant of labor organizing efforts in the workplace as early as possible. Our Labor and Employment Law Practice Group is ready to help you create a "union-free communication plan," which should be shared with all employees if the EFCA becomes a reality.

Lilly Ledbetter Fair Pay Act

In its first major employment law action of 2009, the U.S. House of Representatives has passed legislation that would significantly ease the time limitations for employees to file wage discrimination claims. The Lilly Ledbetter Fair Pay Act of 2009, which would amend Title VII of the Civil Rights Act of 1964, states that a discriminatory compensation decision occurs not only when the decision is made, but also each time that decision is applied (i.e., every time the employee receives a paycheck). This legislation is a direct response to the 2007 decision by the United States Supreme Court in Ledbetter v. Goodyear Tire and Rubber Company, wherein the Court barred the wage discrimination claim as being filed too long after the compensation decision was made. This legislation, which has the support of President Obama, may be brought before the Senate in January. Under this proposed legislation, the claim in the Ledbetter case would not have been barred because each paycheck would have restarted the time within which a claim could have been filed.

Other Important Issues

Other important issues to watch include:

Health Care: President Obama's health care plan may require employers to provide health care benefits or pay a percentage of payroll to support public health care.

Minimum Wage: President Obama has vowed to increase minimum wage.

Immigration: Under President Obama's plan, enforcement of immigration laws will be increased, and employers will be more accountable for the employment of undocumented workers.

FMLA: President Obama supports the amendment of the Family and Medical Leave Act that would abolish the 50-employee threshold and would require employers with 25 employees or more to comply with the Act's requirements.

The attorneys in the Labor & Employment Practice Group represent management in all aspects of labor and employment law matters. We recognize that employers are challenged by an ever-changing legal landscape when it comes to labor and employment laws that regulate the workplace. Our attorneys focus on strategies and solutions to find creative and economically practical ways to assist our clients in accomplishing their goals and avoiding legal pitfalls. We represent clients ranging from Fortune 500 publicly traded companies to smaller privately held businesses in all labor and employment law-related matters.

If you have any questions, or if you would like to discuss any of these issues in greater detail, please do not hesitate to contact Joseph C. DeBlasio, Esq. (jdeblasio@ghclaw.com) or Jay S. Becker, Esq. (jbecker@ghclaw.com), Shareholders in the Labor & Employment Law Practice Group, at 732-741-3900.