



So Long 2009...Predictions for Employers in 2010

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The Celebration of the 2010 New Year signified the conclusion of 2009, marking a year (and a decade) many were happy to see come to an end. Very little employment legislation was passed in 2009 (two exceptions are noted below), but we were given some indication of what employers might expect in the next few years. Labor/union law issues will be addressed in another *LawFax*, but here are five employment law issues employers should keep an eye out for in 2010.

Health Care

Following the passing of the healthcare bills by the House and Senate on Christmas Eve, some people thought healthcare reform had already happened. Nearly a month later, however, we continue to wait and see if Congress will be able to merge the bills into one to send to the President for his signature. If healthcare reform is passed, here are a few issues that may arise for employers:

- Requirements for employers with more than 50 employees (5 in construction!) to offer health insurance to employees;
- Changes to preexisting conditions limitations;
- Dependents being covered until a later age;
- Required changes to summary plan descriptions; and
- Significant tax increases.

Also, one of the few pieces of legislation passed in 2009 that directly affected employers was the COBRA subsidy. The subsidy, which was originally set to expire on December 31, 2009, has been extended through February 28, 2010. The subsidy extension allowed for an additional six (6) months of premium assistance for Assistance Eligible Individuals and tax credits for employers; therefore, Assistance Eligible Individuals are entitled to fifteen (15) rather than nine (9) months of coverage. (Notices should be revised accordingly.) Congress may be poised to pass another extension as there is another bill pending in the Senate (S. 2730) that would extend the expiration date of the subsidy to December 31, 2010, as well as reduce the individual premium contribution from 35% to 25%.



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Contagious Illnesses

In 2009, the H1N1 sparked debate among employers about the best way to manage contagious illnesses in the workplace. One of the ways employers can help prevent uncertainty in the workplace surrounding these types of pandemics is to consider implementing a contagious illness policy. These policies can help employers wanting to have a consistent and predictable response for all contagious illnesses and avoid the risk of discrimination claims.

The Economy and Unemployment

In 2009, many employers took measures to cut costs by either reducing hours or laying off employees. Although these necessary measures helped many employers stay in business, they also increased potential exposure for potential litigation ranging from wage and hour disputes to discrimination claims, especially now that pay discrimination claims, under the 2009 Lily Ledbetter Act, can be brought much later than previously. Any employer that has not recently reviewed and revised its layoff, overtime and payroll policies and procedures should do so in 2010, thereby ensuring that it meets all federal and state laws and rules and reduces the risk of back-pay claims.

Enforcement and Penalties Ramping Up

With many new pro-employee officials nominated for positions at the Department of Labor, Wage and Hour Division, OSHA, OFCCP, and other departments, and their investigative budgets increased, employers should be aware that investigations and fines will be on the rise in 2010. For example, in 2009, OSHA assessed its largest fine in its history against BP of North America. OSHA issued the \$87.4 million dollar fine after an explosion injured and killed a number of employees (for what OSHA called BP's failure to correct potential hazards). An employer's best defense for all types of investigations and audits is to implement and continually update its policies, training and procedures.

E-Verify and No Match

President Obama has stated that he fully supports E-Verify and has required that recipients of the stimulus package using E-Verify have continuous eligibility for funding. In 2009, the Department of Homeland Security reversed the 2007 No Match Rule under which

employers formerly received notice of social security numbers which didn't "match" the employee. Immigration reform remains on the agenda and the debate may be reignited if healthcare reform is passed.

If you have any questions about the recent changes in employment and labor laws and your rights as an employer or federal contractor, or would like to update your employee handbook or policies, please contact the author of this **LawFax** or any attorney at our firm at (952) 896-1700.

Safe Harbor Rule – Employee Contributions to Small Pension & Welfare Plans

On January 14, 2010, the U.S. Department of Labor published a final rule to protect employee contributions deposited into small retirement or welfare plans (those with fewer than 100 participants). Effective January 14, the rule requires all employee contributions and plan loan repayments be made no later than the seventh (7th) business day following receipt or withholding by the employer. This is a change from the former safe harbor requirement of repayments made no later than the fifteenth (15th) business day of the following the month the contributions were withheld or received by the employer. Employers with these small plans should ensure that their payroll department (whether internal or external) is aware of this change.

REGISTER NOW

The Fifth Annual Upper Midwest Labor Law Forum for HR and Labor Relations Professionals

Thursday, March 11, 2010

8:15 a.m. — 4:30 p.m.

Sheraton Bloomington Hotel, Minneapolis South

Cost: \$295 per attendee (\$250 for early registrants by February 5, 2010)

Registration and detailed information at
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