

Employment, Benefits & Labor Alert

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Potential Federal Labor & Employment Legislation on the Horizon for 2010

Labor and employment legislation is expected to garner significant attention during 2010. All employers should be aware of the following legislative initiatives which may have widespread effects in the workplace:

Employee Free Choice Act (EFCA)

A labor-friendly version of the EFCA [<http://www.blankrome.com/index.cfm?contentID=37&itemID=1895>] may be introduced early this year. This version would likely include no card-check provision, an expedited timetable for elections, and it is expected to permit union organizers to access the workplace.

Paycheck Fairness Act (PFA)

The PFA would amend the Equal Pay Act (EPA) in multiple ways of concern for employers, including permitting the recovery of unlimited compensatory and punitive damages, permitting the filing of opt-out class actions, and narrowing the “any factor other than sex” affirmative defense.

Protecting Older Workers Against Discrimination Act (POWADA)

In response to *Gross v. FBL Financial Services, Inc.*, 129 S. Ct. 2343 (2009) [<http://www.blankrome.com/index.cfm?contentID=37&itemID=2028>], bills were introduced to overrule the Court’s insertion of a “but for” standard for ADEA claims. If passed, POWADA would require that courts apply the “motivating factor” framework to the ADEA and other laws, such as Title VII.

Arbitration Fairness Act of 2009 (AFA)

The AFA would render predispute arbitration agreements in employment and civil rights matters unenforceable.

Employment Non-Discrimination Act (EDNA)

The EDNA would prohibit intentional employment discrimination on the basis of actual or perceived sexual orientation or gender identity, effectively adding sexual orientation as a protected class under Title VII.

If you have any questions regarding these potential legislative actions or the potential legislation’s impact on your organization, please contact a member of Blank Rome LLP’s Employment, Benefits and Labor Practice Group.

Employment, Benefits and Labor Practice Group

Arthur Bachman	215.569.5715	Richard Diaz	215.569.5528	Anthony B. Haller	215.569.5690	Barry L. Klein	215.569.5403	Manuela M. Morais	215.569.5357
Patricia K. Barrett	215.569.5432	Jennifer Hale Eagland	215.569.5321	(Practice Leader)		Howard M. Kne	424.239.3439	Jeffrey E. Myers	215.569.5592
Mark Blondman	215.569.5593	Michael J. Eagles	215.569.5741	Michael J. Hanlon	215.569.5652	Tara G. La Fiura	215.569.5673	Virginia E. Neiswender	215.569.5439
Colleen A. Carolan	424.239.3430	Lisa T. Felix	215.569.5419	Brooke T. Iley	202.772.5816	Harrison Lee	215.569.5370	Jim D. Newman	424.239.3435
Scott F. Cooper	215.569.5487	Lauren A. Fox	215.569.5506	Rose E. Isard	215.569.5667	Michael L. Ludwig	424.239.3438	Julie E. Reid*	215.569.5584
	856.779.3676	Donald D. Gamburg*	215.569.5330	Terry D. Johnson	609.750.2658	Richard S. Meyer	212.885.5225	Mary Pierce	424.239.3433
Cherylle C. Corpuz	215.569.5617	Wilhelm L. Gruszecki	215.569.5477		215.569.5374		215.569.5665	Kari Knight Stevens	215.569.5705

*Editors