

The Gathering Storm: A Preview of Probable (and Certain) Changes to Employment and Labor Laws

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Presented by:
Robert M. Howie



Picture of a Tornado - Kansas





Watershed Years for Labor & Employment Laws

- ◆ 1935 – National Labor Relations Act
- ◆ 1937 – Fair Labor Standards Act
- ◆ 1949 – Washington Law Against Discrimination
- ◆ 1964 – Civil Rights Act
- ◆ 1990-1991 – ADA/Civil Rights Act
- ◆ 1993 – Family & Medical Leave Act
- ◆ 2008-2009 - ?



Important Numbers For 2009

- ◆ 59
- ◆ 257
- ◆ 1
- ◆ Do these numbers = 317?
- ◆ Or do these numbers equal party time for big Labor and for lawyers who represent plaintiffs in employment cases?



Why Have the Stars Aligned So Perfectly?

- ◆ Election results 2008
- ◆ Long gap since last major legislative period for employment laws (1990-1993)
- ◆ Union power within Democrat Party (state and federal)
- ◆ Levers of federal agency power (Solis at Labor – maybe; EEOC; Wage/Hour Division; OFCCP; OSHA; MSHA)
- ◆ Economic crisis = corporate America is reeling
- ◆ Return to domestic focus (for now . . .)



Laws Already in Force



Lilly Ledbetter Fair Pay Act





Lilly Ledbetter Fair Pay Act

- ◆ Signed by President Obama January 2009
- ◆ Overruled Ledbetter v. Goodyear Tire
- ◆ Reinstated “paycheck rule”
- ◆ Time limits to file a pay discrimination case under Title VII, ADA, ADEA or Rehabilitation Act begins to run each time a paycheck is issued
- ◆ Includes any payment of pay or benefits even if it’s only affected in part by prior decision
- ◆ Employers can and should take steps to evaluate pay disparity



President Obama's Pro-Labor Executive Orders

1. Requires government contractors to offer jobs to “qualified” employees when a contract changes from a prior contractor
2. Requires government contractors to post notice of right to join union
3. Prohibits government contractors from being reimbursed for expenses for trying to persuade employees to form or refrain from forming unions
4. Requires federal construction contractors to enter project labor agreements and favor union companies



TARP Compensation Limits

- ◆ Businesses accepting future TARP (Troubled Asset Relief Program) funds will need to agree to limit top executive compensation to \$500,000 annually
 - ◆ Except restricted stock
 - ◆ Exceptions allowing submission of higher compensation to shareholder vote
 - ◆ Limit severance and executive perks
 - ◆ WSJ already identified loopholes that may allow companies to get around these rules



ADA Amendments Act of 2008

- ◆ Congress emphasized broad coverage – “The question of whether an individual’s impairment is a disability under the ADA[AA] should not demand extensive analysis”
- ◆ This “broad coverage” contrasts with many prior court decisions emphasizing narrow construction
- ◆ Expands coverage of who qualifies as disabled
- ◆ Allows many more individuals to sue for disparate treatment
- ◆ Does not substantially alter requirements for reasonable accommodation



ADA Amendments Act of 2008

- ◆ ADA still requires employers to provide “reasonable accommodation” to the “known physical or mental limitations” of a “qualified individual with a disability” unless that accommodation would constitute an “undue hardship” on the employer or present a direct threat to the health or safety of the employee or others
- ◆ ADA also prevents employers from discriminating against an individual with a known disability
- ◆ A “qualified individual with a disability” is still defined as an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position
- ◆ “Disability” means a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or being regarded as having such impairment



ADAAA Major Change #1 – Mitigating Measures

- ◆ Mitigating measures shall not be considered in determining whether an individual has a disability (i.e., an impairment that substantially limits a major life activity)
 - ◆ Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999)
 - ◆ U.S. Supreme Court had relied on “43 million Americans” statement in original ADA and “discrete and insular minority”
 - ◆ Ironically, eyeglasses and contact lenses can still be considered (but employer cannot have a job requirement for a certain level of uncorrected vision unless job related and consistent with business necessity)





ADAAA Major Change #1 – Mitigating Measures

- ◆ Mitigating measures include:
 - ◆ Medication
 - ◆ Prosthetics
 - ◆ Hearing aids
 - ◆ Mobility devices
 - ◆ Oxygen therapy equipment
 - ◆ Assistive technology
 - ◆ Learned behavioral or adaptive neurological modification



ADAAA Major Change #2 – Major Life Activity

- ◆ ADAAA expanded and clarified the definition of major life activity by including two non-exhaustive lists
- ◆ The original ADA did not attempt to define “major life activity” but rather left that to the EEOC and federal courts
- ◆ Courts defined major as being important or “of central importance to daily life”



ADAAA Major Change #2 – Major Life Activity

- ◆ Caring for oneself
- ◆ Performing manual tasks
- ◆ Seeing
- ◆ Hearing
- ◆ Eating
- ◆ Sleeping
- ◆ Walking
- ◆ Standing
- ◆ Lifting
- ◆ Bending
- ◆ Speaking
- ◆ Breathing
- ◆ Learning
- ◆ Reading
- ◆ Concentrating
- ◆ Thinking
- ◆ Communicating
- ◆ Working (broad class of jobs?
The jury is still out)



