



Key Employment Law Issues in 2011, May Update

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PROPOSED FEDERAL LEGISLATION

<u>Law</u>	<u>Key Dates</u>	<u>Description</u>
Employment Non-Discrimination Act (H.R. 1397, S. 811)	Introduced 4/13/11	Prohibits discrimination on the basis of actual or perceived sexual orientation or gender identity.
Paycheck Fairness Act (H.R. 1519, S. 797)	Introduced 4/12/11	Amends the FLSA to permit potentially unlimited punitive damages for gender-based discrimination.
Fair Pay Act (H.R. 1493, S. 788)	Introduced 4/12/11	Amends the FLSA to make it unlawful to discriminate on the basis of sex for equivalent jobs.
FML Enhancement Act (H.R. 1440)	Introduced 4/8/11	Permits employees to take up to 4 hours of leave in any 30 day period to attend a child or grandchild's school or community organization activity or attend regular medical appointments, or visit an elderly relative. Also expands the FMLA to make it applicable to all employers with 25 or more employees within 75 miles.
Back to Work Extension Act (H.R. 477)	Introduced 1/26/11	Extends part of the HIRE Act to provide a payroll tax break to employers hiring individuals who were previously unemployed more than 60 days.
The Family Economic Success Act (S. 10)	Introduced 1/25/11	It should be the "sense of the Senate" that Congress should: guarantee pay equity for women, reward companies who promote flexibility for families, guarantee paid family and medical leave, and improve the quality and affordability of child care.
The Older Workers Opportunity Act (S.145, S. 150)	Introduced 1/25/11	Provides tax credit to employers that employ workers age 62 and older and provide a "flexible work program" (full and part time flexible work schedule, full pension, and health care benefits and pay at least 60% of the cost). Credit = 25% of the older workers' wages.
The Veterans Day Off Act (H.R. 319)	Introduced 1/19/11	Guarantees the right to take Veterans Day as an unpaid (or paid if available) day off of work for all veterans who work for at least one year for an employer with 50 or more employees.
Equal Employment for All Act (H.R. 321)	Introduced 1/19/11	Prohibits the use of credit checks on prospective or current employees except for national security clearance, certain public sector employees, and "supervisor, managerial, professional, or executive position at a financial institution."

PROPOSED OHIO LEGISLATION

<u>Law</u>	<u>Key Dates</u>	<u>Description</u>
Ohio S.B. 5	Signed 3/31/11 Effective 7/1/11	Dramatically changes and restricts public sector collective bargaining. Referendum likely. Opponents are currently in the process of obtaining signatures.
Ohio H.B. 137	Introduced 3/2/11	Makes a uniform definition of "employee" and standards to determine whether an individual is an employee or an independent contractor.
Ohio H.B. 131 Ohio S.B. 30	Introduced 3/1/11 Introduced 2/1/11	Makes it unlawful for an employer to use a person's credit score or history as a factor when making employment decisions.
Common Sense Regulation Act (Ohio S.B.11)	Introduced 2/1/11	Requires state agencies to develop customer service training programs and improve state regulatory agency processes, especially with regard to small businesses.
Ohio S.B. 13	Introduced 2/1/11	Allows an individual to receive unemployment for unemployment related to domestic violence or "compelling family circumstances" including having to move to another state because of a spouse or job loss due to a family members' illness or to care for someone with a disability.
Ohio H.B. 85	Introduced 2/2/11	Prohibits requiring an individual to obtain or maintain health insurance (a response to Health Care Reform).

Wage and Hour: There's An "App" For That May, 2011

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We've been advising, cajoling and begging employers to audit payroll policies, practices, exemptions, and independent contractor status – before either receiving notice of a wage and hour audit from the Department of Labor or being forced to defend a lawsuit alleging wage and hour violations. Make no mistake about it, the Department of Labor, Wage and Hour Division is in the enforcement business these days. Hundreds of new wage and hour investigators have been hired and substantial dollars have been budgeted for Wage and Hour Division lawsuits – particularly for misclassification of employees as independent contractors. Targeted industries include trucking, home health care, janitorial service companies and restaurants.

Various wage and hour initiatives make this area of employment law “high risk” for all employers. One initiative, the so-called “Bridge to Justice” program, is a Wage and Hour/American Bar Association collaboration, where employees seeking assistance from the Wage and Hour Division will be provided toll free numbers to plaintiffs’ attorneys in their zip code who are ready, willing and able to take their case. Other initiatives include public awareness campaigns, partnering with local media outlets to provide information regarding offending employers and the decreased availability of employer defenses (no more wage and hour opinion letters).

The latest in this long line of Wage and Hour Division initiatives is the development by the Wage and Hour Division of a “new app” for Smartphones (who knew the Department of Labor was in the app business!). The new “free” app is currently available for iPhone and iPod Touch users and will help employees independently track their own hours they work and determine the wages they are owed. The Wage and Hour Division is currently working on apps for Android and Blackberry users and expanded free apps for tracking commissions, bonuses, tips, deductions, holiday pay and shift differentials. The result of these initiatives will be increased employer exposure to Wage and Hour Division audits and costly wage and hour litigation.

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