



## Governmental Affairs

RWHRMA actively works to shape legislation and regulatory proposals that affect how HR professionals perform their jobs.

If you are interested in getting involved, please contact our [Governmental Affairs Director](#).

2009 has been a very busy year in the world of labor and employment. Several important statutory and regulatory changes relating to labor and employment law went into effect, while many laws were proposed that could have a significant impact. Finally, with the change in administration, actions by agencies entrusted with enforcing aspects of employment law increased. This page serves to update you on these changes and how they may affect your company.

### **Enacted Statutes and Regulations**

\* **Lily Ledbetter Fair Pay Act:** This Act overturns the United States Supreme Court's decision in Ledbetter v. Goodyear Tire & Rubber Co., Inc., which required employees to file a discrimination charge based on compensation within 180 days of the allegedly discriminatory pay-setting decision. After the passage of this Act, an employee can file a charge of discrimination within 180 days of when the employee's pay was most recently *affected* by a discriminatory practice. Thus, any paycheck that the employee receives may be the subject of a discrimination charge so long as the employee files a charge within 180 days of receiving the last allegedly discriminatory paycheck.

\* **Genetic Information Nondiscrimination Act ("GINA"):** GINA, which becomes effective on November 21, 2009, prohibits employers from using genetic information in making employment decisions, bans employers from intentionally acquiring genetic information about applicants and employees, and imposes strict confidentiality requirements on acquired genetic information.

\* **ADA Amendments Act ("ADAAA"):** This statute, signed into law by President Bush in 2008, went into effect in January 2009. The purpose of this law is to expand the class of applicants and employees that qualify as disabled under the Americans With Disabilities Act ("ADA"). The ADAAA attempts to accomplish this in a number of ways, including by covering major bodily functions (such as normal cell growth, digestive, neurological, respiratory, circulatory, endocrine, and reproductive functions) as major life activities. The ADAAA also prohibits employers from taking mitigating measures (such as insulin for a diabetic) into account in determining whether most employees are disabled under the ADA. The Equal Employment Opportunity Commission recently approved a notice of proposed rulemaking under the ADAAA, clearing the way for new regulations interpreting the new obligations under these amendments.

\* **Family and Medical Leave Act ("FMLA"):** In 2008, the FMLA was amended for the first time to add two new types of leave: servicemember leave and qualifying exigency leave. The former type of leave is available to certain employees who had a relative injured in the line of duty during a U.S. military operation. The scope of the latter type of leave was more ambiguous, and Congress left much of the detail to the discretion of the United States Department of Labor ("DOL"). Earlier this year, the DOL's regulations went into effect and clarified the scope qualifying exigency leave. These regulations make clear that qualifying exigency leave includes, but is not limited to, participating in a family member's military related activities, such as arranging child care, attending military events (such as official ceremonies), attending counseling, arranging for certain post-deployment activities, and any other activity that the employee and employer agree qualifies.



## Governmental Affairs

### Proposed Legislation

\* **Employee Free Choice Act:** This bill, currently pending in Congress, would significantly alter the National Labor Relations Act, our most significant labor law. If passed, employees would be able to form a union without a secret ballot election if 50% of the bargaining unit expresses a desire to form a union. Once a union is formed, employers and unions would be required to engage in binding arbitration if a contract is not agreed upon within certain specified timeframes. Several Senators have signalled that this bill is on hold for the rest of the year, but labor unions are already proposing revisions to the bill that would significantly aid their cause.

\* **Healthy Families Act:** If passed, the bill would require all employers with 15 or more employees to provide employees paid sick leave. Under the bill, an employee qualifies for paid leave after working for the employer for 60 days. An employee would accrue one hour of sick leave for every 30 hours worked, with a maximum annual accrual of 56 hours (or 7 days, assuming an 8 hour workday). Any unused sick leave can be rolled over into the next calendar year. An employee is allowed to take this paid sick leave for his or her own illness, or the illness of a child, parent, or spouse. Employers would be prohibited from asking for medical documentation until the employee missed three consecutive days of work.

\* **Paid Vacation Act:** If passed, this bill would require companies with at least 100 employees to provide qualified employees with one week of paid vacation. Three years after passage, the bill would extend the one week paid vacation mandate to companies with at least 50 employees, and it would require two weeks of paid vacation for employees at companies with 100 employees.

\* **Employment Non-Discrimination Act ("ENDA"):** This proposed federal law would amend Title VII to include sexual orientation as a protected class. Thus, if this bill passes, employers with fifteen or more employees would be prohibited from making employment decisions based on an employee's or applicant's sexual orientation. Although many states already laws in place that parallel ENDA, North Carolina currently does not.

\* **Worker Adjustment and Retraining Notification Act of North Carolina ("WARN-NC"):** Most human resource professionals are familiar with WARN, the federal law that requires employers with 100 or more employees to give advance notice of certain plant closings or mass layoffs. WARN-NC, which is pending in the North Carolina General Assembly, would impose similar obligations on employers with 50 or more employees.

### Increased Enforcement Activity

\* **Increased Enforcement by the DOL:** The DOL recently hired 200 new wage and hour compliance officers to investigate compliance with the Fair Labor Standards Act ("FLSA"). Employers should expect much greater enforcement activity on behalf of the DOL during the coming years, so now is the time to ensure that your minimum wage, child labor, and overtime policies and practices comply with the FLSA.

\* **IRS Employment Tax Audits:** The Internal Revenue Service ("IRS") has announced that, beginning in February 2010, it will conduct 6000 compliance audits on five primary aspects of employment tax: worker classification, fringe benefits, reimbursed expenses, officer compensation, and non-filers for the calendar years of 2007 and 2008. The IRS, of course, reserves the right to expand the scope of their inquiries at any time. Employers should assess their compliance with relevant tax regulations for the past three returns in advance of an audit by the IRS.



## Governmental Affairs

The Governmental Affairs Committee continues to keep up to date with these developments. If you have any questions, please contact Gretchen Ewalt (Gretchen.Ewalt@ogletreedeakins.com), Phil Strach (Phil.Strach@ogletreedeakins.com), or Kyle Still (KS@wardandsmith.com).

**2009 Legislative Alerts - [click here](#).**

### **2010 SHRM Employment Law & Legislative Conference**

March 17 - 19, 2010

Hyatt Washington, Capitol Hill

Washington, DC

The SHRM Employment Law & Legislative Conference is designed to give SHRM members the essential information they need regarding workplace policy issues. You can't afford to miss this conference! [Click here for details](#).

[Click here](#), for SHRM's Advocacy Site.

[Click here](#), for SHRM's State and Local Legislative Resources.

### **Who Are My Representatives?**

Visit this site to learn your local and state representatives:

<http://www.ncleg.net/GIS/RandR07/Home.html>