ADAAA Major Change #2 – Major Life Activity

- ◆ Operation of a major bodily function
 - ◆ Immune system
 - ◆ Normal cell growth
 - ◆ Digestive
 - ◆ Bowel
 - ◆ Bladder
 - ◆ Neurological
 - ◆ Brain
 - ◆ Respiratory
 - ◆ Circulatory
 - ◆ Endocrine
 - ◆ Reproductive



ADAAA Major Change #2 – Major Life Activity

- ◆ Keep in mind that these lists are **nonexclusive**!
- ◆ Although “**major**” is not defined in the ADAAA, it is apparent that Congress wants courts to define it to mean less than “central to daily life”



ADAAA Major Change #3 – How Much is “Substantially”

- ◆ Original ADA did not define “**substantially limits**” – EEOC defined as “**significantly restricted**”
- ◆ Toyota Motor Manufacturing, Kentucky Inc. v. Williams, 534 U.S. 184 (2002) – unanimous decision
- ◆ Court interpreted strictly to create a demanding standard for qualifying as disabled – “substantially in the phrase ‘substantially limits’ suggests ‘considerable’ or ‘to a large degree’”
- ◆ Court held that to be substantially limited in performing manual tasks, an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people’s daily lives - the impairment’s impact must also be permanent or long-term



ADAAA Major Change #3 – How Much is “Substantially”

- ◆ ADAAA directs EEOC to revise its regulations defining “substantially limits” to comply with Congressional intent that the ADA be broadly construed
- ◆ Congress did not amend or define the term – some disability advocates wanted it removed entirely – others wanted to use “materially restricts” – neither approach was adopted
- ◆ By way of comparison, Washington law provides that a limitation that is “trivial” is not “substantial”



ADAAA Major Change #4 – Episodic and Remission Count

- ◆ ADAAA clarifies that an impairment that is episodic or in remission or latent is a disability if it would substantially limit a major life activity when active
- ◆ Thus, if an impairment comes and goes, it may still qualify as a disability
- ◆ Transitory and minor impairments with duration of less than 6 months are still excluded



ADAAA Major Change #5 – Expansion of “Regarded As”

- ◆ Original ADA left this issue silent – result was that plaintiff needed to show higher standard
- ◆ ADAAA permits an individual to claim that he or she was discriminated against because of an actual or perceived physical or mental impairment regardless of whether or not the impairment actually limits or is perceived to limit a major life activity
- ◆ **Exception!!** Not if the impairment is transitory and minor (transitory means actual or expected duration of 6 months or less)



ADAAA Major Change #5 – Expansion of “Regarded As”

- ◆ In a bone thrown to employers, the ADAAA provides that there is no need to accommodate individuals who are only regarded as having a disability
- ◆ Some courts had previously concluded that this was required

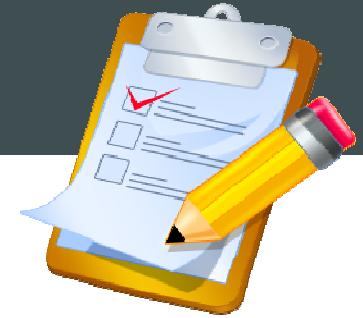


What Hasn't Changed?

- ◆ Individual must still satisfy the job prerequisites (experience, licenses, etc.)
- ◆ Individual must be able to perform essential functions of the job with or without reasonable accommodation
- ◆ Employer is still in best position to define essential function (Would removing the function fundamentally alter the position?)
- ◆ Washington's Law Against Discrimination (substantially limits ability to perform his or her job)
- ◆ Duty of reasonable accommodation
- ◆ Standard for undue hardship or direct threat



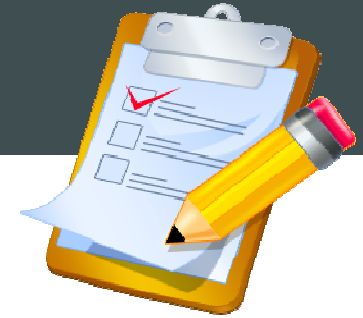
ADA[AA] Checklist



- ◆ Are you on notice that the employee has a disability?
 - ◆ Has the employee disclosed a medical condition that could be a disability or claimed a disability?
 - ◆ Are there obvious signs of a physical or mental abnormality or impairment?
 - ◆ Have other employees reported any physical or mental abnormality or impairment?



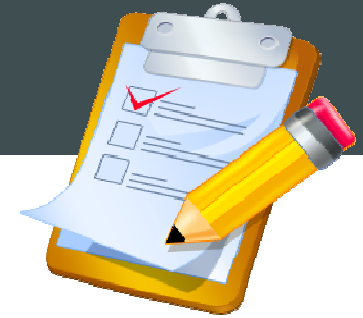
ADA[AA] Checklist



- ◆ Does the individual have a disability?
 - ◆ Does he/she have an impairment?
 - ◆ Is a major life activity affected by the impairment?
 - ◆ Does the impairment substantially limit a major life activity?
 - ◆ In Washington, does the impairment substantially limit the employee's ability to do his/her job?
 - ◆ Does the individual claim he/she has a record of a disability?
 - ◆ Is the individual regarded as having a disability?



