



Employers Should Be on Alert for 2014 Regulatory and Enforcement Initiatives

by Matthew W. Lynch

As it enters the last half of its second term in office, the Obama administration is ramping up its enforcement and regulatory efforts in key areas affecting employers. You will need to monitor these efforts in the coming years, and you should expect these changes to impact how you manage your employees in the future.

NLRB Update. In our [April 2014 Employment Note](#), you learned about the National Labor Relations Board's renewed efforts to pass regulations shortening the unionization process through expedited ("quickie") representation elections. The NLRB held public hearings on its proposed regulations in late April, and it is expected that new, final regulations will come out in the Summer or Fall of 2014.

New FLSA Overtime Regulations on the Horizon. The NLRB, however, is not the only agency that intends to act on major issues before the Obama administration comes to an end in 2017. On March 13th the President directed the Secretary of Labor to re-write overtime regulations under the Fair Labor Standards Act. The Department of Labor last updated those regulations in 2004, much to the chagrin of organized labor and employee advocacy groups who saw the new regulations as narrowing employee rights to overtime. In his March directive, the President calls the 2004 regulations "outdated," with "millions of Americans lacking protections of overtime and even the right to the minimum wage." The President called on the Labor Secretary to propose revisions to "modernize and streamline" the existing overtime regulations, in part to "address the changing nature of the workplace." In his public comments announcing his directive, the President stated he wants to "give more Americans the chance to earn the overtime pay that they deserve." It is expected that the regulatory re-write process will take a year to eighteen months, and will focus on the \$455 salary threshold, the salary basis test, and the duties test under the executive, administrative, professional and outside sales exemptions.

2013-2014 EEOC Enforcement Priorities. But wait, there's more. In December 2013 the Equal Employment Opportunity Commission (EEOC) approved a strategic plan for fiscal years 2013-2016, containing six strategic enforcement priorities. They are: eliminating barriers in recruitment and hiring; protecting immigrant, migrant and other vulnerable workers; addressing emerging and developing employment discrimination issues; enforcing equal pay laws; preserving access to the legal system; and preventing harassment through systemic enforcement and outreach. The plan also directs the EEOC to pursue a coordinated approach to ensure "consistent and integrated enforcement" throughout the private, public, and federal sectors over which the agency has jurisdiction. To carry out this plan, each district office director and regional attorney submitted a plan by March 29th to identify local enforcement priorities, and to identify strategies for collaborative legal and enforcement efforts.

New OFCCP Disability-Related Regulations and Other Initiatives. Meanwhile, at the Office of Federal Contract Compliance Programs (OFCCP), the federal agency administering affirmative action requirements for federal contractors, the agency's top priorities include an examination of federal contractors' compensation practices, and implementation of the new affirmative action regulations under Section 503 of the Rehabilitation Act. The Section 503 regulations are directed towards individuals with disabilities. In part, the rules will require federal contractors to establish a nationwide seven percent utilization goal for disabled individuals in each job group of their workforce. If a contractor has fewer than 100 employees, the final rules require the seven-percent goal to be applied to its entire workforce. Contractors also must record and analyze data on job openings, applicants and hires, as well as invite job seekers to voluntarily self-identify as disabled at the pre- and post-offer phases of the hiring process. These rules became effective March 24, 2014.

In addition to these initiatives, the OFCCP continues its efforts to shrink the gender pay gap and otherwise prevent sex and race discrimination in compensation. In 2013, the agency rescinded Bush-era compensation guidelines and issued Directive 307, which is intended to provide the agency with more flexibility in examining and evaluating contractors' compensation systems.

Stay tuned as more initiatives and proposed regulations come out of the "other Washington." As always, SBJ attorneys will be ready to help you plan for, and deal with, these new government actions.

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