

# LAW WEEK COLORADO

## EMPLOYMENT LAW

# Employers Said To Face Multi-Front Assault From Washington

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The Obama administration and the newly elected Congress have placed their distinctive stamp on labor and employment law. The result? Employers in many industries and professions are facing a marked increase of enforcement by the federal government over new and existing laws and regulations.

Is it here to stay? Absolutely. Unprecedented boosts in funding for the Department of Labor and the Equal Employment Opportunity Commission have taken place to ensure full compliance of the law in the workplace, and examples of non-compliance are proudly being made public. These are the hot spots to watch:

### Department of Labor

In 2010, the Department of Labor, alone, received a budget increase of \$431 million for a total of \$13.3 billion. The Occupational Safety and Health Administration received a \$46.5 million increase to a total of \$554.6 million for 2010. The Labor Department's Wage and Hour Division received a \$35 million budget increase for 2010. All told, the DOL will add 670 new employees to its enforcement staff, and employers should expect an increased aggressiveness by the department to enforce federal labor and employment laws, rules and regulations. In 2011, President Obama has proposed another significant increase of \$14.0 billion for the department to hire 177 investigators and enforcement staff. While President Obama on March 18 signed the Hiring Incentives to Restore Employment Act, or HIRE, which in essence provides a tax break for employers that hire unemployed applicants this year and creates a bonds program for construction-related projects, greater job creation by the Obama administration primarily means ramping up legal compliance through enforcement over employers.

### EEOC

On Jan. 6, the EEOC released enforcement and litigation statistics for fiscal year 2009. According to the EEOC, claimants filed 93,227 discrimination charges against their employers. The commission, on behalf of claimants, obtained a staggering \$376 million of relief. Last year, the most frequently filed administrative claims were for racial bias (36 percent), retaliation (36 percent), and sex discrimination (30 percent). Last year, the commission itself filed 314 new lawsuits and resolved 349 of its aggregate lawsuits. In 2010, the commission received a \$23 million increase from its 2009 budget that now totals \$367.3 million. The commission has already expanded its investigative staff as more aggressive investigation and enforcement on administrative charges is expected this year and next. For fiscal year 2011, President Obama will seek an additional \$18 million to raise the commission's annual budget to \$385.3 million. The Department of Justice Civil Rights Division has also received this year an increase of \$22 million to its budget, which now totals \$145 million. The next two years



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should result in significant enforcement of all anti-discrimination laws by the EEOC and the civil-rights division.

### Paycheck Fairness Act

On Jan. 9, 2009, the U.S. House passed H.R. 12, the Paycheck Fairness Act. The U.S. Senate is expected to vote soon on its passage under S. 182. The act is designed to update and further strengthen protections against gender-based wage discrimination found in the Equal Pay Act. Employers would be required to prove that wage disparities are job-related and required by business necessity. If the Paycheck Fairness

Act is signed into law, then it will bar retaliation against employees who share salary information with co-workers, allow successful plaintiffs to collect compensatory and punitive damages, and allow plaintiffs to bring class action claims in which individuals are joined as party plaintiffs without their consent. If signed into law, federal outreach and enforcement efforts on gender-based discrimination matters will be fortified to monumental proportions.

Some of the rules have changed, and a new mandate of beefed-up enforcement is part of the new era of regulation over the workplace. It is fair to say that all employers

are now targets. Consequently, employers should be on heightened alert from current and former employees, as well as state and federal workplace regulatory agencies. Limiting liability and preventing exposure depends on understanding all amended and newly enacted employment laws as well as finding out how the rules are being enforced. Staying current with all legal requirements of the workplace has never been more important to employers. •

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