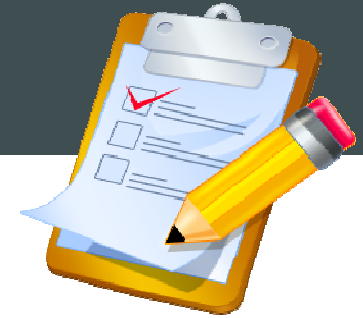
ADA[AA] Checklist



- ◆ Is the individual “qualified”?
 - ◆ Does the individual have the required skill, education and experience for the job and does he/she meet job-related requirements?
 - ◆ What are the essential functions?
 - ◆ Can the individual perform the essential functions with or without an accommodation?



ADA[AA] Checklist



- ◆ Determine whether the individual needs a reasonable accommodation
 - ◆ Did you engage in the interactive process?
 - ◆ Did you discuss possible accommodations with the individual?
 - ◆ Did you document discussions?
 - ◆ Did you request assistance from any outside source?
 - ◆ Did you document those requests?
 - ◆ If the employee cannot be accommodated in current position, did you identify other open positions?



Revised FMLA Regulations

- ◆ Effective January 16, 2009
- ◆ Department of Labor finalized in waning days of Bush Administration – big disappointment for businesses that wanted major changes to FMLA regulations
- ◆ Hundreds of pages of minor changes to regulations – many are marginally helpful in clarifying details
- ◆ DOL says these changes will “reduce uncertainty and provide greater predictability in the workplace for everyone.”
- ◆ Well, I feel better – don’t you?



Revised FMLA Regulations

1. Employer notice requirements consolidated – (29 CFR 825.300) – Four types (a) FMLA poster and employee handbook provision; (b) notice of eligibility; (c) rights and responsibilities notice for person on leave; (d) designation notice as FMLA leave
2. Notices within 5 business days (rather than 2) – translation obligation in some circumstances



Revised FMLA Regulations

3. Employee notice requirements - new regulations remove the language suggesting that employees could give notice within one or two days of taking leave – also require explanation of lack of 30 days notice of planned leave.
4. Clarification that employees who experience unforeseen need for FMLA leave are typically required to follow the company's “usual and customary” absence notification procedures, such as calling in before the employee's start time, unless unusual circumstances prevent doing so (cannot undermine FMLA rules, however)



Revised FMLA Regulations

5. Military related leave - Eligible employees are entitled to take up to 12 weeks of unpaid leave for "qualifying exigencies" to help manage the affairs of a soldier or the soldier's family before, during and after deployment. Qualifying exigencies include short-notice deployment, military events, child care and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities and any additional activities negotiated between employers and employees.



Revised FMLA Regulations

6. Eligible employees would be entitled to up to 26 weeks of leave to care for a family member who was wounded while serving in the military. This 26-week leave entitlement is expanded beyond the customary parent, child or spouse to include "next-of-kin."
7. No relief for intermittent leave abuse (except minor tinkering)



Revised FMLA Regulations

8. Greater flexibility to employers on fitness-for-duty certification process – employees must cooperate (and employers must provide notice)
9. Employers are free to require that the fitness-for-duty certification address the employee's ability to perform a list of essential functions (employers must provide the list on the designation notice)
10. Employers are given slightly more leeway on fitness-for-duty when employee is on intermittent leave – once every 30 days and only if “reasonable safety concerns” are present



Revised FMLA Regulations

11. Relaxing of rules regarding contacting the health care provider. Previously, employer barred from contacting employee's health care provider, new regulations permit certain company officials, such as legal or human resources professionals or leave administrators, to contact the health care provider. To protect the employee's privacy, the employee's direct supervisors are forbidden from contacting the employee's health care provider. (Also, HIPAA still applies.)
12. The new regulations also remove certain provisions that provided categorical penalties to employers for failure to give the required notices, substituting a standard that provides liability only when the failure to follow the notification rules causes individualized harm to an employee.



Revised FMLA Regulations

13. The new regulations clarify that when an employer believes an employee's medical certification form is incomplete or insufficient, the employer must identify for the employee in writing the precise information believed to be lacking and give the employee a week to provide the additional information.
14. Under the new regulations, employers may require employees to provide a new medical certification every 12 months for medical conditions that last longer than one year. But if the employee is actually absent, the employer can require new medical certification every six months for ongoing conditions.
15. All new forms in the regulations.



