



Key Employment Law Issues in 2009

October Update

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<u>Law</u>	<u>Key Dates</u>	<u>Description</u>
American Recovery and Reinvestment Act of 2009	Notice must be provided by 4/18/09	Signed by Pres. Obama on 2/17/09 and effective for premiums in March, 2009, the ARRA provides a 65% subsidy towards the cost of COBRA coverage for employees that are involuntarily terminated between 9/1/08 and 12/31/09 through a credit to employer payroll taxes.
New I-9 Forms	Effective 4/3/09	All employees hired on or after April 3, 2009 must complete new I-9 and employers may only accept documents that are unexpired and on the "List of Acceptable Documents."
Lilly Ledbetter Fair Pay Restoration Act	Signed by Pres. Obama 1/29/09, but, takes effect as if enacted on 5/28/07	Extends the time for bringing a disparate pay claim under anti-discrimination laws. Unlawful employment practice occurs 1) any time a discriminatory compensation decision is made; 2) when an employee is subject to a discriminatory compensation decision; 3) when an employee is affected by the discriminatory decision (e.g. whenever compensation is paid).
Genetic Information Nondiscrimination Act	Employment provisions effective 11/21/09	Prohibits discrimination against employees on the basis of genetic information and prohibits employers from acquiring genetic information of employees or their family members.
Bowling Green, OH anti-discrimination ordinance	Adopted 8/17/09	Makes it illegal to discriminate on the basis of sexual orientation, gender expression, gender identity, marital status, and military and veteran status in Bowling Green, Ohio. Creates a process for investigation of complaints and conciliation. If situation is not resolved, offenders can be charged with a fourth-degree misdemeanor.
<u>Pending Legislation</u>		
The Balancing Act (H.R. 3047)	Introduced 6/25/09	Expands FMLA to provide paid sick leave and additional leave for family issues. Benefits would be provided through Family and Medical Leave Insurance Fund through employer premiums of .2% of employee earnings. Also requires employers with 15 or more employees to provide 7 days of paid sick leave and permits employees to take leave to attend children and grandchildren's educational activities or assist elderly relatives.
Healthy Families Act (Federal)	Introduced 5/18/09	Requires employers with 15 or more employees to provide 56 hours of paid sick leave. Hearings were held 6/11/09 by the U.S. House Workforce Protections Subcommittee. SHRM provided testimony that a federally mandated sick leave limits employers' ability to provide flexible benefits packages and is inappropriate during the difficult economic atmosphere.
Ohio H.B. 176	Passed House on 9/15/09 and sent to Senate 9/17/09	Amends ORC 4112 to include "sexual orientation and gender identity" to the listed of protected classes. When introduced, the Bill protected "sexual orientation, gender identity and

		expression.” After testimony from Tony Fiore, Director of Ohio Chamber of Commerce Labor & HR Policy, on behalf of the Ohio Chamber and SHRM, the term “expression” was removed and the Bill was clarified to indicate that no new employee facilities would be required and employers could continue to enforce grooming and dress codes policies.
FMLA Restoration Act	Introduced 4/29/09	Nullifies new regulations in several key respects, including the new “serious health condition” clarifications. Would only permit employers to require recertification after 1 year not 6 months. Would remove specific number of visits to health care provider as requirement for “serious health condition.”
FMLA Inclusion Act	Introduced 4/28/09	Amends the FMLA to include coverage for care for a domestic partner, child of a domestic partner, parent-in-law, adult child, sibling, or grandparent.
Ohio S.B. 91	Introduced 4/2/09	Amends ORC 4112 to make it unlawful for employers to use a person’s credit rating or score or consumer credit history as a factor in making employment decisions.
Employee Free Choice Act	Introduced 3/10/09	“Card check” legislation would, in most cases, eliminate the right of employees to privately vote for or against union representation. Unions will be able to obtain collective bargaining representative status merely by demonstrating to the NLRB that they obtained cards signed by a majority of employees. Would also require employers to negotiate within 10 days of unionization and would require binding arbitration of contract disputes after 120 days. On 7/16/09 “compromise legislation” was drafted in which the card check provision was eliminated, instead requiring shorter campaigns and faster elections. On 8/28/09, Sen. Reid (D-NV) stated that EFCA will not pass in 2009 because “we have too many other things on our plate.” On 9/5/09, AFL-CIO President makes comment that he may be willing to accept legislation without card check and that Pres. Obama stated he will work on passage of legislation once health care legislation is resolved. On 9/17/09, Sen. Specter (D-PA) predicts the “compromise” version of EFCA will pass this year.
Ohio S.B. 17	Introduced 2/10/09	Permits private sector comp time in lieu of overtime.
New ADAAA Regulations	Published 9/23/09; comments due 11/23/09	EEOC published proposed regulations regarding the ADAAA detailing the expansive nature of the new ADAAA and the clear intention to change the focus on whether an individual is a qualified individual with a disability to a focus on conducting an interactive process to determine whether there is a reasonable accommodation. The proposed regulations note that an estimated 1 million additional workers would consistently meet the new definition of disability.

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