

Employment and Labor Law Update

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Federal Legislation

- Lilly Ledbetter Fair Pay Act
- ADA Amendments Act
- Genetic Information Non-Discrimination Act
- Employee Free Choice Act
- Healthy Family Act
- Employment Non-Discrimination Act
- Arbitration Fairness Act

Lilly Ledbetter Fair Pay Act

- Signed into law January 29, 2009
- Overturns US Supreme Court
- Discriminatory pay practices
- Doc retention policies

Americans with Disabilities Amendments Act

- Effective January 1, 2009
- “Disability” broadly construed
- Modification to “substantially limits”
 - “common sense” assessment
- Unmitigated impairment
- Expansion of “major life activity” and “regarded as”
- New poster

Genetic Information Non-Discrimination Act (GINA) Regulations

- Effective November 21, 2009
- Genetic tests of individual or family members, information related to any disease, disorder or condition of family member (family medical history)
- “Voluntary wellness” plans exempted

Employee Free Choice Act (HR 1409/S 560)

- Card check recognition
- Interest arbitration
- Enhanced remedies against employers during organizing and first contract negotiations

Healthy Families Act (HR 2460)

- Amend FMLA to require a minimum of seven paid sick leave days (own illness or to care for family member) to employees who work a minimum of 30 hours per week
- Prorated for <30 hour employees
- >15 employees

Employment Nondiscrimination Act (ENDA) (HR 2981/S 1584)

- Prohibits discrimination based on actual or perceived sexual orientation or gender identity
- Requires employee to notify employer if undergoing gender transition

Arbitration Fairness Act (HR 1020/S 931)

- Would make pre-dispute arbitration agreements involving employment disputes unenforceable

Other Potential Legislation

- Minimum wage increase
- Tax equity for domestic partners
- Healthy Workforce Act
- Equal Remedies Act

Executive Orders

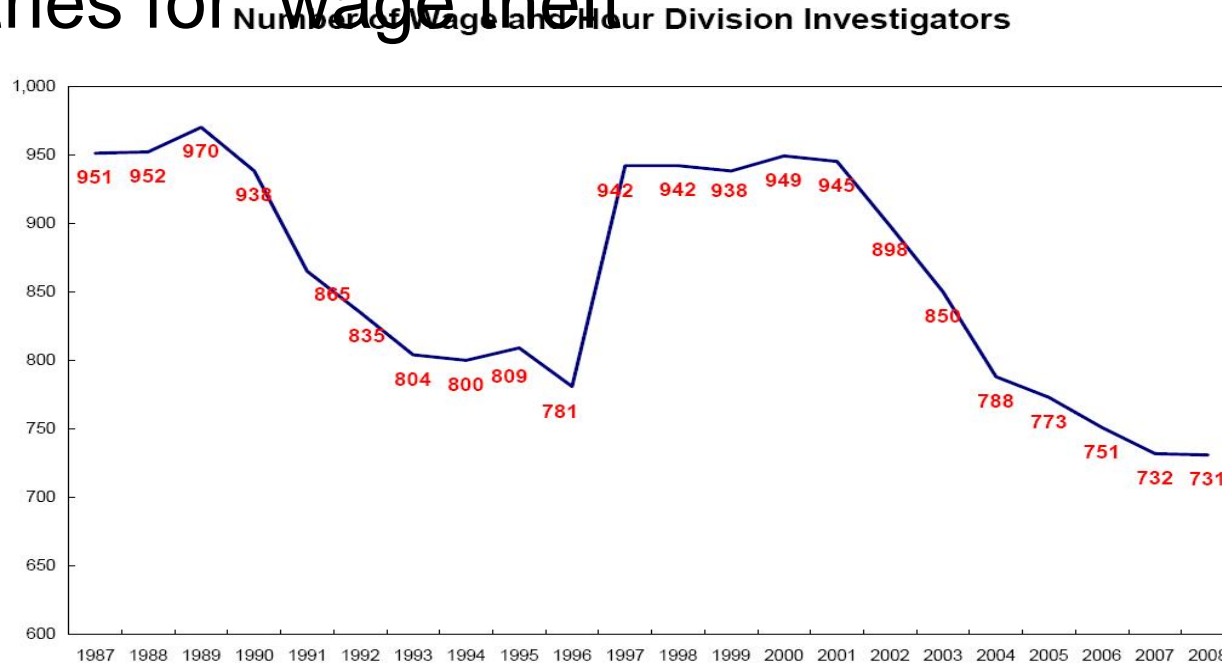
- 13494 – Economy in Government Contracting
- 13495 – Non-Displacement of Qualified Workers Under Service Contracts
- 13496 – Notification of Employee Rights Under Federal Labor Laws

DOL – Office of the Solicitor

- Additional attorneys
- Amicus briefs
- Overtime for sales employees (pharmaceutical sales, e.g.)
- Independent contractors
- Low wage earners

DOL - Wage and Hour Division

- 250 New Investigators
 - Focus on low wage industries for “wage theft”
- Maximum past 30 years – 980
 - 2 year training cycle



Source: U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division

Wage and Hour Problem Areas

- Off the clock
- Overtime
- Regular rate
- Bonuses/commissions
- Independent contractor/employee
- Exemptions
- Tip pools/credits

Occupational Safety and Health Administration (OSHA)

- Additional inspectors/increased regulation
- Initiatives:
 - Globally Harmonized System
 - Standard on fire and explosion hazards associated with combustible dust
 - National Emphasis Program on Recordkeeping

Equal Employment Opportunity Commission

- 93,277 charges filed with EEOC in 2009
 - Record: 95,402 in 2008
- Disability, retaliation largest increase

California Issues

- When is an out of state employee considered a California employee for purposes of California wage and hour law?
 - *Sullivan v. Oracle*, 547 F.3d 1177 (9th Cir. 2008)
 - Withdrawn, asked CA Supreme Court to decide

California Issues

- *Sullivan v. Kelly Services*
 - California federal district court ruled that Kelly was required to pay its workers for time spent interviewing for temporary assignments
 - Travel and prep time not paid