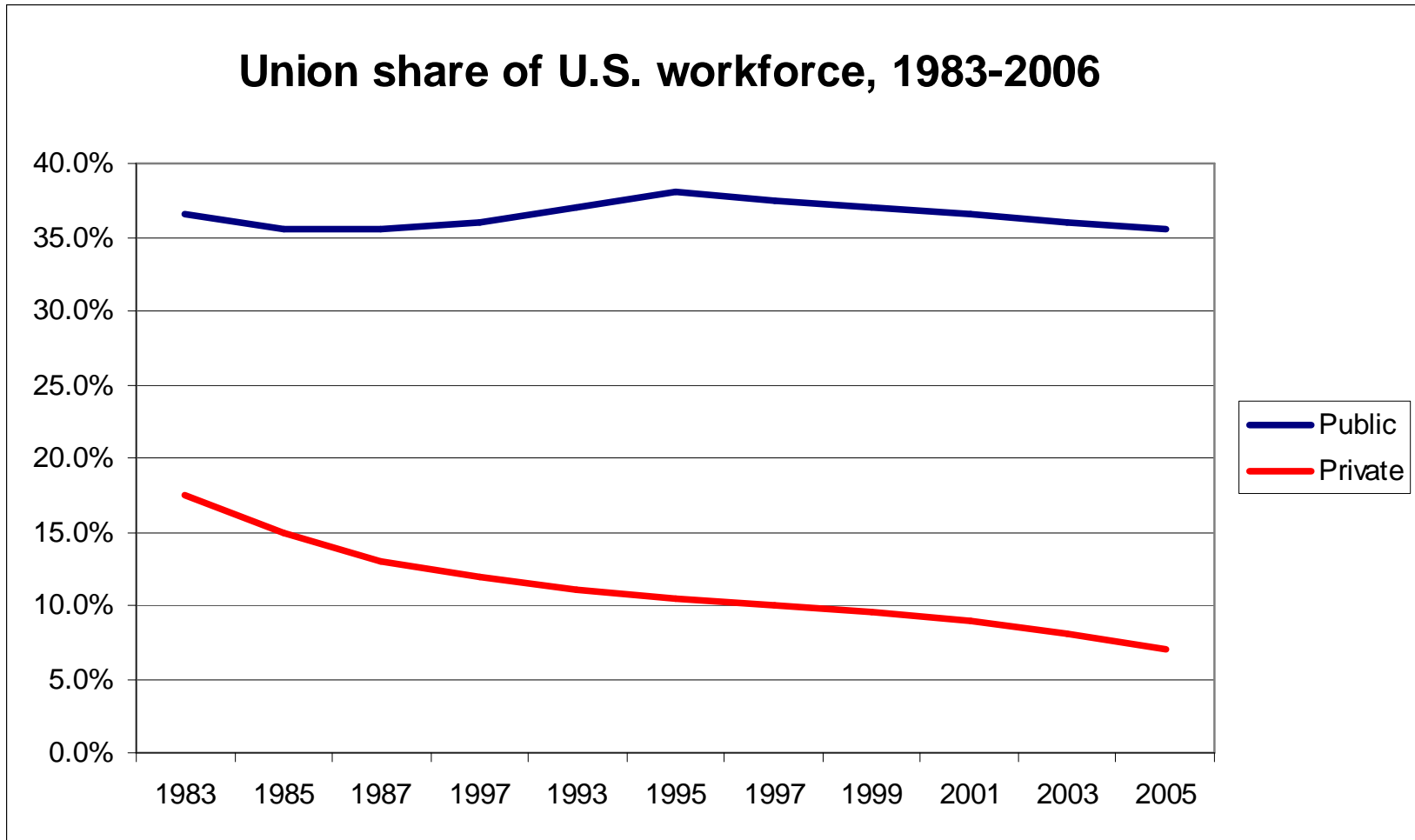
Laws on the Horizon

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**Objects May Be Closer
Than They Appear**

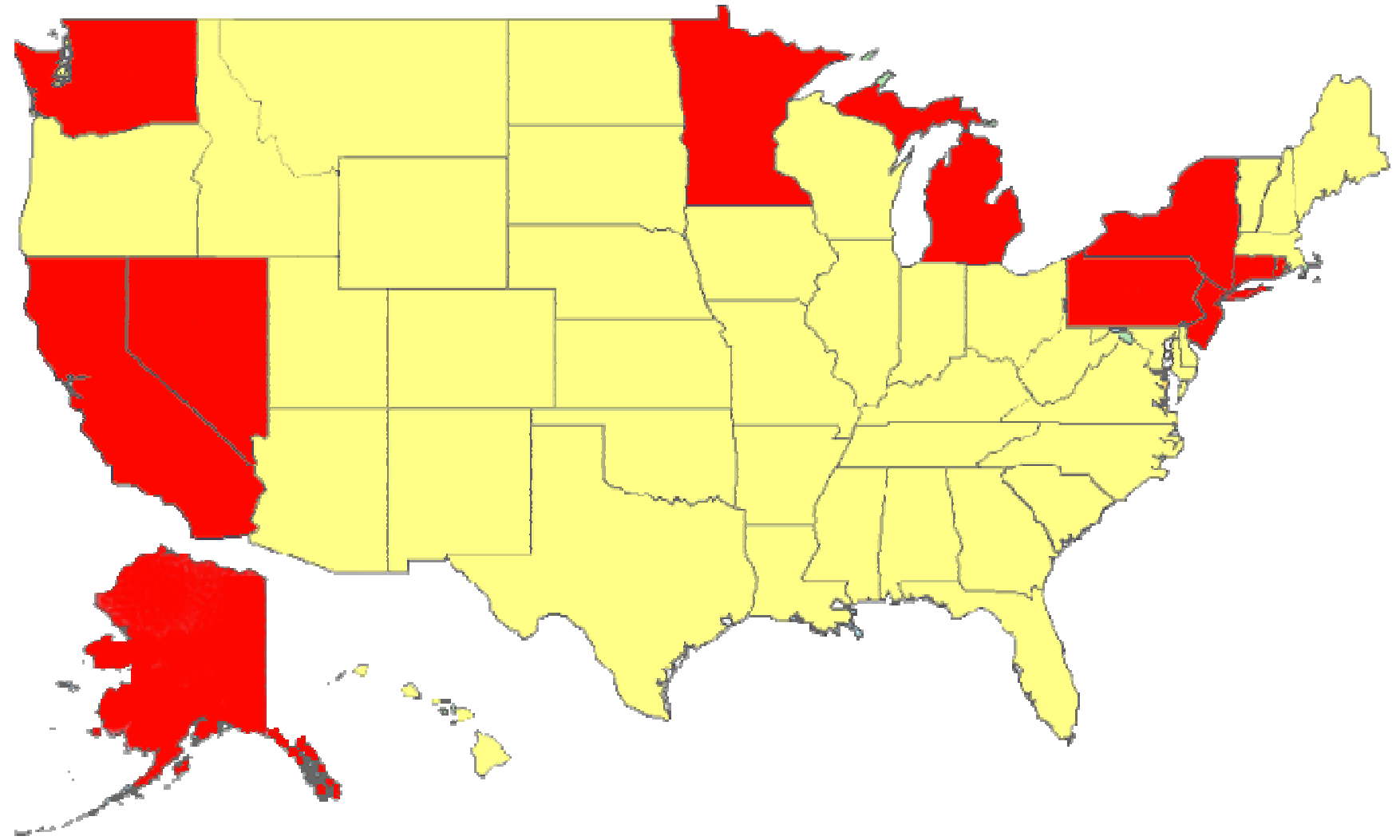


Big Labor's Long Decline





States with Largest Percentage of Union Members





Employee Free Choice Act (“EFCA”)

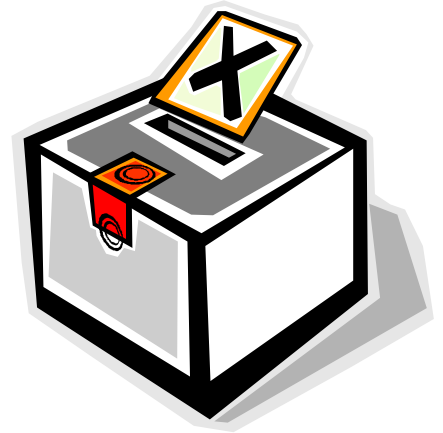


- ◆ The current system
 - ◆ All union organizing campaigns typically begin with prospective members signing a union authorization card
 - ◆ Once the union secures a number of cards, one of two things occurs:
 - ◆ If there is an adequate showing of interest (30% of workers in proposed unit), the NLRB conducts an election
 - ◆ If the union has 50%, the union could request voluntary employer recognition
- ◆ Election supervised by NLRB



Employee Free Choice Act

- ◆ NLRB supervised elections take place under supposed “laboratory conditions”
 - ◆ Secret ballot
 - ◆ No electioneering in polling places
 - ◆ Rules against intimidation, threats
 - ◆ Observers at polling place
- ◆ Almost all elections are held within 60 days – average is 39 days
- ◆ Ballots are counted and a winner is declared
- ◆ If union wins, employer is obligated to bargain in good faith





Employee Free Choice Act

- ◆ EFCA would virtually eliminate that system
- ◆ If union submits more than 50% of signed authorization cards, the union would immediately be certified as the collective bargaining representative
- ◆ Secret ballot elections would vanish



Employee Free Choice Act

- ◆ Second major change in EFCA would be that if union and employee could not reach a contract after 120 days, an arbitrator would be appointed with power to impose terms and conditions
- ◆ This power would include wages, hours and working conditions
- ◆ The title of this bill is seriously misleading - it's not really about employee choice, but about union power



Employee Free Choice Act

- ◆ Today, the National Labor Relations Act provides only “make whole remedies” for employees who are harmed by an employer’s misconduct during a union organizing campaign or in the course of a labor/management conflict
- ◆ EFCA would establish punitive remedies (i.e., double or treble damages) for employer violations of the Act



Employee Free Choice Act

- ◆ What should employers do now?
 - ◆ Train, train, train
 - ◆ Address current workplace concerns
 - ◆ Managers/supervisors must be visible and effective
 - ◆ Avoid TIPS (threats, interrogation, promises, surveillance)
 - ◆ Be honest and have a plan now – once you know a union is in your workplace, it will be too late



RESPECT Act

- ◆ Re-empowerment of Skilled and Professional Employees and Construction Tradeworkers Act
 - ◆ Currently National Labor Relations Act defines “supervisor” broadly as someone who can hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action
 - ◆ Supervisors cannot be members of a bargaining unit or a union
- ◆ RESPECT would delete “assign” and “responsibly to direct” from the definition
- ◆ RESPECT would require that supervisors spend a majority of time as supervising



RESPECT Act

- ◆ RESPECT Act would subject first line supervisors to union organizing, including being in the same bargaining unit as employees they supervise
- ◆ Removes loyalty to management
- ◆ Creates unstable conflict of interest



RESPECT Act

- ◆ Perhaps the law should be called “Ready to Enlarge the Scope and Penetration of Every union from Coast To coast”
- ◆ What should employers do now?
 - ◆ Review job descriptions
 - ◆ Ensure that supervisors are actually supervising and performing enumerated duties
 - ◆ Train supervisors and let them know they are supposed to avoid unionization, not foster it



PATRIOT Employers Act

- ◆ Provides substantial tax break to employers . . . as long as they:
 - ◆ Maintain HQ in United States
 - ◆ Pay at least 60% of employee's health benefits
 - ◆ Observe a policy of neutrality in employee/union organization drives
- ◆ If more than 50 employees
 - ◆ Must maintain or increase # of full time workers in US compared to abroad
 - ◆ Must provide full salary & insurance benefits to employees called to active duty
 - ◆ Must provide certain compensation and retirement benefits



- ◆ Employment Non-Discrimination Act
 - ◆ Prohibits discrimination because of sexual orientation
 - ◆ Prohibits discrimination because of gender identity
 - ◆ Like Title VII, but exempts employer dress codes, small employers, religious organizations and the military
 - ◆ Some discussion about whether to remove gender identity because it is more controversial to some members of Congress



Paycheck Fairness Act

- ◆ The Paycheck Fairness Act has already passed in the House in 2009
- ◆ It would significantly alter federal pay discrimination claims (currently, employers can defend by pointing to “any factor other than sex” – now it will require a “bona fide factor other than sex”)
- ◆ Paycheck Fairness Act would make punitive and compensatory damages available under the Equal Pay Act of 1964 (the “EPA”) without requiring proof of discriminatory intent
- ◆ It would be easier for plaintiffs to become parties to class action lawsuits under the EPA by requiring plaintiffs to “opt-out” of such lawsuits, rather than “opt-in” as under current law



Healthy Families Act

- ◆ Would guarantee employees 7 paid sick days for own illness or sick family members
- ◆ Covers all employers with 15 or more employees
- ◆ Pro-rata for part time employees
- ◆ Covers sickness or doctor's appointments
- ◆ Prohibits employers from taking away any leave as a result of the act
 - ◆ Watch out for your PTO!



Civil Rights Act

- ◆ Sweeping changes to many statutes
 - ◆ Lowers burden of proof to get attorney fees
 - ◆ Prohibits mandatory arbitration agreements in employment contracts
 - ◆ Allows recovery of expert fees
 - ◆ Removes compensatory and punitive damages caps from Title VII (would now be like section 1981)
 - ◆ Prohibits denial of back pay to illegal immigrants
 - ◆ Expands equal pay claims under FLSA



Arbitration Fairness Act

- ◆ Amends Federal Arbitration Act to make any predispute arbitration agreements invalid and unenforceable if it requires arbitration of:
 - ◆ An employment, consumer or franchise dispute
 - ◆ A dispute arising under any statute intended to protect civil rights or regulate contracts between parties of unequal bargaining power
- ◆ Virtually wipes out arbitration agreements



Working Families Flexibility Act



- ◆ The “union of one” Act
- ◆ Requires good faith negotiations with every employee who desires a change of days of work, hours of work or location of work
- ◆ 5 step process of meetings and written documents
- ◆ If not granted, employer must give reasons in writing and specify
 - ◆ Costs of agreeing to change
 - ◆ Effect of change on customer demand; and
 - ◆ The overall financial resources of the company
- ◆ Weingarten rights at meetings
- ◆ Penalty of \$1,000 for violation



FOREWARN Act

- ◆ Or “Watch Out Below for Lawsuits”
- ◆ Would amend WARN to lower coverage to employers with 50 or more employees (down from 100)
- ◆ Require 90 days advance notice of mass layoff or closing (up from 60)
- ◆ Double the amount of back pay an employer owes if notice not given



Protecting American Workers Act

- ◆ Amend OSHA
 - ◆ Extend coverage to public sector
 - ◆ Strengthen whistleblower protections for employees who report unsafe condition
 - ◆ Increase employer penalties (minimum of \$50,000 if willful violation or death)
 - ◆ Increase criminal penalties for death or injury
 - ◆ Require employers to provide personal protective equipment



FMLA Redux

- ◆ Various bills seek to amend FMLA to:
 - ◆ Encourage states to establish paid leave (insurance program for 8 weeks of paid leave, sliding scale based on employee's income)
 - ◆ Expand coverage to employers with 25 employees (down from 50)
 - ◆ Grant leave for domestic violence and sexual assault victims
 - ◆ Grant 24 hours of leave every 12-months for school activities



COBRA

- ◆ COBRA subsidies for unemployed – the House-passed stimulus bill (HR 1) would subsidize 65% of COBRA premiums for covered employees involuntarily losing their jobs between Sept. 1, 2008 and Dec. 31, 2009
- ◆ The subsidy would last for the earlier of 12 months or until the individual is eligible for new group health plan coverage or Medicare.
- ◆ Employers would also have to provide new notices and election periods



COBRA

- ◆ Employers would bear direct, unplanned administrative costs for issuing new notices, managing new election periods, and billing and collecting the individual share of the COBRA premium
- ◆ Employers also would have to front 65% of COBRA premiums until receiving a credit against payroll tax liabilities or a direct government payment for the subsidy amounts



COBRA

- ◆ Individuals could keep COBRA coverage until eligible for Medicare or other employer coverage if they are age 55 or older or have at least 10 years of service with the employer when first eligible for COBRA due to voluntary or involuntary job loss or reduction in hours.



National Labor Relations Board Decisions

- ◆ President Obama appointed former Teamsters lawyer Wilma Liebman to National Labor Relations Board Chair
- ◆ Pro-union members will likely have a 3-2 majority soon
- ◆ Board decisions likely to be reversed
 - ◆ **Dana Corp.** – Employer's voluntary recognition of a union did not bar a decertification or rival union petition filed within 45 days of the notice to employees of the voluntary recognition



National Labor Relations Board Decisions

- ◆ **Harborside Healthcare Inc.** - Solicitation of an authorization card by a supervisor has an “inherent tendency” to coerce the employee solicited and therefore the challenging employer does not have to establish that the supervisor engaged in coercive conduct
- ◆ **Register Guard** - Employers have a basic property right regarding their e-mail systems and are entitled to promulgate and enforce blanket “business only” e-mail policies. This decision also allowed the employer to distinguish between solicitation related to the employee's right to organize under §7 of the NLRA and other charitable or personal solicitation on its e-mail system (jokes, baby announcements, etc.)



National Labor Relations Board Decisions

- ◆ **Oakwood Healthcare, Inc.** - Made it easier for an employer to classify someone as a supervisor and thus exclude them from union representation
- ◆ **IBM Corp.** - Employees in non-unionized workplaces do not have Weingarten rights (i.e., the right to have a coworker present at an investigatory interview), overruling Epilepsy Foundation of Northeast Ohio, 331 NLRB 676 (2000) enf. 268 F.3d 1095 (D.C. Cir. 2001), which in turn overruled Sears, Roebuck & Co., 274 NLRB 230 (1985)



Washington State Worker Privacy Act

- ◆ Ostensibly designed to prohibit employer communication regarding “political matters” or “religious matters”
- ◆ Real purpose is to stop anti-union communication
- ◆ Employer cannot require an employee to:
 - ◆ Attend a meeting, or
 - ◆ Listen to, respond to, or participate in any other communication when:
 - ◆ The purpose of the requirement is to “ensure” that employees receive communications relating to political or religious matters or to “influence the employee’s beliefs, opinions, or actions about political or religious matters”



Washington State Worker Privacy Act

- ◆ Bill defines “**political matters**” as matters directly related to:
 - ◆ Candidates
 - ◆ Elected officials
 - ◆ Ballot propositions
 - ◆ Legislation
 - ◆ Election Campaigns
 - ◆ Political parties
 - ◆ Social, community, **and labor** or other mutual aid organizations



Washington State Worker Privacy Act

- ◆ **“Religious matters”** include all aspects of religious observance and practice, as well as belief
- ◆ Damages include:
 - ◆ Injunctive relief
 - ◆ Rehiring or reinstatement
 - ◆ Back pay and benefits
 - ◆ Damages for any “reasonably foreseeable losses sustained by the employee”
 - ◆ Also 100% of back pay as liquidated damages
 - ◆ Attorneys fees and costs
- ◆ Must post a notice of rights in conspicuous place



Washington State Paid Family Leave

- ◆ Paid family leave insurance program was slated to begin on October 1, 2009
- ◆ Governor Gregoire suspended start-up activity in the fall of 2008 – no money for program
- ◆ Employees in Washington would be entitled to up to five weeks' paid family leave “because of the birth of a child of the employee and in order to care for the child,” or “because of the placement of a child with the employee for adoption.”
- ◆ The law also provided certain employees with re-employment after taking leave if:
 - ◆ the employer has more than 25 employees; and
 - ◆ the individual has been with the employer at least twelve months and worked at least 1250 hours during the previous twelve-month period



Washington State Paid Family Leave

- ◆ To qualify for insurance benefits, the employee must have
 - ◆ worked at least 680 hours during the employee's qualifying year; and
 - ◆ provided written notice of the intent to take leave
- ◆ Wage replacement capped at \$250 per week
- ◆ Funding source was uncertain – task force in 2008 reported some ideas



Washington State Paid Family Leave

- ◆ But, just when you thought this paid leave bill might be finished . . .
- ◆ Like James Bond, it's back and bigger and better than ever!
- ◆ Some state legislators want to expand the reach of paid leave to cover care of parents and other relatives **AND** fund the paid leave with an employee paid premium of 2 cents per hour
- ◆ Stay tuned for legislative developments



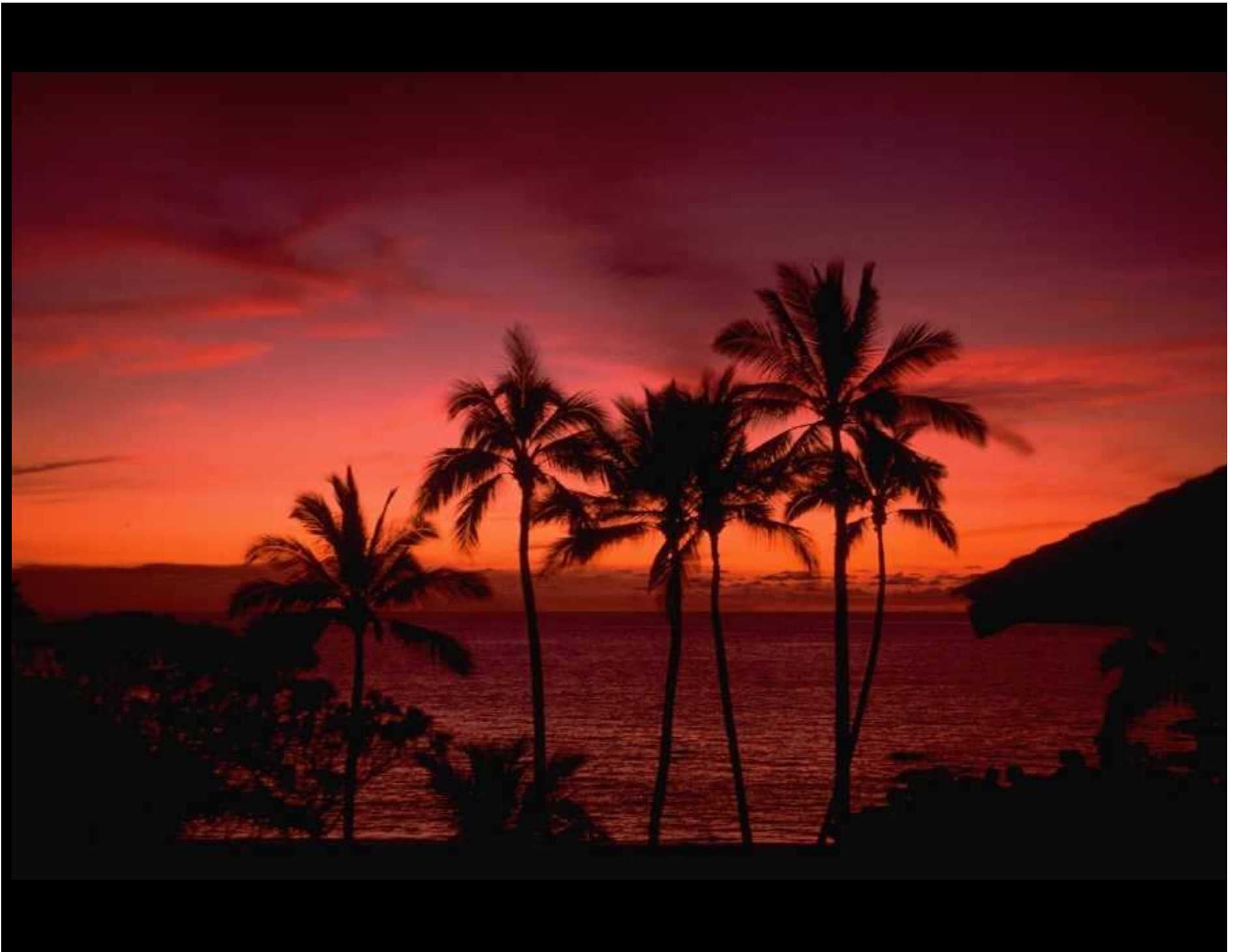
And There's More!

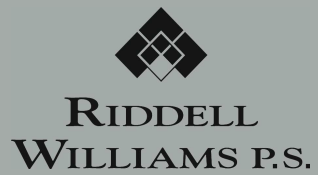
- ◆ Comprehensive Immigration Reform
- ◆ Healthcare Reform
- ◆ State Anti-Bullying laws
- ◆ Marriage Equality Legislation
- ◆ Federal Stimulus Bill



What Is An Employer To Do?

- ◆ **Remember the basics**: sound management will avoid problems with most, if not all, of the cascade of new laws
- ◆ Managers/supervisors must engage consistently with employees – weak management will expose a company to unacceptable risk in this environment
- ◆ Appearances matter in 2009
- ◆ Stay tuned to rapidly changing developments
- ◆ Don't wait for the boomerang to return - learn these new rules and comply
- ◆ OR you can take a different approach





Questions?

Please contact us any time with additional questions.

Robert M. Howie
206.389.1561
rhowie@riddellwilliams.com